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# Law Summary

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**Hon'ble Sri Justice N.V. Ramana, Chief Justice Of India**

N.V. Ramana, B.Sc., B.L., was born in an agricultural family on August 27, 1957 in Ponnavaram Village, Krishna District. He enrolled as an Advocate on February 10, 1983. He has practiced in the High Court of Andhra Pradesh, Central and Andhra Pradesh Administrative Tribunals and the Supreme Court of India in Civil, Criminal, Constitutional, Labour, Service and Election matters. He has specialized in Constitutional, Criminal, Service and Inter-State River laws. He has also functioned as Panel Counsel for various Government Organizations. He has functioned as Additional Standing Counsel for Central Government and Standing Counsel for Railways in the Central Administrative Tribunal at Hyderabad. He has also functioned as Additional Advocate General of Andhra Pradesh. He was appointed as a permanent Judge of the Andhra Pradesh High Court on June 27, 2000. He functioned as Acting Chief Justice of Andhra Pradesh High Court from March 10, 2013 to May 20, 2013. He had participated in several National and International Conferences held in India and abroad and submitted papers on various topics of legal importance. Elevated as the Chief Justice of Delhi High Court w.e.f. 02.09.2013. Elevated as a Judge, Supreme Court of India w.e.f. 17.02.2014 and appointed as Chief Justice of India on 24-04-2021.

**Hon'ble Sri Justice**
**L. Nageswara Rao**
***Judge,***
***Supreme Court of India***

Born on 08.06.1957 at Chirala, Prakasam District, Andhra Pradesh. Did his B.Com., B.L., from Nagarjuna University, Guntur, Andhra Pradesh. Enrolled as an Advocate on 29.07.1982 at Bar Council of Andhra Pradesh. From July, 1982 to January, 1984 practiced at the District Court, Guntur, Andhra Pradesh. From January, 1985 to December, 1994 practiced at the High Court of Andhra Pradesh, at Hyderabad. From January 1995 to May, 2016 practiced at the Supreme Court of India. Designated as a Senior Advocate by the Andhra Pradesh High Court in December, 2000. Served as Additional Solicitor General of India from August 2003 to May, 2004 and again from 26.08.2013 to 18.12.2014. Appointed as a Judge of the Supreme Court of India on 13.05.2016.

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**Hon'ble Sri Justice**
**Pamidighantam Sri Narasimha**
***Judge, Supreme Court of India***

Justice Pamidighantam Sri Narasimha born on 3 May 1963. He was senior Advocatde and former Additional Solicitor General of India May 2014 - 15-12-2018. He is well known for his work on the Ayodhya Title Dispute and the BCCI cases. Appointed as a Judge of the Supreme Court of India on 31-8-2021.

## HON'BLE JUDGES OF HIGH COURT OF ANDHRA PRADESH

**THE HON'BLE SRI CHIEF JUSTICE PRASHANT KUMAR MISHRA**

Born on August 29, 1964 at Raigarh (Chhattisgarh). Took B.Sc. and LL.B Degrees from Guru Ghasidas University, Bilaspur (Chhattisgarh). Enrolled as an Advocate on September 4, 1987. Practiced law in District Court at Raigarh, High Court of Madhya Pradesh at Jabalpur and High Court of Chhattisgarh at Bilaspur and dealt with Civil, Criminal and Writ branches of law. Was designated as Senior Advocate by High Court of Chhattisgarh in January, 2005. Had been Chairman of Chhattisgarh State Bar Council for a period of 2\BD years. Was appointed/co-opted Member of the Rule Making Committee of High Court of Chhattisgarh. Had been Chancellor's Nominee in the Executive Council of Guru Ghasidas University, Bilaspur. Was associated with Hidayatullah National Law University, Raipur (Chhattisgarh) as its Ex-Officio Member in the Executive Council. Served as Additional Advocate General for the State of Chhattisgarh from June 26, 2004 to August 31, 2007 and thereafter as Advocate General for the State from September 1, 2007 till elevation. Elevated as a Judge of High Court of Chhattisgarh on December 10, 2009. Was Acting Chief Justice of High Court of Chhattisgarh from 01.6.2021 to 11.10.2021. Appointed as Chief Justice of High Court of Andhra Pradesh and assumed charge of the Office of the Chief Justice, High Court of Andhra Pradesh on 13.10.2021.

## HON'BLE JUDGES OF HIGH COURT OF ANDHRA PRADESH

Hon'ble Sri Justice
**Ahsanuddin Amanullah**

Born on 11-05-1963; Enrolled with the Bihar State Bar Council on 27-09-1991. Practiced majorly in the Constitutional Courts, primarily Patna High Court; Standing Counsel, Government of Bihar (Mar. 2006 - Aug. 2010) and Government Advocate, State of Bihar (Aug. 2010 till elevation) [Patna High Court]; Special Counsel, Income-Tax Department, Government of India [Jharkhand High Court] and; Counsel for the District Administration before the Commission of Inquiry into the Dalsingsarai (Samastipur) firing incident. The Advocate-General, Bihar nominated him to represent State of Maharashtra, Maharashtra Police and Mumbai Police, upon special request by the Advocate-General, Maharashtra. Represented various institutional and individual clients, including, but not limited to, the Indian Railways, Unit Trust of India, Union Bank of India, RITES (previously Rail India Technical and Economic Services Limited), Indian Railway Catering and Tourism Corporation Limited (IRCTC), Bihar State Housing Board, Bihar State Electricity Board, Bihar State Text Book Publishing Corporation, Bihar State Cooperative Bank Limited, Bihar State Cooperative Marketing Union Limited (BISCOMAUN), Bihar Cooperative Land Development Bank Limited, Bihar State Agricultural Marketing Board, various Agricultural Produce Market Committees in Bihar, Bihar State Housing Cooperative Federation, Bihar State Credit and Investment Corporation (BICICO), Commercial Taxes Department (Government of Bihar), Magadh University (Gaya), Veer Kuer Singh University (Arrah), Bihar Industrial Area Development Authority, Bihar State Health Society, BSACS, Mahindra and Mahindra, Samsung Corporation Engineering & Construction Group etc. Empanelled by the Patna Legal Aid Committee (precursor to High Court Legal Services Committee) for Criminal Appeals. Amicus Curiae in matters of significance; associated with social issues pro bono. Instrumental in drafting and vetting subordinate and delegated legislation for certain Acts of the Bihar Legislature during 2006-2011. Assistant Returning Officer for elections to the Bihar State Bar Council (2002) and Jharkhand State Bar Council (2006). Upon invitation, addressed Indian Administrative Service probationers at the Lal Bahadur Shastri National Academy of Administration. Participated in the Bar Council of India Trust nter-University Moot Court Competition, 1989 at Himachal Pradesh University, Shimla. Elevated as Judge, Patna High Court on 20-06-2011. Upon transfer, joined High Court of Andhra Pradesh on 10-10-2021. At the Patna High Court, had been Chairman, High Court Legal Services Committee; Chairman, Juvenile Justice Monitoring Committee, and; Member, Board of Governors, Bihar Judicial Academy, Patna. Appointed as Executive Chairman, Andhra Pradesh State Legal Services Authority on 08-11-2021.

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Hon'ble Sri Justice
**C.Praveen Kumar**

Born on 26.02.1961 at Hyderabad. Had his school education (Class-I to Class-X) at Little Flower High School, Hyderabad. Passed intermediate from Little Flower Junior College and B.Sc from Nizam College, Hyderabad. Obtained Law degree from University College of law, Osmania University, Hyderabad. Enrolled as an Advocate on the rolls of Bar Council of Andhra Pradesh on 28.02.1986 and joined the office of Sri C.Padmanabha Reddy. Actively practiced on criminal side and also in Constitutional matters. Had developed independent practice in short span. Elevated as Additional Judge of A.P. High Court on 29.06.2012. Appointed as Judge of High Court of Andhra Pradesh and assumed charge as such on 04.12.2013.

## HON'BLE JUDGES OF HIGH COURT OF ANDHRA PRADESH

Hon'ble Sri Justice
**A.V.Sesha Sai**

Born in the year 1962 in an Agricultural and Freedom Fighters' family at Bhimavaram, West Godavari District. Had his primary education in Municipal Elementary School, Bhimavaram and Higher Education in Luthern High School, Bhimavaram and Intermediate in K.G.R.L. College, Bhimavaram and graduation in D.N.R. College, Bhimavaram and B.L. Degree in Sir C.R. Reddy College, Eluru, West Godavari District (Andhra University). Enrolled as an Advocate on the rolls of the Bar Council of Andhra Pradesh on 03.07.1987. Elevated as Additional Judge of High Court of Andhra Pradesh and sworn in on 12.04.2013. Appointed as Judge of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh and assumed charge as such on 08.09.2014.

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Hon'ble Sri Justice
**U.Durga Prasad Rao**

Born in Advocates' family on 12.08.1962. Paternal grand father Sri Upmaka Narayana Murthy was a reputed lawyer and Sathavadhani in Parvathipuram, Vizianagaram District. Maternal grand father Sri Voleti Kameswar Rao and his brothers Sri Seetharam Murthy and Sri Laxmoji Rao were also Lawyers. Selected as Additional District Judge (Direct Recruitment) in 1998. Elevated as Additional Judge of the High Court of Andhra Pradesh and sworn in on 23rd October, 2013. Appointed as Judge of High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh and assumed charge as such on the afternoon of 02-03-2016.

## HON'BLE JUDGES OF HIGH COURT OF ANDHRA PRADESH

Hon'ble Sri Justice
**M.Satyanarayana Murthy**

Born on 14th June, 1960, at Machilipatnam in a middleclass family. Had studies at Machilipatnam up to his graduation. Did his graduation in Commerce from Andhra Jatiya Kalasala, Machilipatnam. Studied law degree in Sir C.R.Reddy Law College, Eluru, and enrolled as a member on the rolls of the Bar Counsel of Andhra Pradesh and started practice at Machilipatnam. Appointed as Standing Counsel for Machilipatnam Municipality in the year 1991 and worked as such till his appointment as District & Sessions Judge, Grade-II, by direct recruitment. Apintteed as Additional Judge, High Court of Andhra Pradesh, Hyderabad, and sworn in as such on 23-10-2013. Appointed as Judge of High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh and assumed charge as such on the afternoon of 02-03-2016.

