Regd.No.PRAKASAM/13/2018-20 R.N.I.No.APENG/2004/15906

Pages:1 to 68

Law Summary

(Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

2019 Vol.(2) Date of Publication 15-7-2019 PART - 13

MODE OF CITATION: 2019 (2) L.S

LAW SUMMARY PUBLICATIONS

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PART - 13 (15TH JULY 2019)

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Nos.1 and 2 were equally entitled to 5/12th share in all the suit properties and defendant No.3 (a) (b) and (c) each were entitled to 1/24th share in all the suit properties and thus the same could be partitioned and distributed amongst the members of the said joint family - High Court, however, granted liberty to the appellant to approach the Trial Court for an enquiry into the question whether the sale of agricultural lands belonging to joint family would bind the appellant and to pass another preliminary decree, if necessary.

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Held - Article 32 of Constitution of India, which is itself a fundamental right cannot be rendered nugatory in a glaring case of deprivation of liberty as in the instant case - In exercise of power under Article 142 of the Constitution of India this Court can mould the reliefs to do complete justice - We direct that the petitioner's husband be immediately released on bail on conditions to the satisfaction of the jurisdictional Chief Judicial Magistrate – Instant Order is passed in view of the excessiveness of the action taken - Proceedings will take their own course in accordance with law.

(S.C.) 98

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CORPUS DELICTI

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The term *corpus delicti*, which literally means "body of crime," is best understood in realizing a person cannot be put on trial for a crime, unless it is first proven that the crime happened to begin with. In other words, the prosecution would need to demonstrate that something bad happened as a result of a law having been violated, and that someone–the accused–was the one who violated it. Corpus delecti means the substance or foundation of a crime i.e., a fundamental fact required to prove that a particualr crime was committed and the material substance or object upon which a crime has been committed. There are two elements of *corpus delicti* in any offense:

1. A certain consequence, or injury, has occurred.
2. The consequence, or injury, is a result of a person's intentional, unlawful act**.**

Corpus delecti from the Latin meaning body of evidence is the proff that a crime has taken place. When applied to a criminal case, proof of a crime must be shown in order to convit a person of the crime. The presentation corpus delicti is often necessary in a criminal case to prove beyond reasonable doubt that the accused is guilty of the charges against him/her. The prosecution in a criminal case has the burden of proving each element of a crime in order to secure convition. When a person is charged with theft, the corpus delecti is proof that property was stolen. When a person is charged with the crime of arson, the corpus delicti is the burned of property or evidence that the arson was committed. In a murder case, the corpus delicti is the dead body of the victim.

Corpus Delicti and a Confession:-

When someone confesses to a crime, the issue of *corpus delicti* becomes a little more tricky, as a person's confession, without substantial proof that the required elements of *corpus delicti* exist, is not generally sufficient to convict the person. As a matter of fact, a person's statement, or confession, may not even be admissible in court, if the prosecution has not already presented some independent evidence that that the crime even occurred. Remember that the Latin term means "the body of the offense," not necessarily referring to the body of the victim. To convict someone of murder in such a case, the prosecution must first prove the two required elements, that the victim was killed, and that the death was the result of a criminal act, using evidence other than what might be found on the missing body. In this way, the legal system defines *corpus delicti* as the fact of a crime having actually been committed.

Example of Corpus Delicti in Arson Cases:-

While the term *corpus delicti* **commonly makes people to think of the need for a body in a murder case, it is necessary to have this "body of evidence" in other**

types of crime as well. Arson cases are especially challenging to prosecute, as the state must show proof that (1) a fire occurred, causing damages, and (2) the fire was caused by a criminal or intentional act, rather than accident or nature. Arson cases require the same presentation of evidence surrounding the fact of the crime, other than a person's confession, as murder.

The Issue of 'No Corpse, No Crime:-

Throughout the years, television and big screen crime dramas have portrayed *corpus delicti* in the sense that, if there is no body, there is no crime. The general rule is also that an accused cannot be convicted of murder if a corpse cannot be produced. This is not true. There is an exception to this rule, however in certain cases, it may be admissible to prove the basis of corpus delicti based on presumptive (circumstantial) evidence rather than conclusive evidence. If the prosecution can show presumptive evidence of corpus delicti beyond reasonable doubt, the defendant can be found guilty even if the actual body of the crime cannot be directly presented.

In all murder cases recovery of dead body is not mandatory: In Ram Gulam Chaudhury and others Vs State of Bihar (SC) it was held that "it is not at all necessary for a conviction for murder that the corpus delicti be found. Undoubtedly, in the absence of corpus delicti there must be direct or circumstantial leading to the inescapable conclusion that the person had died and that the accused are the persons who had committed the murder. In a trial for murder it is not an absolute necessity or an essential ingredient to establish corpus delicit. The fact of death of the deceased must be established like any other fact. Corpus delicti in some cases may not be possible to be traced or recovered. In the absence of corpus delicti what the court looks for is clinching evidence that proves that the victim has been done to death. If the prosecution is successful in providing cogent and satisfactory proof of the victim having met a homicidal death, absence of corpus delicti will not by itself be fatal to a charge of murder.

Elements of corpus delicti:-

1. Mental State (Mens Rea).
2.Conduct (Actus Reus).
3.Concurrence.
4.Causation.
5.Attendant Circumstances.
6.Harm.

1. Mens Rea:-

Mens rea or evil intent or guilty mind. This is the mental element of the crime. A guilty mind means an intention to commit some wrongful act. Intention under criminal law is separate from a person's motive. There can be no crime of any nature without mens rea or an evil mind. Every crime requires a mental element and that is considered as the fundamental principle of criminal liability. The basic requirement of the principle mens rea is that the accused must have been aware of those elements in his act which make the crime with which he is charged. There is a well known maxim in this regard, i.e. "actus non facit reum nisi mens sit rea" which means that, the guilty intention and guilty act

together constitute a crime. It comes from the maxim that no person can be punished in a proceeding of criminal nature unless it can be showed that he had a guilty mind. A lower threshold of *mens rea* is satisfied when a defendant recognizes an act is dangerous but decides to commit it anyway. This is recelessness. It is the mental state of mind of the person at the time the actus reus was committed. For instance, if *C* ears a gas meter from a wall to get the money inside, and knows this will let flammable gas escape into a neighbour's house, he could be liable for poisoning. Courts often consider whether the actor did recognize the danger, or alternatively ought to have recognized a risk. Of course, a requirement only that one *ought* to have recognized a danger (though he did not) is tantamount to erasing *intent* as a requirement. In this way, the importance of mens rea has been reduced in some areas of the criminal law but is obviously still an important part in the criminal system. Wrongfulness of intent also may vary the seriousness of an offense and possibly reduce the punishment but this is not always the case. A killing committed with specific intent to kill or with conscious recognition that death or suerious bodily harm will result, would be murder, whereas a killing effected by reckless acts lacking such a consciousness could be manslaughter. On the other hand, it matters not who is actually harmed through a defendant's actions. The doctrine of transferred malice means, for instance, that if a man intends to strike a person with his belt, but the belt bounces off and hits another, mens rea is transferred from the intended target to the person who actually was struck.

2. Actus Reus [Guilty Act Or Omission]:-

***Actus reus* is "guilty act" and is the physical element of committing a crime. It may be accomplished by an action, by threat of action, or exceptionally, by an ommission to act, which is a legal duty to act. For example, the act of *A* striking *B* might suffice, or a parent's failure to give food to a young child also may provide the actus reus for a crime. Where the actus reus is a *failure* to act, there must be a *duty of care*.** In other words, some overt act or illegal omission must take place in pursuance of the guilty intention. Actus reus is the manifestation of mens rea in the external world. Prof. Kenny was the first writer to use the term 'actus reus'. He has defined the term thus- "such result of human conduct as the law seeks to prevent". An actus reus may be nullified by an absence of causation. For example, a crime involves harm to a person, the person's action must be the but for cause and proximate cause of the harm. If more than one cause exists (e.g. harm comes at the hands of more than one culprit) the act must have "more than a slight or trifling link" to the harm.

3.Concurrence:-

Concurrence (also **contemporaneity** or **simultaneity**) is the apparent need to prove the simultaneous occurrence of both actus reus ("guilty action") and mens rea ("guilty mind"), to constitute a crime; except in crimes of strict liability. Suppose for example that the accused accidentally injures a pedestrian while driving. Aware of the collision, the accused rushes from the car only to find that the victim is a hated enemy. At this point, the accused joyfully proclaims his pleasure at having caused the injury. The conventional rule is that no crime has been committed. In this case actus reus is compled but mens rea is not there, he only moved from his car as victim is enemy. To be

convicted, the accused must have formed the *mens rea* either before or during the commission of the *actus reus*. In the vast majority of cases, this rule works without difficulty.

Two types of concurrence in criminal law:-

1. Temporal concurrence – the *actus reus* and *mens rea* occur at the same time.
2. Motivational concurrence – the *mens rea* motivates the *actus reus*.

4. Causation:-

It is the "causal relationship between conduct and result". In other words, causation provides a means of connecting conduct with a resulting effect, typically an injury. In criminal law, it is defined as the actus reus (an action) from which the specific injury or other effect arose and is combined with mens rea (a state of mind) to comprise the elements of guilt. Causation only applies where a result has been achieved and therefore is immaterial with regard to inchoate offenses. Legal systems more or less try to uphold the notions of fairness and justice. If a state is going to penalize a person or require that person pay compensation to another for losses incurred, liability is imposed according to the idea that those who injure others should take responsibility for their actions. Although some parts of any legal system will have qualities of strict liability, in which the mens rea is immaterial to the result and subsequent liability of the actor, most look to establish liability by showing that the defendant was the cause of the particular injury or loss. Even the youngest children quickly learn that, with varying degrees of probability, consequences flow from physical acts and omissions. The more predictable the outcome, the greater the likelihood that the actor caused the injury or loss intentionally. There are many ways in which the law might capture this simple rule of practical experience: that there is a natural flow to events, that a reasonable man in the same situation would have foreseen this consequence as likely to occur, that the loss flowed naturally from the breach of contractual duties or tortuous actions, etc. However it is phrased, the essence of the degree of fault attributed will lie in the fact that reasonable people try to avoid injuring others, so if harm was foreseeable, there should be liability to the extent that the extent of the harm actually resulting was foreseeable.

Relationship between causation and liability:-

Causation of an event alone is insufficient to create legal liability. Sometimes causation is one part of a multi-stage test for legal liability. For example, for the defendant to be held liable for the tort of negligence, the defendant must have owed the plaintiff a duty of care, breached that duty, by so doing caused damage to the plaintiff, and that damage must not have been too remote. Causation is but one component of the tort. On other occasions, causation is the only requirement for legal liability (other than the fact that the outcome is proscribed). For example, in the law of product liability, the courts have come to apply to principle of strict liability: the fact that the defendant's product caused the plaintiff harm is the only thing that matters. The defendant need not also have been negligent. On still

other occasions, causation is irrelevant to legal liability altogether. For example, under a contract of indemnity insurance, the insurer agrees to indemnify the victim for harm not caused by the insurer, but by other parties. Because of the difficulty in establishing causation, it is one area of the law where the case law overlaps significantly with general doctrines of analytic philosophy to do with causation. The two subjects have long been somewhat intermingled.

Establishing causation:-

Where establishing causation is required to establish legal liability, it usually involves a two-stage inquiry, firstly establishing 'factual' causation, then 'legal' causation. 'Factual' causation must be established before inquiring into legal causation, perhaps by assessing if the defendant acted in the plaintiff's loss. Determining 'legal' causation often involves a question of public policy regarding the sort of situation in which, despite the outcome of the factual enquiry, the defendant might nevertheless be released from liability, or impose liability.

Establishing factual causation:-

The usual method of establishing factual causation is the but-for test. The but for test inquires 'But for the defendant's act, would the harm have occurred?' A shoots and wounds B. We ask 'But for A's act, would B have been wounded?' The answer is 'No.' So we conclude that A caused the harm to B. The but for test is a test of necessity. It asks was it 'necessary' for the defendant's act to have occurred for the harm to have occurred. One weakness in the but-for test arises in situations where each of several acts alone are sufficient to cause the harm. For example, if both A and B fire what would alone be fatal shots at C at approximately the same time, and C dies, it becomes impossible to say that but-for A's shot, or but-for B's shot alone, C would have died. Taking the but-for test literally in such a case would seem to make neither A nor B responsible for C's death.

Establishing legal causation:-

Notwithstanding the fact that causation may be established in the above situations, the law often intervenes and says that it will nevertheless not hold the defendant liable because in the circumstances the defendant is not to be understood, in a legal sense, as having caused the loss. The most important doctrine is that of *novus actus interveniens*, which means a 'new intervening act' which may 'cut the chain of causation'.

Proximate cause*:-*

The but-for test is factual causation and often gives us the right answer to causal problems, but sometimes not. Two difficulties are immediately obvious. The first is that under the but-for test, almost anything is a cause. But for a tortfeasor's grandmother's birth, the relevant tortious conduct would not have occurred. But for the victim of a crime missing

the bus, he or she would not have been at the site of the crime and hence the crime would not have occurred. Yet in these two cases, the grandmother's birth or the victim's missing the bus are not intuitively causes of the resulting harm. This often does not matter in the case where cause is only one element of liability, as the remote actor will most likely not have committed the other elements of the test. The legally liable cause is the one closest to or most proximate to the injury. This is known as the Proximate Cause rule. However, this situation can arise in strict liability situations.

Intervening cause:-

A critically injures B. As B is wheeled to an ambulance, she is struck by lightning. She would not have been struck if she had not been injured in the first place. Clearly then, A caused B's whole injury on the 'but for' or NESS test. However, at law, the intervention of a supervening event renders the defendant not liable for the injury caused by the lightning.
The effect of the principle may be stated simply:-

if the new event, whether through human agency or natural causes, does not break the chain, the original actor is liable for all the consequences flowing naturally from the initial circumstances. But if the new act breaks the chain, the liability of the initial actor stops at that point, and the new actor, if human, will be liable for all that flows from his or her contribution.

Independent sufficient causes:-

When two or more negligent parties, where the consequence of their negligence joins together to cause damages, in a circumstance where either one of them alone would have caused it anyway, each is deemed to be an "Independent Sufficient Cause," because each could be deemed a "substantial factor," and both are held legally responsible for the damages. For example, where negligent firestarter A's fire joins with negligent firestarter B's fire to burn down House C, both A and B are held responsible. The other problem is that of overdetermination. Imagine two hunters, A and B, who each negligently fire a shot that takes out C's eye. Each shot on its own would have been sufficient to cause the damage. But for A's shot, would C's eye have been taken out? Yes. The same answer follows in relation to B's shot. But on the but-for test, this leads us to the counterintuitive position that neither shot caused the injury. However, courts it can be held that in order to prevent each of the defendants avoiding liability for lack of actual cause, it is necessary to hold both of them responsible,

Concurrent actual causes:-

Suppose that two actors' negligent acts combine to produce one set of damages, where but for either of their negligent acts, no damage would have occurred at all. This is two

negligences contributing to a single cause, as distinguished from two separate negligences contributing to two successive or separate causes. These are “concurrent actual causes”. In such cases, courts have held both defendants liable for their negligent acts. Example: A leaves truck parked in the middle of the road at night with its lights off. B fails to notice it in time and plows into it, where it could have been avoided, except for want of negligence, causing damage to both vehicles. Both parties were negligent.

Foreseeability:-

Legal Causation is usually expressed as a question of ‘foreseeability’. An actor is liable for the foreseeable, but not the unforeseeable, consequences of his or her act. For example, it is foreseeable that if I shoot someone on a beach and they are immobilized, they may drown in a rising tide rather than from the trauma of the gunshot wound or from loss of blood. However it is not (generally speaking) foreseeable that they will be struck by lightning and killed by that event. This type of causal foreseeability is to be distinguished from foreseeability of extent or kind of injury, which is a question of remoteness of damage, not causation. For example, if I conduct welding work on a dock that lights an oil slick that destroys a ship a long way down the river, it would be hard to construe my negligence as anything other than causal of the ship’s damage. There is no *novus actus interveniens*. However, I may not be held liable if that damage is not of a type foreseeable as arising from my negligence:

Example:-An example of how foreseeability does not apply to the extent of an injury is the eggshell skull rule. If A punched B in the jaw, it is foreseeable that B will suffer a bodily injury that he will need to go to the hospital. However, if his jaw is very weak, and his jaw comes completely off from A’s punch, then the doctor bills, which would have been about Rs.5,000/- for wiring his jaw shut had now become Rs.1,00,000/- for a full-blown jaw re-attachment. A would still be liable for the entire Rs.1,00,000, even though Rs.95,000 of those damages were not reasonably foreseeable.

5.Attendant circumstances:-

Attendant circumstances (sometimes external circumstances) are the facts surrounding an event. Accompanying factors relevant ot the crime. Generally in commission of offence several actions to be done inaddition to the concept of mens rea. All the said relevant actions shall be construced as attendant circumstnaces which are necessary to evalute the concept of corpus delecti. In order for a person to be found guilty of this crime, the evidence must prove that the accused uttered a profanity (the act) in a public place (the contextual attendant circumstance) with the intention of provoking a violent reaction (the mental element demonstrating the right type of culpability) and thereby causes a breach of the peace (the result prohibited by law). There are no attendant circumstances that might invoke an excuse or other general defence. Indeed, the victim in this instance

being a police officer would probably be considered an aggravating *circumstance* and increase the penalty for the crime.

