SUPREME COURT OF INDIA

Ahmed Abdulla Ahmed Al Ghurair (Through Their Power of Attorney Holder Mr. Bartholomew Kamya)

Vs.

Star Health and Allied Insurance Company Limited

C.A.No.9786-9799 of 2018

(A.K.Sikri and Ashok Bhushan,JJ.,)

26.11.2018

JUDGMENT

A.K.Sikri,J.,

SLP(C)No.22057-22070 of 2018

1. This group of thirteen appeals was heard together and is being disposed of by this common judgment as an identical issue is involved therein.

2. At the outset, we may mention that the dispute between the parties pertain to the shares of Respondent No.1, Star Health Insurance Company, standing in the name of the Respondent Nos. 3-7. As per the appellants/plaintiffs, it is Respondent No. 2 which has the beneficial interest in those shares. In this behalf, the appellants/plaintiffs filed the suit through their Power of Attorney holder (C.S. No. 33 of 2018) before the High Court of Madras seeking, inter alia, the relief of declaration of beneficial interest of Respondent no. 2 herein in the shares which are in the names of Respondent nos. 3 to 7. These constitute a total of 6.16% of the share holding of Respondent No. 1. However, issue before this Court is very limited which pertains to the territorial jurisdiction, viz., whether High Court of Madras has the territorial jurisdiction to entertain the suit filed by the appellants herein?

3. As per Clause 12 of the Letters Patent, along with the suit the plaintiffs also filed application for seeking leave to sue on the ground that a substantial part of cause of action had arisen within its jurisdiction. This application was allowed by the High Court vide its order dated January 12, 2018. After the service of summons in that suit, Respondent no. 1 herein (Defendant no. 1 in the suit) filed applications for revoking leave to institute the suit within the jurisdiction of Madras High Court on the ground that it lacked territorial jurisdiction to decide the suit. Similar applications were filed by Respondent nos. 2 and 3 as well. Respondent nos. 4,6,and 7 filed Memos supporting these applications. The learned Single Judge of the High Court dismissed these applications holding that High Court had the

jurisdiction to entertain the suit. Appeals against this order were filed by Respondent nos. 1 to 9. The Division Bench has allowed these appeals by the common judgment dated August 03, 2018, thereby rejecting the plaint on the ground that suit in the High Court of Madras was not maintainable due to lack of territorial jurisdiction. This order is impugned in the instant appeals.

4. The brief facts leading to the case may be stated at this stage. It may be mentioned that only those facts which are essential to decide the controversy regarding jurisdictional issue are taken note of. Also, for the sake of clarity and convenience, the parties are addressed as plaintiffs and defendants, on the basis of memo of the parties in the suit. Since there are multiple parties to the litigations—contesting as well as proforma - we start with the description of these parties, which is as under:

5. Plaintiff No. 1 — Ahmed Abdulla Al Ghurair and Plaintiff no. 2, Ibrahim Abdulla Al Ghurair are brothers. They are residents and nationals of Dubai, UAE and are minority shareholders with 34% shares in defendant No. 2, ETA Star Holdings Ltd., a Company incorporated under the laws of Jebel Ali Free Zone Authority and having its registered office in Dubai, UAE. The remaining 66% shares in the same are held by Defendant nos. 3 to 7.

6. The Defendant no. 1, Star Health Insurance Company (hereinafter "Indian Company"), a Company registered under the Companies Act, 1956 having its registered office in Chennai, Tamil Nadu, India was incorporated on 17.06.2005. It is engaged in the Health Insurance business in India, having an authorised share capital of Rs.600 Crores and issued and subscribed capital of Rs. 455.57 Crores.

7. Defendant nos. 3 and 5 to 7 belong to the same family, viz., the "Buhary Family". The Defendant no. 3, Mr. Syed Mohamed Salahuddin holds 2.98% of shares in Defendant no. 1/Indian Company. Defendant nos. 5 to 7, sons of Defendant no. 3 and Mr. Arif Buhary respectively, all national and residents of Dubai, UAE hold 0.002% share each in the Indian Company.

8. Defendant no. 4, Mr. Essa Abdulla Ahmed Al Ghurair, a resident of Dubai, UAE, and the brother of the plaintiffs, holds a 3.18% share in Defendant no. 1/Indian Company.

9. Consequently, Defendant nos. 3 to 7 (i.e. the Buhary Family) along with Defendant no. 4 (who is the brother of the plaintiffs and all resident nationals of Dubai) jointly own 6.16% shares in the Indian Company.

10. All the share certificates regarding these 6.16% shares are held with the Proforma Defendant no. 11, viz., ETA Star Holding LLC, having its registered office in Dubai, UAE, which is a limited liability company incorporated in the Emirates of Dubai, UAE under UAE Federal Law No. 8 and is the 100% beneficial owner of the Indian Company.

11. The Contesting Defendant no. 8, Mr. V. Jagannathan, a resident of Chennai, Tamil Nadu India was the Manging Director of Defendant no. 1/Indian Company at the time of institution of the Suit.

12. The Contesting Defendant no. 9, Mr. V.P. Nagarajan, a resident of Chennai, Tamil Nadu India was the Managing Personnel of Defendant no. 2 (incorporated in Dubai) at the time of institution of the Suit.

13. The Contesting Defendant no. 10, Mr. C.M. Kannan Unni, a resident of Chennai, Tamil Nadu India was the Joint Executive director and Company Secretary of Defendant no. 1 at the time of institution of the Suit.

14. The Proforma Defendant no. 12, Emirates Trading Agency is having its registered office in Dubai, UAE. It has 52% share held by the plaintiffs and 48% share held by the Defendant nos. 3 and 5 to 7. It had provided funds for and on behalf of the Defendant no. 2 towards the shares held by the Defendant nos. 3 to 7 in the Indian Company.

15. It is the case of the plaintiffs that the Defendant nos. 3 to 7 had made declarations that the shares of the Indian Company in their name were actually held by them for and on behalf of Defendant no. 2. Conversely, they acknowledged that Defendant no. 2 had a beneficial interest in the shares of the Indian Company, though the shares were in their names. Since the Defendant no. 2 had a beneficial interest in the shares in the names of Defendant nos. 3 to 7, the actual share certificates were in the possession of Defendant no. 11, ETA Star Holding LLC, who in turn had a 100% beneficial holding over the Respondent No. 2. This declaration by Defendant nos. 3 to 7 was discontinued after the de-consolidation of accounts between Defendant nos. 2 and 11.

16. The case of the plaintiffs was that the majority group of shareholders of Defendant no. 2 should have taken some steps in order to assert that it was having a beneficial interest in the shares of the Indian Company, though allotted in the names of Defendant nos. 3 to 7. However, the majority shareholders, namely, Defendant nos. 3 to 7, who held 66% of the shares of the Indian Company, did not take any steps, thereby causing prejudice to the Indian Company.