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Hon'ble Sri Justice
**D.V.S.S.Somayajulu**

He was born on 26.09.1961 in a family of lawyers. His father, late Sri D.V.Subba Rao, was the third generation of a family of distinguished lawyers and a leading Advocate of repute at Visakhapatnam in the State of Andhra Pradesh, holding positions as Chairman, Bar Council of India, Mayor of Visakhapatnam, President, Andhra Cricket Association. He was enrolled as an Advocate on the Roll of Bar Council of Andhra Pradesh and practiced law at Visakhapatnam. He was appointed as Judge of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh and sworn-in on 21.09.2017. He is the first Advocate from a mofussil Bar in Andhra Pradesh who is directly elevated as Judge of a High Court.

## HON'BLE JUDGES OF HIGH COURT OF ANDHRA PRADESH

Hon'ble Mrs. Justice
**K.Vijaya Lakshmi**

Born on 20th September, 1960 to Late Sri Gullapalli Venkateshwara Rao and Late Smt. Gullapalli Sita Rathnam. Enrolled at the then Bar Council of Andhra Pradesh on 12th July 1985. Joined the office of Sri Justice S. Parvatha Rao Garu. Worked as Assistant Government Pleader from 1991 to 1995 and as Government Pleader from January 1996 to May 2004. Worked as Government Pleader, attached to the office of the then Additional Advocate General, High Court of Andhra Pradesh, Sri Justice Jasti Chelameswar Garu. Assumed charge as Permanent Judge of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh on 21st September 2017.

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Hon'ble Sri Justice
**M.Ganga Rao**

He was born on 08-04-1961 at Guntakal Village and Mandal, Anantapuramu District, Andhra Pradesh. He is the eldest son of Late Sri M.Chinthamani and Smt.M.Govindamma. Enrolled on the rolls of the Bar Council of Andhra Pradesh on 05.02.1988 and joined as junior in the Chambers of Sri Justice B.S.A.Swamy, when he was an Advocate, worked for three years and later worked in the Chambers of Sri Justice C.V.Ramulu, when he was Senior Central Government Standing Counsel in the High Court of Andhra Pradesh. Elevated to the Bench as a Judge of the High Court of Judicature for the State of Telangana and for the State of Andhra Pradesh and assumed charge with effect from 21.09.2017.

## HON'BLE JUDGES OF HIGH COURT OF ANDHRA PRADESH

Hon'ble Sri Justice
Cheekati
Manavendranath Roy

Hails from Parvathipuram in Vizianagaram District. Born on 21st May, 1964 in a traditional agricultural family to Cheekati Narahari Rao and Smt. Vijaya Lakshmi at Visakhapatnam. Had Elementary and High School education in R.C.M. School at Parvathipuram and St. Aloysius High School in Visakhapatnam. Studied Intermediate in Government Junior College, Parvathipuram and completed Degree in S.V. Degree College, Parvathipuram. Studied Law in M.V.P. Law College, Vizag. Enrolled as an Advocate in July, 1988 in the Bar Council of Andhra Pradesh. Joined Parvathipuram Bar Association in August, 1988. Practised as an Advocate in Parvathipuram and Vizianagaram from 1988 to 2002 for 14 years. Selected as District and Sessions Judge in the year 2002. Worked as Registrar General of High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh from 3-7-2015 to 31-12-2018. After establishment of the High Court of Andhra Pradesh, at Amaravati, he is the first Registrar General of the High Court of A.P. from 1-1-2019 till his elevation as a Judge of the High Court of A.P. on 20-6-2019. Appointed as a Permanent Judge of the High Court of A.P. at Amaravati on 12-6-2019.

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Hon'ble Sri Justice
Matam Venkata Ramana

Hon'ble Sri Justice Matam Venkata Ramana was born on 12.02.1960 at Hyderabad. His Lordship hails from a well known Matam family of Advocates at Gooty, Ananthapuramu District, State of Andhra Pradesh. His Lordship had his schooling from Maltus Smith High School, Gooty. His Lordship completed Intermediate from S.V. Junior College, Tirupathi, B.Sc from Government College, Ananthapuramu and LL.B., from Sri Jagadguru Renukacharya College of Law, Bangalore. His Lordship completed LL.M., in Constitutional law from Osmania University, Hyderabad. His Lordship is the last issue to his parents Sri late Matam Narayana Rao and Smt. Late Kamala Narayana Rao. His Lordship had his early professional training under his father Sri late Matam Narayana Rao. His Lordship was appointed as a District Munsif with effect from 1-4-1987. His Lordship was elevated as Judge of Hon'ble High Court of Andhra Pradesh with effect from 20.06.2019. His Lordship's wife Mrs. Prathima Ramana is daughter of Sri late Palle Sarvagnachar, Senior Advocate, Kadapa. His Lordship's son Mr. Srikar Raghottam is pursuing Research (Ph.d.,) in Linguistics from Rutgers University, New Jersey, USA, after completing B.E (Hons'.) from BITS, Pilani and Masters, from Jawaharlal Nehru University, New Delhi.

## HON'BLE JUDGES OF HIGH COURT OF ANDHRA PRADESH

Hon'ble Sri Justice
Ravi Nath Tilhari

| | |
|---|---|
| Source | Bar |
| Date of Birth | 09/02/1969 |
| Initial Joining | 12/12/2019 |
| Joining at Allahabad | 12/12/2019 |
| Served at Allahabad Upto | 17/10/2021 |

Elevated as Additional Judge on Dec 12, 2019.

Took oath as Permanent Judge on Mar 26, 2021.

Transferred to High Court of Andhra Pradesh and assumed charge as such on Oct 18, 2021.

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Hon'ble Sri Justice
**Rao Raghunandan Rao**

Hon'ble Sri Justice R Raghunandan Rao was born on 30.06.1964 to Late. Sri. Rao Chinna Rao and Smt. R.Vilasitha Kumari. His Lordship did his schooling in Hyderabad Public School, Ramanthapur, Hyderabad and graduation from Nagarjuna University in Commerce and completed his Law course from Osmania University in the year 1988. Eenrolled as a Member of the Bar Council of the State of Andhra Pradesh on 01.09.1988 and commenced his practice by joining the chambers of Mr. S. Ravi. His Lordship was Assistant Government Pleader (Commercial Taxes) from 1993 to1994 and was the Special Assistant Government Pleader in the office of the Advocate General of Andhra Pradesh in 1995. His Lordship was previously Standing Counsel for various public sector corporations including M/s. Powergrid Corporation, M/s. Indian Oil Corporation, M/s. Gas Authority of India Limited and other private sector corporations till being designated as Senior Counsel. His Lordship was designated as Senior Counsel by the Hon'ble High Court of Andhra Pradesh in December 2013 and was a designated Senior Advocate, with over 30 years of experience at the Bar. His Lordship appeared regularly before the Hon'ble High Court of Telangana at Hyderabad, Hon'ble High Court of A.P. at Amaravati and the National Company Law Tribunal, Hyderabad Bench, and appeared before the other Hon'ble High Courts and the Hon'ble Supreme Court of India on some occasions. His Lordship regularly practiced in all branches of Law. His Lordship was empanelled as a member of the Senior Standing Counsel Panel for the Union of India in the Hon'ble High Court of Telangana, and was also the Senior Standing Counsel to the Hon'ble High Court of Andhra Pradesh. His Lordship sworn as Judge of the Hon'ble High Court of Andhra Pradesh on 13.01.2020. His Lordship's daughter and son are pursuing studies in Pune.

## HON'BLE JUDGES OF HIGH COURT OF ANDHRA PRADESH

Hon'ble Sri Justice **Battu Devanand**

Born on 14-04-1966 at Gudivada Town, Krishna District, Andhra Pradesh to Sri Battu Venkataratnam and Smt. Manoranjitham, who were Govt. Teachers. Had his Primary School education at Panchayat Elementary School, Jami Dintakuru village, Pedaparipudi Mandal and High School education at Municipal Schools, Gudivada. Passed Intermediate and B.A., from A.N.R. College, Gudivada. Students Union President of A.N.R. College, Gudivada during 1984-85. Obtained B.L. Degree from College of Law, Andhra University, Visakhapatnam. Students Union President of Andhra University Law College during 1988-89. After enrolment as an Advocate on the rolls of Bar Council of the State of Andhra Pradesh on 06-07-1989, initially, started practice at District Courts, Visakhapatnam and joined in the office of Sri M.K. Sitaramayya, Senior Advocate, Visakhapatnam and later, shifted his practice to High Court of Andhra Pradesh, Hyderabad. Served as Asst. Government Pleader in the High Court from 1996 to 2000. Counsel for various Central Government undertakings i.e., BSNL, New India Assurance Co., Oriental Insurance Co., United India Insurance Co., S.B.H., and N.T.P.C. and handled hundreds of cases as their Counsel. Handled number of cases on behalf of Poor & Vulnerable persons while doing private practice. Elected as Member of the Bar Council of the State of Andhra Pradesh in 2006. Member of the Disciplinary Committee of the Bar Council and Member of the A.P. Advocates Welfare Fund Committee during 2006-2012. Served as Government Pleader in the High Court since 14-07-2014 to 05-07-2019. Handled cases of Transport Dept., R & B Dept., Higher & Technical Education Dept., Excise Dept., Medical, Health & Family Welfare Dept., Energy, Science & Technology Dept., Forest, Fisheries, Tourism, Sports & Youth Services Departments as Government Pleader. Married to Ms Karra Padma Kumari and blessed with two daughters i.e., Ms Mouni Battu and Ms Keerthi Battu. Elevated to the Bench as Judge of the High Court of Andhra Pradesh and assumed charge on 13.01.2020.

Hon'ble Sri Justice Donadi Ramesh

He was born on 27.6.1965 at Kammapalli village, near Madanapalli, Chittoor District. His father late Sri D.V.Narayana Naidu, was a retired Engineer in Panchayat Raj Department and his mother late Smt. Annapurnamma was a house wife. He did his graduation from Sri Venkateswara Arts College, Tirupathi, Chittoor District. He did his Bachelor of law from V.R.Law College, Nellore in the year 1987-90. He was enrolled as an Advocate in Bar Council of Andhra Pradesh in the year 1990. After enrollment, he started practice at Andhra Pradesh High Court, Hyderabad and joined in the office of Sri Justice P.S.Narayana. During his practice at Andhra Pradesh High Court, Hyderabad he was appointed as Government Pleader for Services and worked from December 2000 to 2004. After that he was appointed as Standing Counsel for A.P.Sarvasiksha Abhiyaan in the year 2007 and worked till 2013. Appointed as Special Government Pleader attached to the Office of Advocate General in the year 2014 and worked till May 2019. Elevated to the Bench as Judge of the High Court of Andhra Pradesh and assumed charge on 13.01.2020.