6.Harm:-

Harm is final Damages resultant from criminal act. The general principle is that every crime must has its outcome by way of harm, it is called crime. It may be in physical or in mental form. The exception is victimless crime, it is an illegal act that typically either directly involves only the perpetrator, or occurs between consenting adults; because it is consensual in nature, there is arguably no true victim. Three characteristics can be used to identify whether a crime is victimless crime - if the act is excessive, is indicative of a distinct pattern of behavior, and its adverse effects impact only the person who has engaged in it. Examples of these types of crimes include possession of illegal contraband, and a typical sexual behavior. Recreational drug use and prostitution, public drunkness, vagarancy, obseenity are other examples for victimless crimes.

Conclusion:-

This principle prevents wrongful conviction as well as wrongful acquittals.

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The Andhra Pradesh Residential and Non Residential Premises Tenancy Act,2017

Is it really a social welfare legislation and safeguarding the interests of weaker sections of tenants from unreasonable eviction and from unfair rent?

By
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Introduction: The Government of India has launched Jawaharlal Nehru National Urban Renewal Mission (JNNURM) in the year 2005-2006 at an estimated cost of Rs 50,000 crores extending to 7 years to bring improvement in the existing services in financially sustainable manner. JNNURM is a reform driven, fast track programme for integrated development of infrastructural services and provision of basic services, particularly to urban poor in urban local bodies. JNNURM requires the State Governments to undertake 7 mandatory reforms and 10 optional reforms at state level for a period of 7 years to have access for financial assistance from Government of India. Establishing a new rent control legislation is one of the mandatory reforms to be implemented by the State Government under JNNURM. The State Government has committed to complete the process of establishing a new rent control legislation by March,2008 and later on extended to complete the process of establishing a new rent control legislation by March,2011 as per the MOA entered with Government of India.

Keeping in view of the said reform of Government of India, the state legislature has passed AP Rent Control Bill (L.A.Bill No.17 of 2011) on 3.12.2011 and 4.12.2011, the same has been reserved by the Governor of AP on 27.12.2011 for consideration and assent of the President of India.

Ministry of Housing and Urban Poverty Alleviation (HUPA) , Government of India does not agree with Chapter II(Regulation of Rent) of the principal enunciated under National Urban Housing and Habitat Policy,2007 namely, “that rent of a housing unit should be fixed by mutual agreement between the land lord and the tenant for a stipulated lease period, prior to which the tenant will not be allowed to evict and after the expiry of the said lease period, the tenant will not be permitted to continue in the said housing unit”. Accordingly ministry of HUPA, Government of India in it’s letter dt.30.4.2015 has forwarded draft Model Tenancy Act,2015 and suggested that the State Governments may modify their rental laws based on the Model Tenancy Ac,2015 by incorporating the local requirements.

Accordingly the Andhra Pradesh Residential and Non Residential Premises Tenancy Bill,2017is prepared as per the draft Model Tenancy Act,2015 circulated by Ministry of HUPA, Government of India duly withdrawing the AP Rent Control Bill,2011 passed by AP State Legislature on 03.12.2011 and 4.12.2011 and repealing the Andhra Pradesh

Buildings(Lease, Rent and Eviction) Control Act,1960.

Simultaniously , the LA Bill No.17 of 211 i.e., The Andhra Pradesh Rent Control Bill,2011 as passed by the state legislature on 3.12.2011 and 4.12.2011 has been withdrawn from the Government of India and a fresh bill as stated above has been prepared incorporating the suggestions given by Union Ministry of HUPA, Law and Justice and Law Affairs.

The broad principles of AP Residential and Non Residential Premises Tenancy Act,2017 are as follows:

i) Rent of a housing unit should be fixed by mutual agreement between the land lord and the tenant for a stipulated lease period without any provision for any standard rent, ii) The law should provide for a fast track quasi judicial process for adjudication of disputes between the land lord and the tenant by constituting Rent Courts, Rent Tribunals, iii) The State Government may by notification, constitute such number of Rent Courts in as many urban areas as may be deemed necessary by it.

Other salient features of the Act: i) it extends to all Muncipal Corporations, Muncipalities and Nagar Panchayaths and Head Ouarters of Mandal Praja Parishad, ii) The Act should not be limited in applicability to properties below monetary threshold but should be applicable for all tenancies, iii) It doesn't apply to any premises owned by the Government, Company, University, Religious/Charitable institutions, or wakfs.

Section 10- Rent Authority to fix or revise rent, the provision empowers the Rent Authority to fix, revise,as the case may be , the rent or other charges payable by the tenant and also fix the date from which the revised rent becomes payable.

What is the Rent Authority? – According to Section 37, the District Collector shall with the previous approval of the State Government, appoint an officer , not below the rank of Deputy Collector to be the Rent Authority for the area within his jurisdiction which the Act applies.

Rent Authority to be the officer not below the Rank of a Deputy Collector- How far it is justifiable?

In this regard three perspectives are to be considered- i) Whether the Deputy Collectors have proficiency /competency to adjudicate the lis/dispute? -they have no legal knowledge and they are not well equipped with law since they did not possess any basic law degree and they have no practical knowledge in the field of law,

ii) Whether fair hearing/ trial will be conducted before the Deputy Collectors? No because there is every feasibility of political intervention /influence and iii) Is the there possibility for speedy disposal of the dispute , before the Deputy Collectors ? answer for the same is no because they are busy with administrative work and they have no much time to conduct the proceedings/hear the matters.

Section 11 of the Act says that it shall be lawful to charge a security deposit three times the monthly rent.- It means the land lord can ask for deposit of three times the

monthly rent, then what about the poor/weaker sections of tenants, they are in financially affordable position? ultimately the weaker sections are defeating their right to life , then how can the Act, term as a social welfare legislation.

Section 8 of the Act speaks that the rent payable in relation to a premises shall be, in case of new tenancies entered in to after the commencement of this Act, the rent agreed to between the land lord and the tenant, at the commencement of the tenancy, which means no standard rent rules are fixed/devised by the Government. The Government/ State has to fix/frame the standard rents for the premises, taking in to consideration of the locality, where the premises is situated i.e., metro city,2nd class city or town, and the amenities/qualities of the premises and other factors. So far no such rent fixing rules are framed by the Government and left to the land lord and tenant by directing them to fix the same by mutual agreement. But practically, the rent is fixed at the choice of the land lord and the tenant is consenting for the same in an un avoidable circumstances and no rent is fixing by the mutual consent by the land lord and the tenant, and it is always fixing by the land lords only. Thus the poor tenants are exploiting by the land lords. Even the premises/structure in dilapidated condition is let out for higher amount, taking in to advantage of the situation i.e., the most of the people from rural areas are coming to nearer towns/cities for the education of the children and for employment . As the large number of people are coming to towns/cities for various purposes/reasons, the land lords are looting the poor tenants' pocket, taking in to advantage of the situation. Further as per Sec.15 and second schedule, the tenant shall be responsible for the following repairs of the premises i.e.,1) Change of tap washers and taps,2) Drain cleaning, 3) Water closet repairs, 4) Bath tub repairs,5) Geysar repairs, 6) Circuit breaker repairs, 7) Wash basin repairs, 8) Switches and socket repairs, 9)Repairs and replacement of electrical equipment except major internal and external wiring changes,10) Kitchen fixtures repairs,11) Replacement of knobs and locks of doors, cup boards, windows etc., 12) Replacement of flynets,13) Replacement of glass panels in windows, doors etc., 14) Maintenance of gardens and open spaces let out to or used by the tenant. These repairs as per II Schedule shall be carried out by the tenant and deduct the amount from the monthly rent payable by him to the land lord, but the same can not be accepted by the land lords ultimately the sufferers/victims are the poor tenants.

The State Government may by notification, constitute such number of Rent Courts in as many urban areas as may be deemed necessary by it. So far no rent courts are constituted. As per Sec.21(2), the Rent Courts shall on an application made to it in the manner prescribed, make an order for the recovery of possession of the premises on the grounds provided under Sec.21(2) (a) to(h).

As per Sec.32 and Sec.40, the civil courts are prevented from entertaining the matters/ suits, relating to disputes between land lord and tenant.

So far no Rent Authorities, Rent Courts, Rent Tribunals are constituted yet and on the other hand civil courts are expressly barred, to entertain the suits, pertains to the

rent disputes. Then which forum, the litigant public have to approach?

Procedure to be followed by the Rent Courts: As per the proviso to Sec.33, the Rent Court shall give due regard to the provisions of the Transfer of Property Act,1882 and the Indian Contract Act,1872 and other substantive law, in deciding applications relating to tenancies. What are the relevant provisions of the Transfer of Property Act,1882 in this regard.

Sec.107, Transfer of Property Act,1882 deals with how lease can be made:

A lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. Provided that the State Government may, from time to time, by notification in Official gazette, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year or reserving a yearly rent, or any class of such leases may be made by unregistered instrument or by oral agreement without delivery of possession. As per the above said provision other than lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, may be made either by a registered instrument or by oral agreement and there is no legal mandate for compulsorily registration of the instrument. But whereas Sec.4 of the AP Residential and Non Residential PremisesTenancy Act,2017 mandates that lease agreement shall be in writing and it must be registered or notarized with the Notary Public, notwithstanding anything contained in this Act or any other law, for the time being in force, irrespect of lease tenure. Now the point for consideration is which Act, prevails , whether the Transper of Property Act or the AP Residential and Non Residential PremisesTenancy Act?

As per Sec.s 32 and 33 of the AP Residential and Non Residential PremisesTenancy Act, the Rent Court , Rent Tribunal and the Rent Authority shall give due regard to the provisions of the Tranfer of Property Act, in deciding the applications relating to tenancies.

Conclusion: It seems that the State Government has made the AP Residential and Non Residential PremisesTenancy Act, by mere borrowing the copy of Model Tenancy Act, 2015, forwarded by the Ministry of Housing and Urban Poverty Alleviation (HUPA) , Government of India to have financial access from the Government of India , without taking into consideration of the interest/fate/rights of the financially weaker sections of the tenants. No doubt financial access from Government is required/desirable but at the same time rights/welfare of the weaker sections of the tenants, also be taken into consideration, as it is a social welfare legislation . Further I humbly appeal to the State Government to take immediate steps to constitute Rent Authorities, Rent Courts, Rent Tribunals, enabling the litigant public to have access for the justice.

(This article is contributed out of, mere academic interest).

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2019(2) L.S. 33 (T.S.)

IN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Mr. Justice Sanjay Kumar

Panakanti Muthyam Rao @ Venkata Muthyam Rao ..Appellant

Vs.

State of Telangana, & Ors., ..Respondents

ANDHRA PRADESH LAND REFORMS (CEILING ON AGRICULTURAL HOLDINGS) ACT, 1973,Sec.8 - Petitioner challenged the proceedings of Collector, and sought a consequential direction to revenue authorities to implement earlier proceedings and the decree passed in O.S. by the Subordinate Judge.

Held - Collector adjudicated upon the status and validity of decree and came to the conclusion that as decree was an ex parte one and as original document relied upon by petitioner was more than 31 years old, it could not be looked into as a decree would be valid only for 12 years - Collector went to the extent of sitting in appeal over a Court decree and drew conclusions which are wholly opposed to settled legal principles - Apart from being bereft of jurisdiction, the said proceedings violate settled legal principles and cannot be sustained even on merits - Writ petitions are accordingly allowed setting aside the impugned proceedings of the Collector.

Mr.E. Madan Mohan Rao, Writ Petition Nos. 4279, 4292, 4301 of 2019 & I.A. No. 2 of 2019.

Mr.V.R.N. Prasanth, K. Vijay Bhaskar Reddy, Advocates . For the Respondents: R5 & R6,

C O M M O N O R D E R

The petitioner in these three cases is Panakanti Muthyam Rao @ Venkata Muthyam Rao. His brother, Panakanti Radha Kishan Rao, is arrayed as respondent 5 in all the writ petitions. Panakanti Nagarjuna Rao, the son of Panakanti Radha Kishan Rao, is impleaded as respondent 6 in W.P.No.4279 of 2019 while Panakanti Anupama, his other son's wife, is shown as respondent 6 in W.P.No.4292 of 2019. Panakanti Radha, the wife of Panakanti Radha Kishan Rao, figures as respondent 6 in W.P.No.4301 of 2019.

By way of W.P.No.4279 of 2019, the petitioner challenged the proceedings dated 15.06.2018 of the Collector, Jayashankar-Bhupalpally District, and sought a consequential direction to the revenue authorities to implement the earlier proceedings dated 21.07.1995 of the Collector, Karimnagar District, and the decree dated 31.01.1992 passed in O.S.No.23 of 1988 by the learned Subordinate Judge, Peddapalli. This case pertains to agricultural land admeasuring

Ac.6.20 guntas in Sy.No.110 and Ac.11.05 guntas in Sy.No.101 of Nasturpally Village, Kataram Mandal, presently in Jayashankar-Bhupalpally District.

In W.P.No.4292 of 2019, his prayer was to set aside the proceedings dated 18.06.2018 of the Collector, Jayashankar-Bhupalpally District, and to implement the proceedings dated 21.07.1995 and the decree dated 31.01.1992 in O.S.No.23 of 1988. This case pertains to agricultural land admeasuring Ac.1.26 guntas in Sy.No.12 and Ac.3.10 guntas in Sy.No.7 of Nasturpally Village.

In W.P.No.4301 of 2019, his prayer was to set aside the proceedings dated 22.06.2018 of the Collector, Jayashankar-Bhupalpally District, and to implement the very same proceedings dated 21.07.1995 and the decree dated 31.01.1992 in O.S.No.23 of 1988. The subject matter in this writ petition is the agricultural land admeasuring Ac.2.00 guntas in Sy.No.39 of Nasturpally Village.

In the affidavit filed in support of W.P.No.4279 of 2019, the petitioner stated that he was the owner and possessor of agricultural land admeasuring Ac.6.20 guntas in Sy.No.110 and Ac.11.05 guntas in Sy.No.101 of Nasturpally Village. According to him, these and other lands were the ancestral properties of his father, Panakanti Narayan Rao. His father effected a partition amongst himself and his progeny during his lifetime. Thereupon, an extent of Acs.28.38 guntas situated in various survey numbers of Nasturpally Village fell to the petitioner's share, including the above extents in Sy.Nos.101 and 110. In terms of this partition, the petitioner filed a declaration under Section 8 of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, which was duly approved in C.C.No.M/245/1975, vide order dated 27.05.1976. According to the petitioner, his father and his brother, respondent 5, along with his son, respondent 6, created false documents in relation to the properties that fell to the petitioner's share in the partition, constraining him to file O.S.No.23 of 1988 before the learned Subordinate Judge, Peddapalli. Therein, he prayed for declaration of his title in relation to the suit schedule lands and a further declaration that the registered documents bearing Nos.629, 636 and 700 of 1987 were null, void and not binding on him. He also sought a consequential perpetual injunction restraining the defendants in the suit from interfering with his possession over the suit properties. This suit was decreed by the trial Court on 31.01.1992 and the same attained finality. The Collector, Karimnagar District, acting upon the request of the petitioner, issued proceedings dated 21.07.1995 directing the Tahsildar, Kataram Mandal, to give effect to the aforestated decree in the revenue records. Pursuant thereto, the petitioner's name was entered in the revenue records and a pattadar pass book was also issued to him in relation to the lands covered by the decree, but his name was not incorporated in the pahanis despite his many representations. While so, respondents 5 and 6 herein again approached the Collector of the newly formed Jayashankar-Bhupalpally District by way of representation dated 21.05.2018 and the Collector, without even conducting an enquiry, issued proceedings dated 15.06.2018 directing incorporation of the

name of respondent 6 in the revenue records and to issue him a pattadar pass book/ title deed. These proceedings are subjected to challenge in this writ petition. The petitioner further stated that when respondents 5 and 6 again tried to interfere with his possession, he filed O.S.No.96 of 2018 before the learned Additional Junior Civil Judge, Manthani, and a temporary injunction order was passed therein on 09.07.2018 in relation to the lands in Sy.Nos.101 and 110 of Nasturpally Village.

In W.P.No.4292 of 2019, the petitioner's pleadings are to the same effect, but in relation to agricultural land to the extent of Ac.1.26 guntas in Sy.No.12 and Ac.3.10 guntas in Sy.No.7 of Nasturpally Village. It appears that respondents 5 and 6 therein approached the Collector, Jayashankar-Bhupalpally District, by way of representation dated 01.06.2018 and without an enquiry, the Collector issued proceedings dated 18.06.2018 directing incorporation of the name of respondent 6 in the revenue records and to issue a pattadar pass book/ title deed to her. These proceedings are subjected to challenge in this writ petition.

In W.P.No.4301 of 2019, pleadings being on the same lines, the petitioner claimed that respondents 5 and 6 therein approached the Collector, Jayashankar-Bhupalpally District, by way of representation dated 01.06.2018 leading to the Collector issuing proceedings dated 22.06.2018, without holding any enquiry, whereby he directed incorporation of the name of respondent 6 in the revenue records and to issue a pattadar pass book/title deed to her immediately. These proceedings are subjected to challenge in this case.

By order dated 05.03.2019 passed in all the three writ petitions, this Court directed the revenue authorities to maintain status quo existing as on that date with regard to entries in the revenue records as well as issuance of pattadar pass books pursuant thereto.