17. In these circumstances, the minority shareholders, namely, the plaintiffs, who together hold 34% in the shares of the Indian Company, initiated the Suit, i.e., C.S. No. 33 of 2018 in the High Court of Judicature at Madras, in the nature of derivative action on behalf of the Indian Company seeking protection and declaration of its beneficial interest in the shares available with the Indian Company standing in the names of Defendant nos. 3 to 7.

18. It is the claim of the plaintiffs that even the pre-incorporation expenses of the Indian Company were met by the funds remitted by Defendant no. 12. Defendant nos. 11 and 12 are further, part of the ETA Group of Companies in Dubai, UAE. According to the plaintiffs, Defendant no. 12 had remitted a total sum of Rs.1,43,00,000/- towards pre-incorporation expenses of the Indian Company between April 2005 and October 2005. The same have been

recorded in the books of account of Defendant no. 2. The plaintiffs have further claimed that four share certificates for a total of 33,200 shares were issued on July 11, 2005 in favour of Defendant nos. 3, 5 and 7, who are shown as subscribers to the Memorandum of Association of Indian Company. The outstanding call amounts on these shares were satisfied from the remittance made in March 2006 by Defendant no. 12. These share certificates are in the custody of Defendant no. 11 in its capacity as beneficial interest holder of Defendant no. 2. Defendant nos. 3, 5 and 7 have also made declarations acknowledging the beneficial interest of Defendant no. 2 in these shares.

19. It was further stated that on December 21, 2005 a sum of Rs.50/- lakhs was remitted by the Defendant no. 12 through bank transfer from Mashreq Bank in Dubai to the Bank Account of the Indian Company in Andhra Bank, Chennai, Main Branch and share certificates were issued in favour of the Defendant no. 3, which has also been recorded in the books of accounts of the Indian Company.

20. Thereafter, on January 16, 2006, the Indian Company issued payment instructions to HSBC Bank, Dubai, for an amount of Rs.16,25,00,000/- to be deposited in the account of the Defendant no. 1 in Andhra Bank, Chennai. According to the plaintiffs, contribution was towards equity share capital held by Defendant nos. 3 ad 4. Share certificates were also issued and recorded as having beneficial interest by the ETA Group.

21. Later, on March 06, 2006 the Indian Company received further investment through four demand drafts amounting to Rs.3,32,000/- from Defendant no. 12, which was recorded as beneficial interest of the Defendant no. 2. Defendant no. 11 is in possession of these shares as well. It has been further stated that between December, 2005 and March, 2006, a total sum of Rs.16,78,32,000/- had been received by the Indian Company from Defendant nos. 12 and 2 towards issue/allotment of shares. On June 25, 2009, Defendant no. 3, issued a personal cheque of Rs.2,13,00,000/- which was honoured on July 07, 2009 in the accounts of Defendant no. 2, and reflected that the investment was made in the Indian Company. On June 28, 2009, a further investment was made in the Indian Company by Defendant no. 12 to the tune of Rs.2,14,00,000/- through payment instructions to Emirates Bank to debit the same, which was actually credited on July 01, 2009. In 2011, two investments were made on December 26, 2011 to the tune of Rs.17,70,00,000/- by payment instructions to Bank of Baroda, debiting the account of Defendant no. 12 and crediting the account of the Indian Company. Thereafter, share certificates in the names of the Defendant nos. 3 and 4 were issued by the Defendant no. 1 around February 10, 2012.

22. The plaintiffs also stated that Defendant nos. 3 to 7 admitted and acknowledged that Defendant no. 2 had a beneficial interest in the share certificates of the India Company issued in their names. Defendant nos. 3 to 7, however, do not have physical possession of these 2,72,20,448 shares, the same being held by Defendant no. 11. It was also contended in the Plaint that Defendant nos. 3, 4, 5 and 7 had signed blank share transfer forms with respect to the shares of the Indian Company in favour of the Defendant nos. 2 and 11. Accordingly, it was urged that Defendant no. 2 has a beneficial interest over the shares of the Defendant no. 1 but held in the names of Defendant nos. 3 to 7.

23. It was further urged in the plaint that deconsolidation of the accounts and businesses of Defendant no. 2 with that of Defendant no. 11 was effected in 2016 with retrospective effect from 2014. The same was on account of Defendant nos. 3, 4 and 7 to sign the financial statements of Defendant no. 2. It was also urged that till the time the Indian Company had requirements for funds, the interest of Defendant no. 2 was acknowledged and it was stopped subsequently. It was further urged that the entire remittance towards the suit shares of 6.16% of the Indian Company, were by the funds provided by Defendant no. 12 or Defendant no. 2 and no part of the funds came from the personal accounts of Defendant nos. 3 to 7. It was further urged by the plaintiffs that Defendant nos. 8 to 10 had direct knowledge of these facts.

24. It is pertinent to mention here that there is no dispute regarding the fact that the decision of the Board of Directors of the Group General Body followed by Defendant no. 11 through the draft financial statement would impact the beneficial interest of Defendant no. 2 in the shares held by in the names of Defendant nos. 3 to 7, which was the subject matter of the suit.

25. Plaintiff no. 2, under these circumstances, wrote the letter dated June 01, 2017 to Defendant no. 8 — the Managing Director of the Indian Company, protesting that the investments made by Defendant no. 2 were denied. Defendant no. 1, through its letter dated June 07, 2017 refused to take notice of the claim asserted by the ETA Group. Plaintiff no. 2, thereafter, sent another letter dated June 12, 2017 to the Indian Company, addressed to the Managing Director of the Indian Company, giving details in support of the claim of the ETA Group. He also called for a meeting in person. However, Defendant nos. 8 and 9 along with other Directors of the Indian Company failed to attend the meeting proposed by Plaintiff no. 2. However, they sent a letter dated June 27, 2017 stating that they had earlier replied on June 07, 2017 itself and had nothing further to state. Plaintiff no. 2 sent another letter dated July 09, 2017 reiterating his original stand. The Indian Company responded through letter dated July 27, 2017, stating that they were not obliged to offer any clarification to the same.

26. It was under these circumstances that the plaintiffs filed the Suit, C.S. No. 33 of 2018 at the High Court of Judicature at Madras.

27. The plaintiffs claim that the Indian Defendant no. 2 Company is under the control of wrong doers. They further claim that Defendant nos. 8 to 10 were in active collusion with Defendant nos. 3 to 7 and that they have joined hands to deprive Defendant no. 2 of its beneficial interest in the suit shares, namely, 6.16% of shares of the Indian Company.

28. The plaintiffs have further stated that they came to know from Newspaper reports that the equity of Defendant no. 1 was to be sold to private equity investors through a bidding process and that Defendant nos. 3 to 7 along with Defendant nos. 8 to 9 were attempting to sell their investments in the Indian Company.

29. It was urged that in case such a sale was to happen, Defendant no. 2, which had financed the purchase of such shares would be put to loss if its beneficial interest was not recorded in the books of the Indian Company.