## HON'BLE JUDGES OF HIGH COURT OF ANDHRA PRADESH

Hon'ble Sri Justice
**Ninala Jayasurya**

Born on 27.08.1968 at Tadepalli, Guntur District to Smt. Indira Devi and Shri NVV Krishna Rao, who worked as Senior Assistant Public Prosecutor in West Godavari, Krishna, Guntur and East Godavari Districts. Had his school education in Z.P.(Boys) High School, Tanuku, West Godavari District. Did Graduation in B.Com from Government Arts College, Rajahmundry. Thereafter studied Law in Siddhartha Law College, Vijayawada and obtained Degree in Bachelor of Law from Nagarjuna University. After enrolling as an Advocate on the rolls of Bar Council of Andhra Pradesh in the year 1992, joined the office of Shri Talari Anantha Babu, Former Advocate General of Andhra Pradesh and Senior Advocate of erstwhile High Court of Andhra Pradesh, Hyderabad. Appointed as a Special Government Pleader, Office of the Advocate General during 2003-2004 and later as Government Pleader, Agriculture, Co-operation and Marketing Departments, Government of Andhra Pradesh in the year 2009 and discharged functions till 2014 for five years. Dealt with various cases on behalf of Bar Council of Andhra Pradesh, BHEL, APCO & NTR Vaidya Seva Trust (presently YSR Aarogyasri Health Care Trust) as Panel Advocate and appeared for various Government undertakings including APSTC, STC of India, HUDA and other departments in different cases. Practiced in the erstwhile High Court of Andhra Pradesh, Hyderabad as well as High Court of Andhra Pradesh, Amaravati and dealt with cases in Writ, Arbitration, Civil and other branches of Law till the date of elevation. Appointed as Judge of High Court of Andhra Pradesh, Amaravati and assumed charge as such on 13.01.2020.

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Hon'ble Sri Justice
**B. Krishna Mohan**

Hon'ble Justice B. Krishna Mohan was born on 05-02-1965 at Guntur. His Lordship's father late Sri B.S. R. Anjaneyulu was a District and Sessions Judge in Andhra Pradesh State Higher Judicial Service. His Lordship studied in Majeti Guruvaiah High School, Guntur; graduated in Sciences from Hindu College, Guntur; obtained law degree from Andhra Christian Law College, Guntur affiliated to Acharya Nagarjuna University. Enrolled on 30-03-1989 in the State Bar Council of Andhra Pradesh at Hyderabad and started High Court practice by joining the office of late Sri C. Trivikrama Rao and set up an independent practice in the year 1993. His Lordship's wife Smt. B. Vasantha Lakshmi, daughter of late Sri. Justice K. R. Prasad Rao, former Judge of Karnataka High Court and the Vice-Chairman of the Central Administrative Tribunal, Hyderabad is also a practicing Advocate. His Lordship worked as Assistant Government Pleader for Home, Law and Legislative Affairs in the High Court between 1996 to 1999. Rendered services as Central Government Counsel from 2008 to 2018, Standing Counsel for University Grants Commission, Food Corporation of India, AIIMS, New Delhi and Navodaya Schools; Legal Adviser to State Bank of Mysore, Canara Bank, Vijaya Bank, VRL Logistics, GATI Ltd and Standing Counsel for NREDCAP. His Lordship was appointed as the first Assistant Solicitor General of India for the High Court of Andhra Pradesh at Amaravti on 10th January, 2019 and continued in the said office till elevation as a Judge of this Hon'ble High Court. His Lordship was sworn in as a Judge of the High Court of Andhra Pradesh on 02-05-2020.

## HON'BLE JUDGES OF HIGH COURT OF ANDHRA PRADESH

Hon'ble Sri Justice
**K.Suresh Reddy**

Hon'ble Sri Justice Kanchireddy Suresh Reddy was born on 07.12.1964 at Tarimela Village of Singanamala Mandal, Anantapuramu District in an agricultural family to Smt.K.Lakshmi Devi and Late Sri K.Sankar Reddy. He pursued Elementary Education in Zilla Parishad High School, Tarimela Village, Higher Grade Education at Vinay Kumar Telugu Medium High School, Anantapuramu, completed Graduation from Government Arts College, Anantapuramu and did Bachelor of Law (L.L.B.) Degree from Gulbarga University, Karnataka State. He got enrolled as an Advocate in the Bar Council of Andhra Pradesh on 07.09.1989 and joined in the office of the learned Senior Counsel Sri T.Bali Reddy, and practiced in Civil, Criminal and Constitutional matters. Represented Sri Acharya N.G.Ranga Agricultural University during the years, 2008-2011 and elevated as a Judge of the High Court of Andhra Pradesh on 02.05.2020.

Hon'ble Dr. Justice
**K Manmadha Rao**

His Lordship was born on 13.02.1967 (recorded date of birth is 13.06.1966) at Mypadu Village in Nellore District. His father Sri K.J.Rama Murthy was a retired Engineer in Irrigation Department and his mother Smt. K. Jhansi Lakshmi is a house wife. His Lordship did his schooling in Guntur, Prakasam and Nellore Districts on account of his father's employment; Intermediate from Jawahar Bharathi College, Kavali of Nellore Dist; Graduation in Commerce from CSR Sarma College affiliated to Nagarjuna University; completed Law course from Naya Vidya Parishad Law College affiliated to Andhra University and was Students' Union General Secretary of NVP Law College during 1989-90; PG Diploma in Cyber Laws from Hyderabad Central University; Master's Degree from PG College of Law, Hyderabad, Osmania University and Ph.D. in Law from Andhra University. Enrolled as a Member of the Bar Council of the State of Andhra Pradesh on 25.06.1991 and commenced his practice by joining as a junior advocate to Sri Nagisetty Mohan Das, Advocate in the Sri Nagisetty Ranga Rao's office at Ongole of Prakasam District and continued as such till May 1993, and thereafter, started independent practice in the Magistrate Courts, Subordinate Judge Court in Kandukur of Prakasam District till May, 1999 and also served as Secretary of the Bar Association, Kandukur. Thereafter, shifted practice to the High Court of Andhra Pradesh at Hyderabad and joined as a Golden member of the High Court Bar Association. His Lordship sworn in as a Judge of the High Court of Andhra Pradesh on 08.12.2021.

Hon'ble Ms. Justice
**B S Bhanumathi**

## HON'BLE JUDGES OF HIGH COURT OF TELANGANA

**THE HON'BLE SRI CHIEF JUSTICE SATISH CHANDRA SHARMA**

## HON'BLE JUDGES OF HIGH COURT OF TELANGANA

Hon'ble Sri Justice
**UJJAL BHUYAN**

Born on 2nd August, 1964 at Guwahati.His father Suchendra Nath Bhuyan was a Senior Advocate and a former Advocate General of Assam. Did his schooling in Don Bosco High School, Guwahati and thereafter studied in Cotton College, Guwahati. After graduating in Arts from Kirori Mal College, Delhi, he obtained his LL.B. degree from Government Law College, Guwahati and LL.M. degree from Gauhati University, Guwahati. Was enrolled on 20-03-1991 with the Bar Council of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh. Had practiced before the Principal Seat of the Gauhati High Court at Guwahati and appeared before the Agartala, Shillong, Kohima and Itanagar Benches of the Gauhati High Court. Also practiced before the Central Administrative Tribunal, Guwahati Bench and the Assam Board of Revenue. Appeared before the Labour Court, Guwahati, various Civil Courts and the State Consumer Forum, Arunachal Pradesh. He was the Standing Counsel of the Income Tax Department for long 16 years starting as Junior Standing Counsel since May, 1995 and subsequently appointed as Senior Standing Counsel of the Income Tax Department on 03-12-2008. He was the Additional Government Advocate, Meghalaya in the Principal Seat of the Gauhati High Court from April, 2002 to October, 2006. He was engaged as Special Counsel of the Forest Department, Government of Arunachal Pradesh from December, 2005 to April, 2009. Appointed as Standing Counsel of Gauhati High Court on 03-03-2010. Designated as Senior Advocate by the Gauhati High Court on 06-09-2010. He was appointed as Additional Advocate General, Assam on 21-07-2011. Was a member of Gauhati High Court Bar Association, Lawyers Association, Guwahati, Bar Association of India, All India Federation of Tax Practitioners and Indian Law Institute, Assam Chapter. Appointed as Additional Judge of Gauhati High Court on 17th October, 2011 and confirmed on 20th March, 2013. He was also the Executive Chairman of Mizoram State Legal Services Authority. Justice Ujjal Bhuyan was closely associated with the Judicial Academy, Assam and National Law University, Guwahati. Transferred to Bombay High Court and took oath as Judge of Bombay High Court on 03.10.2019. After a two year stint at Mumbai, transferred to Telangana High Court and took oath as Judge of Telangana High Court on 22.10.2021. He is also the Executive Chairman of Telangana State Legal Services Authority.

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Hon'ble Sri Justice
**A. Rajasheker Reddy**

Born on 04.05.1960 in an agricultural family at Sirsangandla Village, Peddavoora Mandal of Nalgonda District. His parents are Sri A. Ramanuja Reddy and Smt. A. Jayaprada. He was enrolled in Bar Council of Andhra Pradesh in April, 1985. He was elevated as Additional Judge of the High Court of Andhra Pradesh and sworn-in on 12.04.2013. Appointed as Judge of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh and assumed charge as such on 08.09.2014.

## HON'BLE JUDGES OF HIGH COURT OF TELANGANA

Hon'ble Sri Justice
**Ponugoti Naveen Rao**

He was born in an agricultural family of Nandi Myadaram village, Dharmaram mandal, Karimnagar District to late Sri Ponugoti Muralidhar Rao and Smt Vimala. Did his graduation from Nizam College, Hyderabad and obtained law degree from University of Delhi in the year 1986. Enrolled as advocate in the year 1986. Elevated as Additional Judge, High Court of Andhra Pradesh on 12th April, 2013. Appointed as a permanent Judge of High Court at Hyderabad for the State of Telangana and the State of Andhra Pradesh on 8th September, 2014.

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Hon'ble Dr. Justice
**Shameem Akther**

Born on 1st January, 1961 at Nalgonda to late Smt. Raheemunnisa Begum and late Sri Jan Mohammed. Studied B.Com in Nagarjuna Government Degree College, Nalgonda, obtained Law Degree from University College of Law, Nagpur, completed L.L.M. from P.G.College of Law, Basheerbagh, Hyderabad in the year 1996, obtained Doctorate from Osmania University in the year 2006. Practiced on Civil, Criminal and Revenue side actively in Nalgonda District from 1986 to 2002. Appointed as District and Sessions Judge in the year 2002. Appointed as Judge of the High Court of Judicature at Hyderabad and assumed charge on 17.01.2017.

