THE HIGH COURT OF SINDH, KARACHI

Suit No.367 OF 1995

Faruqi House Building
Corporation, a private company
registered under
the Companies Ordinance 1984,
having its registered office
at 28, Machi Miani Market
Kharadar, Karachi,
through its Managing Director
Muhammad Saleem khan
son of Haji Muhammad Zahid,
Muslim, adult, residing
at 19/44 Model Colony,
Karachi. …… Plaintiff

versus

1. M. Sohail Shakil Faruqi son of Shakil Ahmad Faruqi
2. M.Qaiser Shakil Faruqi son of Shakil Ahmad Faruqi. Since deceased.

2	(a) Mst. Naznin Farooqi	Widow	
	2(b) Muhammad Mohtashim Farooqi	Son	Minor
	2(c) Muhammad Imran Farooqi	Son	Minor
	2(d) Muhammad Haris Farooqi	Son	Minor
	2(e) Muhammad Azam Farooqi	Son	Minor
	2(f) Muhammad Asad Farooqi	Son	Minor

All residents of 1-A-8-4,
Saghira Manzil, Nazimabad, Karachi.

3. Ms.Nasreen Shakil Faruqi D/o Shakil Ahmad Faruqi.

4. M. Sikandar Shakil Faruqi son of Shakil Ahmad Faruqi.

5. Mrs. Nelofar Qadri D/o ShakilAhmad Faruqi.

All Muslims, adult, residingat 1-a,8/4, Saghira Manzil, Nazimabad, Karachi.

6. The Registrar, Joint Stock Companies,
Corporate Law Authority, State Life Building

No.2, Wallace Road, Karachi.

..... Defendants

7. Mrs. Shaista Kaneez Faruqi w/o Late M.Shakil Faruqi.

8. Mufees Faruqi s/o Late M. Shakil Faruqi

9. Mustafeez Faruqi s/o Late M. Shakil Faruqi

10. Shah Farukh Faruqi s/o Late M. Shakil Faruqi

11. Farah Alia Shakila Faruqi D/o Late M.Shakil Faruqi.

All Muislim, adults, resident of British House Rawalpindi.

..... Proforma Defendants

Date of hearing 15. 03. 2007.

Date of Order . 05. 2007.

Plaintiff : Faruqi House Building through its Managing Director Muhammad Saleem khan through Mr. S. Irtiza H. Zaidi, Advocate .

Defendants Nos: 1 to 5 M. Sohail Shakil Faruqi son of Shakil Ahmad Faruqi and four others through Mr. Badar Alam, Advocate.

JUDGMENT

MUNIB AHMED KHAN, J- The dispute between the parties started when a letter dated 25.6.1984 was sent by Deputy Registrar of Joint Stock Company Limited (hereinafter referred to as "company") disclosing therein that the defendants were also filing return in respect to the company, namely, Farooqi House Building Corporation Private Limited while the plaintiff was also Managing and filing the returns of the company. In these circumstances the plaintiff has filed a suit for declaration and permanent injunction to the extent that the defendants NO.1 to 5 be declared not to be a member or shareholder of the company nor they have any right to held office of Chairman or Managing Director of the company hence they cannot submit any return and that the returns filed by them with the Registrar of the Company have no effect nor bind the company. Permanent injunction in the above directions against the defendants NO.1 to 5 have been sought with further direction that they should not disturb the working of the company or its management by the company.

The background of the litigation given by the plaintiff is that Messrs Farooqi House Building Corporation was registered private limited company in the year 1963 and till the year 1982 its shareholding and management was held by Farooqi family headed by Shakil Farooqi and after his death in 1984 by the following shareholder directors:

1. **Mr. Qaiser Shakil Faruqi**
2. **Mrs.Saghira Khatoon Hasrat**
3. **Mr. Sohail Shakil Faruqi**

4. **Mrs.Shaista Kaneez Faruqi**
5. **Mr. Mohammad Sikandar S.Faruqi**
6. **Moulvi Prof. M.Shamim Ghazi Faruqi**
7. **Miss Nasreen Shakil Faruqi**
8. **Mrs. Nilofar Qadri**
9. **Mrs. Tahira S.Abbasi**
10. **Master M. Muzammil Khan Faruqi (Minor)**
11. **Master M. Mufeez Khan Faruqi (Minor)**
12. **Master M. Mustafeez Khan Faruqi (Minor)**
13. **Master Faheem Khan Faruqi (Minor)**
14. **Miss. Farah Alia Shakila Faruqi (Minor)**
15. **Master Mohammad Farukh Shakil Faruqi (Minor)**
16. **Mr. Mohammad Saleem Khan**
17. **Al-Haj Saeed Ahmad**
18. **Mr. M. Tariq Saleem**

According to plaintiff the company in the beginning of 80's had no finances, therefore, Shakeel Farooqi, who was heading the family, transferred entire shareholding of the company to Saleem Khan and his nominee in 1982 who was also elected Managing Director by a unanimous resolution of the board to which the present defendants were also party. Thereafter that management continued running the company and that other defendants at Sr.No.7 t0 11 also legal heir of late Shakeel Farooqi, whose shares were transferred but they have not disputed the handing over of the management to Saleem Khan and his nominee and have rather supported him in legal proceedings, i.e. J.Misc. 4/94. It is being stated by the plaintiff that dispute arose in 1984 when Shakeel Farooqi died in February, 1984 and defendant NO.1 created parallel Board of Director of the company posing himself to be Managing Director, without being the shareholder of the company but the company was not aware of the activities and it came to know only on 25.6.1984 when a letter of the Registrar was received in respect to the activities of the company. It has been stated that the company was owner of piece of land in deh Thaming tapo Songal, Taluka Karachi measuring 384 acres which was purchased from Master Qalandar Khan and since Saleem Khan purchased 139.2 acres land out of the above land, therefore, in that way he was introduced to the company. The said 139.2 acre land was purchased by an agreement of sale dated 29.11.1980 through Wahid Bux Baloch who was attorney of the company. The said sale was confirmed by late Shakeel Farooqi. Since the company was at the verge of insolvency in the year 1980, therefore, it was not able to need its daily expenses and in such a situation on 9.5.1980 a meeting of the company was held to find out a solution and in that way it was through a resolution to transfer the management of the company to a suitable party which could also shoulder all responsibilities and settle disputes. The above resolution was confirmed in a meeting dated 18.7.1980. Subsequently in another meeting it was resolved that consent from shareholders be obtained as to whether they are willing to transfer their shareholding as per resolution of 9.5.1980 or not and in a later meeting held on 28.8.1980 Managing Director of the company placed written consent of all the shareholders before the board. That since the company was intending to found a suit party to transfer the company, therefore, plaintiff offered to purchase entire shareholding of the company and its management which offer was considered by the Board of Directors in its meeting dated 27.11.1981 which accepted the said offer unanimously and in subsequent meeting on 29.11.1982 it was resolved that assets and