I.A.No.2 of 2019 was filed in W.P.No.4279 of 2019 by respondents 5 and 6 therein to vacate the said order.

In the counter-affidavit filed in support thereof, respondent 5 deposed to the following effect: He admitted that all the subject lands initially belonged to his father. According to him, their father sold some of the properties during his life time so as to meet the educational expenses of the petitioner, his second son, and also the educational expenses of their younger brother. He claimed that some of the lands were transferred to his own sons under gift deeds. He stated that the lands in Sy.Nos.41 and 110 were sold to Bellamkonda Malhal Rao, respondent 5's father-inlaw, under a registered sale deed. The said Bellamkonda Malhal Rao, in turn, was stated to have transferred the said lands by way of a Will Deed to his grandsons, viz., respondent 6 in W.P.No.4279 of 2019 and one P.Santosh Rao, the second son of respondent 5. The lands in Sy.Nos.12 and 39 were stated to have been sold to one B.Prabhakar Rao and the same were purchased by respondent 5's wife and daughter under a registered sale deed. He claimed that pursuant to these sale deeds, mutation was carried out and pattadar pass books

were issued, basing on their possession over the said lands. Thereafter, the lands in Sy.Nos.43 and 110 were stated to have been transferred to him by his father under a registered gift deed. Adverting to the judgment and decree in O.S.No.23 of 1988, respondent 5 pointed out that the same was an ex parte judgment and decree and that no reasons were recorded therein. According to him, the said judgment could not even be considered as it had never been executed. Referring to the earlier proceedings dated 21.07.1995 of the Collector, Karimnagar District, he stated that the petitioner's allegation that the revenue authorities having partly implemented the same by incorporating his name in the registers and having issued him a pattadar pass book, failed to incorporate his name in the pahanis due to his influence, was false. He again asserted that the judgment and decree dated 31.01.1992 was not executed and as the limitation period had expired, the petitioner could not rely on the same. According to him, the petitioner had developed an ingenious method to infuse life into this time-barred decree by filing the present writ petition. He further stated that a counter had been filed in O.S.No.96 of 2018 before the learned Additional Junior Civil Jude, Manthani, in relation to the injunction granted therein and the same was pending consideration. He concluded by stating that the petitioner had no right over the subject lands and that his family had been in possession and enjoyment of the same. He sought vacating of the interim order dated 05.03.2019 and dismissal of the writ petition.

Respondent 5 filed a counter-affidavit on the same lines in W.P.No.4292 of 2019. He asserted in this counter that his father never partitioned the lands and therefore, the claim of the petitioner that the properties fell to his share in such partition was false. According to him, his father transferred the lands by way of gift deeds. Having reiterated the averments made by him in the counter filed in W.P.No.4279 of 2019, he sought vacating of the interim order dated 05.03.2019 passed in this writ petition and dismissal of the same.

Similar is the tone and tenor of the counter filed by respondent 5 in W.P.No.4301 of 2019. He further asserted in this counter that the names of his family members had already been entered in the pahanis and as such, no drastic or substantial changes were caused by virtue of the impugned proceedings. According to him, as the Government of Telangana has decided to issue a single pattadar pass book/title deed, an application was made for issuance of the same and taking into consideration the fact that their names had already been mutated in the revenue records, a consequential direction was issued by the Collector to furnish them pattadar pass books. He contended that there was no fresh adjudication which had taken place and their application was based on the entry of the names of the family members in the pahanis and also issuance of title deeds and pass books in their favour, which had never been challenged by the petitioner. He again asserted that the petitioner could not rely upon the judgment and decree dated 31.01.1992 passed in O.S.No.23 of 1988 as it was never acted upon or put

into execution and prayed for vacating of the interim order dated 05.03.2019 passed in this writ petition and for dismissal of the writ petition.

Heard Sri E.Madan Mohan Rao, learned counsel for the petitioner, and Sri V.R.N.Prasanth, learned counsel, representing Indus Law Firm, counsel for respondents 5 and 6 in W.P.Nos.4292 and 4301 of 2019, and appearing for Sri K.Vijay Bhaskar Reddy, learned counsel on caveat for respondents 5 and 6 in W.P.No.4279 of 2019.

The impugned proceedings in each of these cases are identical but for the change of names. It would therefore suffice to refer to the proceedings dated 15.06.2018, impugned in W.P.No.4279 of 2019. These proceedings read as under:

'Office of the Collector
Jayashankar District.
Date:15-06-2018

Rc.No.E/1132/2018

From

Sri D.Amoy Kumar, I.A.S.,
District Collector,
Jayashankar Bhupalpally.

To

1) The Revenue Divisional Officer, Bhupalpally
2) The Tahsildar, Kataram.

Sir,

Sub: Patta Lands – Jayashankar Bhupalpally District – Kataram Mandal – Nathoorpally Village – Title report on the property of Sri Panakanti Nagarjuna Rao, S/o. Radhakrishna Rao – Sy.No.110 to an extent of Ac.12.00 gts & in Sy.No.101 to an extent of Ac.11.05 gts – Instructions issued – reg.

Ref: 1. A/o. Sri Panakanti Radhakishan Rao, S/o. Narayana Rao, R/o. Nasthoorplly (V), Kataram (M), dtd: 21.05.2018.

2. Sri V.Srinivasa Chary, Advocate, Parkal. Dtd:01.06.2018.

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Attention is invited to the reference cited and inform that Sri Panakanti Radhakishan

Rao, S/o. Narayana Rao, R/o. Nasthoorplly (V), Kataram (M) has filed a petition and stated that Sri Panakanti Narayana Rao, S/o.Muthyam Rao, R/o.Nathoorpally was the absolute owner and possessor of the agricultural land in Sy.No.110 to an extent of 12.00 acres which is ancestral property and gifted to him i.e. Panakanti Nagarjuna Rao, S/o. Radhakrishna Rao, through registered gift settlement deed vide Doc.No.629/1987, dtd: 17.08.1987.

Further, Sri Panakanti Nagarujuna Rao has taken will deed vide Document No.07/1996, dtd: 30.12.1996 in Sy.No.101 to an extent of Ac.11.05 gts situated at Nathoorpally village of Kataram Mandal from the Bellamkonda Malhar Rao. S/o.Anthaiah, R/o.Devalwada Village of Kotapally Mandal of Adilabad District was the absolute owner and possessor. After, will deed his name was mutated in revenue records since 1987 onwards with continuous possession.

Mean while, one Panakanti Muthyam Rao, S/o.Narayana Rao has filed suit for injunction against the Panakanti Nagarjuna Rao & 4 others. in the year 1988 vide O.S.No.23/1988 on the file of Subordinate Bench, Paddampally which is exparte cannot be looked into the title, because the original document is the 1987 which is more than 31 yrs and the question of decree does not arise and decree valid only for 12 years and which is more than 26 years back decree, which is not valid.

Therefore you are requested to take necessary action as per rule for incorporation of Sri. Panakanti Nagarjuna Rao, S/o.Radhakrishna rao in revenue records and issue PPBs/TDs immediately, as he is in continuous owner & possessor for last 31 years.

Yours faithfully

Sd/- P Mohan Lal
For Collector, Jayashankar

//Attested//

Sd/-
Superintendent'

A bare perusal of the aforestated proceedings would demonstrate that no reference was made by the Collector to the statutory power, if any, that he was exercising, when he directed incorporation of the name of a particular individual in the revenue records

and issuance of a pattadar pass book/ title deed to him. It may however be noted that the Collector specifically referred to the petitioner and the suit filed by him in O.S.No.23 of 1988 before the learned Subordinate Judge, Peddapalli, but did not deem it appropriate to put him on notice. Strangely, the Collector adjudicated upon the status and validity of the said decree and came to the conclusion that as the decree was an ex parte one and as the original document relied upon by the petitioner was more than 31 years old, it could not be looked into as a decree would be valid only for 12 years. According to the Collector, the decree ceased to be valid as it was passed more than 26 years ago. Similar is the import of the proceedings dated 18.06.2018 and 22.06.2018 impugned in the other two writ petitions.

At this stage, it would be relevant to note the contours of the litigation in O.S.No.23 of 1988 on the file of the learned Subordinate Judge, Peddapalli. This suit was filed by the petitioner. Panakanti Narayana Rao, the father of the petitioner, was defendant 1 therein, while Panakanti Radha Kishan Rao, respondent 5 in these cases, was defendant 2. Panakanti Nagarjuna Rao, respondent 6 in W.P.No.4279 of 2019, was arrayed as defendant 3, while Bellamkonda Malhal Rao, the father-in-law of Panakanti Radha Kishan Rao, was defendant 4. Balmoor Prabhakar Rao was shown as defendant 5. This suit was filed with the following prayer:

'for declaration of title that the plaintiff is the owner and possession of the suit "A" Schedule lands and that the registered documents nos 629/87, 636/87, and 700/ 87, are null and void and not binding on the plaintiff and perpetual injunction restraining the defendants 1 to 5 from interfering in possession of the plaintiff over the suit schedule "A" properties.'

Suit schedule 'A' properties in this suit comprised the following items of property.

'Lands situated at Nasturpally village R.M.Kataram Divisional, Peddapalli.

Sl.No.	Sy.No.	Area	Kind	Market Value
1.	84	0-35	Wet	Rs. 2,625-00
2.	86	1-39	Wet	Rs. 5,925-00
3.	41	1-30	Wet	Rs. 5,250-00
4.	43	1-14	Wet	Rs. 4,050-00
5.	12	1-26	Dry	Rs. 2,640-00
6.	20	0-20	Dry	Rs. 800-00
7.	39	2-00	Dry	Rs. 3,200-00
8.	101	11-05	Dry	Rs.17,600-00
9.	110	6-20	Dry	Rs.10,400-00
10	131	1-09	Dry	Rs. 1,960-00
				Rs.54,650-00

Perusal of the judgment dated 31.01.1992 passed in this suit demonstrates that one S.Chandrasekhar, Advocate, had entered appearance for defendants 2 to 5 therein but remained absent on later dates, leading to these defendants being set ex parte on 31.01.1992. The judgment was delivered on the very same day, after examination of the plaintiff as P.W.1 and the suit documents, which were marked as Exs.A1 to A10. In effect, the title of the petitioner herein, the plaintiff in the said suit, was declared in relation to the suit properties, apart from holding that the registered documents bearing Nos.629/1987, 636/1987 and 700/1987 were null and void and not binding on him. A perpetual injunction was also granted by the trial Court restraining defendants 1 to 5 from interfering with his possession over the suit properties.

Irrespective of whether a judgment is a reasoned one or not, it has the force of law as long it remains in operation. It is an admitted fact that the aforestated judgment attained finality as no appeal was filed against the same by the defendants in the suit and more particularly, Panakanti Radha Kishan Rao, respondent 5 in these cases. Be it noted that they were all well aware of these suit proceedings as they had entered appearance therein.

Though much was stated by the Collector, Jayashankar-Bhupalpally District, in relation to this decree not being valid owing to the lapse of time, and the same sentiment was echoed by Sri V.R.N.Prasanth, learned counsel, during his arguments, this Court is not persuaded to agree. A declaratory decree need not be executed and it would continue to operate with full force unless set aside. The decree, only in so far as it pertained to the perpetual injunction granted thereby, needed to be executed if there was any threat to the possession of the plaintiff. It is not his case that there was any such threat, warranting execution of that part of the decree. Therefore, irrespective of the time that has passed since the passing of the decree, it still continues to hold the field and its validity does not stand diluted, in any sense, by lapse of time. The conclusions to the contrary drawn by the Collector, Jayashankar-Bhupalpally District, are therefore without legal basis and contrary to settled jurisprudence. In consequence, the documents bearing Nos.629, 636 and 700 of 1987 still remain null and void and cannot be acted upon.

The petitioner filed I.A.No.2 of 2019 in W.P.No.4292 of 2019 to receive certain documents, including these cancelled registered documents. The I.A. is ordered and the documents are taken on record.

Document No.629 of 1987 was the gift settlement deed dated 17.08.1987 executed by Panakanti Narayana Rao in favour of Panakanti Nagarjuna Rao in relation to the extent of Ac.12.00 guntas in Sy.No.110, Ac.1.36 guntas in Sy.No.43 and Ac.0.34 guntas in Sy.No.44/A of Nasturpally Village. Document No.636 of 1987 was the sale deed dated 21.08.1987 executed by Panakanti Narayana Rao in favour of Bellamkonda Malhal Rao in relation to an extent of Ac.1.20 guntas in Sy.No.40, an extent of Ac.1.20 guntas in Sy.No.41 and an extent of Ac.11.05 guntas in Sy.No.101

of Nasturpally Village. Be it noted that this document was signed on behalf of Panakanti Narayana Rao by none other than respondent 5, Panakanti Radha Kishan Rao, as his General Power of Attorney. Document No.700 of 1987 was the registered sale deed dated 02.09.1987 executed by Panakanti Narayana Rao in favour of Balmoor Prabhakar Rao in relation to an extent of Ac.3.10 guntas in Sy.No.7, an extent of Ac.3.12 guntas in Sy.No.12, an extent of Ac.4.00 guntas in Sy.No.39 and an extent of Ac.10.07 guntas in Sy.No.102 of Nasturpally Village. This document was again signed by Panakanti Radha Kishan Rao as the General Power of Attorney of Panakanti Narayana Rao.

These three documents were held to be null and void by the judgment and decree dated 31.01.1992 passed in O.S.No.23 of 1988 by the learned Subordinate Judge, Peddapalli. In consequence, they ceased to have any value in the eye of law. While so, registered sale deed dated 09.11.2011 bearing Document No.2097 of 2011 was executed by Balmoor Prabhakar Rao, on the strength of the registered sale deed bearing Document No.700 of 1987 dated 02.09.1987, whereby he sold an extent of Ac.3.10 guntas in Sy.No.7 and an extent of Ac.3.12 guntas in Sy.No.12 in favour of Panakanti Anupama, the daughter-in-law of Panakanti Radha Kishan Rao, respondent 6 in W.P.No.4292 of 2019. As Balmoor Prabhakar Rao was defendant 5 in O.S.No.23 of 1988 and the registered sale deed bearing Document No.700 of 1987 under which he claimed title over the lands in Sy.Nos.7 and 12 of Nasturpally Village was declared null and void, the question of his executing a sale deed in 2011 in relation to these lands did not arise. This document, on the face of it, was bereft of legal foundation as Balmoor Prabhakar Rao had no title whatsoever in the said lands to pass on to a vendee for consideration. Similarly, the registered sale deed dated 09.11.2011 bearing Document No.2098 of 2011 executed by Balmoor Prabhakar Rao in favour of Panakanti Radha, the wife of Panakanti Radha Kishan Rao, in relation to an extent of Ac.4.00 guntas in Sy.No.39 of Nasturpally Village is equally bereft of legal validity.

Lastly, the Will Deed dated 30.12.1996 bearing Document No.9 of 1996 executed by Bellamkonda Malhal Rao in favour of Panakanti Nagarjuna Rao, the son of Panakanti Radha Kishan Rao, in relation to the land admeasuring Ac.1.20 guntas in Sy.No.40, an extent of Ac.1.20 guntas Sy.No.41 and an extent of Ac.11.05 guntas in Sy.No.101 of Nasturpally Village is also without legal foundation as Bellamkonda Malhal Rao claimed title over these lands by virtue of the registered sale deed bearing Document No.636 of 1997, which was held to be null and void by the learned Subordinate Judge, Peddapalli, in the judgment and decree dated 31.01.1992 passed in O.S.No.23 of 1988.

This being the legal position, it is surprising to note that the Collector, Jayashankar-Bhupalpally District, also brushed aside the declaratory decree dated 31.01.1992 in so far as it pertained to these documents and recognized the so called rights claimed by the beneficiaries under these documents, vide the proceedings impugned in these

three writ petitions. Once the registered documents bearing Nos.629, 636 and 700 of 1987 were held to be null and void, the documents executed on the strength of these documents also fall to the ground, as the superstructure of such documents cannot stand without a foundation. Therefore, neither the subsequent sale deeds executed by Balmoor Prabhakar Rao nor the Will Deed executed by Bellamkonda Malhal Rao have any value in the eye of law. The understanding to the contrary of the Collector, Jayashankar-Bhupalpally District, violates basic tenets of law and utterly defies comprehension.

Sri V.R.N.Prasanth, learned counsel, placed reliance on **B.L.SREEDHAR V/s. K.M.MUNIREDDY (DEAD)** (2003) 2 SCC 355), wherein the Supreme Court held that estoppel may have the effect of creating substantive rights as against the person estopped. This decision was cited in support of the contention that the petitioner was estopped from claiming rights under the decree dated 31.01.1992 in O.S.No.23 of 1988 as he failed to act upon it or get it executed. However, as already pointed out supra, this judgment and decree essentially voiced declarations and did not need execution or acting upon. Therefore, the question of the petitioner being estopped from claiming rights thereunder merely because time has passed would not arise. This contention is therefore devoid of merit and the judgment relied upon does not further the case of respondent 5 and his family members.