## HON'BLE JUDGES OF HIGH COURT OF TELANGANA

Hon'ble Sri Justice
**Abhinand Kumar Shavili**

He was born on 08.10.1963 to late Dr. Subba Rao Shavili and late Smt. Sangam Yashoda Shavili. Had School education from St. John's Grammar School, Secunderabad, Intermediate from Nrupatunga Junior College, Hyderabad, B.Sc., Degree from Nizam College (Osmania University, Hyderabad), and LL.B., from Osmania University Campus Law College. Enrolled as an Advocate on 31.08.1989 in the Bar Council of Andhra Pradesh. Initially joined the Chambers of Sri D. Linga Rao, Advocate, and later the Office of former Justice Nooty Rama Mohana Rao when His Lordship was practicing as an Advocate, on 02.02.1993, and gained exposure to various branches of law. Elevated as Judge of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh on 21.09.2017.

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Hon'ble Justice
**G. Sri Devi**

Born on 10th October, 1960 to late Sri G.Visweswara Rao and Smt. G.Shanta. Did her graduation in Science from M.R.College For Women, Vizianagaram, Andhra Pradesh (Andhra University, Visakhapatnam). Secured Law Degree from Rourkela Law College (Sambalpur University) in the year 1986. Joined in the office of Sri A.K.Sahoo, Senior Advocate and practiced in the Civil side at Rourkela District, Sundargarh, in the Subordinate or District Courts, Odisha and thereafter joined in the office of Sri A.Ranga Chary and practiced in the Civil and Revenue side in the erstwhile High Court of Andhra Pradesh, Hyderabad from 2002 to 2005. Appointed as Additional District and Sessions Judge, Jhansi, Uttarpradesh State in the year 2005 and promoted as District and Sessions Judge in the year 2016. Elevated to the Bench as Additional Judge, High Court of Judicature at Allahabad on 22nd November, 2018 and has been transferred and assumed charge as Additional Judge of High Court of Telangana on 15th May, 2019.

## HON'BLE JUDGES OF HIGH COURT OF TELANGANA

Hon'ble Sri Justice
**T. Vinod Kumar**

Born on 17th November, 1964 to late Sri T. Laxmi Narasimha Rao and Smt. T. Shakuntala. Had initial school education at Suryapet in Nalgonda District and thereafter in Hyderabad. Obtained Bachelor of Arts degree and LL.B., from Osmania University. Enrolled as an Advocate in the year 1988 in the Bar Council of Andhra Pradesh and joined in the chambers of Sri Ravi. S, Senior Advocate. Specialized in Tax and Corporate Litigation. Appointed as Senior Standing Counsel for Income Tax in 2015 and as Special Standing Counsel for Commercial Tax in 2016 and continued till elevation. Appointed as Judge of the High Court for the State of Telangana, Hyderabad and sworn-in on 26th August, 2019.

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Hon'ble Sri Justice
**A.Abhishek Reddy**

Honourable Sri Justice A.Abhishek Reddy is the son Sri A.Pulla Reddy, Advocate, and Smt.Dr.A.Shashirekha Reddy, born on 07th November, 1967, and hails from Lingampally village, Manchal Mandal, Ranga Reddy District. He has done his schooling from St.Pauls High School, Hyderguda, Intermediate from Little Flower Junior College, Uppal. On completion of graduation in Arts from Nizam College, Hyderabad, obtained Law Degree from University College of Law, Osmania University, in the year 1990 and enrolled as Advocate in the erstwhile Bar Council of Andhra Pradesh at Hyderabad, in July, 1990. After enrolment, he has joined the chambers of his father. He completed his LL.M. from Washington College of Law, The American University, Washington D.C., in the year 1993 and resumed practise. He was appointed as Government Pleader-cum-Public Prosecutor in the Special Court under A.P.Land Grabbing (Prohibition) Act in the year 2004 and worked as Government Pleader for Higher and Technical Education, in the High Court of Andhra Pradesh from 2007 to 2009. Elevated to the Bench as Permanent Judge, High Court for the State of Telangana at Hyderabad, on 26th August, 2019.

## HON'BLE JUDGES OF HIGH COURT OF TELANGANA

Hon'ble Sri Justice
**K.Lakshman**

He was born on 08.06.1966 to Sri K. Gopal and Smt. K. Sathamma, who hail from an agriculture family. He belongs to Bogaram village of Ramannapet Mandal in Yadadri - Bhuvanagiri District. His school journey had taken place in Government Schools at Bogaram and Ramannapet villages respectively. He did his Graduation with B.Sc., (M.P.C.) from New Science Degree College, Ameerpet, Hyderabad, and later did his LL.B., from V.R. Law College, Nellore. After completion of Law Degree, he enrolled as an Advocate in the year 1993 with the Andhra Pradesh Bar Council and joined in the office of Sri Madiraju Radhakrishna Murthy, Advocate. He got married to A. Manjula Rani. He was blessed with two daughters, Ms. Sreeja and Ms. Himaja. He was appointed as an Assistant Solicitor General of India for the High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh on 24th August, 2017, and after bifurcation of the High Court, served as such for the High Court of Telangana State and discharged his duties till his elevation as a Judge of the Honourable High Court. He has been elevated as a Judge for the High Court of State Telangana and was sworn-in as such in the forenoon of Monday, 26th of August 2019.

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Hon'ble Sri Justice
**B. Vijaysen Reddy**

Born on 22.08.1970 at Hyderabad. His father Justice B. Subhashan Reddy (Late) was a former Chief Justice of Madras and Kerala High Courts and was also former Chairperson of A.P. State Human Rights Commission and former Lokayukta for the States of Andhra Pradesh and Telangana. His grand father Sri B. Aga Reddy (Late) was renowned personality and was a former Examiner of Accounts Jagir Administration in the erstwhile Hyderabad State. He passed LL.B., from Padala Rama Reddy Law College (Osmania University) Hyderabad in 1994. He enrolled as an Advocate on 28.12.1994. As an advocate Justice Reddy practiced in all branches of Law and appeared in High Court in large number of Constitutional, Civil, Revenue and Criminal matters. He practiced as a private lawyer for more than 25 years and commanded good practice in Revenue Laws, Land Ceiling, Tenancy, Land Acquisition Laws, other local laws and also on civil and criminal original side and appellate side and appeared regularly in Hyderabad City and Ranga Reddy District civil, Revenue and criminal Courts. He also appeared for several religious, charitable and social organizations. He has number of reported cases to his credit. He was elevated as a permanent Judge of the High Court for the State of Telangana and assumed charge on 02.05.2020. He delivered lectures on Record of Rights and Comparative Study of Old and New Land Acquisition Acts (Young Lawyers Association, A.P. High Court), Litigation Practice, Land Reforms, Civil Procedure Code (NALSAR University), Working of Constitution (Ranga Reddy District Bar Assocation).

## HON'BLE JUDGES OF HIGH COURT OF TELANGANA

Hon'ble Smt. Justice
**Lalitha Kanneganti**

Hon'ble Smt. Justice Lalitha Kanneganti hails from a reputed family of Cheruvu Jammulapalem Village, Bapatla Mandal, Guntur District. Born to late Sri Kommineni Ankamma Choudary & Smt.K.Amareswari. Her Ladyship did her schooling from St. Theresa's – Erragadda, intermediate from Nagarjuna Junior College – S.R.Nagar, Bachealor of Arts from Sarojini Naidu Vanita Mahavidyalaya – Nampally, Hyderabad. Her Ladyship obtained law degree from Padala Rami Reddy Law College, Osmania University; Hyderabad. Her stint as a law student saw innumerable accolades for outstanding academic achievements.Her Ladyship enrolled as an Advcoate on 28.12.1994 and commenced practice by joining the chambers of Sri M.R.K. Choudary, Sri K.Harinath and Sri O.Manohar Reddy and developed independent practice within a short span of time. Her Ladyship practiced in all areas of law including Civil, Criminal, Constitutional, Taxation, Service, Non-Service, Motor Accident Claims and Matrimonial Cases.Her ladyship was the Standing Counsel for Agriculture Market Committees; English & Foreign Languages University, Endowments; Tirumala Tirupati Devasthanams; Sri Venkateswara Vedic University, Sri Venkateswara Institute of Medical Sciences (SVIMS) and Sanskrit University, Tirupati. Married to Sri K.Vijay Prasad and blessed with a son Mr.K.Gautam and a daughter Ms.Maanasa. Assumed charge as permanent Judge of the High Court of Andhra Pradesh on 02.05.2020. Transferred to the High Court of Telangana and assumed charge as such on 15-Nov-2021.

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Hon'ble Sri Justice
**P. Sree Sudha**

Born to Sri Venkateswarlu and Smt. Padmavathi as their eldest daughter. Father retired as a Judicial Officer and Mother is a home maker. Did her schooling in Adoni, Kurnool District, and intermediate in Kurnool. Graduated in Pulivendula of Kadapa District. Secured Law Degree from A.C. College of Law, Guntur. Enrolled as a member on the rolls of Bar Council of Andhra Pradesh and did practice at Tenali, Srikalahasti and Kavali respectively. Got married to Dr. P. Srikanth Babu, now Principal, BRKR Government Ayurvedic Government Medical College, Hyderabad. Selected as Direct Recruit District Judge and inducted on 21.08.2002 and completed 19 years of service as I Additional District and Sessions Judge, Nizamabad, Special Judge for Bomb Blast Cases-cum-Additional Judge for Family Court, Hyderabad, Chairperson for Land Appellate Tribunal-cum-II Additional District Judge, Hyderabad, Industrial Tribunal for Warangal and Khammam Districts, Judge, Mahila Court, Metropolitan Sessions Judge at Vijayawada, as Principal District and Sessions Judge at Karimnagar, Visakhapatnam, Nizamabad and as Chief Judge, City Civil Court, Hyderabad, Special Judge for ACB Cases, Hyderabad, Chairperson, VAT Appellate Tribunal, Transport Appellate Tribunal and as Director, Judicial Academy, Secunderabad, and gained commendable exposure in various branches of law. Elevated to the Bench as Permanent Judge, High Court for the State of Telangana and assumed charge as such on 15.10.2021.