liability of the company including 4802 shares held by its 17 members to be transferred to the plaintiff on better terms hence an agreement dated 21.3.1982 was executed between all the 17-members of the Farooqi family and plaintiff. On 28.3.1982 a meeting of the Board of Directors was held in which Saleem Khan, after purchase of share was appointed as Managing Director w.e.f. 27.3.1982 in place of Mr. Qaiser S. Farooqi (the defendant No.1) and in the said meeting the Board of Directors was reconstituted and plaintiff was given all powers under Article 28 of Articles of Association of the Company. The above arrangement was approved in the meeting dated 30.4.1982. Since Shakeel Farooqi had died on 25.2.1984, therefore, Alhaj Saeed Ahmed Khan was elected as Chairman of the company in a previous meeting dated 15.3.1984. Although shareholding of the Farooqi family was transferred but its record which was in custody of deceased chairman was not transferred by Qaiser S. Farooqi, son of the deceased, which factual position was conveyed to the board of the company in its meeting. It has further been submitted that towards fulfillment of the obligation under various resolution and sale agreement dated 21.3.1982 all payments were made to the said attorney i.e. late Shakeel Farooqi in cash and through sale of two vehicles. The cash payment made in installments was acknowledged by the receipant. These payments are confirmed through the entries made by late Shakeel Farooqi in the account books under his signature. After purchase of the company and being nominated as Managing Director, Saleem Khan made efforts for moving the company and invested huge amount towards payment of share money as well as towards incurring expenses in the pending litigation bearing Suit NO.163/1971, 103/1972, HC No.128/1993 and HCA No.89/1993 to which, company was a party. The defendant NO.2 did not cooperate with the company and started disputing the position of the plaintiff as Managing Director of the company and formed a parallel Board of Directors of the members who have already sold their shares to Saleem Khan and his nominee and received the consideration and also started conveying the meeting while he did not appear in the company meeting called by Saleem Khan as a Managing Director as he himself was running a parallel board, holding meeting and submitting returns to the Registrar of the Company. In these circumstances and after being confirmed about above factual position through letter of the Registrar dated 25.6.1984 an extra ordinary meeting was called by the company on 25.7.1984 in which Mr.Qaiser S.Farooqi was removed from directorship of the company under Article 27 of the Articles of the Company w.e.f 27.4.1984. On enquiry from Registrar Office it appeared that Qaiser Farooqi was acting as a Managing Director while other directors were the persons whose shares had already been transferred to the plaintiff. It has been submitted that none of the defendants had ever disputed any of the resolution of the company at the relevant time nor the agreement through which shares and management of the company was transferred to Saleem Khan hence their acts at subsequent stage are malafide. Under the agreement the defendants are bound to hand over all the record of the company. In such a situation the Managing Director filed proceedings i.e. J.M. No.4/84 but even after remaining for a long time before the court no final result could be achieved.

It seems that before final decision in that J.M the plaintiff filed, this suit on 22.5.1995 with the assertion that there is continuing cause of action keeping in view the pendency of company proceedings. Anyhow in the clause pertaining to cause of action, first cause has been shown as to have arisen on 25.6.1984 when the letter from Registrar Joint Stock Company was received while subsequent cause have also been given and lastly on 27.4.1995 when defendant used company's letter head.

Defendant Nos. 1 to 5 have filed written statement, while other defendants No.7 to 11 have been shown as proforma Defendants and have not submitted any written statement while Defendant No. 6 has submitted its comments. During the pendency Qaisar Shakeel Farooqui died, therefore, his legal heirs were brought on record as defendants No.2-A to 2-F and amended title was filed. The defendants No.1 to 5 in their written statement have taken legal