30. While filing the suit, the plaintiffs had filed application no. 292 of 2018 seeking leave to institute the suit within the jurisdiction of the High Court of Judicature at Madras. In the affidavit filed in support of that application, the plaintiffs had stated that they had sought a declaration that Defendant no. 2 had a beneficial interest over 6.16% of shares of the Indian Company. However, the shares might be alienated. It was further stated that substantial part of cause of action arose within the jurisdiction of the Court where the registered office of the first defendant was located and where it carried on business. Further, the entire subject matter of the suit was the shares of the Indian Company, which are held by Defendant nos. 3 to 7 and that Defendant nos. 3, 5, 6 and 7 normally reside in Chennai. It was further stated that the correspondences between the Plaintiff no. 2 and the Indian Company through Defendant no. 10 also took place in Chennai. Claiming on this basis that substantial part of cause of action arose within the jurisdiction of the High Court, leave to institute the suit was sought. The Single Judge Court granted leave.

31. As noted above, the contested defendants filed applications for revocation of the order granting leave to the plaintiffs. The Indian Company in the affidavit filed in support of A. No. 1387 of 2018, stated that Defendant no. 2 is a body corporate situated in Dubai and any dispute regarding the same could not be adjudicated by Courts in India. It was urged that order granting leave should be revoked on this ground itself. It was further stated that there are no disputes with respect to the ownership or management or shareholding of the Indian Company. It also took the stand that the plaintiffs are neither the shareholders nor the Directors of the Indian Company, and, therefore, they had no right to sue and consequently, the suit itself is not maintainable. It also averred that the disputes between the plaintiffs and Defendant nos. 3 to 7 arose around 2013 and the suit had only been filed in the year 2018 and consequently, the suit was barred by limitation. Another objection was that the plaintiffs had filed the suit when private equity investors had shown interest in purchasing shares of the Indian Company and the same was an abuse of process of law. Maintainability of the suit was also questioned on the ground that it was barred by Section 89 of the Companies Act 2013 and Section 187(C) of the Companies Act 1956.

32. Somewhat similar stand was taken by other contesting defendants in support of the prayer for revoking the leave and to rejecting the plaint in C.S. No. 33 of 2018. Defendant no. 2 also took the plea that it was not interested in seeking the relief claimed in the plaint, viz., Defendant no. 2 is the beneficial interest holder of 6.16% of shares of the Indian Company.

33. Counter affidavits were filed by the plaintiffs with respect to these applications reiterating that they had the locus; that the suit is within the period of limitation; that the Court had jurisdiction to adjudicate the issues; and that the suit had been filed with bona fide intent.

34. The learned Single Judge dismissed the applications filed by the defendants seeking to revoke the leave granted to institute the suit and to reject the plaint inter alia holding that the allegations pertaining to fraud would have to be decided in the suit. He further observed that there were factual issues that were to be gone into and Sections 187C and 89 of the Companies Act, 1956/2013 which may bar the reliefs but would not bar the suit.

35. The aforesaid order of the learned Single Judge has been reversed by the Division Bench vide common judgment dated August 03, 2018. It has allowed the appeals filed by the contesting defendants and set aside the common order of the Single Judge, thereby revoking the leave granted by the Single Judge.

36. To recapitulate in brief the controversy, the suit filed by the plaintiffs was in the nature of a derivative action on behalf of defendant No.2 to protect and declare its beneficial interest (i.e. beneficial interest of defendant No.2) in the shares available with the Indian company, which stand in the name of defendant Nos. 3 to 7. According to the plaintiffs, defendant No.2 is the beneficial owner and defendant Nos. 3 to 7, in collusion with defendant Nos. 1, 8 and 9, are acting against the interests of defendant No.2. In the plaint the averments regarding cause of action and Chennai having territorial jurisdiction were mentioned in paragraph Nos. 54 and 55, which are as under:

> "54. The Plaintiffs submit that the present lis relates to the denial and non-recognition of the beneficial interest of Defendant No.2 of the shares held by the Defendant Nos. 3, 4, 5, 6 and 7 in Defendant No.1. The cause of action arose on 31.12.2016 when the draft consolidated financial statement of Defendant No.11 records deconsolidation of its accounts with those of Defendant No.2 (refer to Para 42 supra) for the reason that there is "absence of confirmation of beneficial ownership from the legally registered shareholders of the entities" (which inter alia includes Defendant No.2). Thus on 31.12.2016 it became manifested that the recordal of declaration of beneficial interest of the Defendant No.2 would no longer be caused to be made by those in control of Defendant No.2 and its affairs namely Defendant Nos. 3, 4 and 7 and which hostile action led to not only the denial of the recording of beneficial interest of Defendant No.2 but also to deconsolidation with retrospective effect of its accounts with Defendant No.11. With the deconsolidation of accounts it became clear that a hostile action denying the beneficial interest of Defendant No.2 stood taken by Defendant Nos. 3, 4 and 7. The cause of action further arose on 07.06.2017 when Defendant No.1 refused to acknowledge the beneficial interest in the suit shares. The cause of action further arose when Defendant No.1 through Defendant No. 10 on 27.06.2017 once again refused to acknowledge the beneficial interest in the suit shares. The cause of action further arose on 12.11.2017 and 24.11.2017 when newspaper articles, being in public knowledge suggested that the equity of the Defendant No.1 is being sold to private equity investors through a bidding process and the present investors including the Defendant Nos. 3 to 7 along with Defendant Nos. 8 and 9 are attempting to sell their investments in the Defendant No.1 and exit the health insurer. The cause of action further arose on 21.12.2017 when newspaper articles of the Economic Times, being in public knowledge suggested that the five (5) companies have been shortlisted

to purchase the Defendant No.1 and that the floor price if INR 5,500 crore has been put for the sale. The article further suggested that the sale of the Defendant No.2 will help ETA Trading to exit the Defendant No.1, as the beneficial interest of Defendant No.2 has been negated and continues to be negated the cause of action has and is continuing to arise.

55. Since the registered office of Defendant No.1 is in Chennai, the investments made by Defendant No.2 were also made in Defendant No.1 in Chennai, this Hon'ble Court will exercise jurisdiction over the present dispute. Furthermore, the recent correspondence/letters were also exchanged between the Plaintiff No.2 and Defendant No.1 and 10 in Chennai. Therefore, it is clear that a substantial part of the cause of action has arisen within the territorial jurisdiction of this Hon'ble Court. Leave is being craved to sue the Defendants who are outside the jurisdiction of this Hon'ble Court."

37. The plaintiffs, thus, wanted a declaration to the effect that shares in the Indian company which are held by defendant Nos. 3 to 7 in fact belong to defendant No.2 company. Since defendant No.2 did not come forward to make the said claim, derivative action was filed by the plaintiffs on its behalf to the aforesaid effect. As per the plaintiffs, the High Court of Madras, at Chennai, had the jurisdiction to entertain the same inasmuch as: (a) Registered Office of the Indian company is in Chennai; (b) the investments made by defendant No.2 were made in the Indian company in Chennai; and (c) substantial part of cause of action, as reflected in the correspondence/letters exchanged between plaintiff No.2 and defendant Nos. 1 and 10 arose in Chennai.