# HON'BLE JUDGES OF HIGH COURT OF TELANGANA

Hon'ble Dr. Justice
**C. Sumalatha**

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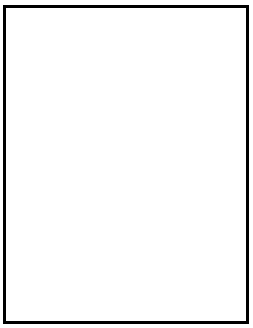
Hon'ble Dr. Justice
**G. Radha Rani**

Born on 29th June 1963 at Tenali, Guntur District, to late Smt. Bharata Rajeswari and late Sri Seetha Ramaiah. Studied Matriculation from Andhra University, Visakhapatnam, Intermediate and B.Sc. (CBZ) from VSR College, Tenali and B.L. from Sir C.R. Reddy Law College, Eluru. Completed L.L.M. from Osmania University, Hyderabad in 2001. Obtained P.G. Diploma in Human Rights from Indian Institute of Human Rights, New Delhi and P.G. Diploma in Intellectual Property Rights from Osmania University, Hyderabad. Obtained Doctorate in Law on the subject Role of Forensic Investigation in Administration of Criminal Justice in India from Osmania University in the year 2009. Married to Sri CLN Gandhi. He retired from State Government Service as Additional Commissioner of Transport. Blessed with two children (1) Mrs.Chetana, Attorney and Legal Consultant and (2) Dr. Mrs.Manavi, MBBS, MD. Enrolled as Advocate with Bar Council of AP on 10.08.1989 and practiced at Eluru, Vijayawada and High Court, Hyderabad. Appointed by direct recruitment as Assistant Public Prosecutor on 15.06.1998, appointed by direct recruitment as Additional Public Prosecutor Grade-II in 2007, worked as Additional Legal Advisor in Director General, Anti-Corruption Bureau in 2008. Selected by direct recruitment as District and Sessions Judge (Entry Level) and worked at Ongole, Hyderabad, Sangareddy and Secunderabad. Worked as Principal District Judge, Nalgonda, Metropolitan Sessions Judge, Hyderabad, Chairperson, Telangana VAT Appellate Tribunal, Hyderabad and worked as Principal District Judge, Ranga Reddy District. Appointed as Judge of the High Court for the State of Telangana, Hyderabad and assumed charge on 15.10.2021.

## HON'BLE JUDGES OF HIGH COURT OF TELANGANA



Hon'ble Mr. Justice
**M. Laxman**

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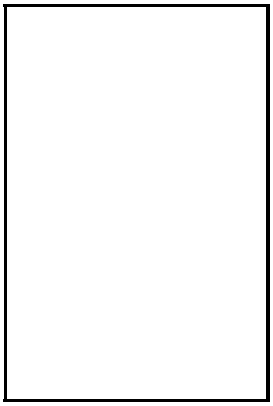

Hon'ble Mr. Justice
**E.N. Tukaramji**

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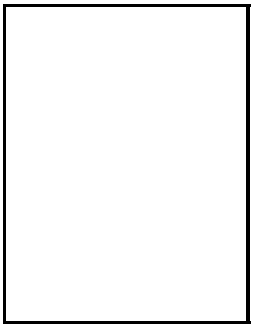

Hon'ble Mr. Justice
**A. Venkateshwara Reddy**

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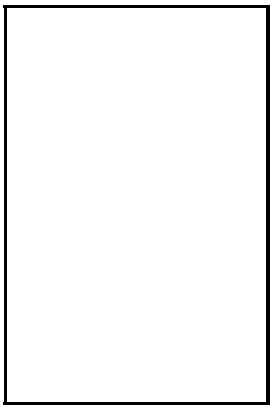

Hon'ble Smt. Justice
**P. Madhavi Devi**

# Law Summary

(Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

PART - 3 (15TH FEBRUARY 2022)

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# SUBJECT - INDEX

**A.P. CHARITABLE AND HINDU RELIGIOUS INSTITUTIONS AND ENDOWMENTS ACT** - Writ Petitions - Whether the Petitioner-Sabha can be registered under the Endowments Act, 1987 and brought within the control and regulation of the Endowments Department and its officers under the provisions of the Act.

HELD: Any religious or charitable institution would be governed and regulated by the Endowment Law applicable to the State in which the head quarters of the said institution is situated - In the event of such an institution holding properties, even extensive properties, in any other State, the law applicable to the institution would remain the Endowment law applicable in the State in which it is situated - Since the Petitioner-Sabha is situated in the State of Tamilnadu, the provisions of the Endowments Act, would not apply to the Petitioner and the registration of the Petitioner, under the provisions of the Endowments Act, 1966 or the Endowments Act, 1987 is not permissible and stands set aside - Authorities under the Endowments Act, 1987 cannot interfere with the activities of the Petitioner. **(A.P.)** ***137***

**CIVIL PROCEDURE CODE,** Sec.104 r/w. Or.43(1)(r) - Civil Miscellaneous Appeal under Sec.104 r/w. Or.43(1)(r) of Code has been filed by the Appellants/Plaintiffs challenging the judgment and order, in I.A. by which their application for grant of temporary injunction under Order 39 Rules 1 and 2 CPC was rejected - Appellants filed a suit for partition of immovable properties and for mesne profits and for declaration of title over B-schedule immovable property and for consequential permanent injunction - Suit was instituted on 27.07.2016, along with I.A. for grant of temporary injunction was also filed with respect to B-schedule property.

HELD: Grant of injunction is a discretionary relief and exercise thereof is subject to the court satisfying that—

(1) There is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant;

(2) Irreparable injury or damage would ensue before the legal right would be established at trial; and

(3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

Unfortunately, Court below has not adverted to the documents filed by the appellants/plaintiffs at least prima facie - Order in I.A. stands set aside and the matter is remanded to the court below for consideration afresh of I.A., in accordance with law, after affording opportunity of hearing to all the parties concerned - Appeal as allowed in part. **(A.P.) 126**

**CIVIL PROCEDURE CODE** - Appeal aggrieved by the judgment of the High Court, dismissing the application filed by the Appellant under Sections 152 and 153 read with Section 151 of the Code of Civil Procedure, seeking modification of the judgment.

HELD: Even assuming there is a mistake, a consent decree cannot be modified/ altered unless the mistake is a patent or obvious mistake - Or else, there is a danger of every consent decree being sought to be altered on the ground of mistake/ misunderstanding by a party to the consent decree - We are unable to agree with the Appellant that there was a mistake committed while entering into a settlement agreement due to misunderstanding - Correspondence between the advocates for the parties who are experts in law would show that there is no ambiguity or lack of clarity giving rise to any misunderstanding – Appeal stands dismissed. **(S.C.) 14**

**CIVIL PROCEDURE CODE,** Or.43, Rl.1 – **TRANSFER OF PROPERTY ACT,** Sec.52 - Whether, Sec.52 of the TRANSFER OF PROPERTY ACT operates as a bar to the grant of temporary injunction under Order 39 Rules 1 and 2 CPC - C.M. Appeals, challenging the judgment and order, passed in I.A. under Order 39 Rules 1 and 2, whereby, I.A. was allowed granting interim injunction restraining the respondents from executing or creating any registered document of alienation or encumbrance in respect of schedule property pending disposal of the suit.

HELD: Sec.52 of T.P. Act, although provides protection to the parties from transfers pendent lite, in as much as it makes such transfers subservient to the decree

that may be passed in the suit, but it does not come in the way of passing an order of temporary injunction restraining alienation of the suit property during the pendency of the suit on the applicant satisfying all the three ingredients of prima facie, balance of convenience and causing irreparable loss or injury in his favour - Distinction between Sec.52 of T.P. Act and Or.39, Rl. 1 and 2 CPC, is that an Order of temporary injunction is of pre-emptive nature restraining the act of alienation by party to the suit where there is such a danger, whereas Sec.52 of T.P. Act comes into play after the alienation takes place during pendency of the suit – No illegality in the Order passed by the Court below granting temporary injunction in favour of the Plaintiff/Respondent - Appellate court will not re-assess the material and seek to reach a conclusion different from the one reached by the Court below if the one reached by that Court was reasonably possible on the material – C.M. Appeals stand dismissed. **(A.P.)** ***104***

**CRIMINAL PROCEDURE CODE,** Sec.482 - Petition seeking quashing of the First Information Report instituted under Section 353 of the Indian Penal Code - Allegation that on a piece of land on which the erstwhile High Court of Andhra Pradesh, had directed for maintenance of status quo - When the officials on knowing that some unknown persons had erected a six-feet statue of Dr. B.R. Ambedkar on a one-foot cement block, for ensuring compliance of the order, reached the site in question, the petitioner is said to have reached the spot and objected to such action by the officials - On the said allegation, the FIR came to be instituted.

HELD: Court finds that the statements of all five officials do not even have a whisper of any gesture and/or the alleged specific overt acts of petitioner which may give an impression that petitioner was about to commit assault - Hence, there is no specific instance of assault or use of criminal force on any public servant attributed to petitioner - Even otherwise, merely a bald allegation that petitioner objected to further action in purported implementation of order of High Court - High Court while exercising its power under Section 482 of Cr.P.C. to quash FIR instituted against second respondent-accused should have applied following two tests: i) whether allegations made in complaint, prima facie constitute an offence; and ii) whether allegations are so improbable that a prudent man would not arrive at the conclusion that there is sufficient ground to proceed with the complaint - Petitioner alone could obstruct three officials in presence of a total of five officials is improbable - Criminal petition stands allowed and FIR is accordingly, quashed. **(A.P.)** ***120***

**(INDIAN)** PENAL CODE, Secs.405, 406, 409, 430, 120-B read with Section 34 – CRIMINAL PROCEDURE CODE - QUASH PETITION - Respondent No.1 is the

complainant in C.C. to prosecute the Petitioners/Accused – Allegation that A1 company, its Directors and some of its officers in conspiracy with one another and with a common intention have unlawfully caused financial loss to the complainant company by indulging in acts of cheating and breach of trust.

HELD: Merely because A3 is the Chairperson, she cannot be prosecuted as no specific role is attributed to her in the instant complaint - As against A12 and A13, though there is an allegation of misrepresentation and assurance of payment, the same cannot be a ground to prosecute them since it is not the assurance of payment for which the accused are being prosecuted - Vicarious liability of the Chairman, Managing Director, Directors and Officers in-charge of a company under criminal law cannot be presumed unless the statute specifically provides for the same - For instance, for the offence under Section 138 of the Negotiable Instruments Act, the vicarious liability is provided for under Section 141 of the Act and such similar provision is not available for the offences under the Indian Penal Code.