objection on the ground that the suit is not maintainable under Sections 12 and 42 of the Specific Relief Act as the plaintiff has not sought any declaration in respect to his own title, which is seriously disputed, while he has sought negative declaration regarding the title of the answering defendants and that Saleem Khan has no locus standi to file the suit as he cannot be a Managing Director of the company as his appointment is contrary to Article 29 of the Company, which provide election of Managing Director by general body, while he has claimed his appointment through Board resolution. To support their challenge, defendants have referred letter, dated 28.10.1984 filed in Suit No.163/1971 and that through the general body meeting of the company held on 2.3.1984, Saleem Khan has been removed from the status of so-called Managing Director, while status of Qaisar Farooqui/defendant No.2 (now deceased) was confirmed. It has further been stated that Saleem Khan is claiming his title through agreement, dated 21.3.1982 through which he has purchased shares of seventeen persons through one attorney and since that agreement has been denied, therefore, the only option left for Saleem Khan to go for specific performance of that contract but instead he has filed the suit for negative declaration against the defendants and that Saleem Khan was aware of the dispute, therefore, on 31.4.1984 he filed suit No.1145/1984 in the Court of Civil Judge, but plaint was returned and was never presented in proper forum. The J.M. NO.4/1987 under Section 152 and 290 of the Companies Ordinance, 1984 was filed in this Court after three years, but since it was not proper recourse keeping in view serious factual controversies, therefore, he filed this suit late in a day in 1995 and that Saleem Khan had no cause of action while case has wrongly been filed on behalf of Company and that the defendants No.7 to 11 are opposite party and are in collusion with Saleem Khan, therefore, he wanted to take benefit of that situation. On merits, the defendants have submitted that the company was formed in 1963 and according to latest position of the Board of Directors, five of the defendants were its Directors, while in the year 1981 late Shakeel Farooqui was Chairman and Qaisar Farooqui was its Managing Director alongwith three other Directors of Farooqui family. The defendants have given the past history, according to which there were twenty-seven original members headed by Khanbahadur Muhammad Suleman as its first Chairman and in 1976 Farooqui family came on the scene as Director and President. They have denied that late Shakeel Farooqui was heading the company as after his third marriage with defendant No.7 Farooqui, family was splitted, one headed by Qaisar Farooqui, and another by Shakeel Farooqui. The relation between both the groups were strained, which were more deteriorated during the course of time and power of attorney given to late Shakeel Farooqui by defendants No.1 to 5 was cancelled on 27.1.1982. They further submit that Saleem Khan, in collusion with defendants No.7 to 11, has tried to hijack the company to deprive the shareholders of Farooqui family and their right to manage it. The Defendants have controverted the statement of Saleem Khan that this change was ever accepted by defendants nor share holding was legally transferred to Saleem Khan, nor it could be, as late Shakeel Farooqui had no authority to transfer or sell the shares and that all the resolutions of the company relied upon by Saleem Khan are fake, as answering defendants did not participate nor had information, hence no right was entrusted upon Saleem Khan nor it could be proved, as the defendants No.1 and 2 and their mother never signed any resolution and that election of the Managing Director could not take effect through the resolution of Board, as the same was ultra vires to Article 29 of the Company and in this respect order dated 28.10.1984 passed in Suit No.163/1971 on the application of Saleem Khan is answer to that controversy. Defendants have asserted their position as sharers and Directors. In respect to the power of attorney given by defendants, they have submitted that same was given to late Shakeel Farooqui to resolve Suit No.163/1971 only, as there were chances of settlement. The power of attorney executed on 5.12.1981 was signed with the spirit to maintain good relations between both the groups of Farooqui family as well as late Sakeel Farooqui on the assurance of the defendants that the interests of the defendants will be protected, but later-on when it

transpired that late Farooqui was under influence of his third wife, then attorney was cancelled by joint registered post letter, dated 27.1.1982. They have submitted that in the said power of attorney number of share-holders were not mentioned but same was manipulated by Saleem Khan by inserting wrong number of shares against each donor of attorney. By that time the company had not issued any share certificate to any shareholder except to Qaisar Farooqui, managing Director holding 1150 shares and to Shakeel Farooqui holding 1538 shares and that the shares to other shareholders could not be issued without the signature of defendant No.2, the Managing Director, while Shakeel Farooqui had no power, as his attorney was cancelled and that the share certificate numbering 1150 owned by defendant NO.2 (Qaisar Farooqui) had been submitted in G&W Suit No.1394/1980 in the Court of Civil Judge as a security for grant of Guardianship Certificate and permission to obtain loan from H.B.F.C. It has been submitted that after cancellation of power of attorney relations between both the groups became so strained that they avoided to be in contact, hence annual general meeting of the company for 1982 and 1983 could not be held nor statutory returns were filed for these years. The defendants met Shakeel Farooqui in the month of February, 1984 as he was seriously ill and was calling them but by that time the defendants were not aware of any activity of Shakeel Farooqui, which was told to them by him that Saleem Khan despite knowing the fact that the defendants have cancelled the power of attorney insisted upon him for execution of agreement for sale of shares, dated 21.3.1982, but Saleem Khan has failed to make payment and was fraudulently trying to usurp the shareholding of the company and at that time he also handed over his 1000 shares to defendant No.2, which were not sold to anybody. The late Farooqui told that Saleem Khan has purchased only 150 shares of Rs.100/-, out of which 50 shares were allotted in his name, while 25 each in the name of his nominees, namely, Alhaj Saeed Ahmed and Hashmat Ali and that all the accounts, meetings, documents, which are being relied upon by Saleem Khan are false and illegal, so an extraordinary general meeting of the company be called to remove Saleem Khan and his nominees and to elect a new Director, hence a letter, dated 21.2.1984 was sent by Qaisar Farooqui, defendant No.2, to Saleem Khan directing him to restrain himself. Notice of holding meeting on 24.2.1984 was also given. The proposed meeting could not be held on 24.2.1984 due to lack of corum and was held thereafter on 2.3.1984, wherein Saleem Khan was removed from the post of Managing Director and Qaisar Farroqui was appointed in his place with all powers of Managing Director. The Board of Directors was also reconstituted and Saleem Khan as well as Saeed Ahmed were also removed from the Directorship of the company, while two members of the Farooqui family were appointed in their place as a Director in the subsequent meeting of 2.3.1984 and minutes of the said meeting were submitted to the Deputy Registrar, Joint Stock Companies, but due to inadvertence shareholding was not mentioned properly, which was corrected in a subsequent meeting and was intimated to the Registrar of Companies and in that meeting filing of suit by Saleem Khan in Civil Court was also discussed. They have asserted that all the returns filed by Saleem Khan in the capacity of Managing Director were illegal, as he had no authority and specifically the shareholding was totally incorrect and was contrary to Section 76 of the Companies Ordinance. They submit that there was no request to the Board of Directors in respect to the transfer of shares of Saleem Khan, while defendant No.7, belonging to rival group were in collusion with Saleem Khan, therefore, they have no say in the matter of answering defendants and that the answering defendants were not holding the parallel Board of the company as alleged by Saleem Khan, but they were holding genuine board of Directors, while Saleem Khan had no locus standi. They have further alleged that on the last day of Shakeel Farooqui he was kept at the house of Saleem Khan at Model Colony, Malir and his signatures were obtained by Saleem Khan under coercion with malafide intention and in such a situation the late Farooqui conveyed a message to the defendants to meet him, hence they initiated action and corrected the record of the company. In such a situation, the applicant collected all the documents from the Registrar of

