be no order as to costs of the suit; no order as to costs of the counter-claim and no order as to costs of the appeal. There are certain cross-objections filed. There will be no order on the cross-objections. No order as costs.

Attorneys for appellants: *Malvi, Ranchhoddas & Co.*

Attorneys for respondents: *M. B. Cholhia & Co.*

Appeal allowed.

P. M. P.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Dixit.

SITARAM HIRACHAND BIRLA (ORIGINAL OPPONENT No. 1), PETITIONER *v.* YOGRAJSING SHANKARSING PARIHAR AND OTHERS (ORIGINAL APPLICANT AND OPPONENTS NOS. 1 TO 7), OPPONENTS.*

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Representation of the People Act (XLIII of 1951), ss. 81, 82, 83, 85, 90 (2), 90 (4), 92, 98—Election petition not properly verified when presented to Election Commission—Petition referred to Election Tribunal for trial—Application before Tribunal for amending petition by properly verifying it and for adding party—Tribunal granting application—Constitution of India, arts. 226, 227—Application by successful candidate to High Court for writ directing Tribunal to dismiss election petition—Powers of Election Tribunal—Discretion to dismiss petition for non-verification—Power to amend petition and add party—Person withdrawing candidature before publication of list of valid nominations whether a necessary party—Effect of non-joinder—Power of High Court to interfere on merits.

An election petition presented by an unsuccessful candidate (opponent No. 1) under s. 81 of the Representation of the People Act, 1951, and the list of particulars accompanying it, were not verified as required by s. 83 and the list was later on supplemented by another list. The Election Commission instead of dismissing the petition under s. 85 referred the petition and the lists to an Election Tribunal to be dealt with according to law. The Tribunal allowed the documents to be amended by way of proper vertification, added as opponent No. 7 a person who was duly nominated a candidate for the election but who before the valid nominations were published had withdrawn his candidature, and then proceeded to hear the election petition on merits. The successful candidate (petitioner) having applied to the High Court under arts. 226 and 227 of the Constitution of India for a writ directing the Tribunal to dismiss the election petition:

* Special Civil Application No. 2017 of 1952.

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Held, (*i*) that assuming that the Election Commission was under an obligation to dismiss the election petition under s. 85, the petition for writ having been directed against the Tribunal and not the Election Commission, it was necessary to consider the statutory obligations of the Tribunal, and the duty of the Tribunal was to dispose of the petition according to law; it was not open to the Tribunal to challenge the competence of the Election Commission to appoint the Tribunal or to refer the petition to it for trial;

(*ii*) that no obligation was cast upon the Tribunal under s. 90 (4) to dismiss the petition although it did not comply with the provisions of s. 83;

(*iii*) that the power conferred on the Tribunal under s. 92 was not a substantive but a procedural power, a power intended for the purposes of carrying out the procedure before the Tribunal; but that conferred under s. 90 (2) to try an election petition in accordance with the procedure applicable under the Code of Civil Procedure, 1908, was a much wider power than one to apply the procedure which would be applicable to the hearing of a suit, so as to include the power to amend;

(*iv*) that although opponent No. 7 was a duly nominated candidate *for the election*, he was not a duly nominated candidate *at the election* within the meaning of s. 82, and, therefore, he was not a necessary party to the petition at all, and the fact that the Tribunal added him as a party was a mere surplusage and no question as to the jurisdiction of the Tribunal to add him arose;

(*v*) that even assuming that opponent No. 7 was a necessary party to the petition, the Tribunal had the power to add him as a party under s. 90 (2); but apart from it there was neither a statutory obligation nor even a statutory discretion vested in the Tribunal to dismiss an election petition for non-joinder of parties either under s. 90 (4) or s. 98;

(*vi*) that the High Court had no power to go into merits of the election petition on a petition for a writ and the central question that arose on such a petition was whether there was anything in the Act which cast a duty upon the Tribunal under the circumstances alleged by the petitioner to dismiss the election petition;

(*vii*) that since no such statutory obligation appeared on a plain reading of the statute, the petition for writ must fail.

SPECIAL CIVIL APPLICATION under arts. 226 and 227 of the Constitution of India for an appropriate writ.

Sitaram Hirachand Birla (petitioner) was one of the seven candidates who offered themselves for election for a seat in the Bombay Legislative Assembly representing the Erandol Taluka Constituency. One of the candidates named T. C. Patil (opponent No. 7), although he was duly nominated, withdrew from the contest before the valid nominations were published. The election took place on January 7, 1952, and at the election the petitioner was declared to be the successful candidate. The results of the election for all the seats in the State Assembly

were published in the Bombay Government Gazette on March 6, 1952, and notice as required by rule 113 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, was published on March 13, 1952.