No material on record nor any case is made out to proceed against the Petitioners - In the event any evidence is let in by the complainant showing complicity of the petitioners during trial, Complainant is always entitled to proceed against the Petitioners by filing an application under Section 319 Cr.P.C - Criminal petitions are allowed and the proceedings in C.C. are quashed. **(T.S.)** ***88***

**NEGOTIABLE INSTRUMENTS ACT,** Sec.138 - Criminal Petition by the Accused Nos.5, 7, 8 and 9 to quash the proceedings in C.C. - Allegation that the complainant is a wholesale dealer in gold and jewellery business - A1 is the Jewellery Shop and A3 to A9 are the Directors of A1 company.

HELD: Mere assurance of payment or selection of jewellery cannot be the basis to rope in the Petitioners - Mere verbatim reproduction of the words contained in Sec.141 of the Negotiable Instruments Act without any specific role attributed to each of the petitioners in the A1 company, cannot be the basis to prosecute the Petitioners, as the same would be unjust and result in abuse of process of law - Complaint, where no specific role is attributed to the Director Accused, is liable to be quashed - Criminal Petition stands allowed and the proceedings in CC., against the Petitioners/ Accused Nos.5, 7, 8 and 9, are hereby quashed. **(T.S.)** ***78***

**NEGOTIABLE INSTRUMENTS ACT,** Sec.138 - Criminal Petition is filed to quash the proceedings in C.C., wherein the Petitioner is arrayed as A2 - Case of the Complainant/Respondent No.2 that A1/Company owes the complainant a sum, were issued by A1/company towards discharge of its liability - A2 is the Vice President of A1/company.

HELD: It is not in dispute that the petitioner accused No.2 was shown in cause title as Vice President, but there is no averment in the entire complaint that all the accused are responsible for day to day affairs of the Company - Basic reading of the complaint would not prima facie disclose commission of any offence, so as to prosecute the petitioner for the offence under Sec.138 read with 141 of the Act - Court exercising equitable jurisdiction may decline to grant relief to the party if he or she approaches the Court with unclean hands - However, such suppression should be of material facts - In the instant case dismissal of discharge petition cannot be considered to be a material fact - Criminal petition stands allowed quashing the proceedings in C.C. **(T.S.)** ***82***

***--X--***

**Usage of Legislative History while Interpreting the Statutes: – An Introduction.**

By
**Dr.Y.Srinivasa Rao**,
M.A (English Lit.)., B.Ed., LL.M., Ph.D in Law of Torts,
Principal Senior Civil Judge, Tirupati.

***The constitutional function performed by courts of justice as interpreters of the written law laid down in Acts of Parliament is often described as ascertaining 'the intention of Parliament'.*** *- Fothergill vs. Monarch Airlines Ltd[1],*

**Introduction:**

For determination of intention of the legislature of a particular of enactment, interpretation of statutes is essential because it is the objective of the interpretation of statues. To decide and regulate, the elucidation of the statutory language is to be determined. While interpreting statute, considering the legislative intention is pivotal and necessitous. Having conscious of legislative history is also significant. Nevertheless the tendency in common law, for interpretation, is according to the letter of law, in recent times, the civil law practice slopes towards interpreting an act commensurate with its spirit. What are the methods of interpretation of a statute? Social needs, comparative law and history, ideals which are prevalent at that point of time are potent factors for consideration of a judge.

**Legislative history**:- The basis for legislative history of a statute can be summed up as Statement of reasons for a Bill, Committee Reports, Review of existing law and need of changes, if any, and Parliamentary debates etc. A judge , while interpreting a provision of a statute, may take assistance of such material, as an aid, to give reasons for his decision. How to trace the will of a legislator, who is no more? Alternatively, to track the will of a legislator, there is a clue. According to *Francois Geny*, Social needs, comparative law and history, ideals which are prevalent at that point of time are to be considered for interpretation of a statute. The English Judge, in *Fothergill vs. Monarch Airlines Ltd*[2], it was held that 'Although on a literal interpretation in an English legal context 'loss' was to be differentiated from 'damage', that was not an appropriate method of interpretation of an international convention, such as the Warsaw Convention, which was incorporated by statute into English law.'.

Legislative history is an aid to interpret the statute is succinctly explained in *Fothergill vs. Monarch Airlines Ltd*[3], as follows:-

> ''The constitutional function performed by courts of justice as interpreters of the written law laid down in Acts of Parliament is often described as ascertaining 'the intention of Parliament'; but what this metaphor, though convenient, omits to take into account is that the court, when acting in its interpretative role, as well as when it is engaged in reviewing the legality of administrative action, is doing so as mediator between the state in the exercise of its legislative power and the private citizen for whom the law made by Parliament constitutes a rule binding on him and enforceable by the executive power of the state. Elementary justice or, to use the concept

> often cited by the European court, the need for legal certainty, demands that the rules by which the citizen is to be bound should be ascertainable by him (or, more realistically, by a competent lawyer advising him) by reference to identifiable sources that are publicly accessible. The source to which Parliament must have intended the citizen to refer is the language of the Act itself. These are the words which Parliament has itself approved as accurately expressing its intentions. If the meaning of those words is clear and unambiguous and does not lead to a result that is manifestly absurd or unreasonable, it would be a confidence trick by Parliament and destructive of all legal certainty if the private citizen could not rely on that meaning but was required to search through all that had happened before and in the course of the legislative process in order to see whether there was anything to be found from which it could be inferred that Parliament's real intention had not been accurately expressed by the actual words that Parliament had adopted to communicate it to those affected by the legislation."

To say in short, the legislative history can be used only to trace the intention of the legislator but to explain the meaning of statutory provision.

**What are the restrictions for the usage of legislative history by the Judges?**

It is quite difficult to screen off or shut away useful information if it is available within the parliamentary record. There are certain restrictions for usage of legislative history while interpreting provisions of a statute. In fact, English judges generally refuse to use of legislative history to interpret the provisions of an enactment as held by the Privy Council[4]. It is thus 'parliamentary material' is inadmissible in English Courts and they refuse to consider 'parliamentary material'. Curiously enough, in 1979, the Law Commission submitted a report and recognized that the record of parliament, which was considered for a statute, is relevant to know the intention of the statute. As to 'reliability on such material' is concerned, it emphasized that the purpose of debate is not to explain the meaning but to secure enactment; and the procedure of parliament does not produce any material that is suited for interpretation of a statute. '*Hansard'* means the official report of all Parliamentary debates. The Law Commission was also the view that Judges should continue to prohibit for consideration of *Hansard*. One of the other reasons is that *Hansard* is widely available to advocates.

It is a settled position that it is legitimate to look at the useful material such a report of a committee leading to legislation in order to see the mischief which statute tried to curb and keep under control. The parliamentary material may be used to assist the judges in determining the intention of the parliament.

As was held in R Vs. Bishop of London[5], where the words of the Act are clear, it is not necessary to look at the history of legislation. If the words of the Act are of capable of two meanings, it may be material to look at the history of such an enactment.

In 1993, in the case of Pepper Vs. Hart, it was held that English Courts can consider the parliamentary material where

1. legislation is ambiguous and obscure or leads to an absurdity;
2. to understand the statements of ministers or promoter of the Bill, if necessary;
3. such statements that are relied on are clear.

Lord Reid opines that allowing reference would increase time and expense and that reference to parliamentary material would be of a little help in interpretation of statutes. However, in the decision of Pepper Vs. Hart, it was opined that non availability of parliamentary material was not shown as a problem in practice. In spite of everything, the new trend in English courts is such that there is open usage of parliamentary material for interpretation statutes but it should be limited.

In America, the principle is that the judge should interpret the law rather than reconstruct the intention of legislators. They consider that the debates in Congress are not appropriate or reliable to interpret the meaining of language of an Act. A system of judicial construction should not be converted into a system of committee-staff prescription, by using parliamentary material as opined by *Scalia, J*. His Lordship opines that placing reliance on legislative history is not merely a waste of research time and ink; it is a false and disruptive lesson in the law[6].

It is well accepted is that 'legislative material can be cited to support almost any proposition, and frequently is.' Even the French Government make efforts to disseminate parliamentary material, for the reason that such material is not accessible to majority of advocates. Prof. Peter Strauss opines that Acts ought to be interpreted on the basis of what they say, not what their legislative history might appear to reveal. Further, it is curious to note that Legislative history is a product of evolution and so it is not to be disregarded. *Henri Capitant* believes that parliamentary debates lead to the expression of the personal views, rather than a general sense of the spirit of the law.

In *State Of West Bengal vs M/S. B. K. Mondal And Sons[7], the Hon'ble Supreme Court of India held as follows: '*The question as to whether mandatory provisions contained in statutes should be considered merely as directory or obligatory has often been considered in judicial decisions. In dealing with the question no general or inflexible rule can be laid down. It is always a matter of trying to determine the real intention of the Legislature in using the imperative or mandatory words, and such intention can be gathered by a careful examination of the whole scope of the statute and the object intended to be achieved by the particular provision containing the mandatory clause.*'*
Recently, in 2019, in *Pioneer Urban Land And ... vs Union Of India[8], relying on the dicta in Mardia Chemicals Ltd. Etc. Etc vs U.O.I. & Ors*[9] *, held that p*arliamentary intent cannot be thwarted even if it operates a bit harshly on a small section of the public, if otherwise made in the larger public interest. *In* in Cellular Operators Association of India v. TRAI (2016) 7 SCC 703, the Apex Court of India held that when a provision is cast in definite and unambiguous language, it is not permissible either to mend or bend it, even if such recasting is in accord with good reason and conscience. *It was further held that* the expression "means and includes" would indicate that that the definition section is exhaustive. *"w*hat is an exhaustive definition is exhaustive for purposes of interpretation of a statute by the Courts, which cannot bind the legislature when it adds something to the statute by way of amendment".
In '*Principles of Statutory Interpretation*[10]', states as follows:
"As approved by the Supreme Court: "The question as to whether a statute is mandatory of directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed.

In *M/S Delhi Airtech Services Pvt. ... vs State Of U.P. & Anr*[11]*, observed as infra***:** ''The meaning and intention of the legislation must govern, and these are to be ascertained not only from the phraseology of the provision, but also by considering its nature, its design and the consequences which would follow from construing it the one way or the other" "For ascertaining the real intention of the Legislature", points out Subbarao, J, "the court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other;the impact of the other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered". If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory, serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory. But all this does not mean that the language used is to be ignored, but only that the prima facie inference of the intention of the Legislature arising from the words used may be displaced by considering the nature of the enactment, its design and the consequences flowing from alternative construction. Thus, the use of the words `as nearly as may be' in contrast to the words `at least' will prima facie indicate a directory requirement, negative words a mandatory requirement `may' a directory requirement and `shall' a mandatory requirement."

