For the purpose of maintainability of petitions under Sections 397 and 398 of the Companies Act, 1956, against oppression and mismanagement, the expression “member” is not to be construed in an unduly restrictive or purely technical sense confined only to formal entry in the register of members under Section 41(2)

The **Supreme Court** in the case of **Dr. Bais Surgical and Medical Institute vs Dhanajay Pande [Civil Appeal No. 8973 of 2010] dated May 04, 2026**, has held that for the purpose of maintainability of petitions under Sections 397 and 398 of the Companies Act, 1956, against oppression and mismanagement, the expression “member” is not to be construed in an unduly restrictive or purely technical sense confined only to formal entry in the register of members under Section 41(2). The Court held that in the context of the equitable jurisdiction under Sections 397 and 398, read with Section 399, a person may be treated as a member where the cumulative factual circumstances demonstrate a clear, recognized proprietary interest in the company and the person has, in substance, been treated by the company as having shareholder status, notwithstanding absence of formal entry in the register at the relevant time.

Accordingly, the Apex Court dismissed the appeals, upheld the finding that respondent no. 1 was entitled to be treated as a member for purposes of Sections 397 and 398, and directed release of the amount deposited before the Court with accrued interest in favour of respondent no. 1.

The Court observed that the statutory scheme draws a distinction between the inclusive definition of “member” under Section 2(27) and the provisions in Section 41 dealing with acquisition of membership. Section 41 prescribes recognized modes by which membership may arise, but the requirement of written agreement and entry in the register was not treated as the sole or exclusive mode in the context of proceedings under Sections 397 and 398.

The Court emphasized that jurisdiction under Sections 397 and 398 is equitable in character, and therefore maintainability must be examined with reference to Section 399 and the remedial purpose of the provisions, rather than by a purely mechanical application of Section 41(2). It rejected an unduly restrictive or technical construction of the term “member” that would defeat substantive rights.

The Court approved the approach that, for Sections 397 and 398, the word “member” cannot be construed in isolation or rigidly confined to the technical requirements of Section 41(2), and that the broader definitional framework in Section 2(27) assumes significance. On facts, the Court found that the High Court was justified in relying on a cumulative factual chain showing recognition of respondent no. 1’s proprietary interest: contemporaneous correspondence describing him as “co-owner,” conciliation materials acknowledging his entitlement to substantial shareholding, his appointment as Managing Director, rebranding of the hospital with reference to his trading concern, and the company’s acceptance and utilisation of his investment for its business operations.

The Court therefore found no reason to differ from the High Court and the Company Law Board (CLB) in treating respondent no. 1 as a member for the purpose of maintaining proceedings under Sections 397 and 398 of the Companies Act.