On March 27, 1952, i.e. within the period prescribed under r. 119, Yograjsing (opponent No. 1), one of the defeated candidates, presented an election petition to the Election Commission without impleading opponent No. 7 in it. The petition challenged the election of the petitioner *inter alia* on the ground that the petitioner was not qualified to offer himself for the election and that the result of the election had been materially affected by reason of corrupt and illegal practices. The petition was accompanied by a list of corrupt practices as required by s. 83 of the Representation of the People Act, 1951. The petition as well as the list were not properly verified nor was the list complete, and therefore the Commission wrote a letter dated April 22, 1952, to opponent No. 1 pointing out to him the defects and calling upon him to show cause why the petition should not be dismissed under s. 85. On April 31, 1952, the opponent No. 1 sent a detailed list verified in proper form and also a proper verification to the original petition. After receipt of these documents, the Commission, without exercising the power vested in it under s. 85, appointed an Election Tribunal and forwarded to it the petition together with the supplementary papers to be dealt with according to law.

On September 3, 1952, the opponent No. 1 gave an application before the Tribunal that he should be allowed to amend the petition by properly verifying it and that opponent No. 7 may be added as a party respondent to the petition.

On October 30, 1952, the Tribunal tried certain issues as preliminary issues, granted the application and fixed the petition for hearing on merits on November 26, 1952.

On November 24, 1952, the petitioner applied to the High Court under arts. 226 and 227 and prayed that a suitable writ be issued against the Tribunal directing it to dismiss the election petition.

The application was heard.

S. G. Patwardhan, for the petitioner.

R. B. Kotwal, for opponent No. 1.

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M. P. Amin, Advocate General, with *Messrs. Little & Co.,* for opponets Nos. 6 and 8 to 11.

Chagla C. J. This is a petition filed by a successful candidate at an election held for a seat in the Bombay Legislative Assembly from the Erandol Taluka Constituency. A petition was filed by the first opponent challenging the petitioner's election. Seven nominations were received for this election. The seventh opponent, although he was duly nominated, withdrew from the contest. The scrutiny of the nominations was held on November 27, 1951, and on November 28, 1951, the Returning Officer published the list of valid nominations. The election took place on January 7, 1952, the counting of votes took place on January 12, 1952, and the result of the election was declared on January 19, 1952, and as already pointed out the petitioner was declared to be duly elected. The first opponent filed his election petition on March 25, 1952, and it reached the Election Commission on March 27, 1952. The Election Commission referred the petition to an Election Tribunal which was appointed for the trial of the petition, and the petitioner has now come before us for a writ directed against the Tribunal calling upon the Tribunal to dismiss the election petition.

Mr. Patwardhan who appears for the petitioner has pointed out various defects which appear in the petition. It is pointed out that when the petition was presented it was not properly verified, and s. 83 (*1*) of the Representation of the People Act provides that an election petition shall contain a concise statement of the material facts on which the petitioner relies and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for the verification of pleadings. Admittedly, the verification of the petition as presented to the Election Commission did not comply with the provisions of the Code. A list was also furnished to the Commission in accordance with s. 83 (*2*) and that sub-section provides that the petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice. The verification of this list was not also in accordance with the Civil Procedure Code. A further additional list was also sent to the Commission and the Commission in referring the petition to

the Tribunal also forwarded with the petition the list and the additional list which was submitted to it.

In the first place, it is contended that the Election Commission should have dismissed the petition and should not have appointed an Election Tribunal for the trial of the petition under s. 86 of the Act. Section 85 of the Act provides that if the provisions of s. 81, s. 83 or s. 117 are not complied with the Election Commission shall dismiss the petition. Mr. Patwardhan contends that inasmuch as the petition and the list were not verified as required by s. 83 (*1*) and s. 83 (2), it was obligatory upon the Election Commission to dismiss the petition. Now, this petition is not directed against the Election Commission. The petitioner does not require any mandamus against the Election Commission to discharge its statutory obligation. The election petition is directed against the Tribunal, and what we have to consider in this petition is not the statutory obligations of the Election Commission but the statutory obligations of the Tribunal. If the Election Commission failed to dismiss the petition, assuming that it was under an obligation to do so under s. 85, even so, once the election petition is referred to an Election Tribunal the duty of the Election Tribunal is to dispose of it according to law. It is not open to the Election Tribunal to challenge the competence of the Election Commission to appoint the Tribunal or to refer the election petition to it for trial.