38. The contesting defendants questioned the territorial jurisdiction of the Madras High Court to entertain the said suit on the ground that no cause of action available to the plaintiffs to maintain the suit arose within the jurisdiction of the said Court. In substance, the plaintiffs were attempting to resolve the dispute between the shareholders of the company though all these shareholders are residents and nationals of Dubai. Moreover, they are claiming that though shares are in the names of defendants Nos. 3 to 7, it is defendant No.2 which has the beneficial interest therein and even defendant No.2 is a foreign entity which is covered by the foreign law. Likewise, the inter se relationship between defendant No.2 and the plaintiffs is also covered by the foreign law. It was additionally contended that the claims made by the plaintiffs are not enforceable even under the Companies Act, 1956 or the Companies Act, 2013. As far as inter se disputes between the plaintiffs and the contesting defendants, who are all shareholders of defendant No.2, are concerned, they have arisen in Dubai which is outside the territorial jurisdiction of Chennai.

39. M/*s. C.A. Sundaram, Neeraj Kishan Kaul, V. Giri and C.U. Singh,* learned senior counsel appeared for the plaintiffs. In substance, their argument was that the learned Single Judge of the Madras High Court had rightly allowed the application for leave to file the suit after satisfying that the Court at Chennai had the territorial jurisdiction to entertain such a suit which was a derivative action taken out by the plaintiffs on behalf of defendant No.2. It was highlighted that even if defendant No.2 was a Dubai company, of which plaintiffs and

defendant Nos. 3 to 7 were the shareholders, dispute was in respect of shares in defendant No.1 which was an Indian company having its Registered Office in Chennai. Moreover, defendant Nos. 3 to 7 were also having their residence in Chennai even though they are NRIs residing in Dubai. Attention of this Court was specifically drawn to the following discussion in the order of the learned Single Judge, which was adopted as their arguments in support of the plea that the suit was validly instituted in Chennai:

> "130. It had been further argued on behalf of the defendants that under Section 34 of the Specific Relief Act, the plaintiffs must have a direct interest and entitlement over the property, for which the declaration is sought. Section 34 of the Specific Relief Act is as follows:
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> "34. Discretion of court as to declaration of status or right. - Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:
>
> Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."
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> 131. In the present case, the plaintiffs are not seeking a declaration that they have a beneficial interest. A derivative action is sought only for the beneficial interest of the second defendant. The second defendant has however abjured such interest. Whether such disclaimer or abjuration is the result or effect of collusion or fraud are further aspects to be examined. Such abjuration has to be weighed with the flow of funds through the second defendant to the first defendant, leading to the allotment of shares to the third to the seventh defendants. Examining all these aspects can only be through advancing oral and documentary evidence. This would further imply that the suit has to be retained on file.
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> 132. It had been further contended that the suit relief is barred under Section 187C of the Companies Act, 1956. It had been contended that primarily the third, fourth and seventh defendants should first make a declaration that though the shares are in their names, a beneficial interest had accrued to the second defendant. Similarly, the second defendant has to make a declaration that they are the beneficial interest holders of the said shares. It has been contended that in the absence of the above declarations seeking a declaration against the first defendant would be akin to putting the cart before the horse.
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> 134. I hold that the declarations made or not made in the books of the first defendant would be to the exclusive knowledge of the first defendant alone and those in charge of management of the first defendant. In this context, the eighth to tenth defendants have a vital role to play. Evidence is necessary from their end to disclose facts and to subject themselves to cross examination on all these aspects. The plaintiffs have

pleaded the facts to their knowledge. It must also be kept in mind that except the third defendant, no other defendant had sworn to an affidavit. Questions raised by the plaintiffs remain unanswered and trial is the answer to determine the actual facts.

135. I hold the plaintiffs cannot be non suited at the threshold. The suit is only at its nascent stage. It still has a rough course to meander. The reliefs sought may be superfluous but if the plaint discloses a cause of action and if the plaintiffs are prepared to battle out the issues at the time of recording the evidence, then again they must be afforded such opportunity.

136. At this stage, the plaintiffs have come to Court primarily claiming a declaration as against the first defendant. Whether the third, fourth and seventh defendants on the one hand and the second defendant on the other hand have made declarations in accordance with the provisions of either Section 187C or Section 89 of the Companies Act 1956 or 2013 are facts to the exclusive knowledge of the first, second, third, fourth and seventh defendants and also the eighth defendant. The plaintiffs could never have had access to the records of the first defendant. The queries raised in the pre-suit notices have not been answered. Consequently, they have sought a declaration only against the first defendant. This declaration is sought because in Dubai, the third, fourth and seventh defendants had made similar declarations and in the plaint, the plaintiffs have stated that they believed that similar declarations had been made in the books of the first defendant. This statement of the plaintiffs has to be tested further through oral and documentary evidence. Consequently, I am not in agreement with this contention raised by the defendants. Trial is the answer to settle facts. At this stage, the plaint averments hold the sway and a reading makes it obvious that the first defendant has to open up its records for scrutiny, and that can be done only during trial.

139. To sum up, the allegations raised in the plaint have to be examined at Chennai since, the first defendant is registered in Chennai. During its pre-incorporation, incorporation and post corporation stages, substantial amounts of money had flowed to it. It is only with examination of the books of the first defendant that the source of the funds can be determined. This is because the third to seventh defendants, who are said to have benefited by allotment of shares in view of the flow of funds have denied the contention of the plaintiffs. The eighth, ninth and tenth defendants, who were in management have not filed any affidavit disclosing facts to their knowledge. The eleventh and twelth defendants have chosen not to participate in these proceedings. The first, third, eighth, ninth and tenth defendants are in Chennai. They are privity to the relevant records and to the facts in issue in this case. I hold that since the plaint discloses cause of action, and substantial cause of action had arisen in Chennai, and since the suit is nor barred by any statute, the issues raised in the suit can be determined in this Court and by this Court.

140. Moreover, the eighth, ninth and tenth defendants, who were in management of the first and second defendants are residents at Chennai and it would be to their

convenience if the suit is litigated in Chennai. Their evidence would be crucial. In the plaint, fraud has been alleged against them and they will have to withstand cross examination on such specific aspects.

141. The third defendant, who appears to fight his own cause and also the cause of the second defendant, has his residence at Chennai.

143. The fifth and sixth defendants are the sons of the third defendant. They have residence in Chennai, and if required to tender evidence, they would not be inconvenienced. The seventh defendant is also a resident of Chennai. These defendants also appear to tag the line of the third defendant, and consequently they would never be prejudiced by the suit being continued in Chennai.