the company by applying properly, while legally constituted Board headed by defendant No.2 continued working and filed return. It is further added that the Company was owner of 374 acres of agricultural land and the claim of Saleem Khan that he purchased 139-2 acres land out of the Company's land through one Wahid Bux, the alleged attorney of the Company, is incorrect as, Wahid Bux was stranger and was never appointed. The Power of Attorney, dated 19.9.1980 in the name of Wahid Bux is false and fabricated and might have been obtained by misrepresentation as it does not bear signature of late Shakeel Farooqui, hence any sale agreement on the basis of that power of attorney has no value nor any amount was paid by Saleem Khan or received by the Company. The payment detail given by Saleem Khan in this respect is false as it does not appear in the Company's account and that the signatures of defendant No.2 as a witness to attorney are also false. It is asserted that the entire land is still in the name of Company in the record of rights and that Saleem Khan in the past litigation has never stated that he was holding a sale agreement, dated 29.11.1980, which has been filed in this suit, it means that the same has been fabricated at the time of filing of the suit and that several applications filed by Saleem Khan to become intervenor in pending litigation were rejected and his status to represent the Company was not accepted. Even in a litigation bearing Suit No.163/1971, Saleem Khan could not succeed to be a party and that suit has been decreed against the Company, in which entire land comprising 374 acres is involved and H.C.A. has been filed against the judgment, dated 12.4.1993. The defendants have stressed that in the proceeding pending, including J.M. NO.4/1987 and Suit NO.163/1971, Saleem Khan has never disclosed that he was owner of 139-2 acres land, which he allegedly purchased out of 374 acres land and that the title of the plaintiff or the documents he has referred, especially, the letters or acknowledgment of consideration are incorrect. The said documents are fabricated. They submit that even if some amounts of cheque given to late Shakeel Farooqui, or deposited in Company's account, does not confirm alleged agreement of sale, dated 29.11.1980 and that the Company's financial position was not so weak as stated or it could not meet its expenses, as it was holding huge land. They stated that there is no meeting of Company on 9.5.1980, 26.12.1980, 28.8.1981, 25.9.1981, 27.11.1981 or 29.1.1982 and even if those were held, the same were invalid, as the defendant No.2 was not present nor his mother, a Director of the Company, nor they signed the minutes of the resolution, hence signature attributed to them are incorrect, therefore, authenticity of the minutes of meetings, dated 18.4.1980, 9.5.1980, 26.12.1980, 28.8.1981, 25.9.1981, 27.11.1981 or 29.1.1982, is challenged, same being bogus and sham document. Likewise, it has been vehemently denied that any sale agreement, dated 21.3.1982 was executed between seventeen members of the Farooqui family and Saleem Khan. The said agreement does not even contain the sharing of alleged sellers. It has further been submitted that the alleged agreement is also not binding on the ground that seven of the shareholders were minor, which are detailed below with their respective shareholding:-

1. M. Sikandar S. Farooqui	**.....**	**100 shares**
2. M. Muzammil Farooqui	**.....**	**100 shares**
3. M. Mufeez Farooqui	**.....**	**100 shares**
4. M. Musafeez Farooqui	**.....**	**100 shares**
5. M. Faheem Farooqui	**.....**	**100 shares**
6. Miss Farah Alia Farooqui	**.....**	**100 shares**
7. M. Farrukh Khan Farooqui	**.....**	**100 shares**

It has also been averred that the said attorney was also not valid as it was cancelled by the answering defendants alongwith their deceased mother Saghira Khatoon Hasrat

and their sister Tasneem Farooqi, Mrs. Nazneen Qaisar Farooqui, through registered post letter, dated 27.1.1982, hence subsequent sale agreement, dated 21.3.1982, on this ground, has no validity, hence the agreement is illegal. In respect to the title of Saleem Khan that he was appointed as Director in a meeting, dated 28.3.1982 or was nominated subsequently on 27.3.1982 as Managing Director, are false as no meeting was held on 28.3.1982 and even if there were meeting then they were invalid as no proper participation of the shareholders or of the Directors was there, and even otherwise, Managing Director could not be elected through the Board but through general body resolution, which admittedly was never held. The said alleged election was also contrary to Article 29 of the Company Memorandum. In such a way, the alleged transfer of the shares of all the persons as well as of minors, which are contrary to the law as well, is totally illegal. The factual position narrated by Saleem Khan is also contrary to the share-holding, as certain shares were lying in security in G & W Suit NO.1394/1980, while minors' shares could not be transferred. Other shareholders have never transferred the shares and attribution towards them towards sending of certain letters is totally incorrect nor Shakeel Farooqui signed several forms as alleged by Saleem Khan. The assertion of the plaintiff that change was accepted by the shareholders is totally incorrect nor Qaisar Farooqui ever seized to be Managing Director of the Company. Defendants have also submitted that the record of the company was with late Shakeel Farooqui and answering defendants were rightly refusing to hand over the said record to Saleem Khan but after the death of Shakeel Farooqui, defendant No.7 (third wife of defendant), took over all the record and handed it over to Saleem Khan, who manipulated the same. The meeting, dated 20.2.1984 is illegal as it was not held while the defendants holding the Company conducted the general meeting of the shareholders on 2.3.1984 and removed Saleem Khan as Managing Director and Alhaj Saeed Khan as Director and reconstituted the Board. It is further pointed out that Tariq Saleem was not Director of the Company. It has further been clarified that even under the cancelled power of attorney, dated 5.12.1981 the donee late Shakeel Farooqui was authorized only to appoint sub-attorney for the purpose of collection of money from the purchasers of sharers or transferees, while Saleem Khan has claimed to be attorney on the basis of sub-power of attorney under the cancelled general power of attorney even in respect to the sale of shares, which is not permitted under the cancelled power of attorney. Since the said power of attorney is illegal, therefore, all actions taken under the said attorney, dated 19.12.1982 are illegal and cannot be sustained, therefore, they submitted that the share certificate annexed with the plaint and have been attributed to the defendants, are totally incorrect as, Saleem Khan and late Shakeel Farooqui in collusion and without lawful authority got issued such shares and Saleem Khan detained those certificates. Any transfer of these shares, which were illegally issued without knowledge and consent of the owners, is totally incorrect. They have submitted that in all the total payments allegedly made, Mr. Saleem Khan under the alleged agreement, comes to Rs.334,078/=, which at the rate of Rs.2,376.42 per share comes for 216 shares, while Saleem Khan is claiming ownership of 4208 fully paid up shares at a cost of Rs.10 million. The figures in respect to the payments given by Saleem Khan also not tally to each other. He tried to prove existence of alleged sale agreement, made application to Court for deposit of Rs.5,000/= per month, but his request was declined and his C.M.A 699/1985 was rejected. The record of income tax contain the defendants as owner of the Company and a tax of Rs.2,592,348/- has been imposed, against which an appeal has been filed by the defendant NO.2.