That apart, as already pointed out supra, the Collector did not even choose to mention as to in exercise of what power and under which enactment he had issued the proceedings under challenge. Be it noted that as per the scheme of the Telangana Rights in Land and Pattadar Pass Books Act, 1971 (for brevity, 'the Act of 1971'), once entries are made in the revenue records and a person is aggrieved by any particular entry therein, the remedy provided is by way of an appeal under Section 5(5) thereof to the Revenue Divisional Officer concerned. The remedy of revision is provided under Section 9 of the Act of 1971 to the Collector, be it against the appellate order passed by the Revenue Divisional Officer under Section 5(5) or even against a primary order of the Tahsildar concerned. Though this provision refers to the 'Collector' and Section 2(2) of the Act of 1971 defines 'Collector' to include 'Joint Collector', as a matter of practice, revisionary power under this statutory provision is being exercised only by the Joint Collectors. Further, in terms of Rule 23 of the Telangana Rights in Land and Pattadar Pass Books Rules, 1989 (for brevity, 'the Rules of 1989'), a revision under Section 9 of the Act of 1971 has to be presented in writing setting forth concisely the grounds therein and it has to bear a Court fee stamp of Rs.5/- only. Rule 23(3) provides that the Collector has to give sufficient opportunity to the party or parties likely to be adversely affected before passing orders upon such revision, so that they can make their written or oral representation before issuance of such orders. In the cases on hand, the impugned proceedings of the Collector, Jayashankar-Bhupalpally District, refer to the applications made by Panakanti Radha Kishan Rao on 21.05.2018, 01.06.2018 and 01.06.2018. There is no

evidence of any revision having been filed in terms of Section 9 of the Act of 1971 read with Rule 23 of the Rules of 1989. It is not even the case of Panakanti Radha Kishan Rao that he preferred any such revisions. The material placed on record bears out that the petitioner was issued regular a pattadar pass book/title deed in relation to the lands claimed by him under the provisions of the Act of 1971. This fact is sufficient in itself to show that his name was entered in the revenue records as against these lands but he was not even put on notice by the Collector. Even if the Collector wanted to exercise revisionary power, there was no question of the procedure contemplated under the Act of 1971 being brushed aside by him so as to clandestinely substitute the petitioner's name with others.

Though respondent 5 claimed that the entry of the names of his family members in the pahanis was sufficient in itself and the direction of the Collector did not really amount to any adjudication, it may be noted that Rule 3 of the Rules of 1989 postulates that a pahani does not constitute the record of rights for the village. As per this rule, the record of rights should be prepared and maintained in Form-I for every separate village. Therefore, entries in the pahanis were of no real import. Further, the impugned proceedings manifest in no uncertain terms that the Collector practically sat in appeal over the Court decree! At this stage, it may also be noted that the so called revenue records projected by Panakanti Radha Kishan Rao and his family members are all of recent origin and most of them are subsequent to the passing of the impugned proceedings. It is not known how pattadar pass books were casually issued in relation to the very same land to different parties by the Tahsildar concerned but the inescapable fact remains that the judgment and decree dated 31.01.1992 passed in O.S.No.23 of 1988 demolishes the very basis for the claims put forth by the defendants therein and in effect, the entries made in the revenue records on the strength of such claims also stood destroyed by the trial Court holding that the basic documents of title under which they claimed rights to be null and void. Further, the record relied upon by the petitioner clearly bears out that as long back as in the year 1975, he filed a declaration under the Act of 1973 leading to the proceedings dated 27.05.1976 of the Land Reforms Tribunal, Peddapalli, in C.C.No.M/245/75, holding to the effect that the lands held by him and his family unit in Sy.Nos.84, 85, 86, 41, 43, 12, 20, 39, 101, 110 and 131, aggregating to Ac.31.47 guntas, were within the ceiling limit. This document lends overwhelming strength to the claim of the petitioner that these lands fell to his lot in the family partition, whereupon he declared them as the landholdings of his family unit. Further, the inescapable fact remains that the claims of Panakanti Radha Kishan Rao and his family members were built upon registered documents which were held to be null and void by the competent civil Court and the said judgment attained finality. Having entered appearance in the said suit, it is not open to Panakanti Radha Kishan Rao or the other defendants therein, to claim ignorance of the suit proceedings. Having allowed the judgment passed therein to attain finality, it is too late in the day for

Panakanti Radha Kishan Rao and his family members to seek to brush aside the declaratory decree passed therein.

That apart, their knocking upon the doors of the Collector, Jayashankar-Bhupalpally District, by way of applications is patently contrary to the scheme of the Act of 1971 but unfortunately, the Collector, be it for whatever reason, decided to lend them a helping hand, contrary to the settled legal position and procedure. Having done so, he went to the extent of sitting in appeal over a Court decree and drew conclusions which were wholly opposed to settled legal principles. To compound it further, the Collector relied upon the very same documents which had been held to be null and void in the said decree to uphold the case of Panakanti Radha Kishan Rao and his family members. To top it off, the Collector did not even choose to explain as to how he was exercising such power, without any enquiry whatsoever, when the applications filed by Panakanti Radha Kishan Rao and his family members did not even come within the ambit of the statutory scheme of the Act of 1971.

On the above analysis, this Court has no hesitation in holding that the Collector, Jayashankar-Bhupalpally District, was completely unjustified in entertaining the applications made by Panakanti Radha Kishan Rao and his family members and in issuing the impugned proceedings in their favour. Apart from being bereft of jurisdiction, the said proceedings violate settled legal principles and cannot be sustained even on merits.

The writ petitions are accordingly allowed setting aside the impugned proceedings dated 15.06.2018, 18.06.2018 and 22.06.2018 of the Collector, Jayashankar-Bhupalpally District. There shall be a consequential direction to the revenue authorities to give complete effect to the decree dated 31.01.1992 passed by the learned Subordinate Judge, Peddapalli, in O.S.No.23 of 1988, by deleting from the revenue records the names of all such persons whose claims are founded on or are traceable to the documents which were held to be null and void therein. The revenue authorities shall also give effect to the declaration of title of the petitioner in relation to the lands covered by the said decree and enter his name in the relevant revenue records and also the pahanis.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

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of applying the same retrospectively. It is submitted that as such no vested right of the appeal of the appellants has been taken away or affected by amendment in Section 148 of the N.I. Act. It is submitted that in the present case, admittedly, the appeals were preferred after the amendment in Section 148 of the N.I. Act came into force and therefore Section 148 of the N.I. Act, as amended, is rightly invoked/applied by the learned first appellate Court. It is submitted that therefore the amendment so brought in the Act by insertion of Section 148 of the N.I. Act is purely procedural in nature and not substantive and does not affect the vested rights of the appellants, as such, the same can have a retrospective effect and can be applied in the present case also.

6.2 Now so far as the reliance placed on Section 357(2) of the Cr.P.C. and the submission of the learned Senior Advocate appearing on behalf of the appellants that in view of Section 357(2) of the Cr.P.C., fine during the pendency of the appeal is not recoverable is concerned, it is vehemently submitted that in the present case in Section 148 of the N.I. Act as amended, it is specifically stated that "Notwithstanding anything contained in the Code of Criminal Procedure, 1973.....". It is submitted that therefore Section 148 of the N.I. Act as amended shall be applicable and it is always open for the appellate court to direct deposit of such sum, but not less than 20% of the amount of compensation/fine imposed by the learned trial court.

6.3 Making the above submissions, it is prayed to dismiss the present appeals.

7. We have heard the learned counsel for the respective parties at length.

7.1 The short question which is posed for consideration before this Court is, whether the first appellate court is justified in directing the appellants - original accused who have been convicted for the offence under Section 138 of the N.I. Act to deposit 25% of the amount of compensation/fine imposed by the learned trial Court, pending appeals challenging the order of conviction and sentence and while suspending the sentence under Section 389 of the Cr.P.C., considering Section 148 of the N.I. Act as amended?

7.2 While considering the aforesaid issue/ question, the Statement of Objects and Reasons of the amendment in Section 148 of the N.I. Act, as amended by way of Amendment Act No. 20/2018 and Section 148 of the N.I. Act as amended, are required to be referred to and considered, which read as under:

"The Negotiable Instruments Act, 1881 (the Act) was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The said Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of dishonour of cheques. However, the Central Government has been receiving several representations from the public including trading community relating to pendency of cheque dishonour cases. This is because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings. As a result

of this, injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realize the value of the cheque. Such delays compromise the sanctity of cheque transactions.

2. It is proposed to amend the said Act with a view to address the issue of undue delay in final resolution of cheque dishonour cases so as to provide relief to payees of dishonoured cheques and to discourage frivolous and unnecessary litigation which would save time and money. The proposed amendments will strengthen the credibility of cheques and help trade and commerce in general by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy.

3. It is, therefore, proposed to introduce the Negotiable Instruments (Amendment) Bill, 2017 to provide, inter alia, for the following, namely:-

(i) to insert a new section 143A in the said Act to provide that the Court trying an offence under section 138, may order the drawer of the cheque to pay interim compensation to the complainant, in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and in any other case, upon framing of charge. The interim compensation so payable shall be such sum not exceeding twenty per cent of the amount of the cheque; and

(ii) to insert a new section 148 in the said Act so as to provide that in an appeal by the drawer against conviction under Section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial court.

4. The Bill seeks to achieve the above objectives."

148. Power to Appellate Court to order payment pending appeal against conviction....

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial Court:

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.

(2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.

(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted,

the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.'

8. It is the case on behalf of the appellants that as the criminal complaints against the appellants under Section 138 of the N.I. Act were lodged/filed before the amendment Act No. 20/2018 by which Section 148 of the N.I. Act came to be amended and therefore amended Section 148 of the N.I. Act shall not be made applicable. However, it is required to be noted that at the time when the appeals against the conviction of the appellants for the offence under Section 138 of the N.I. Act were preferred, Amendment Act No. 20/2018 amending Section 148 of the N.I. Act came into force w.e.f. 1.9.2018. Even, at the time when the appellants submitted application/s under Section 389 of the Cr.P.C. to suspend the sentence pending appeals challenging the conviction and sentence, amended Section 148 of the N.I. Act came into force and was brought on statute w.e.f. 1.9.2018. Therefore, considering the object and purpose of amendment in Section 148 of the N.I. Act and while suspending the sentence in exercise of powers under Section 389 of the Cr.P.C., when the first appellate court directed the appellants to deposit 25% of the amount of fine/ compensation as imposed by the learned trial Court, the same can be said to be absolutely in consonance with the Statement of Objects and Reasons of amendment in Section 148 of the N.I. Act.

8.1 Having observed and found that because of the delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings, the object and purpose of the enactment of Section 138 of the N.I. Act was being frustrated, the Parliament has thought it fit to amend Section 148 of the N.I. Act, by which the first appellate Court, in an appeal challenging the order of conviction under Section 138 of the N.I. Act, is conferred with the power to direct the convicted accused - appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court. By the amendment in Section 148 of the N.I. Act, it cannot be said that any vested right of appeal of the accused -appellant has been taken away and/or affected. Therefore, submission on behalf of the appellants that amendment in Section 148 of the N.I. Act shall not be made applicable retrospectively and more particularly with respect to cases/ complaints filed prior to 1.9.2018 shall not be applicable has no substance and cannot be accepted, as by amendment in Section 148 of the N.I. Act, no substantive right of appeal has been taken away and/or affected. Therefore the decisions of this Court in the cases of Garikapatti Veeraya (supra) and Videocon International Limited (supra), relied upon by the learned senior counsel appearing on behalf of the appellants shall not be applicable to the facts of the case on hand. Therefore, considering the Statement of Objects and Reasons of the

amendment in Section 148 of the N.I. Act stated hereinabove, on purposive interpretation of Section 148 of the N.I. Act as amended, we are of the opinion that Section 148 of the N.I. Act as amended, shall be applicable in respect of the appeals against the order of conviction and sentence for the offence under Section 138 of the N.I. Act, even in a case where the criminal complaints for the offence under Section 138 of the N.I. Act were filed prior to amendment Act No. 20/2018 i.e., prior to 01.09.2018. If such a purposive interpretation is not adopted, in that case, the object and purpose of amendment in Section 148 of the N.I. Act would be frustrated. Therefore, as such, no error has been committed by the learned first appellate court directing the appellants to deposit 25% of the amount of fine/compensation as imposed by the learned trial Court considering Section 148 of the N.I. Act, as amended.

9. Now so far as the submission on behalf of the appellants that even considering the language used in Section 148 of the N.I. Act as amended, the appellate Court "may" order the appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court and the word used is not "shall" and therefore the discretion is vested with the first appellate court to direct the appellant - accused to deposit such sum and the appellate court has construed it as mandatory, which according to the learned Senior Advocate for the appellants would be contrary to the provisions of Section 148 of the N.I. Act as amended is concerned, considering the amended Section 148 of the N.I. Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 of the N.I. Act, though it is true that in amended Section 148 of the N.I. Act, the word used is "may", it is generally to be construed as a "rule" or "shall" and not to direct to deposit by the appellate court is an exception for which special reasons are to be assigned. Therefore amended Section 148 of the N.I. Act confers power upon the Appellate Court to pass an order pending appeal to direct the Appellant-Accused to deposit the sum which shall not be less than 20% of the fine or compensation either on an application filed by the original complainant or even on the application filed by the Appellant-Accused under Section 389 of the Cr.P.C. to suspend the sentence. The aforesaid is required to be construed considering the fact that as per the amended Section 148 of the N.I. Act, a minimum of 20% of the fine or compensation awarded by the trial court is directed to be deposited and that such amount is to be deposited within a period of 60 days from the date of the order, or within such further period not exceeding 30 days as may be directed by the appellate court for sufficient cause shown by the appellant. Therefore, if amended Section 148 of the N.I. Act is purposively interpreted in such a manner it would serve the Objects and Reasons of not only amendment in Section 148 of the N.I. Act, but also Section 138 of the N.I. Act. Negotiable Instruments Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of the dishonoured of cheques. So as to see that due to delay tactics by the unscrupulous drawers of the dishonoured cheques due to easy filing of the appeals and obtaining

stay in the proceedings, an injustice was caused to the payee of a dishonoured cheque who has to spend considerable time and resources in the court proceedings to realise the value of the cheque and having observed that such delay has compromised the sanctity of the cheque transactions, the Parliament has thought it fit to amend Section 148 of the N.I. Act. Therefore, such a purposive interpretation would be in furtherance of the Objects and Reasons of the amendment in Section 148 of the N.I. Act and also Sec 138 of the N.I. Act.

10. Now so far as the submission on behalf of the appellants, relying upon Section 357(2) of the Cr.P.C. that once the appeal against the order of conviction is preferred, fine is not recoverable pending appeal and therefore such an order of deposit of 25% of the fine ought not to have been passed and in support of the above reliance placed upon the decision of this Court in the case of Dilip S. Dhanukar (supra) is concerned, the aforesaid has no substance. The opening word of amended Section 148 of the N.I. Act is that "notwithstanding anything contained in the Code of Criminal Procedure.....". Therefore irrespective of the provisions of Section 357(2) of the Cr.P.C., pending appeal before the first appellate court, challenging the order of conviction and sentence under Section 138 of the N.I. Act, the appellate court is conferred with the power to direct the appellant to deposit such sum pending appeal which shall be a minimum of 20% of the fine or compensation awarded by the trial Court.

In view of the above and for the reasons stated herein above, impugned Judgment and Order passed by the High Court does not call for any interference.

11. At this stage, learned Senior Advocate appearing on behalf of the appellants has requested to grant the appellants some more time (three months' time) to deposit the amount as per the order passed by the first appellate court, confirmed by the High Court. The said prayer is opposed by the learned Advocate appearing on behalf of the original complainant. It is submitted that as per amended Section 148 of the N.I. Act, the appellants -accused have to deposit the amount of compensation/fine as directed by the appellate court within a period of 60 days which can be further extended by a further period of 30 days as may be directed by the Court on sufficient cause being shown by the appellants. However, in the facts and circumstances of the case and considering the fact that the appellants were bonafidely litigating before this Court challenging the order passed by the first appellate court, in exercise of powers under Article 142 of the Constitution of India and in the peculiar facts and circumstances of the case and the amount to be deposited is a huge amount, we grant further four weeks' time from today to the appellants to deposit the amount as directed by the first appellate court, confirmed by the High Court and further confirmed by this Court.

12. In view of the above and for the reasons stated above, we see no reason to interfere with the impugned common judgment and order passed by the High Court dismissing the revision application/s, confirming the order passed by the first appellate court directing the appellants to deposit 25% of

the amount of fine/compensation pending appeals.

The instant appeals are accordingly dismissed with the aforesaid observations and appellants are now directed to deposit the amount directed by the first appellate court within extended period of four weeks from today.

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2019 (2) L.S. 98 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Ms.Justice
Indira Banerjee &
The Hon'ble Mr.Justice
Ajay Rastogi

Jagisha Arora ..Appellant
Vs.
The State of Uttar Pradesh
& Anr., ...Respondents

CONSTITUTION OF INDIA, Arts.32 &142 - Writ Petition - Petitioner has challenged the arrest and incarceration of her husband, against whom proceedings have been initiated u/Secs.500 and 505 of the Indian Penal Code read with Section 67 of the Information Techonlogy Act - Whether the petitioner's husband ought to have been deprived of his liberty for the offence alleged.

Held - Article 32 of Constitution of India, which is itself a fundamental right cannot be rendered nugatory in a glaring case of deprivation of liberty as in the instant case - In exercise of power under Article 142 of the Constitution of India this Court can mould the reliefs to do complete justice - We direct that the petitioner's husband be immediately released on bail on conditions to the satisfaction of the jurisdictional Chief Judicial Magistrate – Instant Order is passed in view of the excessiveness of the action taken - Proceedings will take their own course in accordance with law.