It is then urged that if the Commission failed to dismiss the petition, the Tribunal itself under s. 90 (*4*) should have dismissed the petition. What the Tribunal has done is that on October 30, 1952, it has made an order by which it has allowed the petition and the list to be amended by these two documents being properly verified, and Mr. Patwardhan contends that this order of the Tribunal was without jurisdiction because it was obligatory upon the Tribunal to dismiss the petition under s. 90 (*4*). That sub-section provides that notwithstanding anything contained in s. 85, the Tribunal may dismiss an election petition which does not comply with the provisions of s. 81, s. 83 or s. 117. It will be immediately apparent that whereas in s. 85 dealing with the Election Commission the Legislature has used the expression "shall dismiss", in s. 90 (*4*) the Legislature has used the expression "may dismiss". It is obvious therefore that no obligation is cast upon the Tribunal under s. 90 (*4*) to dismiss an election petition which does not comply with the provisions of s. 83. Mr. Patwardhan asks us to construe "may" as "shall" and he says that there is no reason why the same obligation

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should not be cast upon the Tribunal as has been cast upon the Commission. When we find in the same statute with regard to the same subject-matter the Legislature using in one case the expression "shall" and in the other case "may", it is impossible to hold that these two expressions were used with the same meaning and connotation. The Legislature obviously wanted to make a distinction between these two expressions and therefore whereas in the one case the Legislature wanted to cast an obligation upon the Commission to dismiss the petition, in the other case the Legislature has given a discretion to the Tribunal whether to dismiss or not to dismiss the petition. Therefore, in our opinion, there is no statutory obligation upon the Tribunal to dismiss a petition which does not comply with the provisions of s. 83.

It is then contended that the Act confers no power upon the Tribunal to amend the petition. Section 90 regulates the procedure before the Tribunal and sub-s. (2) provides:

> "Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, to the trial of suits."

Section 92 confers certain powers upon the Tribunal and these are powers which are vested in a Court under the Code of Civil Procedure when trying a suit, and the powers under s. 92 are enumerated and they deal with discovery and inspection, enforcing the attendance of witnesses, compelling the production of documents, examining witnesses on oath, granting adjournments, reception of evidence taken on affidavit, and issuing commissions for the examination of witnesses. Mr. Patwardhan's contention is that the Tribunal cannot exercise any power which a Court can exercise under the Code of Civil Procedure, unless that power is specifically conferred upon it under s. 92. Mr. Patwardhan says that if the object of the Legislature was to confer upon the Tribunal all powers under the Civil Procedure Code, then it was not necessary to enumerate certain powers under s. 92 and confer those powers specifically upon the Tribunal.

The further contention of Mr. Patwardhan is that whereas s. 90 (2) deals with procedure, s. 92 deals with the powers of the Tribunal, and Mr. Patwardhan further contends that s. 90 (2) only comes into play after the hearing of the petition has actually commenced. Mr. Patwardhan says that under this subsecton the Tribunal has only those powers which the Court

enjoys under the Code under O. 18 of the Code and subsequent orders which deal with the trial of suits. In our opinion, the trial of suits does not mean the same thing as the hearing of a suit. Order 18 in terms speaks of the hearing of a suit and not the trial of a suit. A Court is concerned with the trial of a suit from the time when it is instituted. The hearing of a suit is only a part of the trial of the suit and the hearing is concerned with what happens in open Court when witnesses are examined and cross-examined, addresses are delivered by counsel and judgment is delivered. But a great many things go on after a suit is instituted which are all concerned with the trial of a suit, and there is no reason why sub-s. (2) of s. 90 should be limited and confined to procedure which applies only at the hearing of the suit and not outside that hearing. Therefore the power conferred upon the Tribunal to try a petition in accordance with the procedure applicable under the Code of Civil Procedure is a power much wider than merely applying procedure which would be applicable to the hearing of a suit. But even so Mr. Patwardhan wants to distinguish between procedure referred to in sub-s. (2) of s. 90 and the powers referred to in s. 92. Undoubtedly there is considerable force in Mr. Patwardhan's contention, but on the other hand Mr. Kotwal has drawn our attention to the fact that whereas sub-s. (2) of s. 90 is made subject to not only the provisions of the Act but of any rules made thereunder, s. 92 is not made subject to any rules, and Mr. Kotwal suggests that the scheme of the Act is that the powers conferred upon the Tribunal under s. 92 are minimum powers which cannot be taken away by any rules framed under the Act, whereas the general power of procedure given to the Tribunal under s. 90 (2) is a power which is subject to the rules and the rules may modify, limit or restrict the power that a Tribunal may exercise similar to the power exercised by a Court under the Civil Procedure Code. In our opinion, Mr. Kotwal is right because on principle it is difficult to make a distinction between procedure and the powers of a Court as suggested by Mr. Patwardhan. The whole of the Civil Procedure Code, as its very name implies, deals with procedure. In the course of procedure the Court always exercises powers and when the Court is exercising its powers it is exercising them in order to carry out the procedure laid down in the Code. Therefore procedure and powers in this sense are really interchangeable terms and it is difficult to draw a line between procedure and power. The power conferred under s. 92 is not any substantive