144. The main evidence on behalf of the defendants would be on behalf of the first defendant and by the third defendant and by the eighth, ninth and tenth defendants. The records of the first defendant are in Chennai. These defendants are all in Chennai. The cause of action arose within Chennai. In view of all these reasons, I hold that the applications seeking revocation of the leave have to be dismissed."

40. Attention of this Court was also drawn to the averments made in various paragraphs of the plaint as well as documents annexed with the plaint which, according to them, were taken note of by the learned Single Judge in forming the opinion about the jurisdiction. It was submitted that the Division Bench has misdirected itself by ignoring the aforesaid vital discussion by the Single Judge and committed an error in treating it to be a dispute between the shareholders of defendant No.2. It was specifically argued that paragraph 54 of the plaint would reflect that the dispute raised by the plaintiffs pertained to the shares in defendant No.1/Indian company, which would mean that situs of the shares, namely, the place where company is located, would be the determinative factor, as held in *Vodafone International Holdings BV v. Union of India and Another*[1] in the following words:

"Situs of the CGP share

139. Before concluding, one more aspect needs to be addressed. It concerns the situs of the CGP share. According to the Revenue, under the Companies Law of the Cayman Islands, an exempted company was not entitled to conduct business in the Cayman Islands. CGP was an "exempted company". According to the Revenue, since CGP was a mere holding company and since it could not conduct business in the Cayman Islands, the situs of the CGP share existed where the "underlying assets are situated", that is to say, India. That, since CGP as an exempted company conducts no business either in the Cayman Islands or elsewhere and since its sole purpose is to hold shares in a subsidiary company situated outside the Cayman Islands, the situs of the CGP share, in the present case, existed "where the underlying assets stood situated" (India). We find no merit in these arguments.

140. At the outset, we do not wish to pronounce authoritatively on the Companies Law of the Cayman Islands. Be that as it may, under the Indian Companies Act, 1956, the situs of the shares would be where the company is incorporated and where its shares can be transferred. In the present case, it has been asserted by VIH that the transfer of the CGP share was recorded in the Cayman Islands, where the register of members of CGP is maintained. This assertion has neither been rebutted in the impugned order of the Department dated 31-5-2010 nor traversed in the pleadings filed by the Revenue nor controverted before us. In the circumstances, we are not inclined to accept the arguments of the Revenue that the situs of the CGP share was situated in the place (India) where the underlying assets stood situated."

41. The appellants also relied upon the following two judgments of the Calcutta and Bombay High Courts respectively:

(i) *Starlight Real Estate (Ascot) Mauritius Ltd. and Another v. Jagrati Trade Services P. Ltd. and Others*[2]

"38. The plaintiffs as shareholders of the proforma defendant neither could have initiated an arbitration proceeding in their own name, nor the said plaintiffs would be entitled to initiate arbitration proceedings and claim any relief on behalf of the company. No shareholder can say that because the company is a party to the arbitration agreement, he should be allowed to initiate arbitration proceedings and claim any relief in the said proceeding. It is the company who alone can initiate and/or defend such proceeding. A third party is no way concerned with the inter se disputes between the shareholders of the company. However if the said third party is a party to a fraud in an action in which a decree or an award is passed affecting the valuable right of the company and is prejudicial to the interest of the company, the shareholder can sue the miscreant directors and the persons and/or entities connected with the fraud on behalf of himself and other shareholders and in the name of the company to prevent any wrong being perpetrated on the company. In such a situation, the complainant-shareholder would be seeking to enforce a cause of action which is available and belongs to the company and not to the shareholder personally. The essential purpose of such an action is to remedy a wrong done to the company and if the suit ultimately succeeds, the judgment is given in favour of the company, so that the complainant-shareholder obtains no direct personal benefit therefrom."

(ii) *Nirad Amilal Mehta v. Genelec Limited & Others* "Regarding derivative action by a shareholder[3].

6. The sale of the suit property was effected in the name of defendant No.1 company by defendant Nos. 2, 3 and 4 in the capacity as its directors. It is alleged that the sale being contrary to the provisions to section 293 of the Companies Act is void. If the said is void, the person aggrieved is the company. The suit should therefore normally be filed by the company for setting aside the alienation. The plaintiff who is only a shareholder of the company would not normally have a right to file a suit on behalf of

the company as the person aggrieved is the company and not a shareholder. More than one and a half century ago, in (Foss v. Harbottle), (1843) 2 Hare 461, the Court laid down the rule that normally an individual shareholder would not be entitled to bring an action for a wrong allegedly done to the company. It is the company who alone can bring an action for a wrong done to it. The rule however has been subjected to more than one exceptions. In (B.B.N. (UK) Limited v. Janardan Mohandas Rajan Pillai), 1993 (3) Bom. C.R. 228, this Court while upholding the rule that it is the company who is entitled to maintain an action for wrong allegedly done to it and a shareholder has no locus standi to maintain the suit, affirmed one of the exceptions to the aforesaid rule that where a shareholder can show that the wrong doers are in control of the defendant company and hence the company would be unable to maintain the action, he can maintain an action."

It was submitted that the present case is covered by the exception carved out by the Calcutta and Bombay High Courts in the aforesaid judgments.

42. M/s. Gopal Subramanium, Mukul Rohatgi, Dr. Abhishek Manu Singhvi and Shyam Divan, learned senior counsel appeared for defendant Nos.1, 2, 3 and 4 respectively. They strongly refuted the aforesaid submissions of the appellants/plaintiffs and submitted that the approach of the Division Bench of the High Court was without any blemish which warranted imprimatur by this Court as well. They paraphrased their submissions in the following manner:

(a) In the first instance, it was submitted that undoubtedly the suit of the plaintiffs was for a derivative action which means it was filed by them on behalf of defendant No.2. Such a suit, even as per the plaintiffs, was in the interest of defendant No.2 company. This company was a Dubai company incorporated under the laws of that country. Defendant No. 11 is the holding company which is also a Dubai company. It was further submitted that the main grievance of the plaintiffs pertained to deconsolidation, which was admitted in paragraph 48 of the plaint that this deconsolidation was by defendant Nos. 11 and 2, both Dubai companies. It was argued that shares were held by defendant Nos. 3 to 7 in the Indian company, which fact was not in dispute. Since the plaintiffs were seeking declaration in respect of beneficial interest in these shares, the governing provision was Section 89(2) of the Companies Act, 2013, which clearly barred the institution of such a suit. Section 89(1) and (2) are as under:

"89. Declaration in respect of beneficial interest in any share. - (1) Where the name of a person is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares, such person shall make a declaration within such time and in such form as may be prescribed to the company specifying the name and other particulars of the person who holds the beneficial interest in such shares.

(2) Every person who holds or acquires a beneficial interest in share of a company shall make a declaration to the company specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed."

(b) Though the action was brought by the plaintiffs on behalf of defendant No.2 as a derivative action, defendant No.2 had specifically opposed this action. It, therefore, became a dispute between the shareholders of defendant No.2, which is a Dubai company. Therefore, the courts at Chennai had no jurisdiction to deal with such a dispute.