**Conclusion:**

Legislative material is evidence can be used to reach legal conclusions. The reliability and veracity are significant factor to accept the evidence in legal proceedings. Because of disrupting language game, it leads to many difficulties to understand the meaning of the provisions of the statutes 'what rightly represents what' and smothering the chances of enlightenment and reliable answers about that which is not yet clearly signified in the enactment. Legislative history does not confer any guarantee clarification of the statutory provisions under interpretation. As was observed by the Apex Court in several decisions, parliamentary intent cannot be thwarted even if it operates a bit harshly on a small section of the public, if otherwise made in the larger public interest. Holmes says that 'We do not inquiry what the legislature meant , we ask only what the statue means'.

**(Footnotes)**

1.*(1980) 2 All ER 696*
2.*ibid*
3.*ibid*
4.See.*The Use of Legislative History in Statutory Interpretation* by ROBERT J. ARAUJO, S.J.
5.(1890) 24 QBD p. 213
6. 480 US 421 [1987] as cited in Stephaine Wald.
7. AIR 1962 SC 779
8.AIR 2019 SC 4055
9. (2004) 4 SCC 311

**-X-**

5. Sri M.Radha Krishna, learned counsel for the petitioners, mainly placed reliance on G.O.Ms.No.145, dated 25.4.2015, and contends that respondent No.4/V.R.O is incompetent to issue such an endorsement.

6. Learned Assistant Government Pleader for Revenue contended that there are no family members to the deceased and the petitioners/applicants will not fall within Class-I legal heirs of the deceased as per Hindu Succession Act, 1956; that the petitioners did not mention the basis for their claim and therefore, the respondents are not under an obligation to issue the Family Member Certificate.

7. Since the question is about competency of V.R.O. to issue such an endorsement, examination of competency is suffice to decide the real controversy involved in this petition. In G.O.Ms.No.145, Revenue (SER.II) Department, dated 25.4.2015, procedure is laid down and according to Clause (i), on an application made through Meeseva, the Tahsildar shall issue Family Member Certificate, provided there is no written objection from any other member of the family. This Clause (i) itself is sufficient to decide the incompetency of V.R.O. to hold that the V.R.O. is incompetent, since Tahsildar alone shall issue Family Member Certificate as per Clause (i) of the procedure. Similarly, as per Clause (vii), after the expiry of the notice period, the Tahsildar or any other officer deputed by him shall conduct enquiry and record panchanama, based on which the Tahsildar shall either issue the certificate or reject the same. Thus, the Tahsildar alone is competent either to issue or reject the Family Member Certificate but in the present case, the V.R.O. issued the endorsement, which is impugned in the writ petition. Therefore, the V.R.O. is incompetent to issue such an endorsement in terms of G.O.Ms.No.145, dated 25.4.2015. On this ground alone, the endorsement impugned in the writ petition is liable to be set aside.However, the matter is to be remitted back to respondent No.3/ Tahsildar to follow procedure prescribed in G.O.Ms.No.145, dated 25.4.2015, and process the application of the petitioners.

8. In the result, the Writ Petition is allowed declaring that the endorsement, dated nil, issued by respondent No.4 is in violation of the procedure prescribed in G.O.Ms.No.145, Revenue (SER.II) Department, dated 25.4.2015, and consequently, set aside the same while remitting the matter to respondent No.3/ Tahsildar, Kankipadu for fresh disposal as per law in view of the request of the petitioners for issuance of Family Member Certificate and strictly adhering to the procedure prescribed under G.O.Ms.No.145, Revenue (SER.II) Department, dated 25.4.2015. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

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## 2022(1) L.S. 104 (A.P.) (D.B.)

IN THE HIGH COURT OF
ANDHRA PRADESH

Present
The Hon'ble Mr.Justice
C. Praveen Kumar &
The Hon'ble Mr.Justice
Ravi Nath Tilhari

K.Ravi Prasad Reddy ..Petitioner
Vs.
G. Giridhar ..Respondent

**CIVIL PROCEDURE CODE, Or.43, Rl.1 – TRANSFER OF PROPERTY ACT, Sec.52 - Whether, Sec.52 of the TRANSFER OF PROPERTY ACT operates as a bar to the grant of temporary injunction under Order 39 Rules 1 and 2 CPC - C.M. Appeals, challenging the judgment and order, passed in I.A. under Order 39 Rules 1 and 2, whereby, I.A. was allowed granting interim injunction restraining the respondents from executing or creating any registered document of alienation or encumbrance in respect of schedule property pending disposal of the suit.**

**HELD: Sec.52 of T.P. Act, although provides protection to the parties from transfers pendent lite, in as much as it makes such transfers subservient to the decree that may be passed in the suit, but it does not come in the way of passing an order of temporary injunction restraining alienation of the suit property during the pendency of the suit on the applicant satisfying all the three ingredients of prima facie, balance of convenience and causing irreparable loss or injury in his favour - Distinction between Sec.52 of T.P. Act and Or.39, Rl. 1 and 2 CPC, is that an Order of temporary injunction is of pre-emptive nature restraining the act of alienation by party to the suit where there is such a danger, whereas Sec.52 of T.P. Act comes into play after the alienation takes place during pendency of the suit – No illegality in the Order passed by the Court below granting temporary injunction in favour of the Plaintiff/ Respondent - Appellate court will not re-assess the material and seek to reach a conclusion different from the one reached by the Court below if the one reached by that Court was reasonably possible on the material – C.M. Appeals stand dismissed.**

Y. Ratna Prabha, Advocate for the Petitioner.
Mr.P.Nagendra Reddy, Advocate for the Respondent

**C O M M O N J U D G M E N T**
(per the Hon'ble Mr.Justice
Ravi Nath Tilhari )

1. Heard Sri O.Manohar Reddy, learned counsel for the appellant/1st defendant in CMA.No.45 of 2021, Sri Y.Ratna Prabha, learned counsel for the appellants/defendants Nos.2 & 3 in CMA.No.43/2021 and Sri P.Nagendra Reddy, learned counsel for the 1st respondent/ plaintiff in CMA.No.45 of 2021 and perused the material on record.

2. The appellants in CMA.No.43 of

2021 are defendants Nos.2 & 3 and the appellant in CMA No.45 of 2021 is the 1st defendant. The plaintiff is shown as 1st respondent in both the appeals. These two Civil Miscellaneous Appeals are filed under Order 43 Rule-1 of Code of Civil Procedure (for short "CPC") challenging the judgment and order, dated 04.12.2020, passed by the IV Additional District Judge, Kurnool in I.A.No.334 of 2017 under Order 39 Rules 1 and 2 CPC in O.S.No.108 of 2017 (G.Giridhar v. S.Chandra Mohan Reddy and others), by which, I.A.No.334 of 2017 was allowed granting interim injunction restraining the respondents therein, their agents, successors or anybody on their behalf from executing or creating any registered document of alienation or encumbrance in respect of petition schedule property pending disposal of the suit.

3. The facts of the case, briefly stated are that the plaintiff/1st respondent filed O.S.No.108 of 2017 seeking a decree for specific performance of the agreement of sale, dated 11.03.2014 against the 1st defendant directing him to perform his part of the agreement by receiving the entire balance of sale consideration in respect of the suit schedule property and in case of his failure to do so, to enable the plaintiff/ 1st respondent to get the same performed through the process of court and to deliver vacant possession of the property.

4. The suit has been filed on the pleadings inter alia that the 1st defendant is the absolute owner of the suit schedule land and he had executed agreement of sale, dated 11.03.2014 in plaintiff's favour. Out of total sale consideration of Rs.75,00,000/-, the 1st defendant received a sum of Rs.1,00,000/- on the date of execution of the agreement of sale towards advance and had agreed to receive the balance of sale consideration of Rs.74,00,000/- in two instalments, viz., Rs.18,50,000/- within 25 days, i.e., on or before 05.04.2014, and Rs.55,50,000/- within 5 months, i.e., on or before 05.09.2014 from the date of agreement of sale. The plaintiff offered to pay the balance of sale consideration as per the schedule fixed under the agreement of sale, but on one or other reason the 1st defendant was not ready to receive the same, however, the 1st defendant collected a sum of Rs.2,00,000/- on 30.06.2014, Rs.5,00,000/ - on 05.04.2016 and Rs.1,00,000/- on 07.04.2016 from the plaintiff towards part of balance sale consideration by making necessary part payment endorsements on the respective dates of receipt on the reverse of the first page of the agreement of sale. The plaintiff had been repeatedly asking the 1st defendant to receive the remaining balance sale consideration and to execute the registered sale deed in his favour, but in spite thereof as also the legal notice, dated 29.10.2017, issued and served, the 1st defendant continued postponing execution of the sale deed on one or other pretext. The plaintiff pleaded that he had always been ready and willing to perform his part of the contract.

5. During pendency of the suit, the 1st defendant alienated the suit schedule property in favour of defendants Nos.2 & 3/the appellants in CMA No.43 of 2021 under a registered sale deed, dated 26.10.2019. Consequently, the plaintiff amended the plaint and impleaded the defendants Nos.2 and 3 as party in the suit.

6. Along with the plaint, the plaintiff/ 1st respondent also filed an application under Order 39 Rules 1 and 2 CPC for grant of interim injunction, restraining the 1st respondent, his representatives, successors or anybody on his behalf from executing or creating any registered document of alienation or encumbrance in respect of petition schedule property pending disposal of the suit.

7. The 1st defendant/appellant in CMA.No.45/2021 filed objection/counter, denying the averments of the petition and contending that the plaintiff is falsely pleading that the respondent is selling the property and that there is no necessity for restraining the alienation of the property as the plaint filed by the plaintiff is registered and notice has been on the said respondent. He further pleaded that in view of specific provision of Section 52 of Transfer of Property Act (for short "T.P.Act"), there is no necessity for expressive order as provided in the civil procedure code. Such a pre-emptive restraining order would affect the right to property conferred on the respondent, who will be well within his right to sell the property to the prospective buyers after informing and appraising about the pendency of the suit.

8. Defendants Nos.2 & 3/appellants in CMA No.43/2021 also filed counter denying the averments of the plaint/petition and contending that the said respondents were not aware of the suit filed by the plaintiff seeking for specific performance of the agreement of sale, dated 11.03.2014, against 1st defendant and that they purchased the suit schedule property under a registered sale deed, dated 26.10.2019, vide Doc.No.12694 of 2019. The claim of the petitioner was barred by limitation. They also contended that in pursuance of the sale deed, dated 26.10.2019, the physical possession of the plaint schedule property had been handed over to them and they, in turn, sold part out of the suit schedule property to an extent of Ac.24.00 cents, located in Sy.No.97/A2 of Kallur village limits to others.