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power , it is a procedural power, a power intended for the purposes of carrying out the procedure before the Tribunal. Therefore, in our opinion, the Tribunal was right when it took the view that it had the power to amend under sub-s. (2) of s. 90 of the Act. It is also difficult to believe that when dismissing a petition is not made obligatory upon the Tribunal under s. 90 (4), the Legislature should not have given the power to the Tribunal to amend the petition and to bring it into conformity with s. 83. If the intention of the Legislature was that every petition that did not comply with the provisions of s. 83 must be dismissed and no amendment should be permitted, then the Legislature would have used appropriate language and would have cast an obligation upon the Tribunal to dismiss the petition. But the very fact that the Legislature has left it to the discretion of the Tribunal clearly goes to show that the Legislature conferred the power upon the Tribunal in proper cases to amend a petition and to bring it in conformity with s. 83 so that it need not be dismissed.

The more substantial opposition that has been presented to the order made by the Tribunal is that the Tribunal has added a party to the petition when it had no jurisdiction to do so. The party came to be added under the following circumstances. Opponent No. 7, as has already been pointed out, was duly nominated a candidate for this election at Erandol, but before the valid nominations were published he withdrew his candidature and therefore his name did not appear in the list of valid nominations. When opponent No. 1 presented this petition to the Commission he did not make opponent No. 7 a party to the petition. He then applied before the Tribunal that he should be made a party and the Tribunal has made an order making opponent No. 7 a party to the petition, and Mr. Patwardhan's contention is that this order is also without jurisdiction. According to Mr. Patwardhan, in the absence of opponent No. 7 the petition was not maintainable and the Tribunal should have dismissed the petition and should not have proceeded with it. The relevant provision as regards parties to the petition are to be found in s. 82 and that section provides that a petitioner shall join as respondents to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated. A petition can be presented under s. 81 either by a candidate at such election or any elector, and the first question that we have to consider is as to what is the correct interpretation of the expression "all the candidates who

were duly nominated at the election." Mr. Patwardhan's submission is that the candidates referred to in this expression are the candidates who were duly nominated and even though a candidate may have withdrawn from the candidature and although his name may not have appeared in the list of valid nominations, he still was a candidate who was duly nominated, and therefore he is a necessary party to the petition. Mr. Patwardhan says that there is a distinction between a candidate who is duly nominated and a candidate who is validly nominated. A candidate is validly nominated after his name appears in the list of nominations published by the Returning Officer, whereas a person is duly nominated whose nomination paper has been accepted as laid down under the law. Therefore the fact that a duly nominated candidate withdraws his candidature does not relieve the petitioner of his obligation to make him a party to the petition.

Now, the expression used by the Legislature is not "all the candidates who were duly nominated", but "all the candidates who were duly nominated at the election", and proper meaning and significance is to be given to the expression "at the election." If the intention of the Legislature was that the petitioner should join as parties all candidates whose nominations were accepted, irrespective of the fact whether they contested the election or not and irrespective of the fact whether they were candidates at the election or not, it is difficult to understand why the expression "candidates who were duly nominated" is qualified by the expression "at the election". It is clear that there is a vital distinction between a candidate for an election and a candidate at an election. You are a candidate for an election long before the election takes place. You may cease to be a candidate for that election and you may not be a candidate at the election. "At the election" emphasises the point of time when the election takes place. It emphasises the fact that you are a contestant at the election and that the voters have a right to vote for that candidate. It also emphasises the fact that the candidate has not withdrawn and has no right to withdraw and in law he must be considered to be a person who is contesting the election along with other candidates. The distinction between a candidate "for an election" and "at an election" is brought out by s. 32. That section provides that any person may be nominated as a candidate for an election to fill a seat in any constituency if he is qualified to be chosen to fill that seat under the provisions of the Constitution and this Act. There-