(c) In the instant case the question was about the correctness of the order granting leave to the plaintiffs permitting them to institute the suit in Chennai, under Clause 12 of the Letters Patent. The contesting defendants had filed the applications for revocation of the said order of grant of leave and, therefore, the parameters of Order VII Rule 11 of the CPC could not be applied. It was submitted that as far as the High Court of Madras is concerned, specific provision in th form of Clause 12 of the Letters Patent was made, in supersession of Section 20 of the CPC. Grant of leave is discretionary and for granting leave the Court is governed by the principle of forum conveniens. In the instant case, having regard to the fact that the holding company (defendant No.11) as well as the company on whose behalf the suit was filed (defendant No.2) were situated in Dubai and the shareholders of defendant No.2 were having disputes inter se, who were also residents of Dubai, the Courts in Dubai were better equipped to deal with such a dispute.

(d) In any case, the defendants' application was also under Order VII Rule 11 of the CPC raising the plea that no cause of action had arisen in Chennai and also that the suit was barred by law as well. These contentions were accepted by the Division Bench, inter alia, with the following discussion: "6.12 Keeping in view of the abovesaid principles of law, let us consider the issues raised before us. Admittedly, the defendant No.2 is a foreign entity governed by the laws of Dubai. The Plaintiffs are its shareholders. Therefore, any dispute between them will have to be resolved under the laws of Dubai. Hence, the contention of the learned Senior Counsel appearing for the plaintiffs that they are stepping into the shoes of the defendant No.2 seeking a relief against the defendant No. 1 cannot be countenanced. This is also for the reason that there must be a declaration in clear terms qua the status of a beneficial interest holder before seeking a relief against the defendant No.1. More so, when defendant No.2 itself denies it.

6.13 In the case on hand, the fundamental and core facts are not in dispute. They are with respect to the consolidation and deconsolidation of defendant No.2 by defendant No.11. Similarly, a decision of the general body of a ETA Group, the Board of Directors and the participation of the plaintiffs in that are also not in dispute. These undisputed happenings lead to the draft financial statement of the defendant No.11. This draft financial statement confirms two things. One is with respect to the

deconsolidation and the other is removal of status over the shares held by the individuals. The decision was to implement it with retrospective effect from 10.01.2014. It is an admitted case that the decision of the ETA Group and the draft financial statement of defendant No.11 would make the trustees of the holders of the respective shares involving beneficial interest as absolute owners. The plaintiffs may have grievance over this, but their remedy will lie elsewhere. That is the reason why one of the plaintiffs after issuing notice on behalf of the defendant No.11 to defendant No.1, has chosen to file the suit along with the other in the status of shareholders. May be it is also for the reason that the defendant No.11 cannot wriggle out of the decision of ETA Group followed by its draft financial statement. If we see the cause of action as recorded above, it is abundantly clear that what has triggered the present suit is the aforesaid facts.

6.14 The decision of the ETA Group, which consists of numerous entities, applies to every shareholder of the Group. Accordingly, the status of a registered owner would get transferred into one of absolute ownership. Therefore, even if we go by the averments in the plaint while eschewing the defence of the defendant No.2, no relief can be claimed before this Court. It is an indirect way of challenging the decision of the ETA Group, in which, the plaintiffs were also parties. Any adjudication on this though indirectly, will have a serious spiralling effect, as settled things would get unsettled for the reason that it might have an adverse impact on other shareholders of other entities coming under the umbrella of the ETA Group. The logic and rationale behind the decision of a foreign entity cannot be adjudicated here. Be that as it may, certainly the remedy lies elsewhere. We should also keep in mind defendants 2 and 11 are admittedly situated outside the jurisdiction of the Court though the plaintiffs contend that defendants 3 to 7, despite being non resident Indians are permanent residents of Chennai. This is nothing but an attempt to review the decision made already by the ETA Group as acknowledged by the defendant No.11 in the draft financial statement. After all, the relief that is sought against the defendant No.1 is a mere consequential one. When once the plaintiffs succeed against defendant Nos. 2 to 7 then defendant No.1 is bound to give effect to it. For doing so, the remedy for the plaintiffs against defendants Nos.2 to 7 lies elsewhere.

6.15 When the status of defendant No.2 being the foreign company is not in dispute, no relief either direct or indirect can be sought against it under the Indian Law. We are not concerned with the ultimate relief but the issues leading to it. What we are dealing is nothing but a fight between two groups. Defendant No.2 is controlled by defendant Nos.3 and 5 to 7 whereas, defendant No.11 is by the plaintiffs. This explains the letter sent by the defendant No.11 though the plaintiff No.2 to the defendant No.1 dated 01.06.2017.

6.16 A perusal of the cause of action as indicate in the plaint would show that it started happening only from the date of deconsolidation. Monies were sent by the defendant No.2 and on its behalf by defendant No.12 at least till 2011. Though prima facie, the payment made was not in dispute, the entity from which it emerged actually

cannot be decided here. The very fact that payments were made by defendant No. 12 on behalf of defendant No.2 followed by book adjustment itself would vouch for the fact that such things have happened involving the other entities of the ETA Group as well and at least defendant No.2 and its subsidiaries. These issues also cannot be looked into by this Court.

6.17 In the plaint, the plaintiffs have not stated anything about the derivative action available to a shareholder on behalf of the company in Dubai. We also note that the Indian Companies Act, 1956/2013 do not have an application to a foreign entity. Even assuming it to be so, Section 187(c) read with 89(8) of the Companies Act, 1956/2013 would disentitle the plaintiffs from getting the relief, when once, the reliefs cannot be granted through a statutory bar, a suit filed claiming it also would be barred. After all, a Court is required to grant a relief, which parties are entitled to in law. Similarly, there is no corresponding duty fixed on the defendant No.1 to seek the declaration from defendants 3 to 7 in favour of defendant No.2. Suffice it is to state that the plaintiffs do not raise any such issue till 2016, though share certificates were issued in the year 2012 itself. Though the limitation is a mixed question of law and fact, when facts are not in dispute, certainly it would apply. A Civil Court is mandated to check its jurisdiction to deal with a lis qua the limitation."

43. We have deliberated on the respective arguments raised by both sides with reference to the records of the case.

44. In order to appreciate the respective contentions, we may have to capture the real essence of the dispute between the parties. As noted earlier, the suit which was filed by the plaintiffs in the High Court of Madras is derivative action on behalf of Defendant No. 2. Defendant No. 2 is a Company incorporated in Dubai, UAE. Plaintiff Nos. 1 and 2 were also resident nationals of Dubai, UAE have share holding in Defendant No. 2 Company. Together they hold 34% of shares in this Company. Defendant Nos. 3,4 and 7 are also share holders in Defendant No. 2 Company. They hold 66% shares in Defendant no. 2 Company. In this way, plaintiffs on the one hand hold 34% of the shares in Defendant No. 2 Company, whereas Defendant Nos. 3, 4 and 7 have share holding of 66%. There are certain disputes between these two groups of share holders insofar as affairs of Defendant No. 2 are concerned.