To sum up the contentions of the defendants, it will be suffice to say that according to them Saleem Khan entered Farooqui family due to differences between the step brothers and sisters and thereafter with the assistance of rival group, which are defendants NO.7 to 11, and to some extend with the collusion of late Shakeel Farooqui, he obtained some documents

including a power of attorney as well as sale agreement towards sale of Company's land and subsequent thereto he fraudulently manoeuvered the record of the Company, obtained by him from defendant NO.7 and submitted false return with Company Registrar without intimation to the answering defendants, he did not pay any amount to the shareholders nor the price of land which is linked with the shares and moreover most of the shares were not available for sale as over thousands were lying as security in G&W suit while 700 shares were in the name of minors, therefore, the contention of Saleem Khan is even contrary to the hard facts, hence his ownership and purported minutes of the meeting of the Company were neither called nor will be termed as a genuine, nor any action regarding the sale of the shares etc. can be taken nor Saleem Khan under the alleged power of attorney, he was holding from Shakeel Farooqui, was entitled to remove the Farooqui family and could induct his own family and friends.

On the basis of above, the Court framed following issues :-

1. *Whether defendants Nos.1 to 5 are share holders of M/s. Farooqui House Building Corporation Ltd (the said company)?*

2. *Whether any of the defendants Nos.1 to 5 have the right to hold office of Chairman, Managing Director and Director of the said company?*

3. *Whether Muhammad Saleem Khan is the Manging Director of the said company?*

4. *Whether defendant No.1 to 5 have any right or claim over the property or assets of the said company?*

5. *What should the decree be?*

Following legal issues proposed on behalf of defendants No.1 to 5 were also included vide, order 2.6.1999.

1. *Whether suit as framed and filed is maintainable?*

2. *Whether the suit is hit by the provisions of sections 12 & 42 of Specific Relief Act, 1877?*

3. *Whether the suit is time barred?*

After framing of issues, the evidence was recorded on commission, wherein one Muhammad Saleem Khan has been examined as a Managing Director of the plaintiff Company. He has Exhibited the A/E as Ex.5/1 and has also produced various documents from Ex.5/2 to Ex.5/90.

On the other hand, Muhammad Qaisar Shakeel Farooqui, the defendant No.2, has examined himself by showing himself to be the Managing Director of M/S Farroqui House Building Finance Corporation Private Ltd. He has also represented defendants Nos.1, 3 to 5, on the basis of general power of attorney. The A/E has been Exhibited as Ex.6/1, while the defendant has produced documents from Ex.6/2 to Ex.6/32. Except above, none was examined by either of the parties as a witness. It has been observed that the parties have filed very lengthy affidavit-in-evidence and specifically the defendant, who, besides submission of his evidence, has given comments on the Exibits filed by the plaintiff and has also submitted arguments to some extent. The single-spaced affidavit-in-evidence spreading over 31 pages is contrary to

the rules, which is nothing but an exploitation of the facility granted to parties towards filing of affidavit-in-evidence instead of their verbatim examination-in-chief.

Anyhow, after hearing of the learned counsel I first take upon issues Nos. 1 to 3 which are legal. It has been noted that the plaint, although has been filed by a limited company, but the style and the manner, in which it has been drafted, shows that it is filed by Muhammad Saleem Khan in his individual capacity and not by a company. The verification clause does show that it has been verified by Saleem Khan in his independent capacity and in many other paras of the plaint the contention of Saleem Khan appears, which shows that he is the plaintiff and not the Company. In the evidence the plaintiff has based his entire claim on the basis of agreement of sale, dated 29.11.1980 between the Company through it's attorney Shakeel Ahmed Farooqui and M. Saleem Khan. To sum up the claim of the plaintiff – but more properly of M. Saleem Khan, is that Shakeel Farooqui and his family were the Directors and share-holders of Messrs Farooqui House Building Finance Corporation Pvt. Ltd. The Company was owner of the agricultural land measuring 374 acres and 02 ghuntas (the measurement differ at some places in the pleading of parties) situated in Deh Thaming, Tapo Songal Taluka and District Karachi East. According to the claim of Saleem Khan he was introduced to the Company when he purchased 139 acres and 02 ghuntas land out of the above land from the Company through attorney Wahid Bux Baloch (G.P.A. is Exhibited as Ex.5/2) through agreement of sale, dated 29.11.1980 Ex.5/3. The Farooqui House Building Finance Corporation (Pvt) Ltd (Company) had acquired the said land from its previous owner Qalandar Khan and Form VII-B in this respect is Exhibited as Ex.5/4. It is the further case of Saleem Khan that later-on M. Shakeel Farooqui, the predecessor-in-interests of all the present shareholders executed a special power of attorney, whereby he nominated M. Saleem Khan as his attorney. The plaintiff has submitted that previously the Company had seventeen sharers belonging to the family of late Shakeel Farooqui but after the agreement of sale by Wahid Bux Baloch and agreement of sale executed on 7.2.1982 (Ex.5/55) main control of the Company came to Saleem Khan and his family with slight control of nominee of Farooqui family and that according to the agreement of sale executed between Muhammad Saleem Khan and Shakeel Farooqui in 1982 several payments have been made. Saleem Khan has much emphasized on that agreement, which is Ex.5/55, in which it has been shown that late Shakeel Farooqui representing his family members numbering seventeen has, sold out land of the Company measuring 374 acres and 02 ghuntas to Mr. Saleem Khan for a total consideration of Rs.40,00,000/-. The plaintiff has given some detail of payments in para 10 of his affidavit-in-evidence, wherein certain payments have been shown and the biggest payment is Rs.10,00,000/-, Rs.130,000/- and Rs.150,000/-, while most of the payments are Rs.5,000/- as a monthly instalments. Plaintiff has submitted that amount was received of Shakeel Farooqui, who was holding general power of attorney from all his family members including the defendants, therefore, the said sale agreement (Ex.5/55) is binding upon them and they cannot claim anything contrary to that and since by virtue of the said agreement entire shareholding has also been transferred to Saleem Khan and his family members, therefore, shareholding of the defendants has also been affected and they are no longer in a controlling position. Besides, the several receipts of payment, which have been Exhibited from Ex.5/6 to Ex.5/47, some other document showing handing over and taking over as well as power of attorney by late Shakeel Farooqui (who died on 25.2.1984) in the name of Muhammad Saleem Khan is Exhibited as Ex.5/54. Saleem Khan has also produced some Exibits to show that certain returns were filed before the Registrar of Companies, in which Saleem Khan was shown major shareholder and that he was holding original share certificates to the extent of major shareholding of more than 4000 sharers. Some other documents have also been produced to show that meetings of the Companies were held during the lifetime of late Shakeel Farooqui from 1982 to 1984, in which one of the defendants, namely, Qaisar Shakeel Farooqui also participated. One of the