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fore at that stage a person is nominated as a candidate for an election. Then s. 33 provides for presentation of nomination paper and requirements for a valid nomination. Section 36 provides for the scrutiny of nominations, and s. 37 provides for the withdrawal of candidature. After that time is passed, s. 38 provides for the Returning Officer preparing and publishing a list of valid nominations. Once this has been done and once the right of the candidate to withdraw has disappeared, then the candidate becomes a candidate at an election and it is this candidate who has got to be made a party to the petition. If the other view was accepted, the view pressed for by Mr. Patwardhan, it is difficult to understand how a candidate who has withdrawn from the contest is in any better position than any other elector; he has no rights other than the rights enjoyed by an elector; and why the Legislature should have taken the view that a candidate who has withdrawn should be made a party to the election petition is difficult to understand. The Legislature might as well have provided that all electors to an election should be made parties to the petition. The object of s. 82 is that all parties who were concerned with the actual election and who contested the election should be before the Tribunal, but a person who did not contest the election and who withdrew from the fight does not stand in the same position as candidates who not only were duly nominated but who were candidates at the election. Therefore, in our opinion, the construction suggested by Mr. Kotwal is not only the proper construction according to the plain natural language used by the Legislature, but it is also more consistent with the principle underlying the section. Therefore, if respondent No. 7 was not a necessary party to the petition at all, the fact that the Tribunal has added him as a party is a mere surplusage and no further question can arise as to the jurisdiction of the Tribunal.

But we are prepared to assume in favour of Mr. Patwardhan that opponent No. 7 was a necessary party to the petition and that he was not made a party when the petition was presented. The question is, what is the effect in law? It is rather significant that s. 85, which confers the power upon the Election Commission to dismiss a petition, does not provide that a Commission should dismiss the petition if there is non-compliance with the provisions of s. 82. Therefore, whereas the Legislature attached importance to the provisions of ss. 81, 83 and 117, it did not attach the same importance to the question of joining parties, and when we come to s. 90 (4) the position is the same. When

discretionary power is given to the Tribunal to dismiss the petition for non-compliance of certain provisions of the Act, that power was not given to the Tribunal if there was non-compliance with the provisions of s. 82. Therefore the Legislature advisedly did not desire a petition to be dismissed because there was non-joinder of parties. Mr. Patwardhan is at the outset confronted with this difficulty that there is neither a statutory obligation nor even a statutory discretion vested in the Tribunal to dismiss a petition for non-joinder of parties. Therefore, far from our ordering the Tribunal to dismiss the petition, we would have to restrain the Tribunal if it were to dismiss a petition for non-joinder. If the Tribunal does not exercise its discretion to dismiss a petition under s. 90 (4), its statutory duty is to decide the petition on merits and it can only dismiss a petition under s. 98 at the conclusion of the trial of the election petition. It is clear that under s. 98 the power given to the Tribunal to dismiss the election petition is not on any preliminary or technical ground; the power given is to dismiss the petition on merits; and we do not think that Mr. Patwardhan can seriously contend that dismissing a petition for non-joinder would be a dismissal on merits. Therefore it is only after the merits have been gone into that the power of a Tribunal would arise to dismiss the petition.

It is then urged by Mr. Patwardhan that the Tribunal has no power to add a party to the petition and that argument is based on the same contentions as were advanced in the case of amendment of the petition. It is urged that s. 92 does not confer the power upon the Tribunal to add a party, and s. 90 (2) does not deal with a case of addition of parties. Our answer to this contention is the same as our answer to the contention with regard to amendment of the petition. In our opinion, the power to add parties is derived from the wide language used by the Legislature in s. 90 (2).