J U D G M E N T
(Per the Hon'ble Ms.Justice Indira Banerjee)

In this Writ Petition under Article 32 of the Constitution of India, the petitioner has challenged the arrest and incarceration of her husband – Prashant Kanojia against whom proceedings have been initiated under Sections 500 and 505 of the Indian Penal Code read with Section 67 of the Information Techonlogy Act. We need not comment on the nature of the posts/tweets for which the action has been taken. The question is whether the petitioner's husband-Prashant Kanojia ought to have been deprived of his liberty for the offence alleged. The answer to that question is prima facie in the negative.

The fundamental rights guaranteed under the Constitution of India and in particular Articles 19 and 21 of the Constitution of India are non-negotiable.

WPs(Criminal) No.164 /2019 Date:11-6-2019

The learned Additional Solicitor General appearing on behalf of the State has opposed this allegation on various technical grounds including the ground that there is an order of remand passed by the jurisdictional Magistrate. It is also contended that the High Court should have first be approached.

Citing the judgment of this Court in the State of Maharashtra and others versus Tasneem Rizwan Siddiquee reported in 2018 (9) SCC 745, the learned Additional Solicitor General argued that the question of whether a writ of habeas corpus could be maintained in respect of a person who was in police custody pursuant to a remand order passed by the jurisdictional Magistrate in connection with the offence under investigation, had already been settled by this Court. This application, is, therefore not maintainable. It was argued that the order of remand ought to be challenged in accordance with the provisions of the Criminal Procedure Code. It was also argued that this Court does not ordinarily entertain writ petitions unless the High Court has first been approached.

As a matter of self imposed discipline and considering the pressure of mounting cases on this Court, it has become the practice of this Court to ordinarily direct that the High Court first be approached even in cases of violation of fundamental rights. However, Article 32 which is itself a fundamental right cannot be rendered nugatory in a glaring case of deprivation of liberty as in the instant case, where the jurisdictional Magistrate has passed an order of remand till 22.06.2019 which means that the petitioner's husband- Prashant Kanojia would be in custody for about 13/14 days for putting up posts/tweets on the social media.

We are not inclined to sit back on technical grounds. In exercise of power under Article 142 of the Constitution of India this Court can mould the reliefs to do complete justice.

We direct that the petitioner's husband be immediately released on bail on conditions to the satisfaction of the jurisdictional Chief Judicial Magistrate. It is made clear that this Order is not to be construed as an approval of the posts/tweets in the social media. This order is passed in view of the excessiveness of the action taken.

Needless to mention that the proceedings will take their own course in accordance with law.

The writ petition is disposed of accordingly.

Pending application(s) also stand disposed of.

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2019 (2) L.S. 100 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Ms.Justice
A.M. Khanwlkar &
The Hon'ble Mr.Justice
Ajay Rastogi

R.S. Anjayya Gupta ..Appellant
Vs
Thippaiah Setty & Ors., ..Respondents

CIVIL PROCEDURE CODE - Instant appeal against Judgment of the high court, whereby High Court upheld the findings of the Trial Court, that the suit properties in the plaint were not self-acquired by the appellant (defendant No. 1) but, instead, belonged to the Joint Hindu Family of which he was a member and, therefore plaintiff and defendant Nos.1 and 2 were equally entitled to 5/12th share in all the suit properties and defendant No.3 (a) (b) and (c) each were entitled to 1/24th share in all the suit properties and thus the same could be partitioned and distributed amongst the members of the said joint family - High Court, however, granted liberty to the appellant to approach the Trial Court for an enquiry into the question whether the sale of agricultural lands belonging to joint family would bind the appellant and to pass another preliminary decree, if necessary.

C.A.No.7418/2009 Date: 01-07-2019

Appellant has raised formidable issues on facts as well as on law which ought to receive proper attention of the High Court, in the first instance in exercise of powers under Section 96 of CPC - Additionally, the High Court will have to address the grievance of the appellant that some of the documents, which in the opinion of the appellant are crucial have not been even exhibited although the same were submitted during the trial, as noted in the written submissions filed by the appellant - Therefore, we do not wish to deviate from the consistent approach of this Court in the reported cases that the first appellate court must analyse the entire evidence produced by the concerned parties and express its opinion in the proper sense of the jurisdiction vested in it and by elucidating, analysing and arriving at the conclusion -We refrain from analysing the pleadings and the evidence in the form of exhibited documents and including the non-exhibited documents and expect the High Court to do the same and arrive at conclusions as may be permissible in law - Appeals are accordingly allowed.

J U D G M E N T

(per the Hon'ble Mr.Justice
A.M. Khanwilkar)

The present appeal takes exception to the judgment and decree of the High Court of Karnataka at Bangalore dated 7thSeptember, 2004, in RFA No.456 of 2002, whereby the High Court upheld the findings

of the Trial Court, that the suit properties described in Schedules A and B to the plaint were not self-acquired by the appellant (defendant No. 1) but, instead, belonged to the Joint Hindu Family of which he was a member and, therefore plaintiff and defendant Nos.1 and 2 were equally entitled to 5/12th share in all the suit properties and defendant No.3 (a) (b) and (c) each were entitled to 1/24th share in all the suit properties and thus the same could be partitioned and distributed amongst the members of the said joint family. The High Court, however, granted liberty to the appellant to approach the Trial Court for an enquiry into the question whether the sale of agricultural lands belonging to joint family would bind the appellant (defendant No.1) and to pass another preliminary decree, if necessary. The appellant has also assailed the judgment of the High Court rejecting his review petition being R.P. No.567 of 2002 dated 27th September, 2006.

2. The parties to this appeal are the children of the original defendant No.3-patriarch of the family, Hanumanthaiah Setty. The appellant is the eldest son, while respondent No.1 and respondent No.2 are his younger brothers. Respondent Nos. 3 to 5 are the daughters of Hanumanthaiah Setty and thereby sisters to the appellant and respondent Nos. 1 and 2. Respondent Nos. 3 to 5 came on record as the legal representatives of Hanumanthaiah Setty after he passed away during the course of the proceedings before the Trial Court.

3. This appeal has its origins in a suit for partition of certain properties, being O.S. 1300 of 1982, filed by respondent No.1(original plaintiff) against the appellant (original defendant No.1), respondent No.2 (original defendant No.2) and the original defendant No.3 Hanumanthaiah Setty before the Court of the XXXI Additional City Civil Judge at Bangalore. Respondent No. 1, claiming to be a member of a Joint Hindu Family comprising the other parties to the suit, alleged that the scheduled suit properties belonged to the said Joint Hindu Family since they had been purchased by the original defendant No.3 father with money from joint family funds. The crux of respondent No. 1's plea was that the suit properties mentioned in Schedules A and B to the plaint had been purchased ostensibly in the name of the appellant since he was the senior-most member of the family (after defendant No.3) and also the eldest son, however, in actuality, the said properties belonged to the joint family. Respondent No.1 also asserted that suit properties were in the joint possession of the appellant, respondent No.2 and the original defendant No.3 and that the appellant was attempting to illegally dispose of the same and obstruct partition thereof, thus necessitating the suit. Accordingly, respondent No. 1 sought a 1/4th share in the suit properties and mesne profits in that regard.

4. The original defendant No.3 father supported the stand of the respondent No. 1/original plaintiff, contending in his written statement that the suit properties were purchased for and on behalf of the joint family and were merely purchased in the name of the appellant/original defendant No. 1 since the original defendant No.3 could not travel to Bangalore, where the properties

in question were situated, and since the appellant was the eldest son and "worldly-wise". He denied that the suit properties were self-acquired properties of the appellant and submitted that the appellant was exploiting the fact that the properties had been purchased in his name. He then submitted that his children, namely the appellant and respondent Nos.1 and 2, had an equal share, right, title and interest in the suit properties. Accordingly, the original defendant No.3 sought for a partition of the suit properties amongst his children after making provisions for respondent Nos.3 to 5 herein (who, at the time of filing the said written submissions, were his unmarried daughters and had not been impleaded as parties to the suit). Respondent No. 2 (original defendant no. 2) supported and echoed the stance of respondent No. 1 and the original defendant no.3.

5. The appellant/original defendant No.1 in turn, denied that the properties set out in Schedules A and B to the plaint had been purchased by family from joint family funds or that they belonged to the Joint Hindu family and submitted that he was the absolute owner thereof since he had purchased it out of his own funds and through loans. The appellant submitted that he had exclusive possession and enjoyment over the said properties since the date of their purchase and there was no question of any illegality in his dealings therewith. The appellant further submitted that a shop being run by him, constructed on one of the suit properties, had been sold by respondent No.2 and original defendant No.3, and that he was entitled to the sale consideration of the same. Additionally, the appellant was entitled to 1/4th share in certain other ancestral property of the original defendant No.3 father. The appellant also filed an additional written statement wherein he alleged that certain joint family properties had intentionally been omitted from the plaint for nefarious purposes.

6. On the basis of the above pleadings, the Trial Court framed the following issues:

"7. On the pleadings of the parties, the following issues have been framed:

i. Whether the plaintiff and defendants are the members of a Hindu Joint family?

ii. Whether the suit schedule properties have purchased by defendant No.3 in the name of defendant No.1 from out of the joint family funds?

iii. Whether the plaintiff is entitled for a share as claimed in the plaint schedule properties?

iv. Whether the suit properties are self acquired properties of defendant No. 1?

v. What order or decree?

Adl. Issue No.2

A : Whether suit properties are joint family properties of plaintiff and defendants?"

7. During the pendency of the matter, the original defendant No.3 expired and the present respondent Nos.3 to 5 daughters were brought on record as his legal representatives. Thereafter, the Trial Court

rendered its judgment dated 30th January, 2002, wherein it found in favour of respondent No. 1/original plaintiff on all the issues. The Trial Court opined that the appellant had not claimed any partition or separation from the joint family and infact, had pleaded for a 1/4th share in certain other ancestral property of the original defendant No.3. This was sufficient to establish that the parties viz the appellant (original defendant No.1), respondent No.1 (original plaintiff), respondent No.2(original defendant No.2) and the original defendant No.3, belonged to a Hindu Joint Family.

8. The Trial Court relied upon several judgments to opine that once the acquisition of the suit properties from the nucleus of a joint family had been admitted or proved, thereafter, property acquired by any member of the joint family would be presumed to be joint family property subject to the condition that the acquired property had to be such that it could have been acquired only by the aid of the family. It reasoned that after the acquisition of the suit properties from the nucleus of a joint family had been established, the burden of proof then shifted on to the person who claimed that the property was self-acquired, to prove that the property had been acquired without any aid from the family. The Trial Court found that the evidence on record established the existence of a joint family nucleus and thereafter, the appellant/original defendant No.1 had failed to discharge the burden that the suit schedule properties were self-acquired and had also failed to prove that his business, from the proceeds of which he claimed to have purchased the suit schedule properties, was conducted without the aid of family funds.

9. The Trial Court also rejected the appellant's contention that he was the sole owner of the schedule suit properties by relying upon the evidence of DW3 advocate. DW3 had deposed that he advised the original defendant no.3 to purchase the said properties in the name of the appellant since the original defendant No.3 was aged and resided in the village, and since the parties were living as members of an undivided joint family. The Trial Court also relied upon evidence which showed that the original defendant No.3 had taken out loans and paid interest in that regard, for some of the schedule suit properties. The Trial Court reasoned that if the appellant was indeed the absolute and independent owner of the properties, then there was no reason for the original defendant No.3 to make any payments for the said properties. Additionally, evidence on record established that various rent receipts for the businesses being run on the scheduled properties had been issued in the name of the father of plaintiff (original defendant No. 3) and appellant original defendant No. 1, thus proving that they were engaged in joint family businesses and not independently run by the appellant. The Trial Court also noted that the appellant had failed to explain as to why the original defendant No.3 had sided with the stance taken by the other respondents and not with the appellant. These factors established that the suit scheduled properties belonged to the joint family, rather than the appellant. Additionally, the properties in Schedule C to the plaint were admittedly joint family properties.

10. The Trial Court also found that the village panchayat had already effected a prior partition of certain properties, including those set out in Schedules A and B to the suit, between the parties, which indicated that such properties belonged to the joint family. On the basis of the aforesaid findings, the Trial Court ordered that the suit schedule properties be partitioned amongst the parties, with the appellant, respondent No. 1 and respondent No.2 each getting 5/12th share and respondent Nos.3 to 5 getting remaining 1/12th share in the suit schedule properties. The Trial Court also ordered an enquiry into the mesne profits payable to respondent No.1.

11. Aggrieved by the decision of the Trial Court, the appellant preferred an appeal to the High Court of Karnataka being RFA No. 456 of 2002. In its judgment dated 7th September, 2004, the High Court recorded that the contest was only in regard to the properties set out in Schedules A and B to the plaint and accordingly, upheld the findings of the Trial Court in that regard. The High Court noted the submissions of the plaintiff that although the properties had been purchased in the name of the appellant, the said purchases were done during the continuation of the joint family status. The properties had been purchased with the help of loans and the interest on the same was, admittedly, being serviced by the original defendant No.3 and not by the appellant. The license of the business being conducted on the suit schedule property was in the name of respondent No. 2, and the lease was taken in the name of the original defendant No.3, while the appellant was merely managing the business. The purported businesses of the appellant were in fact jointly conducted by all the parties and the appellant had failed to establish either that he had any independent business or that he had purchased the suit schedule properties without the aid of family funds. The High Court then went on to conclude that the findings of the Trial Court were just and proper and thus rejected the appellant's contentions, although it allowed the appellant to approach the Trial Court for an inquiry as to whether the sale of agricultural land by the other parties would bind the appellant and to pass another preliminary decree in that regard, if necessary.

12. Thereafter, the appellant preferred a review petition before the same High Court being R.P. No. 567 of 2005. The said review petition was dismissed on 27th September, 2006. Hence, the present appeal.

13. We have heard Mr. Shailesh Madiyal, counsel for the appellant. The main contention of Mr. Madiyal is that the High Court dismissed the first appeal cursorily without discussing or considering the documentary or oral evidence produced by the parties. Further, the plaintiff had failed to plead and also to prove that the joint family was in possession of a nucleus and which was adequate to fund the purchase of properties at schedule 'A' & 'B' respectively. Hence, no presumption of jointness of the said property can be drawn in this case. It is then urged that both the courts have failed to consider crucial evidence, which established that the appellant had paid for the purchase of the schedule suit properties with his own, personal funds and hence, was the absolute

owner thereof. He also contends that the Trial Court grievously erred in putting the burden of establishing the existence and adequacy of such a nucleus on the appellant/ original defendant No. 1 and the High Court ought not to have supported such an approach. Mr. Madiyal refers to the judgments of C. Venkata Swamy Vs. H.N. Shivanna (Dead) by Legal Representative & Anr, (2018) 1 SCC 604 (paragraph nos. 10-11, 13-18), Madhukar & Ors. Vs. Sangram & Ors, (2001) 4 SCC 756 (paragraph no.5), Mudi Gowda Gowdappa Sankh Vs. Ram Chandra Ravagowda Sankh, (1969) 1 SCC 386 (paragraph no.6), G. Narayana Raju (dead) by his Legal Representative vs. G. Chamaraju & Ors, AIR 1968 SC 1276 (paragraph no.3) and Appasaheb Peerappa Chamdgade Vs. Devendra Peerappa Chamdgade and Ors, (2007) 1 SCC 521 (paragraph nos. 12-17) to buttress his submissions.

14. We have also heard Mr. Raghavendra Srivatsa, counsel for respondent No.1 (plaintiff), who argues that the evidence on record shows that the members of the family were living as an undivided joint family and that the schedule suit properties were purchased in the name of the appellant on legal advice but infact the consideration amount was paid from the joint family funds. He then contends that it is settled law that once admitted or proved that there was a sufficient joint family nucleus out of which the properties could be acquired, thereafter, the presumption would arise that the properties are joint family properties. It is then for the opposing party, in this case, the appellant, to prove that he had acquired the properties out of his own funds. In the present case, the business conducted from the schedule suit properties were clearly established as joint family business being run by the family members and acquired out of joint family funds. The appellant failed to impeach the evidence given by respondent No. 1/plaintiff and the existence of the joint family nucleus had been proved by the respondent No. 1/original plaintiff and admitted by the appellant/original defendant No.1.