important documents from the point of plaintiff's view is Ex.5/61, which is a general power of attorney executed by seventeen shareholders of the Company, with total shareholding of 4208, in favour of Muhammad Shakeel Farooqui. The plaintiff has also filed some Exibits, which are affidavits of members of Farooqui family Exhibited as Ex.5/62 to 5/65, to show that members of Farooqui family have verified the contention of M. Saleem Khan and they have accepted the transfer of their shares to him. The plaintiff has further submitted that the record shows that before selling of shares of Farooqui family their predecessor-in-interests M. Shakeel Farooqui had taken their consent towards the same and since the Company was not in a position to maintain itself and was at the verge of insolvency, therefore, M. Saleem Khan was introduced into it and shares with all liabilities were transferred to him and gradually all the powers and shares, except few, were transferred to him and he started managing the Company. He has further submitted that in the life of Shakeel Farooqui, plaintiff was managing the Company but immediately after his death he noticed that the defendants have formed a parallel Board of Directors and were also filing returns with the Registrar of Companies, therefore, action was initiated and after going through some litigation finally the suit was filed with the prayer of declaration and injunction that the defendants be restrained from claiming themselves to be a member/shareholder or Director of the Company and that all their actions in respect to the Company have no legal force.

On the other hand, the witness of defendants has questioned authority of Saleem Khan as he is not the transferee or owner of shares of Farooqui family. According to defendants, there are five Directors in the Board of Directors and all belong to Farooqui family. He has submitted that late Shakeel Farooqui has married thricely and due to differences between the step-sisters and brothers, Saleem Khan managed to gain favour of some of the sharers but he has no legal sanctity, as the defendants have never given any authority to late Shakeel Farooqui to sell out their shares and that some of the shareholders were minor, therefore, their shares could not be transferred and even the alleged power of attorney given by some shareholders to their father Shakeel Farooqui was cancelled prior to execution of sale agreement, dated 7.2.1982 (Ex.5/55). He has further submitted that shares of the Company were linked with the value of the property, the Company was holding, therefore, the shares could not be separated from 374 acres and 02 ghuntas land owned by the Company and value of the shares can only be determined keeping in view the value of the property. The defendants have disowned payments made by plaintiff Saleem Khan to late Shakeel Farooqui. He submits that the defendants have been filing proper returns of the Company and they are the shareholders and Directors. He further submits that according to the memorandum of Company itself, the shares of the Company could not be transferred in such a manner and that alleged transfer is contrary to Section 76 of the Companies Ordinance and contrary to these legal provisions, Saleem Khan, with the connivance of the rival group within the family of the defendants, has tried to hijack the Company, as the Company has valuable land with it. In the affidavit-in-evidence, the plaintiff has also given the back history of filing the suit and then J. M. No.4/87 and thereafter present suit. Defendants have Exhibited copies of some orders of this Court to establish that Saleem Khan has no locus standi to enter into proceedings or to hold title in any capacity in the Company. He has Exhibited a letter, dated 27.1.1982 as Ex.6/11-A, written by eight children of Shakeel Farooqui, the defendants herein, whereby power of attorney was cancelled. Towards posting of this letter, a registry-slip in the name of Shakeel Farooqui bearing the date of 27.1.1982 has also been Exhibited as Ex.6/11-B including Ex.6/13-C, 6/13-D, 6/13-E to 6/13-H. The witness has also submitted copy of family suit No.1394/1980, which is a guardian and wards matter. This document has been filed to show that some of the defendants at the relevant time were minor and in respect to them guardian and wards certificate was applied for and 1150 shares in the name of Qaisar Shakeel Farooqui were kept

with the Court as a security towards grant of Guardianship Certificate and that the original shares were still in their hands, which have been exhibited as Ex.6/14-A to 6/14-F, therefore, question of transfer without surrendering the original shares does not arise.

Mr. Irtaza H. Zaidi, learned counsel for the plaintiff and Mr.Badar Alam counsel for the defendants No.1 to 5 have argued their case while other defendants remained absent. According to Mr. Zaidi respondents No.7 to 11 were proforma as they support the plaintiff's claim while defendant No.6 being Registrar of Joint Stock Companies has filed his reply.