It is then urged by Mr. Patwardhan that even assuming that the Tribunal has the power to add opponent No. 7 as a party to the petition, opponent No. 7 was made a party beyond the period of limitation, and therefore the petition is liable to be dismissed. The petition has to be presented within the time provided by s. 81 (1) and this petition was so presented. But Mr. Patwardhan says that inasmuch as opponent No. 7 was brought on the record on October 30, 1952, which was long after the due date for the presentation of the petition, by virtue of s. 22 of the Limitation Act the petition must be deemed to have

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been preferred against opponent No. 7 only on that date, and as s. 82 requires that the petition must contain all the parties the petition as a whole or rather the proper petition must be deemed to have been presented not on the date when it was presented but on October 30, 1952, and therefore Mr. Patwardhan says that the proper petition as required by law was not before the Tribunal and the Tribunal should have dismissed it. The law with regard to limitation only provides that if a party is added after the period of limitation, the suit must be deemed to have been instituted as against him when he was made a party, and assuming that that principle applies to the present case, all that can be said is that the petition must be deemed to have been presented against opponent No. 7 at the date when he was made a party. It does not follow that because a party to a suit or to an application or to a petition is brought on the record at a later stage and even beyond the period of limitation that the suit, application or petition must fail as a whole. It is for the Court to consider what is the effect of non-joinder. If relief can be granted to the plaintiff in the absence of the party who is not before the Court during the period of limitation, the Court is not bound to dismiss the suit as a whole; the plaintiff may be given a limited relief. In this very case, assuming Mr. Patwardhan is right, it would be for the Tribunal to consider whether the petitioner is entitled to any relief by reason of the fact that opponent No. 7 was not brought on the record within the period of limitation. It would be for the Tribunal to consider whether the petition should be wholly dismissed or whether opponent No. 7 was merely a *pro forma* party and that the right of opponent No. 1 to obtain relief against the petitioner was in no way affected by the absence of opponent No. 7 from the record of the petition. But that question cannot arise at this stage. At this stage the only question that arises is whether the Tribunal acted with jurisdiction in bringing opponent No. 7 on the record of the petition. As we have pointed out, in our opinion opponent No. 7 was not a necessary party at all under s. 82, and assuming he was a necessary party we have held that the Tribunal had the jurisdiction to bring him on record.

It is then urged by Mr. Patwardhan that the list which has got to be filed under s. 83 (*2*) was not a proper list at all and that it did not contain the full particulars as required by that sub-section. In our opinion, that is not a question that we have to consider. It is either for the Commission at the earlier

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stage or for the Tribunal to decide whether the list complies with the provisions of s. 83 (2) or not. Apparently, the view taken both by the Commission, inasmuch as it did not dismiss the petition under s. 85, and also by the Tribunal is that the list does comply with the provisions of s. 83 (2) and what the Tribunal has done is, it has allowed opponent No. 1 to give further particulars and to amend the particulars given in the list by treating the additional list as falling under s. 83 (3). These are matters of merit into which we are not entitled to go on a petition for a writ. But the central point that arises on this petition and which we have to decide apart from all these refinements is whether there is anything in the Act which caste a duty upon the Tribunal under the circumstances alleged by the petitioner to dismiss the petition. It is only if we are satisfied that there is such a clear and unequivocal statutory obligation upon the Tribunal that we can issue a writ and direct the Tribunal to dismiss the petition. In our opinion, no such statutory obligation appears on a plain reading of the statute, and therefore apart from any other consideration the petition must fail and is dismissed with costs.

Rule discharged.

M. W. P.

APPEAL FROM ORIGINAL CIVIL

Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Shah.

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NARANDAS MANMOHANDAS RAMJI AND OTHERS, APPELLANTS (ORIGINAL PLAINTIFFS AND DEFENDANTS TO THE COUNTERCLAIM) *v.* THE INDIAN MANUFACTURING COMPANY, LIMITED, RESPONDENTS (ORIGINAL DEFENDANTS AND PLAINTIFFS TO THE COUNTERCLAIM).*

Indian Companies Act (VII of 1913), s. 30 (2)—Whether each of the persons holding shares in a company jointly with others is a 'member' within the meaning of s. 30 (2)—Indebtedness of one of joint holders of shares to Company—Articles of association of Company—Article enabling Company to have a lien on shares registered in the name of each member whether solely or jointly with others.

One N. and his sons V. and J.—plaintiffs—jointly held certain shares in I. M. Company, Ltd. V. became indebted to the Company. The Company relying on art. 29 of the Articles of Association of the Company claimed a lien for V.'s indebtedness on the shares jointly held by the plaintiffs. The plaintiff's contention that the Company was not entitled to claim a lien on shares held by V. jointly with others for his indebtedness to the Company was negatived by the trial Court. On appeal, confirming the decision of the trial Court,

* O. C. J. Appeal No. 18 of 1953; Suit No. 406 of 1950.