15. The respondents have relied on Appasaheb Peerappa Chamdgade (supra) in support of the submission that when it is proved or admitted that a family possessed sufficient nucleus with the aid of which the member might have made the acquisition, the law raises a presumption that it is a joint family property and the onus is shifted to the individual member to establish that the property was acquired by him without the aid of the said nucleus. Additionally, reliance is placed on V.D. Dhanwatey Vs. Commissioner of Income Tax, M.P., Nagpur, (1968) 2 SCR 62 (paragraph nos.4 and 5) for the same proposition. While, refuting the argument that the High Court cursorily dismissed the first appeal without adverting to the relevant points and evidence on record, it is urged by the respondents that the High Court after noticing the relevant aspects was pleased to uphold the finding of fact recorded by the Trial Court being convinced that the same was just and proper. It was unnecessary for the High Court to restate the effect of the evidence or reiterate the reasons given by the Trial Court as observed by a three judge Bench in the case of Santosh Hazari Vs. Purushottam Tiwari,

(2001) 3 SCC 179 (paragraph no. 15) and U. Manjunath Rao Vs. U. Chandrashekar and Another, (2017) 15 SCC 309

16. After cogitating over the rival submissions made during the elaborate arguments by the respective counsel and who had invited our attention to the pleadings and evidence on record, we deem it to appropriate to relegate the parties before the High Court for consideration of the first appeal afresh. We say so for more than one reason. The first is that, the High Court has disposed of the first appeal by a cryptic judgment. For, the first five paragraphs of the impugned judgment are only reproduction of the submissions made by the counsel for the concerned parties. After doing so, in paragraph no.6 of the impugned judgment, the High Court straightaway proceeded to affirm the opinion of the Trial Court that the suit properties forming part of Schedule A and Schedule B to the plaint are the joint family properties. It is apposite to reproduce paragraph nos.6 and 7, whereby the first appeal has been disposed of. The same read thus:

"6. I find no merit in the appeal in so for as A and B schedule propertied are concerned. The opinion of the trial court that they are the joint family propertied is sound and proper. But in respect of the sales of agricultural lands made by the defendants No and 3 and plaintiff. I feel that the appellant can make another application before the trial court for an enquiry to find out whether the impugned sales would bind the appellant. To that extent, the appellant can pursue his remedy for another preliminary decree before the trial court.

7. In so far as A and B schedule propertied are concerned the finding of the trial court is sound and proper, Accordingly, the appeal is disposed of."

17. In a recent decision of this Court in U. Manjunath Rao (supra), the Court after adverting to Santosh Hazari (supra), Sarju Pershad Ramdeo Sahu Vs. Jwaleshwari Pratap NarainSingh and Ors., AIR 1951 SC 120 (paragraph no. 15) , Madhukar (supra), H.K.N. Swami Vs. Irshad Basith (Dead) by LRs, (2005) 10 SCC 243 (paragraph no.3), and State Bank of India and Another Vs. Emmsons International Limited and Another, (2011) 12 SCC 174 went on to observe thus:

"11. .....Thus, in the first appeal the parties have the right to be heard both on the questions of facts as well as on law and the first appellate court is required to address itself to all the aspects and decide the case by ascribing reasons.

12. In this context, we may usefully refer to Order 41 Rule 31 CPC which reads as follows:

"ORDER 41

APPEALS FROM ORIGINAL DECREES

* * *

31. Contents, date and signature of judgment. The judgment of the appellate court shall be in writing and shall state

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled,

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein."

13. On a perusal of the said Rule, it is quite clear that the judgment of the appellate court has to state the reasons for the decision. It is necessary to make it clear that the approach of the first appellate court while affirming the judgment of the trial court and reversing the same is founded on different parameters as per the judgments of this Court. In Girijanandini Devi, AIR 1967 SC 1124 the Court ruled that while agreeing with the view of the trial court on the evidence, it is not necessary to restate the effect of the evidence or reiterate the reasons given by the trial court. Expression of general agreement with reasons given in the trial court judgment which is under appeal should ordinarily suffice. The same has been accepted by another three-Judge Bench in Santosh Hazari, (2001) 3 SCC 179. However, while stating the law, the Court has opined that expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage to be adopted by the appellate court for shirking the duty cast on it. We are disposed to think, the expression of the said opinion has to be understood in proper perspective. By no stretch of imagination it can be stated that the first appellate court can quote passages from the trial court judgment and thereafter pen few lines and express the view that there is no reason to differ with the trial court judgment. That is not the statement of law expressed by the Court. The statement of law made in Santosh Hazari has to be borne in mind.

14. In this regard, a three-Judge Bench decision in Asha Devi v. Dukhi Sao, (1974) 2 SCC 492 is worthy of noticing, although the context was different. In the said case, the question arose with regard to power of the Division Bench hearing a letters patent appeal from the judgment of the Single Judge in a first appeal. The Court held that the letters patent appeal lies both on questions of fact and law. The purpose of referring to the said decision is only to show that when the letters patent appeal did lie, it was not restricted to the questions of law. The appellant could raise issues pertaining to facts and appreciation of evidence. This is indicative of the fact that the first appellate court has a defined role and its judgment should show application of mind and reflect the reasons on the basis of which it agrees with the trial court. There has to be an "expression of opinion" in the proper sense of the said phrase. It cannot be said that mere concurrence meets the requirement of law. Needless to say, it is one thing to state that the appeal is without any substance and it is another thing to elucidate, analyse and arrive at the conclusion that the appeal is devoid of merit."

In another recent decision in C. Venkata Swamy (supra), once again this Court reiterated the settled legal position regarding the purport of power of the appellate court

coupled with its duty, under Section 96 of the Code, while deciding the first appeal, by adverting to decisions in Kurian Chacko Vs. Varkey Ouseph, AIR 1969 Kerala 316 Santosh Hazari (supra), H.K.N. Swami (supra), Jagannath Vs. Arulappa and Another, (2005) 12 SCC 303 (paragraph no.2), B.V. Nagesh and Another Vs. H.V. Sreenivasa Murthy, (2010) 13 SCC 530(paragraph nos.3 and 5), S.B.I. (supra) and Union of India Vs. K.V. Lakshman and Others, (2016) 13 SCC 124 The court, even in this reported case relegated the parties before the High Court for reconsideration of the first appeal afresh.

18. We are conscious of the fact that in the present case the suit came to be filed by the respondent No. 1 as back as in 1982 and that the present appeal has remained pending in this Court from 2009, against the impugned judgment of the High Court. We, at one stage were persuaded to consider and examine the matter on its own merits instead of relegating the parties before the High Court. But, it is noticed that the appellant has raised formidable issues on facts as well as on law which ought to receive proper attention of the High Court, in the first instance in exercise of powers under Section 96 of CPC. Additionally, the High Court will have to address the grievance of the appellant that some of the documents, which in the opinion of the appellant are crucial have not been even exhibited although the same were submitted during the trial, as noted in the written submissions filed by the appellant. Therefore, we do not wish to deviate from the consistent approach of this Court in the reported cases that the first appellate court must analyse the entire evidence produced by the concerned parties and express its opinion in the proper sense of the jurisdiction vested in it and by elucidating, analysing and arriving at the conclusion that the appeal is devoid of merit.

19. We refrain from analysing the pleadings and the evidence in the form of exhibited documents and including the non-exhibited documents and expect the High Court to do the same and arrive at conclusions as may be permissible in law. In other words, we should not be understood to have expressed any opinion either way on the merits of the controversy. The High Court shall decide the first appeal uninfluenced by any observation made in the impugned judgment. As the remanded first appeal pertains to year 2002, we request the High Court to dispose of the same expeditiously.

20. The appeals are accordingly allowed. The impugned judgment and decree and orders dated 7th September, 2004 and 27th September, 2006 respectively, passed by the High Court of Karnataka at Bangalore are set-aside and instead remand the RFA No.456 of 2002 to the High Court with the aforementioned directions. No order as to costs. All pending applications are disposed of.

--X--

2019 (2) L.S. 109 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Ms.Justice
A.M. Khanwlkar &
The Hon'ble Mr.Justice
Ajay Rastogi

Madhav Prasad Aggarwal
& Anr.,

Vs.

Axis Bank Ltd. & Anr., ..Respondents

CIVIL PROCEDURE CODE, OR. 7 Rule 11 (d) - . Appeals against Judgment passed by High Court, whereby the notice of motion filed by respondent No. 1 (one of the defendant in the suits filed by the appellant) came to be allowed and as a result of which, the suit filed by the appellant had been dismissed as against respondent No. 1 - Plaintiffs/Appellants contended that the plaint cannot be rejected only against one of the defendant(s) but it could be rejected as a whole.

Relief of rejection of plaint in exercise of powers under Order 7 Rule 11 (d) of CPC cannot be pursued only in respect of one of the defendant(s) - Plaint has to be rejected as a whole or not at all, in exercise of power Order 7 Rule 11 (d) of CPC - Appeals stand allowed.

C.A.Nos...../ 2019
(arising out of SLP(C)
No.31579/18 Date:1-7-2019

J U D G M E N T

(Per the Hon'ble Mr.Justice
A.M. Khanwilkar)

Leave granted.

2. These appeals take exception to the common judgment and order passed by the High Court of Judicature at Bombay (Ordinary Original Civil Jurisdiction) in Appeal Nos.360, 361, 362 and Commercial Appeal No. 172 of 2017 dated 26th October, 2018, whereby the notice of motion(s) filed by respondent No. 1-Axis Bank Ltd. (one of the defendant in the suits filed by the respective appellant(s)) came to be allowed and as a result of which, the suit filed by the concerned appellant(s) had been dismissed as against respondent No. 1-Axis Bank Ltd., by invoking the provisions of Order 7 Rule 11 (d) of the Civil Procedure Code (for short "CPC").

3. The appellant(s) being the original plaintiff(s) in the respective suit(s) wanted to purchase flats in a project known as 'Orbit Heaven' (for short "the project") being developed by Orbit Corporation Ltd. (In Liq.) (for short "The builder"), at Nepean Sea Road in Mumbai and in furtherance thereof parted with huge amounts of money to the builder ranging in several crores although the construction of the project was under way. The appellant(s) had started paying installments towards the consideration of the concerned flats from 2009. Admittedly, no registered agreement/document for purchase of concerned flats has been executed in favour of respective appellant(s). The appellant(s), however, would rely on the correspondence and including the letter of

allotment issued by the builder in respect of concerned flats - to assert that there was an agreement between them and the builder in respect of the earmarked flat(s) mentioned therein and which had statutory protection.

4. The respondent No. 1-bank gave loan facility to builder against the project only around year 2013, aggregating to principal sum of Rupees 150 Crores in respect of which a mortgage deed is said to have been executed between the builder and the bank. That transaction came to the notice of the concerned plaintiff(s) only after publication of a public notice on 13th September, 2016 in Economic Times, informing the general public that the said project (Orbit Heaven) has been mortgaged. The sum and substance of the assertion made by the appellant(s) is that the appellant(s) were kept in the dark whilst the mortgage transaction was executed between the builder and the bank whereunder their rights have been unilaterally jeopardised, to receive possession of the concerned flats earmarked in the allotment letter(s) and in respect of which the concerned appellant(s) have paid substantial contribution and the aggregate contribution of all the plaintiff(s) would be much more than the loan amount given by the bank to the builder in terms of the mortgage deed for the entire project. In this backdrop, the concerned appellant(s) had asked for reliefs not only against the builder but also concerned parties joined as defendant(s) in the suit(s) filed by them and including respondent No. 1-bank.

5. The reliefs claimed by the concerned appellant(s) in separate suit(s) filed by them are more or less similar. We may presently refer to the reliefs claimed in suit No. 8 of 2017 filed by Padma Ashok Bhatt (appellant in civil appeal arising from SLP (C) No.30900 of 2018), the same read thus:

"The Plaintiff therefore prays:

(a) That the Defendant No.1 be ordered and decreed to complete the Flat Nos.2302 and 2402 in the Project "Orbit Haven" situate at Darabshaw Lane, Nepean Sea Road, Mumbai-400036 as per the agreement being letter of confirmation dated 16th April 2009 and receipts executed by Defendant No.1 in favour of the Plaintiff and hand over the possession of Flat Nos.2302 and 2402 to the Plaintiff and that the Defendant No.1 and Defendant No. 15 be jointly and/or severally be ordered and directed to comply with all the obligations under Maharashtra Ownership Flats Act including, but not limited to, (i) the execution of the Agreement in terms of Section 4 of Maharashtra Ownership Flats Act, (ii) completing the building as per the sanction plan as sanctioned by Municipal Corporation of Greater Mumbai, (iii) to delivery vacant and peaceful possession of the respective flats, (iv) to form the Society or body of the Corporation as provided under Maharashtra Ownership Flats Act and to convey the land along with the building in favour of the Society or body of Corporation as per Maharashtra Ownership Flats Act.

(b) That the Plaintiff is also entitled for a declaration that there is no legal, valid enforceable lien, charge or mortgage in favour of Defendant No. 15 in respect of the building or any part thereof known as Orbit Haven,situated at Darabshaw Lane,

Napeansea Road, Mumbai-400036;

(c) The Defendant No.1 be also ordered and directed to disclose all their assets, properties including the personal properties of the Directors and its sister concern particularly M/s Apex Hotel Enterprise Pvt. Ltd. on Affidavit before this Hon'ble Court, within the period of two weeks or such other time as this Hon'ble Court may deem fit and proper;

(d) This Hon'ble Court be pleased to pass an order of injunction restraining the Defendant No.1 from in any manner creating any third party rights in respect of all the properties that may be disclosed by the Defendant No.1, pursuant to the orders of this Hon'ble Court on Affidavit;

(e) The Plaintiff is also entitled for an order and direction that the Defendant No.1 be ordered and directed to give clear and marketable title in respect of flat being Flat Nos.2302 and 2402 and the building Orbit Haven, situated at Darabshaw Lane, Napeansea Road, Mumbai-400036 and to enter into and register the Agreement as provided under the provisions of Maharashtra Ownership Flats Act;

(f) The Defendant No.1 be also ordered and directed to indemnify the Plaintiff in respect of all claims, charges that may be made by anybody in respect of Flat Nos.2302 and 2402 at Orbit Haven, situated at Darabshaw Lane, Napeansea Road, Mumbai-400036 and keep the same indemnified till the registration of the Agreement and Conveyance of the land in favour of the Society that may be formed;

(f1) Without prejudice to the reliefs as claimed hereinabove and in the alternative and in the event this Hon'ble Court comes to the conclusion that the specific performance of the suit flat cannot or ought not to be granted, in such an event, the Plaintiff is entitled for refund of the amount of Rs.9,23,50,000/-(Rupees Nine Crores Twenty Three Lakhs Fifty Thousand Only) paid by the Plaintiff to Defendant No.1 along with interest thereon @12% from the date of payment till repayment and cost.

(f2) It be declared that the payment of the amount as stated in prayer (f1) stands validly charged on the land and in the flat Nos.2302 and 2402.

(f3) In the event of failure to pay the amount as stated in prayer (f1), directions be issued for enforcement of the Plaintiffs charge upon the suit plot of land and Flat Nos.2302 and 2402.

(f4) In addition to the amount as prayed in prayer (f1) the Defendant be also ordered and decreed to pay damages of Rs. 15,00,00,000/- (Rupees Fifteen Crores Only) to the Plaintiff.

(g) This Hon'ble Court be pleased to appoint Court Receiver, High Court, Bombay, as Receiver under all powers under Order XL Rule 1 of Code of Civil Procedure, in respect of suit building Orbit Haven and the Plot of Land being Plot No. 12, 8, Darabshaw Road, Off Nepean Sea Road, admeasuring

1105.00 square yards i.e. 923.92 sq. mtrs. Or thereabouts and registered with Collector of Land Revenue under Collector's Old Nos.573 and 104A and Collector's New Nos.2736 and 11317 old Survey No.48 and New Survey Nos.3 and 4/7139 and Cadastral Survey Nos.8/593 of Malabar Hill and Cumballa Hill Division bearing Municipal Ward No.D-3326 (4) and Street No.76(a), to do following things and/or such other things as this Hon'ble Court may deem fit and proper:-

i. To take complete charge of the said building;

ii. To call for the balance money from the Flat Purchasers as mentioned in Exhibit 'E', being Plaintiff and Defendant Nos.2 to 14;

iii. To execute the Agreement for and on behalf of Defendant No.1 with the Plaintiff as provided under the provisions of MOFA on payment of stamp duty, registration charges and all other incidental charges to be paid by the Plaintiff;

iv. To pay all requisite fees to Municipal Corporation of Greater Mumbai as may be required for further progress of the work;

v. To appoint the existing Architect, who are the Architect to complete the said Project;

vi. To appoint the existing Contractor of the said building, to complete the work;

vii. To appoint the existing Structural Engineer who have already been the Structural Engineer of the said Project;

viii. To pay all fees/charges in respect of the aforesaid persons;

ix. To regularly submit report to this Hon'ble Court with regard to the progress and any other measures that may be required for completion of the Project;

x. To make all application to Corporation and all other Semi-Government Authorities as may be required for completing the said building Orbit Haven,

xi. After completion of the Project, to apply for Occupancy Certificate and Completion Certificate,

xii. To hand over the flats after completion to the Plaintiff, (h) Interim and ad-interim in terms of prayers (c) to (g) be granted;

(i) Cost of the suit be provided;

(j) Such further and other reliefs as the nature and circumstances of the case may require be granted."

6. The respondent No. 1-bank (defendant No. 15) appeared in the concerned suit and filed a notice of motion for identical relief, as claimed in notice of motion No. 1206 of 2017 in suit No.8 of 2017. The relief claimed in the subject notice of motion(s) was limited to reject the plaint qua respondent No.1 herein, in exercise of

powers under Order 7 Rule 11 (d) of CPC on the ground that the suit(s) against the said respondent would be barred by provisions of Section 34 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "2002 Act"). The reliefs claimed in notice of motion No. 1206 of 2017 in suit No.8 of 2017, read thus:

"(a) That the plaint in suit no.8 of 2017 be rejected qua the applicant/defendant No. 15;

(b) that pending the hearing and final disposal of the Notice of Motion the suit be stayed;

(c) that pending the hearing and final disposal of the notice of motion the status-quo granted vide dated 3rd March, 2017, of this Hon'ble Court be vacated;

(d) for ad-interim relief in terms of prayers (b) and (c) above;

(e) for such further and other relief as the nature and circumstances of the case may require; and

(f) costs."