First of all I would take up the legal issues forwarded to by the defendants and were adopted by the court on 02.6.1999. The issues are listed above as issue No.6,7 and 8. On these issues Mr.Zaidi has argued that plaintiff company was incorporated in 1963 by Mr.Shakeel Farooqi and its shares numbering 4208 were held by him and his family members. The only asset of the company is 384 acres of land acquired from Master Qalandar Khan but that acquisition is challenged in a civil suit No.163/1971 and pending in High Court Appeals Nos.89/1993 and 128/1993 as according to Mr. Zaidi, the above litigation in the suit ended in favour of Mst.Rahmat Bibi, therefore, legal heirs of Master Qalandar Khan and the plaintiff company have filed High Court Appeals. He further submit that the issue of the land is involved in the above litigation while in the present suit transfer of shareholding as well as appointment of Saleem Khan as Managing Director of the Company is involved. In this respect he has also referred to the prayer of the suit. He submit that the litigation was started in 1984 while plaintiff came to know through letter of Registrar Stock Joint Company that the defendants have formed a parallel Board of Directors hence civil suit NO.1145/1984 was filed but plaint was returned on the ground that the issue pertain to the company law. Thereafter Judicial Misc. Application was filed under section 152 of the Companies Ordinance of 1994 bearing JM No.4/1987. Initially J.M. was allowed but in HCA No.44/1992 case was remanded by order dated 12.4.1994 and while the J.M was pending after remand it happened that a far-reaching judgment was announced by the court wherein it was declared that the company proceeding being summary in nature, therefore, complicated question of law and facts and adverse allegations to be decided in a proper form which is civil proceeding. He has cited Manzoor Ahmed Bhatti and others v. Haji Noval Khan and others 1986 CLC 2560 in this respect. Following the above said judgment J.M No.4/1987 was disposed of as dismissed with the observation that the petitioner may seek his remedy in a suit. He submit that in the light of above finding present suit has been filed therefore, it cannot be said that it is not maintainable. Regarding limitation point to file the suit, he has submitted that cause of action arose in 1984 with the letter of Registrar, Joint Stock Companies and since then the plaintiff is continuously proceeding with the matter with no fault on his part as the forums were changed from civil Court to Company Court and then again the Civil Court, therefore, all the times from 1984 till filing of the suit in 1995 has been spent in the search of proper remedy.

On the other hand, the learned counsel for the respondents submit that at the first hand it is to be seen as to how the suit has been framed and filed. He has pointed out that suit has been filed in the name of Company through its Managing Director M. Saleem Khan but in the verification clause he has not verified the plaint as a Managing Director or Chief Executive of the Company nor he has shown any resolution of the Company to authorize him to file suit. He has pointed out that the verification is in the name of Muhammad Saleem, who has represented him as a first person by showing himself plaintiff and not the officer of the company. He further submit that at so many places Saleem Khan has tried to assert himself and claim by showing that he has acquired the shares of the plaintiff company from the defendants and he is entitled to hold those shares. In this respect he has referred sale agreement Ex.5/55 as well as other documents including several receipts towards the payment of alleged

share price to Shakeel Farooqi and all that shows that the plaintiff wanted to clarify his own title in respect to the ownership of the shares so he may hold the company. He further argued that the basic document Ex.5/55 dated 7.2.1982 as well as special power of attorney Ex.5/54 and a subsequent agreement dated 21.3.1982 which has also been exhibited as Ex.5/55 have been disputed by the defendants, therefore, the plaintiff would have sought declaration in respect to all those documents to establish his right and that the general power of attorney dated 5.12.1981 Ex.5/61 is not valid document as it was even for limited purpose of collection of money due to executant therefore, on the basis of documents, the donor Shakil Farooqi had no right to transfer the share of Defendants to anybody. In addition, he submits that even the said attorney was cancelled on 27.01.1982 prior to the date of Ex.5/55. In this respect he has referred to Ex.6/11-A which is a letter dated 27.1.1982 sent by eight persons including contesting Defendant whereby they have cancelled the general power of attorney given in the name of their father Shakeel Farooqi. The said letter was sent through registered post and receipt in this respect bearing date of 27.01.1982 is Exhibited as Ex. 6/11-B. He submits that the documents on which the plaintiff is relying are forged and bogus documents which have persistently been denied by the Defendant, therefore, until the declaration in this respect is sought then plaintiff has no right to claim benefits of the suit in the present form whereby negative declaration has been sought against the title of the Defendants which is not maintainable.

In the light of above arguments and after perusal of documents I have sum-up the situation in a way that according to plaintiff itself the issue involved was not simply a company matter, therefore, his J.M No.4/1987 was disposed of by the court by observing that the complicated question of facts to be decided in appropriate proceeding and following that, the plaintiff, instead of taking the matter into appeal filed the present suit which shows that admittedly there were complicated question and these questions are not only relating to the transfer of shares, management of the company but the land itself measuring 384 acres owned by the company. It is being observed that the entire litigation is encircling that valuable land owned by the company therefore, either of the party to own the land wants to take over the company to sit on the driving seat. The agreement dated 7.2.1982 as well as 21.3.1982 both Exhibited as 5/55 shows that it was a land which was agreed to be sold and not the shares only, although number of shares i.e. 4208 have been mentioned therein. According to these agreements executed between Saleem Khan and 17 shareholders of the company the purchaser Saleem Khan has agreed to purchase for which parta-1 of the agreement dated 21.3.1982 is relevant that the first party of the first part has agreed to purchase and take over 4208 fully paid shares of Messrs Farooqi House Building Corporation (Pvt) limited Karachi held in the name of its 17 (seventeen) shareholders through their lawful attorney Mr.Shakeel Farooqi together with their title and liens on the agricultural land measuring about 374 acres and 2 ghuntas, which has already been mutated in the government record of rights in the name of the said company for a total consideration of Rs.100,00,000/- (Rupees One Crore only). In the other clause of the said agreement some advance payment has been made while future payments have been promised and according to plaintiff even application was made in the court for deposit of Rs.5000/- towards monthly installment but that application was dismissed. In the light of above it appears that in the absence of any declaration in respect to the title of the plaintiff itself they cannot pray for negative declaration in respect to the title of opponent party as that also depend upon the entitlement of the plaintiff which he has very cleverly avoided and now to counter the legal objections he has come-forward with the proposition that only declaration in respect to the shares is involved in the suit and not the land while the question of shares as well as land in the name of company is a mixed question and the value of the shares cannot be determined until the value of entire land is calculated