45. Defendant Nos. 3 to 7 are also subscribers to the share capital of Defendant No. 1/Indian Company. It is to the extent of approximately 6.16% of the share holding of the Indian Company when all the shares held by Defendant Nos. 3 to 7 are put together. According to the plaintiffs, these shares actually belonged to Defendant No. 2 which has the beneficial interest therein. It is for this reason, the plaintiffs filed suit for declaration, as a derivative action on behalf of Defendant No. 2, purportedly to protect and declare the beneficial interest in the shares available to Defendant no. 1 standing in the name of Defendant Nos. 3 to 7.

46. Since Defendant No. 1 is an Indian Company incorporated in the Indian laws having its registered office at Chennai, in the first blush, arguments of the plaintiff may appear to be sound that for such a declaration the suit can be filed in Chennai. However, on going through

the real dispute between the parties, which emerges out of the plaintiff as well, it would become manifest that the dispute between the plaintiffs on the one hand and Defendant Nos. 3 to 7 on the other hand pertains to the affairs of the Defendant no. 2 Company and in respect of which cause of action has not arisen in Chennai and such a dispute has to be sorted out by the parties between themselves by filing appropriate proceedings in Dubai, UAE only.

47. From the material facts in this behalf, as mentioned in the plaint itself, specifically in paragraphs 54 and 55 of the plaint, while making the averments qua the cause of action and territorial jurisdiction, it becomes apparent that the plaintiffs got aggrieved by the draft Consolidated Financial Statement of Defendant No. 11 (which is again a Dubai company and a parent company) and this statement records deconsolidation of its account with those of Defendant No. 2. The real dispute, thus, is whether Defendant Nos. 3 to 7 in whose name shares to the extent of 6.16% of Indian Company stand, are the real owners or it is Defendant no. 2 Company which has the beneficial interest in the said shares. Though, the plaintiffs claim beneficial interest of Defendant No. 2, Defendant Nos. 3 to 7 deny the same. Interestingly, even Defendant No. 2 Company, whose beneficial interest in these shares is claimed by the plaintiffs, refutes such a claim of the plaintiffs. Thus, in reality, it is the dispute between the plaintiffs and Defendant nos. 3 to 7 who are all residents of Dubai. Even Defendant No. 2 whose beneficial interest is claimed by the plaintiffs is a Company incorporated in Dubai, UAE. Merely, because the dispute is about those shares which are issued by Indian Company would not lead to the conclusion that cause of action has arisen in India. It is obvious that insofar as Defendant No. 1/Indian Company is concerned it has nothing to do with the dispute. The relief of declaration which is sought is that Defendant Nos. 3 to 7 are not the real owners of such shares and its actual/beneficial owner is Defendant No. 2. Such a dispute would not bring jurisdiction of Chennai courts simply because Defendant No. 1/Indian Company has its registered office in Chennai. Even if it is presumed that the plaintiffs ultimately succeed in their action, when brought in a competent court in Dubai, and a declaration of the aforesaid nature is given by the said court, Defendant No. 1 can always act thereupon.

48. Mr. Gopal Subramanium, had referred to the provisions of Section 89(1) and (8) of the Companies Act, 2013. As per sub-section (1) of Section 89, a person whose name is entered in the register of Members of the Company as the holders of shares in that Company but does not hold beneficial interest in such shares, he shall make declaration within the prescribed time to the Company specifying the name and address of the person who hold the beneficial interest. Sub-section (8) provides that if such a declaration is not made right in this behalf cannot be enforced by other person claiming through the beneficial owner. Prima facie, it appears that court in India on the application of the aforesaid provision would not be in a position to give any relief to the plaintiffs in the instant suit. The High Court has discussed in detail the nature of derivative action as well as the meaning that is to be ascribed to the term 'beneficial interest'. It is rightly pointed out that the suit for derivative action is an exception to the general principle of locus. It can be claimed only in a particular situation. Such a situation has to be seen contextually from the point of view of the entity, on whose behalf the suit is filed. Incidentally, the inter se relationship between the plaintiffs and the beneficial owner, which may be a company is also of relevance. It may involve a case of deceit, fraud,

inability or incapacity. However, the fundamental factor to be considered is the relationship between the plaintiff and the party, which the plaintiff seeks to represent.

49. The term 'Beneficial interest' is defined under Section 3 of the Indian Trust Act, 1882 which is reproduced hereunder:

> "Beneficial interest" or "interest of the beneficiary is his right against the trustee as owner of the trust property."

50. As it can be discerned from the definition of 'Beneficial interest' provided in Section 3 of the Indian Trust Act, 1882, there are two parties involved in an issue governing beneficial interest. One is a beneficiary named as 'beneficial owner' and the other is the owner named as 'registered owner' being the trustee of the property or the asset in question. Thus, one can deduce the underlining principle that the ownership is nonetheless legal over the trust property, which vests on him but he also acts as a trustee of the beneficiary. A beneficial owner may include a person who stands behind the registered owner when he acts like a trustee, legal representative or an agent.

51. In *Mount Royal/Walsh Inc. vs. Jensen Star, the Ship* [4], Federal Court of Appeal in Canada explained the meaning of 'beneficial owner' in the following words:

> "In my view, the expression 'beneficial owner' was chosen to serve as an instruction, in a system of registration of ownership rights, to look beyond the register in searching for the relevant person. But such search cannot go so far as to encompass a demise charterer who has no equitable or proprietary interest which burden the title of the registered owner of the registered owner. As I see it, the expression 'beneficial owner' serves to include someone who stands behind the registered owner in situations where the latter functions merely as an intermediary, like a trustee, a legal 25[1990] 1 F.C. 199 representative or an agent. The French corresponding expression 'veritable proprietaire' leaves no doubt to that effect."

52. The High Court is also right in its observation that for applying the principles governing a derivative action one fundamental test has to be passed, viz., such an action will necessary have the sanction of law and this shall have no obligation to a foreign entity having beneficial interest which can be enforced in India especially when there are provisions dealing with such a situation.

53. While considering the territorial jurisdiction over a suit initiated to protect the beneficial interest, the issue qua the existence of such an interest can only be decided on the condition that the same is amenable to such a jurisdiction. Defendant no. 2 is admittedly not amenable to the jurisdiction of Madras High Court.

54. The High Court in the impugned judgment has also discussed in detail the meaning and scope of 'cause of action' by referring to various judgments including *A.B.C. Laminart (Pvt.) Ltd. and Another vs. A.P. Agencies, Salem*[5]. It has also considered the scope of Clause 12 of

the Letters Patent which is peculiar to Madras High Court, where a leave is required to be obtained when part of cause of action arises within the territorial jurisdiction of the said court. In such a situation, as rightly contended by Mr. Mukul Rohatgi, the principles of forum convenience would become applicable as laid down in the case of *Kusum Ingots and Alloys Ltd. vs. Union of India and Another* . We find that court in Dubai would be more convenient forum to decide the dispute between the parties who are residents of Dubai and which revolves around Defendant no. 2, again a Company registered and situate in Dubai.