(emphasis supplied)

As aforementioned, the reliefs claimed in the plaint and the notice of motion in the respective suit(s) which are the subject matter of the present set of appeals are similar, albeit with minor variation. That, however, need not detain us from considering the common question which has arisen for our consideration in the present appeals.

7. Be that as it may, the notice of motion(s) in the concerned appeals came to be dismissed by the learned Single Judge of the High Court by a common judgment dated 26th July, 2017, on the finding that there was no bar from entertaining civil suit(s) in respect of any other matter which is outside the scope of matters required to be determined by the Debt Recovery Tribunal (for short "DRT") constituted under 2002 Act. The learned Single Judge held that the facts of the present case clearly indicate that the cause of action and the reliefs claimed by the concerned plaintiff(s) fell within the excepted category and the bar under Section 34 read with Section 17 of 2002 Act would be no impediment in adjudicating the subject matter of the concerned suit. The learned Single Judge referred to decisions of this Court in Mardia Chemicals Ltd. and Ors. Vs. Union of India and Ors, (2004) 4 SCC 311, Jagdish Singh Vs. Heeralal and Ors., (2014) 1 SCC 479 and of High Courts in State Bank of India Vs. Smt. Jigishaben B. Sanghvi and Ors, 2011 (3) Bom. C. R. 187 and Arasa Kumar Vs. Nauammal, (2015) 2 BC 127. However, the learned Single Judge rejected the argument/objection raised by the appellant(s) that it is impermissible to reject the plaint only against one of the defendant(s), in exercise of power under Order 7 Rule 11(d) of CPC by relying on the decision of the Division Bench of the same High Court in M.V. "Sea Success I" Vs. Liverpool and London Steamship

Protection and Indemnity Association Ltd. and Ors, AIR 2002 BOMBAY 151 As the notice of motion moved by respondent No. 1-bank came to be dismissed, respondent No.1 carried the matter in appeal before the Division Bench by way of separate five appeals in the concerned suit. All these appeals came to be allowed by the Division Bench vide impugned judgment.

8. The impugned judgment has reversed the opinion of the learned Single Judge that bar under Section 34 will not come in the way of the appellants/plaintiffs. The Division Bench also opined that the averments in the concerned plaint do not spell out the case of fraud committed by the bank and/ or the builder. As a result of which, the Court held that the suit(s) instituted by the appellant(s) did not come within the excepted category predicated in Mardia Chemicals Ltd. (supra) and thus the plaint against respondent No. 1-bank was not maintainable, being barred by Section 34 of the 2002 Act.

9. Feeling aggrieved, out of the five plaintiff(s) only four of them have chosen to file the present appeals. They have assailed every reason assigned by the Division Bench both on facts and the law. It is urged that the plaint cannot be rejected only against one of the defendant(s) but it could be rejected as a whole. To buttress this contention reliance has been placed on Sejal Glass Limited Vs. Navilan Merchants Private Limited, (2018) 11 SCC 780

According to the appellant(s), even otherwise the decisions considered by the High Court to hold against the appellant(s) that the suit(s) filed by them were barred by Section 34 of 2002 Act were in applicable to the fact situation of the present case being a case of third party claiming right under an agreement which has the statutory protection under the provisions of The Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short “1963 Act”). The appellant(s) would also urge that the bar under Section 34 has no bearing on the subject matter of the suit filed by the respective appellant(s) and the nature of reliefs claimed by them including against respondent No. 1-bank. The presence of respondent No.1 in the said suit would be proper, even if not a necessary party. It is urged that the impugned judgment cannot be countenanced.

10. Per contra, respondent No. 1-bank would urge that the Division Bench was justified in allowing the notice of motion filed by respondent No. 1-bank to reject the plaint qua the bank being barred by Section 34 of the 2002 Act. According to the said respondent, the appellant(s) are not genuine home buyers but are investors of developers i.e. Orbit Corporation Ltd. (In Liq.). Due to the close acquaintance/business relationship, the concerned appellant(s) took commercial unsecured risk by purportedly investing huge amount under the guise of purchasing flats and entered into transactions which were contrary to the provisions of 1963 Act. Thus, the appellant(s)

cannot claim any right merely on the basis of a self-serving allotment letter pertaining to the concerned flat, purportedly given by the builder. Noticeably, contends learned counsel for respondent No. 1 that the averments in the plaint(s) regarding allegation of fraud played upon the appellant(s) are vague and general. The same are baseless and unsubstantiated. Rather, no case can be culled out from the averments in the plaint so as to hold that the suit filed by the concerned appellant(s) comes within the excepted category predicated in Mardia Chemicals Ltd. (supra). Respondent No. 1 has supported the impugned judgment of the Division Bench and would contend that the bank is not a necessary or even a proper party to suit for specific performance of the alleged agreement and including in relation to alternative relief of damages claimed against the developers.

11. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11 (d) of CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power Order 7 Rule 11 (d) of CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in the case of Sejal Glass Limited (supra) is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11 (d) of CPC stating that the plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the director's defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against defendant No. 1-company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) of CPC. The Court answered the said question in the negative by adverting to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) of CPC will have no application at all, and the suit as a whole must then proceed to trial.

12. In view of this settled legal position we may now turn to the nature of reliefs claimed by respondent No. 1 in the notice of motion considered by the Single Judge in the first instance and then the Division Bench of the High Court of Bombay. The principal or singular substantive relief is to reject the plaint only qua the applicant/respondent No. 1 herein. No more and no less.

13. Indubitably, the plaint can and must be

rejected in exercise of powers under Order 7 Rule 11 (d) of CPC on account of non-compliance of mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 of CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part. In that sense, the relief claimed by respondent No. 1 in the notice of motion(s) which commended to the High Court, is clearly a jurisdictional error. The fact that one or some of the reliefs claimed against respondent No. 1 in the concerned suit is barred by Section 34 of 2002 Act or otherwise, such objection can be raised by invoking other remedies including under Order 6 Rule 16 of CPC at the appropriate stage. That can be considered by the Court on its own merits and in accordance with law. Although, the High Court has examined those matters in the impugned judgment the same, in our opinion, should stand effaced and we order accordingly.

14. Resultantly, we do not wish to dilate on the argument of the appellant(s) about the inapplicability of the judgments taken into account by the Division Bench of the High Court or for that matter the correctness of the dictum in the concerned judgment on the principle underlying the exposition in Nahar Industrial Enterprises Limited Vs. Hong Kong and Shanghai Banking Corporation, (2009) 8 SCC 646 to the effect that the DRT and also the appellate authority cannot pass a decree nor it is open to it to enter upon determination in respect of matters beyond the scope of power or jurisdiction endowed in terms of Section 17 of the 2002 Act. We leave all questions open to be decided afresh on its own merits in accordance with law.

15. A fortiori, these appeals must succeed on the sole ground that the principal relief claimed in the notice of motion filed by respondent No. 1 to reject the plaint only qua the said respondent and which commended to the High Court, is replete with jurisdictional error. Such a relief "cannot be entertained" in exercise of power under Order 7 Rule 1 1(d) of CPC. That power is limited to rejection of the plaint as a whole or not at all.

16. In view of the above, these appeals are allowed. Resultantly, the impugned judgment and order of the Division Bench of the High Court in the concerned appeals are set-aside and instead the order of the learned Single Judge dismissing the notice of motion(s) in the concerned suit(s), is restored. Thus, the notice of motion taken out by respondent No.1 in the concerned suit(s) are dismissed with liberty to respondent No.1, as aforementioned. All pending interim applications are also disposed of. No order as to costs.

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2019 (2) L.S. 117 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Ms.Justice
A.M. Khanwlkar &
The Hon'ble Mr.Justice
Ajay Rastogi

Reckitt Benckiser
(India) Pvt. Ltd. ..Appellant

Vs.

Reynders Label Printing
India Pvt.Ltd., & Anr., ..Respondents

ARBITRATION AND CONCILIATION ACT, Secs..11(5), 11(9) and 11(12)(a) - Whether respondent company established under the laws of Belgium, having its principal place of business at belgium, could be impleaded in the proposed arbitration proceedings despite the fact that it is a non-signatory party to the agreement , executed between the applicant and respondent company established under the Companies Act, merely because it is one of the group companies of which respondent.

Held - No relief can be granted to the applicant who has invoked the jurisdiction of this Court on the assumption that it is a case of international commercial arbitration - Arbitration application stands dismissed as against respondent No.2.

Arbitration (Civil) No. 65/2016 Dt:1-7-2019

J U D G M E N T

(per the Hon'ble Mr.Justice
M. Khanwilkar)

1. The singular question involved in this application filed under Sections 11(5), 11(9) and 11(12)(a) of the Arbitration and Conciliation Act, 1996 (for short "the Act") seeking appointment of a sole arbitrator, is whether respondent No.2 a company established under the laws of Belgium, having its principal place of business at Nijverheldsstraat 3, 2530 Boechout, Belgium, could be impleaded in the proposed arbitration proceedings despite the fact that it is a non-signatory party to the agreement dated 1st May, 2014, executed between the applicant and respondent No.1 a company established under the Companies Act, 2013 merely because it (respondent No.2) is one of the group companies of which respondent No.1 also is a constituent. The legal position as to when a non-signatory to an arbitration agreement can be impleaded and subjected to arbitration proceedings is no more res integra. In the case of Chloro Controls India Private Limited Vs. Severn Trent Water Purification Inc. and Ors., (2013) 1 SCC 641) a three-Judge Bench of this Court opined that ordinarily, an arbitration takes place between the persons who have been parties to both the arbitration agreement as well as the substantive contract underlying it. Invoking the doctrine of "group of companies", it went on to observe that an arbitration agreement entered into by a company, being one within a group of corporate entities, can, in certain circumstances, bind its non-signatory affiliates. That exposition has been followed

and applied by another three-Judge Bench of this Court in Cheran Properties Limited Vs. Kasturi and Sons Limited and Ors. (2018) 16 SCC 413)In paragraph 23 of this decision, the Court, after analysing the earlier decisions and including the doctrine expounded in Chloro Controls India Private Limited (supra), concluded as follows:

"23. As the law has evolved, it has recognised that modern business transactions are often effectuated through multiple layers and agreements. There may be transactions within a group of companies. The circumstances in which they have entered into them may reflect an intention to bind both signatory and non-signatory entities within the same group. In holding a non-signatory bound by an arbitration agreement, the court approaches the matter by attributing to the transactions a meaning consistent with the business sense which was intended to be ascribed to them. Therefore, factors such as the relationship of a non-signatory to a party which is a signatory to the agreement, the commonality of subject-matter and the composite nature of the transaction weigh in the balance. The group of companies doctrine is essentially intended to facilitate the fulfilment of a mutually held intent between the parties, where the circumstances indicate that the intent was to bind both signatories and non-signatories. The effort is to find the true essence of the business arrangement and to unravel from a layered structure of commercial arrangements, an intent to bind someone who is not formally a signatory but has assumed the obligation to be bound by the actions of a signatory."

2. In the present case, it is not in dispute that the respondents are constituents of a group of companies known as "Reynders Label Printing Group". The constituent companies of the said group of companies can be described in the form of a chart appended to the written submission filed by respondent No.1 as Annexure R1/ 1, which reads thus:

Reynders Label Printing Group				Reynesco Invest NV	
Reynders Ttiketten NV (R2)	Reynders Etiquetters Cosmetiques	Reynders Pharmaceutical Labels NV	Reynders Label Printing India Pvt. Ltd. (R1)	Reynders Etiquettes France SA	Reynders Etiketten Polska Sp

3. Keeping in mind the exposition in Chloro Controls (supra) and Cheran Properties (supra), the crucial question is whether it is manifest from the indisputable correspondence exchanged between the parties, culminating in the agreement dated 1st May, 2014, that the transactions between the applicant and respondent No.1 were essentially with the group of companies and whether there was a clear intention of the parties to bind both the signatory as well as non-signatory parties (respondent No.1 and respondent No.2, respectively). In other words, whether the indisputable circumstances go to show that the mutual intention of the parties was to bind both the signatory as well as the non-signatory parties, namely, respondent No.1 and respondent No.2, respectively, qua the existence of an arbitration agreement between the applicant and the said respondents.

4. In the wake of the amended Section 11(6) read with Section 11(6A) of the Act, the enquiry by this Court must confine itself to the examination of existence of an arbitration agreement. No more and no less. For that, we must revert to the assertion made by the applicant in the present application. Be it noted that respondent No.1 has not filed any counter affidavit to refute the assertions made by the applicant in the application under consideration. Respondent No.1, however, through its counsel has urged that respondent No.2 has no concern with the subject agreement dated 1st May, 2014. That agreement is only between the applicant and respondent No.1 and as a result thereof, it would give rise to a domestic commercial arbitration and not an international commercial arbitration. Respondent No.1 has also made it amply clear through its counsel that it will have no objection, whatsoever, if the Court were to appoint a sole arbitrator for resolving the dispute between the applicant and respondent No.1, who would conduct the arbitration proceedings in accordance with the Act, in Delhi, as a domestic commercial arbitration between the applicant and respondent No.1 alone.

5. Be that as it may, reverting to the averments in the application under consideration, it is mentioned that the dispute arises out of the agreement dated 1st May, 2014, executed between the applicant and respondent No.1, but respondent No.2 has been impleaded because it is the parent/ holding company of respondent No.1. The agreement, in the form of clause 13, ("13. Dispute Resolution 13.1 Prior to the beginning of any arbitration process the parties hereby undertake to attempt in good faith to resolve any dispute by way of negotiation between senior executives of the parties who have authority to settle such dispute. A copy of any Escalation Notice shall be given to the Regional Senior Vice President (or equivalent person of seniority) of each party or their Affiliates (which copy shall state that it is an Escalation Notice pursuant to this Agreement). Provided, however, that the negotiations shall be completed within thirty (30) days of the date of the Escalation Notice or within such longer period as the parties may agree in writing prior to the expiration of the initial thirty-day period.

13.2 In the event the dispute is not resolved

within a period of 30 days from the commencement of such dispute, the dispute shall be referred to arbitration and the parties shall mutually appoint a Sole arbitrator who shall conduct the proceedings in accordance with Indian Arbitration Act, 1996 as amended from time to time or any reenactment thereof. The arbitration shall be held in Delhi and the proceedings shall be conducted in English.

13.3 The existence of a dispute with respect to this Agreement between the parties shall not relieve either party from performance of its obligations under this Agreement that are not the subject of such dispute.") contains an arbitration agreement between the parties. In terms of clause 9 ("9. Indemnity

9.1 The Supplier and the Supplier group shall indemnify RB against any claims, losses, damages and expenses howsoever incurred or suffered by RB (and whether direct or consequential or economic loss) arising out of or in connection with

(i) defective workmanship, quality or materials;

(ii) an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture, or supply of the products; and

(iii) negligent performance or failure or delay in performance of the terms of this Agreement by this Supplier.

9.2 Supplier shall indemnify and hold harmless RB and their respective officers, directors, agents, and employees against any and all claims:

i. Arising out of an alleged breach of the terms and conditions of other provision of this Agreement.

ii. based upon any allegations that the material produced by RB using Product was defective (including, but not limited to, manufacturing or refining defects);

These provisions shall survive termination or expiry of this Agreement.") thereof, respondent No.2 has assumed the liability to indemnify the applicant in case of any loss, damage etc., caused to the applicant on account of acts and omissions of respondent No.1. Respondent No.2 is an integral party to the stated agreement which contains an arbitration agreement in the form of clause 13.2. The applicant has relied upon emails exchanged which, according to the applicant, provide the record of an arbitration agreement within the meaning of Section 7(4)(b) of the Act. According to the applicant, the respondents had approached the applicant with an offer to print labels for the applicant, including for booklets and leaflets and labels required for Mucinex, exported to USA. The 'Drug Facts' and other detailswhich were to be printed on the back-label were in accordance with the laws of USA and the respondents were aware of the fact that Mucinex supply is meant for USA market. The applicant relied upon the minutes of the meeting held on 29th May, 2013, between the officials of the applicant and the officials of respondent No.1. Pursuant thereto, the respondents made a presentation to the

applicant about their capability to print labels for the applicant, including the booklet and leaflet labels as desired and made several representations about the quality of their product. The applicant asserts that the respondents had held exhaustive negotiations in relation to the execution of agreement whereby the respondents were to provide packaging material to the applicant and its affiliates. Based on negotiations, the applicant, by email dated 23rd April, 2014, circulated a draft of the agreement along with the code of conduct and antibribery policy of the applicant. The applicant asserts that the respondents replied to the same through Mr. Frederik Reynders (promoter of respondent No.2 which is the parent company of respondent No.1) by his email of 23rd April, 2014 at 12:00 PM. The said email sent by Mr. Frederik Reynders was responded to by the applicant on 23rd April, 2014 at 12:10 PM. Further, Mr. Frederik Reynders, by his email of 23rd April, 2014 at 4:09 PM, attached a copy of the draft with some attached comments from the headquarters of the respondents in Belgium (respondent No.2 herein). According to the applicant, the comments related to clause 9 of the draft agreement relating to the indemnity of respondent Nos.1 & 2. It is then stated that in the same email, Mr. Frederik Reynders gave a counter proposal, concerning clause 9.1 of the draft agreement, of providing a document of insurance to inform the applicant about their maximum coverage. On this basis, it is asserted that respondent No.2 was aware of the fact that indemnity is being extended to the applicant and that respondent No.2 was the disclosed principal on whose behalf the respondent No.1 was executing the agreement. It is further asserted that the arbitration agreement was an integral part of the agreement executed between the applicant and respondent No.1, on its behalf and on behalf of its disclosed principal, namely, respondent No.2. The applicant has then asserted that respondent No.1 addressed an email dated 6th June, 2014, to the applicant enclosing a signed copy of the agreement and further stating that hard copy would be delivered to the applicant. The relevant averments in the application referred to above have been articulated in paragraphs 7.7 to 7.12, which read thus:

"7.7 The Applicant states that the Respondents had approached it with its offer to print labels for the applicant, including booklet and leaflet labels (required for Mucinex exported to USA). The Drug Facts and other details which were to be printed on the back label were in accordance with the laws of USA and the Respondents were aware of the fact that the Mucinex supply is meant for USA market. True typed copy of the Minutes of Meeting held on November 22, 2013 between the officials with the respondent No.1 are annexed as ANNEXURE A2 (at pages 133 to 134).