and divided by the number of shares to give them the market value. The agreement on the basis of which the plaintiff has acquired the land of the company is also contrary to the company law as neither there is any resolution of the company supported by General Body Meeting nor there is any other resolution under which Shakeel Farooqi has been appointed as attorney of all his children etc. It has further come on the record that certain shares of the company were kept as security by one of the defendants in Guardian and Ward proceedings while two shareholders for whom that Guardian and Ward proceeding was filed, were minors, therefore, question of transfer of shares in the absence of their free status is not comprehendible. The learned counsel for the defendants has cited case of Central Cotton Mills Limited v. Naveed Textile Mills Limited 1993 MLD 42 (Karachi) and Akbar Ali Sharif and others v. Syed Jamaluddin and others 1991 MLD 203. These authorities are cited on the point that share of the company cannot be transferred without due performance of legal formalities. Learned counsel for the defendants has further cited case pf Khursheed Ahmad Khan v. Pak Cycle Manufacturing Company PLD 1987 Lah. 01, Karachi Shipyard Engineering Works Limited v. Muhammad Shakir Sheikh 1993 CLC 330 and S.M.Shafi Ahmad Zaidi v. Malik Hassan Ali Khan 2002 SCMR 338 on the ground that firstly the plaintiff would have performed part of his contract by paying the consideration and secondly if there was a breach of contract then he could go for specific performance. In these circumstances I find that the suit as framed and filed is not maintainable as the plaintiff has failed to claim proper relief as appeared from the dispute involved. The plaintiff has tried to minimize the cause by saying that only issue involved in the suit relates to transfer of shares but had it been so, then plaintiff would have contested his J.M No.4/1987 instead of filing the suit. There appears to be strong dispute in respect to entitlement of share, authentically of power of attorney as well as agreement of sale and all that between the sharers that Salim Khan and contesting Farooqi family. Salim Khan has claimed to have purchased land measuring 139 acres through Wahid Bux out of 384 =-2 acres but against he catered for purchase of entire land 384-3 acres. In the circumstances issue NO.1 and 2 are decided against plaintiff with the result that the suit is not maintainable as framed and filed. As far as issue No.3 in respect to the limitation is concerned, a lenient view can be taken keeping in view that the parties were aware since the beginning of 1984 regarding claim of each other but the forum remained changing while grievance of the parties had come on the record immediately.

ISSUES NOS. 4 TO 7:

Now issue No.4 to 7 are taken together as all these issues relate to the ownership of respective parties in respect to the shares of company, therefore, these issues have been taken together. Some of the relevant factual position have been discussed in the above paras and further from the arguments of the learned counsel as well as keeping in view the record it has been noted that this suit is in respect to the shares of the company and the land owned by the company. It will be pertinent to point out that in the above issues I have declared that the suit is not maintainable, therefore, there are two option for me, one is to conclude the dispute there and by leaving the parties at the stage of litigation where they are for the last about more than twenty years and second option is to decide other issues relating to their ownership in respect to the shares of the company and the land owned by the company. Since the evidence is bulky and lot of labour has been done on recording of the evidence as well as hearing of the argument of the learned counsel for some dates while the parties are also expecting that the dispute, they are litigating on for the last about quarter century, to be decided earlier therefore, I find myself in a position to decide the remaining issues as

whole evidence is available and apparently nothing is left in possession of the parties in the shape of the documents hence I also given my finding on above issues as follows:

First of all to ascertain the claim of M.Saleem Khan it is to be seen that he is relying upon several documents through which he entered the company. In this respect a reference is made to Ex.5/2 which is a general power of attorney executed by M.Shakeel Farooqi in the name of Wahid Bux Baloch the said attorney has been executed by Shakeel Farooqi not as the owner of the land but as attorney of the original owner Master Qalandar Khan and that land is shown to be 384 acres. According to that document suit NO.163/1971 is pending in this Court. The said document was executed on 28.9.1980. After some days i.e. on 29.11.1980 the attorney Wahid Bux Baloch executed a sale agreement in favour of Saleem Khan whereby 139 acres and 2 ghuntas land has been sold out. It means that after this sale there remain 244. 38 acres of land with the company. Now comes Ex.5/5 which is special power of attorney given by Shakeel Farooqi to Saleem Khan. This attorney is 29.7.1981. By said attorney Saleem Khan has been appointed as Special Attorney for a total area of land measuring 225 acres of land in which a reference has been made to the earlier documents i.e. Ex.5/3 but the land which has been mentioned as 225 acres does not tally with Ex.5/5. Again and again another agreement dated 7.2.1982 Ex.5/55 has been executed by Shakeel Farooqi acting as attorney of 17-shareholders has sold out 372 acres and 2 ghuntas of land for a sum of Rs.40,00,000/- (Rupees Forty Lacs) on certain terms and conditions. One of the interesting features is clause 2 of the agreement whereby Saleem Khan has promised to give 45 acres of land as a gesture of goodwill to Mr.Shakeel Farooqi. The quantum of land also does not tally with the previous documents referred to above. Another agreement dated 21.3.1982 which has also been Exhibited as Ex.5/55 wherein although the quantum of land is 374.2 acres but terms and conditions have been changed while grant of 45 acres as a gesture of goodwill has been retained. The terms and conditions in both the Exibits (5/55) have not properly been followed and their execution, which has seriously been questioned by the defendants, can be suspected on the ground that Shakeel Farooqi, as per contention of the defendants, died in 1984. Moreover, the company matter has been dealt with in a way where private properties are dealt with. There is no general body resolution of the company or notices in this respect to the shareholder as well as to the Registrar regarding general body hence the land could not have been transferred. The only notices relied upon by the plaintiff are in respect to the meeting of the board, and that too, the contesting defendants did not participate and apparently in a discreet way the ownership of the Farooqi family was shifted to Saleem Khan and his family without any proper payment. The payment which has allegedly been made by Saleem Khan to Shakeel Farooqi cannot be accepted as a proof in this respect as has been submitted and receipts in this respect to individual Shakeel Farooqi cannot be considered as payment to company or shareholders nor Shakeel Farooqi was entitled to sell the shares of all the shareholders and even of minor children while some of the shares were lying security in civil court. The factual position

in respect to minors and placement of shares as security has not been questioned by the plaintiff in cross-examination, hence, can be admitted without hesitation.

In these circumstances the claim of the plaintiff seems to be full of doubts and all these four issues regarding ownership of either of the party is decided in favour of the defendants. In the circumstances the suit firstly is not maintainable on legal grounds and secondly is also dismissed on merit.

JUDGE

Samie