55 The High Court also appears to be right in holding that the relief sought for against Indian Company, at best, is a consequential one and cannot give a cause of action. Even Defendant no. 2 cannot seek such a relief without resolving its dispute as against Defendant nos. 3 to 7. Such a dispute can only be dealt with by competent forum in Dubai as per the law prevailing in Dubai, UAE.

56. We would also like to reproduce the following discussion from the impugned judgment, with which we concur:

> "6.11 When a dispute arose against the company, which issued the shares, then the situs would be its registered office. However, when the dispute is between the shareholder and the company with respect to the shares held in another, the mere existence of registered office of the subsequent company is not a factor to clothe jurisdiction. In this connection, it is apposite to refer the following paragraphs of the judgment of the Apex Court in R. Viswanathan and others v. Rukn-Ul-Mulk Syed Abdul Wajid Since Deceased and others (Air 1963 Supreme Court 1).
>
> "Per J.C. Shah, J. (Majority) : The situs of the shares in any question between the Company and the holders thereof was the registered office of the Company in Bellary (outside the State of Mysore), but the share certificates must, on the case of the plaintiffs as set out in the plaint, be deemed to be with the executors and compliance with the decree, if any, passed against the executors for an order of retransfer could be obtained under the Code of Civil Procedure (see Order 21, Rules 31 and 32 Mysore Civil Procedure Code). There is no rule of private international law recognised by the courts in India which renders the Bangalore Court incompetent to grant a decree directing retransfer of the shares merely because the shares have a situs in a dispute between the Company and the shareholders outside the jurisdiction of the foreign court: Counsel for the plaintiffs submitted that the Mysore Court was incompetent to deliver an effective judgment in respect of the shares. But by personal compliance with an order for retransfer judgment in favour of the plaintiffs could be rendered effective.
>
> Per Hidayatullah, J (Minority) : It only remains to consider the argument in relation to the shares of the Indian Sugars and Refineries Ltd. It was contended that the shares must be deemed to be situated where they could be effectively dealt with and that was Madras, where the Head Office of the Company was situated. Learned counsel relied upon some English cases in support of his contention. It is not necessary to refer to

those cases. The situs of shares between the Company and the shareholders is undoubtedly in the country where the business is situated. But in a dispute between rival claimants both within the jurisdiction of a court over shares the court has jurisdiction over the parties and the share scrips which are before the court. The Mysore court was in this position. Between the rival claimants the Mysore High Court could order the share scrips to be handed over to the successful party and if necessary could order transfer of the shares between them and enforce that order by the coercive process of the law. It would be a different matter if the Company refused to register the transfer and a different question might then have arisen; but we are told that the Company has obeyed the decision and accepted the executors as the shareholders. The judgment of the Mysore courts on the ownership of the shares is ancillary to the main decision. It is therefore not necessary for me to consider the argument of Mr Desai that jurisdiction attaches on the principle of effectiveness propounded by Dicey, but which has been criticised by the present editors of his book and by Cheshire. In my opinion, this controversy does not arise in this case, which must be decided on the plain words of Section 13 of the Code of Civil Procedure."

6.12 Keeping in view of the abovesaid principles of law,let us consider the issues raised before us. Admittedly, the defendant no. 2 is a foreign entity governed by the laws of Dubai. The Plaintiffs are its shareholders. Therefore, any dispute between them will have to be resolved under the laws of Dubai. Hence, the contention of the learned Senior Counsel appearing for the plaintiffs that they are stepping into the shoes of the defendant no. 2 seeking a relief against the defendant no. 1 cannot be countenanced. This is also for the reason that there must be declaration in clear terms qua the status of a beneficial interest holder before seeking a relief against the defendant no. 1. More so, when defendant no. 2 itself denies it.

6.13 In the case on hand, the fundamental and core facts are not in dispute. They are with respect to the consolidation and deconsolidation of defendant No. 2 by the defendant No. 11. Similarly a decision of the general body of a ETA Group, the Board of Directors and the participation of the plaintiffs in that are also not in dispute. These undisputed happenings lead to the draft financial statement of the defendant No. 11. This draft financial statement confirms two things. One is with respect to the deconsolidation and the other is removal of status over the shares held by the individuals. The decision was to implement it with retrospective effect from 10.01.2014. It is an admitted case that the decision of the ETA Group and the draft financial statement of defendant No. 11 would make the trustees of the holders f the respective shares involving beneficial interest as absolute owners. The plaintiffs may have grievance over this, but their remedy will lie elsewhere. That is the reason why one of the plaintiffs after issuing notice on behalf of the defendant No. 11 to defendant No. 1, has chosen to file the suit along with the other in the status of shareholders. May be it is also for the reason that the defendant No. 11 cannot wriggle out of the decision of ETA Group followed by its draft financial statement. If we see the cause of action as recorded above, it is abundantly clear that what has triggered the present suit is the aforesaid facts.

6.14 The decision of the ETA Group, which consists of numerous entities, applies to every shareholder of the Group. Accordingly, the status of a registered owner would get transferred into one of absolute ownership. Therefore, even if we go by the averments in the plaint while eschewing the defence of the defendant No. 2, no relief can be claimed before this Court. It is an indirect way of challenging the decision of the ETA Group, in which, the plaintiffs were also parties. Any adjudication on this though indirectly, will have a serious spiralling effect, as settled things would get unsettled for the reason that it might have an adverse impact on other shareholders of other entities coming under the umbrella of the ETA Group. The logic and rationale behind the decision of a foreign entity cannot be adjudicated here. Be that as it may, certainly the remedy lies elsewhere. We should also keep in mind the defendants 2 and 11 are admittedly situated outside the jurisdiction of the Court though the plaintiffs contend that defendants 3 to 7, despite being non resident Indians are permanent residents of Chennai. This is nothing but an attempt to review the decision made already by the ETA Group as acknowledged by the defendant No. 11 in the draft financial statement. After all, the relief that is sought against the defendant No. 1 is a mere consequential one. When once the plaintiffs succeed against defendant Nos. 2 to 7 then defendant No. 1 is bound to give effect to it. For doing so, the remedy for the plaintiffs against defendants Nos. 2 to 7 lies elsewhere."

57. As a consequence, we do not find any merit in these appeals which are, accordingly, dismissed.

Judgment Referred.

[1]*(2012) 6 SCC 0613*
[2]*(2016) 195 Comp Cas 434 (Cal)*
[3]*(2008) 6 Bom CR 0499*
[4]*1990) 1 FC 0199*
[5]*(2004) 6 SCC 0254*