7.8 The Respondents subsequently made a presentation about their capability to print labels for the Applicant, including booklet and leaflet labels (required for Mucinex exported to USA). During personal meeting and in the presentation, the Respondents represented that they are the market leaders in label printing across the globe and they provide creativity and innovation for selfadhesive labels. Further, the

Respondents represented that Reynders label printing in India offers tailor made solutions to fit all needs of the Respondent including perfect adhesion on vials conforming to ISO 15010), every single label is printed as per specifications) and numbering of each label, to ensure quality control. The Respondents offered to print booklet & leaflet labels "to put extra information on a packaging where the available space for text or images is rather limited". The Respondents further specifically emphasised that such booklet labels contain a multipage booklet, glued at the back, having application in pharmaceutical industry. For the purpose of adhering and maintaining strict quality control measures, the Respondents represented that inspection of printed labels is conducted through a system consisting of "500 100% camera controlled inspection system, online numbering on back side and units for offline numbering". Further, in relation to quality assurance, the Respondents represented to the Applicant that they provide standard quality assurance and in addition, they also provide quality check by camera control. True typed copy of the Presentation dated NIL made by the Respondents is annexed as ANNEXURE A3 (at pages 135 to 156).

7.9 In the interregnum, the Applicant entered into a Supply Agreement dated April 16, 2014 with its affiliate in India viz., RB Healthcare. True typed copy of the Supply Agreement executed between the Applicant and RB Healthcare dated 16.04.2014 is annexed as ANNEXURE A4 (at pages 157 to 189).

7.10 The Applicant and Respondents held detailed negotiations in relation to execution of an agreement, whereby the Respondents were to provide packaging material to the Applicant and its affiliates. Based on negotiations, the Applicant by email dated April 23, 2014, circulated a draft of the Agreement along with the Code of Conduct and AntiBribery policy, of the Applicant. True typed copy of the email 23.04.2014 addressed by the Applicant to the Respondents is annexed as ANNEXURE A5 (at pages 190 to 191). The applicant also requested the Respondents to attach a copy of the executed specifications of Mucinex labels and signed copy of the pricing/costing agreement for Mucinex Labels. It is relevant to state that Clause 9 of the draft Agreement, specifically stated "The Supplier and the Supplier group shall indemnify RB against any claims, losses, damages and expenses howsoever incurred or suffered by RB (and whether direct or consequential or economic loss) arising out of or in connection with……negligence performance or failure or delay in performance of the terms of this agreement by the Supplier".

7.11 In response, the Respondents through Mr. Frederik Reynders (promoter of Respondent No.2 which is a parent of Respondent No.1) by his email responded on April 23, 2014 at 12:00 pm. True typed copy of the email dated April 23, 2014 addressed by Mr. Frederik Reynders to the Applicant is annexed as ANNEXURE A6 (at page 192). The said email sent by Mr. Frederik Reynders was responded by the Applicant on April 23, 2014 at 12:10 pm. True typed copy of the email dated April 23, 2014 addressed by the Applicant to Mr.

Frederik Reynders is annexed as ANNEXUXRE A7 (at page 193). Further, Mr. Frederik Reynders by his email of April 23, 2014 at 04.09 pm attached a copy of the draft Agreement with "some comments of our HQ in Belgium (Respondent No.2 herein)". True typed copy of the email dated April 23, 2014 with the commented Agreement sent by Mr. Frederik Reynders to the Applicant is annexed as ANNEXURE A8 (at page 194). The comments related to Clause 9 of the draft Agreement relating to Indemnity extended by the Respondent Nos.1 and 2. In the same email, Mr. Reynders also stated that for Clause 9.1 of the draft Agreement, "I will provide you with an document of our Insurance to inform you about our maximum coverage". From the above, it is clear that Respondent No.2 was aware of the fact that indemnity is being extended to the Applicant and the fact that Respondent No.2 is the disclosed principal, on whose behalf the Respondent No.1 is executing the Agreement. In this regard, it is relevant to state that the arbitration agreement is an integral part of the Agreement executed between the Applicant and the Respondent No.1. Hence, the arbitration agreement also has been executed by Respondent No.1 on its behalf and on behalf of its disclosed principal i.e. the Respondent No.2.

7.12 After further discussions, the Respondent No.1, on its behalf of and on behalf of its parent and disclosed principal – Reynders Belgium) of Respondent No.2, executed the Agreement on May 1, 2014 and sent the same to the Applicant. In this context it is stated that the Respondent No.1 had addressed an email dated June 6, 2014 to the Applicant enclosing the signed copy of the Agreement and further stating that hard copy shall be delivered to the Applicant. True typed copy of the email dated June 6, 2014 sent by the Respondent No.1 to the Applicant is annexed as ANNEXURE A9 (at page 195). The Agreement was subsequently executed by the Applicant and a hard copy, was sent to the Respondents."

(emphasis supplied)

6. We deem it apposite to reproduce the correspondence, referred to in the aforesaid paragraphs of the application under consideration, for examining the case made out by the applicant as to whether respondent No.2 can be said to have assented or had an intention to become party to the arbitration agreement by its conduct, without being a signatory to the agreement dated 1st May, 2014. Annexures5 to 9 referred to by the applicant read thus:

"ANNEXURE A5

From: Joshi, Sonu [mail to:Sonu.Joshi@rb.com]

Sent: woensdag 23 april 2014 10:38

To: Frederic Reynders

Subject: Commercial Agreement sigh-off-RB & Reynders

Dear Frederik,

As per our Global procurement policies and

procedures, it is mandatory for RB to signoff a commercial agreement, document on code of conduct and Anti-Bribery policies with all of our suppliers. Accordingly, please find the following documents for immediate signoff.

1. Code of Conduct

2. Anti-Bribery and

3. Commercial agreement (Packing material Supply Agreement) Along with the above, please attach a copy of the signedoff specs of Mucinex labels and the signed copy of our pricing/costing agreement on the Mucinex labels.

Please go through the commercial agreement, provide all relevant details i.e. Company Name, Address, Supply/Mfg. location, Details of Products manufactured/ supplied, Agreed payment terms etc. and send us the duly signed (by the authorized signatory) & company stamped copy along with the signed & stamped copies of the Code of Conduct and Anti Bribery policies.

For any information or clarifications, please contact me. Request you to email/send us all the documents latest by 30th April 2014 and if earlier it would be really appreciated.

Regards,
Sonu Dev Joshi
Manager Procurement
–Packing Material
RB

Plot – 48, Institutional Area, Sector32, Gurgaon – 122001
Direct-911244028197; Mobile +91 8527399487

www.reckittbenckiser.com

ANNEXURE A6

On 23Apr2014, at 12:00 pm., "Frederik Reynders"

wrote:

Dear Sonu,

We will provide you with all complete documents before 30th. A lead time of 14 days is highly requested and recommended a leaflet label after receival of PO till delivery at RB factory in Baddi.

Please confirm.

Best regards,

Frederik Reynders

Reynders_Label Printing India Pvt. Ltd.

www.reynders.com

ANNEXURE A7

From:
Joshi, Sonu
[mail to: Sonu.Joshi@rb.com]

Sent: woensdag 23 april 2014 12:10

To: Frederic Reynders

Cc: Kari Vandenbussche

Subject: Re: Commercial Agreement signoff – RB & Reynders

Hi Frederik
Thanks.

We (me and you) will discuss on the leadtimes, align on some buffer days and publish the official lead times to BADDI planning team. The unofficial or real/crash/ squeeze lead time must remain between the three of us.

Regards
Sonu Dev Joshi
Manager-PM Procuremen
RB

ANNEXURE A8

From: Frederic Reynders [mail to: fre@reynders.com]

Sent: Wednesday, April 23, 2014 4:09 PM

To: Joshi, Sonu

Cc: Kari Vandenbussche

Subject: RE: Commercial Agreement signoff – RB & Reynders

Dear Sonu,

Please find attached the contract with some comments of our HQ in Belgium. We will discuss & agree on a realistic and necessary lead time between the 3 of us.

For 9.1. I will provide you with an document of our insurance to inform you about our maximum coverage.

Waiting for your feedback. Feel free to call in case of any questions.

Frederik Reynders

Reynders_Label Printing India Pvt. Ltd.

www.reynders.com

ANNEXURE A9

From: Kari Vandenbussche [mail to :fre@reynders.com]

Sent: Friday, June 06, 2014 4:38 PM

To: Joshi, Sonu

Cc: Frederic Reynders

Subject: FW: Commercial Agreement signoff – RB & Reynders

Dear Mr. Sonu Joshi,

Attached you find the signed agreement with Company stamp, hard copies will be delivered today at your R&B office in Gurgaon.

Best regards,

Kari Vandenbussche

Site Manager

Plot no. F 686 – Chopanki Ind. Area

Chopanki 301019 – Bhiwadi – Rajasthan

T + 91 987 1024 467

M + 91 987 102 4467

F + 91 149 330 5403

www.reynders.com"

(emphasis supplied)

7. Respondent No.2 has filed its counter affidavit and emphatically refuted the assertions made by the applicant that respondent No.2 is the parent or holding company of respondent No.1. It is stated that respondent No.1 and respondent No.2 both are part of Reynders Label Printing Group. This group is an internationally operating group of seven printing companies and each of these companies has its own separate legal entities and operates in different offices independently. Further, these companies only share a common parent entity, namely, Reynesco NV which is also the holding company of both respondent companies. First, respondent No.2 had no presence or operation whatsoever in India and was not involved in the negotiation, execution and/or performance of the agreement. There is no privity of contract between the applicant and respondent No.2. Second, respondent No.2 in its counter affidavit has clearly stated that Mr. Frederik Reynders was not the promoter of respondent No.2. However, Mr. Frederik Reynders was an employee of respondent No.1. The signatory to the stated agreement, Mr. Kari Vandenbussche, had neither exercised any managerial functions for respondent No.2, nor was he an authorized representative or a director of respondent No.2 with any authority to appoint the said respondent. The relevant extract of the counter affidavit reads thus:

"THE ANSWERING RESPONDENT DID NOT PARTICIPATE IN THE NEGOTIATIONS PERTAINING THE AGREEMENT

15. It is incorrect to state that the answering Respondent was at any point in time involved in the negotiations with respect to the Agreement. The answering Respondent did not make any presentation or representations to the Applicant. From the documents annexed by the Applicant, there is nothing to show that the answering Respondent ever made any presentation to the Applicant or was present at any meeting prior to the date of the alleged Agreement.

16. Contrary to what has been alleged by the Applicant, the answering Respondent did not provide any comments on the draft of the Agreement. The answering Respondent submits that it is not aware of the email dated 23.04.2014, as alleged by the Applicant. Respondent No.1 did not forward email dated 23.04.2014 or any such email to the answering Respondent seeking comments of the answering Respondent on the draft of the Agreement. The reference to HQ in Belgium is not a reference to the answering Respondent. As explained above, the answering Respondent is but one of seven subsidiaries of the holding company Reynesco NV.

17. The answering Respondent submits that it was not party to any negotiations

pertaining to the Agreement. The signatory to the Agreement, Mr. Karl Vandenbussche, and Mr. Frederik Reynders, who is alleged to have carried out the negotiations with respect to the Agreement, were not representing (or purporting to represent) or acting in any way for the answering Respondent, and they had no authority to bind the answering Respondent.

18. The answering Respondent has no connection to the present dispute not having been a party in any capacity to the negotiation, execution, or enforcement of the Agreement. RESPONDENT NO.1 HAD NO AUTHORITY TO BIND THE ANSWERING RESPONDENT AND DID NOT EXECUTE THE AGREEMENT ON BEHALF OF THE ANSWERING RESPONDENT.

19. The signatory to the Agreement is Mr. Karl Vandenbussche, who at no point time exercised any managerial functions for the answering Respondent. Mr. Vandenbussche has never been an authorized representative or a director of the answering Respondent, having any authority to bind the answering Respondent.

20. Further, Mr. Frederik Reynders, who is alleged to have carried out the negotiations with respect to the Agreement, has incorrectly been described as the promoter of the answering Respondent. Mr. Frederik Reynders was not and has never been an employee, officer or representative of the answering Respondent.

21. The Applicant contends that the fact that Mr. Frederik Reynders was acting on behalf of the answering Respondent and the answering Respondent is the parent company of Respondent No.1 binds the answering Respondent to the Agreement and consequently the arbitration Agreement. It is submitted that the answering Respondent is not the parent company of Reynders India and at no point in time was Mr. Frederik Reynders ever employed by the answering Respondent or for that matter Reynesco NV. Clearly, Mr. Frederik Reynders was not acting for the answering Respondent, and had no authority to bind the answering Respondent. From the communication and documents annexed by the Applicant, there is nothing to show that Mr. Vandenbussche or Mr. Frederik Reynders represented themselves to be the agents of the answering Respondent or authorized persons acting for the answering Respondent.

22. It is submitted that the answering Respondent has no connection to the present dispute not having been a party in any capacity to the negotiation, execution, or enforcement of the Agreement. Therefore, the Applicant's submission that the Agreement was executed by Respondent No.1 on behalf of Respondent No.2, is incorrect. As demonstrated above, the answering Respondent was never a participant in the negotiations between the Applicant and Respondent No.1."

(emphasis supplied)

8. The applicant has filed a rejoinder affidavit in which it is vaguely stated that Mr. Frederik Reynders, during the stage of negotiation of the agreement, was taking directions

from the representatives of respondent No.2. In paragraphs 10 to 12 of the said affidavit, in response to the stand taken by respondent No.2, the applicant has stated thus:

"10. The contents of Para 15 are wrong and denied. It is a matter of record (Annexure – A3 at Page 135 of the Application) that the Respondents had approached the Applicant at the time of negotiation of Agreement under the common banner of 'Reynders Label Printing' and in that capacity had made a presentation to the Applicant. In fact, the Respondents market themselves as a label printing company, the printing being executed through various sites around the world.

11. The contents of Para 1618 are incorrect and denied. It is a matter of record that Respondent No.2 had actively participated in the negotiation of the Agreement. It is a matter of record (Annexure A8 at Page 194 of Application) that Respondent No.1 was taking directions from Respondent No.2 during the stage of negotiations of the Agreement. In fact, Respondent No.2 through Mr. Kristof Vandenbroucke had shared comments on the Agreement. The same Mr. Kristof Vandenbroucke subsequently participated in the escalation meeting held in Amsterdam for amicable resolution of the disputes that have arisen between the parties. Without prejudice to the same, it is submitted that it is inconsequential whether or not Respondent No.2 participated in negotiations of the Agreement. As elaborated in the Preliminary Submissions, there is irrefutable evidence that Respondent No.2 has assented to the Agreement.

12. The contents of Para 1922 are wrong and denied. It is a matter of record (Annexure A8 at Page 194 of the Application) that Mr. Frederik Reynders, during the stage of negotiations of the Agreement, was taking directions from representatives of Respondent No.2. In any case, as demonstrated hereinabove, Respondent No.2 has admitted to its liability under the Indemnity Clause, its limited objection being the extent of its liability thereunder. Additionally, Respondent No.2 had participated in the escalation meetings held in Amsterdam under the Arbitration Clause. Clearly the paragraphs under reply are an afterthought."

(emphasis supplied)

9. In the backdrop of the averments in the application and the correspondence exchanged between the parties adverted to by the applicant, it is obvious that the thrust of the claim of the applicant is that Mr. Frederik Reynders was acting for and on behalf of respondent No.2, as a result of which the respondent No.2 has assented to the arbitration agreement. This basis has been completely demolished by respondent No.2 by stating, on affidavit, that Mr. Frederik Reynders was in no way associated with respondent No.2 and was only an employee of respondent No.1, who acted in that capacity during the negotiations preceding the execution of agreement. Thus, respondent No.2 was neither the signatory to the arbitration agreement nor did have any causal connection with the process of negotiations preceding the agreement or the execution thereof, whatsoever. If the main plank of the applicant, that Mr. Frederik

LAW SUMMARY

2017 & 2018 Yearly Digest

Printed, Published and owned by **Smt.Alapati Sunitha,**

Printed at: Law Summary Off-Set Printers,Santhapeta Ext., Ongole - 523001, Prakasam District. (AP)

Editor: **A.R.K. Murthy,** Advocate.

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