9. The learned IV Additional District Judge, Kurnoolvide order, dated 04.12.2020, allowed the petition and granted the interim injunction, as mentioned above, against which the present appeal has been filed.

10. The learned counsel for the appellants/defendants submits that in view of Sec.52 of T.P.Act, the appellant will be well with his right to sell the property even during pendency of the suit before the court which right cannot be taken away by grant of temporary injunction. Any transfer made lis pendens before the court shall abide by Sec.52 of T.P.Act and consequently, there was no occasion for the court below to have passed the order of temporary injunction. The further submission is that when a registered sale deed, dated 26.10.2019, had already been executed in favour of defendant Nos.2 & 3 by the 1st defendant, no injunction should have been granted.

11. Per contra, Sri P.Nagendra Reddy, learned counsel for the 1st respondent/ plaintiff, submits that Sec.52 of T.P.Act is not a bar to the exercise of the power to grant temporary injunction under Order 39 Rules 1 and 2 CPC. He further submits that the learned court below while granting temporary injunction has recorded a specific

finding that the plaintiff established prima facie case and balance of convenience in his favour, and also that if the defendants were not restrained by order of injunction from making any further alienation, they might execute further sale deeds in favour of third persons, giving rise to multiplicity of proceedings and causing irreparable loss and injury to the plaintiff. He further submits that the appellant/1st defendant had admitted that he had transferred part of the suit property in favour of appellants/ respondents Nos.2 and 3, who in turn had also transferred part of the property in favour of third persons, and when taking note of these facts, the learned trial court granted the temporary injunction, such order needs no interference by this court in the exercise of appellate jurisdiction.

12. In reply, the learned counsel for the appellants/defendants submits that by the time the transfer was made by the 1st defendant in favour of defendants Nos.2 & 3 there was no order of temporary injunction. Such transfer would abide by the ultimate decree in view of Sec.52 of T.P.Act.

13. We have considered the submissions advanced by the learned counsel for the parties and perused the material on record.

14. In view of the submissions advanced, the following points arise for consideration and determination;

i) Whether Section 52 of the Transfer of Property Act operates as a bar to the grant of temporary injunction under Order 39 Rules 1 and 2 CPC?

ii) Whether the impugned order granting temporary injunction suffers from any error of law or of jurisdiction and calls for interference in the exercise of appellate jurisdiction?

15. So far as the first point is concerned it would be appropriate to consider the relative scope of Section 52 of the Transfer of Property Act and Order 39 Rules 1 and 2 CPC.

16. Section 52 of the Transfer of Property Act reads as under:

> "52. Transfer of property pending suit relating thereto - During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceeding which is not collusive and in. which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.
>
> Explanation.-- For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding

has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force."

17. In A.Nawab John v. V.N.Subramaniyam (2012) 7 SCC 738) the Hon'ble Supreme court held that Section 52 of the Transfer of Property Act incorporates the doctrine of lis pendens, and it stipulates that during the pendency of any suit or proceeding in which any right to immovable property is, directly or specifically, in question, the property, which is the subject matter of such suit or proceeding cannot be transferred or otherwise dealt with, so as to affect the rights of any other party to such a suit or proceeding. It has further been held that it is also settled legal position that the effect of Section 52 is not to render transfers effected during the pendency of a suit by a party to the suit void; but only to render such transfers subservient to the rights of the parties to such suit, as may be, eventually, determined in the suit. In other words, the transfer remains valid subject to the result of the suit. The pendent lite purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the court. It is relevant to reproduce paragraphs Nos.16, 17 and 18 as under:

"16. This Court in Jayaram Mudaliar v. Ayyaswami3 (paras 42 to 44) quoted with approval a passage from Commentaries on the Laws of Scotland, by Bell, which explains the doctrine of lis pendens: (SCC p. 217, para 43)

"43. … Bell, in his Commentaries on the Laws of Scotland, said that it was grounded on the maxim: 'Pendente lite nibil innovandum'. He observed:

'It is a general rule which seems to have been recognised in all regular systems of jurisprudence, that during the pendence of an action, of which the object is to vest the property or obtain the possession of real estate, a purchaser shall be held to take that estate as it stands in the person of the seller, and to be bound by the claims which shall ultimately be pronounced.'"

17. Section 524 of the Transfer of Property Act, 1882 (for short "the TP Act") incorporates the doctrine of lis pendens and it stipulates that during the pendency of any suit or proceeding in which any right to immovable property is, directly or specifically, in question, the property, which is the subject-matter of such suit or proceeding cannot be "transferred or otherwise dealt with", so as to affect the rights of any other party to such a suit or proceeding. The section is based on the principle:

"41. …'… that it would plainly be impossible that any action or suit could be brought to a successful termination, if alienations pendente lite were permitted to prevail. The

plaintiff would be liable in every case to be defeated by the defendant's alienating before the judgment or decree, and would be driven to commence his proceedings de novo, subject again to be defeated by the same course of proceeding.' (Bellamy v. Sabine5, ER p. 849) Quoted with approval by this Court in Vinod Seth v. Devinder Bajaj6. (SCC p. 20, para 41)

18. It is settled legal position that the effect of Section 52 is not to render transfers effected during the pendency of a suit by a party to the suit void; but only to render such transfers subservient to the rights of the parties to such suit, as may be, eventually, determined in the suit. In other words, the transfer remains valid subject, of course, to the result of the suit. The pendente lite purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the court.

"12. … The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court." (Sanjay Verma v. Manik Roy7, SCC p. 612, para 12.)

18. In Jagan Singh v. Dhanwanti (2012) 2 SCC 628) the Hon'ble Supreme Court held that the broad principle underlying Section 52 of the Transfer of Property Act is to maintain the status quo unaffected by the act of any party to the litigation pending its determination. Even after the dismissal of a suit, a purchaser is subject to lis pendens, if an appeal is afterwards filed. The doctrine of lis pendens is founded in public policy and equity.

19. In Madhukar Nivrutti Jagtap v. Pramila Bai Chandulal Parandekar (2020) 15 SCC 731) the Hon'ble Supreme Court reiterated that the effect of Section 52 of T.P.Act would not be that every transaction on being hit by Section 52 of T.P.Act is illegal or void ab initio. The effect of doctrine of lis pendens is not to annul all the transfers effected by the parties to a suit but only to render them subservient to the rights of the parties under the decree or order which may be made in that suit. Its effect is only to make the decree passed in the suit binding on the transferee i.e., the subsequent purchaser. The transfer remains valid subject to the result of the suit. It is relevant to reproduce paragraph No.14 with its sub-paras as under:

"14. The third question as regards the sale transactions in favour of the present appellants (the subsequent purchasers) need not detain us longer, except to correct an error on the part of the High Court where it is observed that such sale deeds are to be treated as illegal.

14.1. The suit in question was filed on 26-8-1968. So far the sale transaction in favour of Defendants 4 & 5 (Appellants 1 & 2 herein), in relation to 25 acres of land out of the suit property, is concerned, the same was effected by way a sale deed registered only on 10-7-1978 i.e. nearly 10

years after filing of the suit. So far the sale transaction in favour of Defendant 6 (Appellant 3 herein), in relation to other 25 acres of land out of the suit property, is concerned, though it is suggested that there had been an agreement (dated 8-5-1968) in his favour before filing of the suit but then, admittedly, the sale transaction was effected by way of a sale deed registered only on 18-9-1968, that had also been after filing of the suit. The suggestion about want of knowledge of the subsequent purchasers about the transaction of the vendors with the plaintiffs and about the pendency of the suit has been considered and rejected by the High Court and even by the subordinate court after due appreciation of evidence on record; and we are unable to find any infirmity in these findings. Both the sale transactions in favour of the present appellants, purporting to transfer the suit property in part, having been effected after filing of the suit, are directly hit by the doctrine of lis pendens, as embodied in Section 52 of the Transfer of Property Act, 1882 that reads as under:

"52. Transfer of property pending suit relating thereto.—During the pendency in any court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the court and on such terms as it may impose.

Explanation.— For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force."

14.2. In Guruswamy Nadar12, this Court has held as under: (SCC p. 800, para 13)

"13. Normally, as a public policy once a suit has been filed pertaining to any subject-matter of the property, in order to put an end to such kind of litigation, the principle of lis pendens has been evolved so that the litigation may finally terminate without intervention of a third party. This is because of public policy otherwise no litigation will come to an end. Therefore, in order to discourage that same subject-matter of property being subjected to subsequent sale to a third person, this kind of transaction is to be checked. Otherwise, litigation will never come to an end."

14.3. The aforesaid observations in no way lead to the proposition that any transaction on being hit by Section 52 ibid., is illegal or void ab initio, as assumed by the High Court. In Sarvinder Singh6, as relied upon by the High Court, the subsequent purchasers sought to come on record as defendants and in that context,

this Court referred to Section 52 of the TP Act and pointed out that alienation in their favour would be hit by the doctrine of lis pendens. The said decision is not an authority on the point that every alienation during the pendency of the suit is to be declared illegal or void. The effect of doctrine of lis pendens is not to annul all the transfers effected by the parties to a suit but only to render them subservient to the rights of the parties under the decree or order which may be made in that suit. In other words, its effect is only to make the decree passed in the suit binding on the transferee i.e. the subsequent purchaser. Nevertheless, the transfer remains valid subject, of course, to the result of the suit. In A. Nawab John10, this Court has explained the law in this regard, and we may usefully reiterate the same with reference to the following: (SCC p. 746, para 18)

"18. It is settled legal position that the effect of Section 52 is not to render transfers effected during the pendency of a suit by a party to the suit void; but only to render such transfers subservient to the rights of the parties to such suit, as may be, eventually, determined in the suit. In other words, the transfer remains valid subject, of course, to the result of the suit. The pendente lite purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the court."

14.4. Hence, the effect of Section 52 ibid., for the purpose of the present case would only be that the said sale transactions in favour of the appellants shall have no adverse effect on the rights of the plaintiffs and shall remain subject to the final outcome of the suit in question. However, the High Court, while holding that the said transactions were hit by lis pendens, has proceeded to observe further that the sale deeds so made in favour of the present appellants were illegal. These further observations by the High Court cannot be approved for the reasons foregoing."

20. Order 39 Rules 1 and 2 of CPC reads as under:

"Order-XXXIX, Rule-1. Cases in which temporary injunction may be granted.- Where in any Suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,the court may by Order grant a temporary injunction to restrain such act, or make such other Order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the court thinks fit, until the disposal of the suit or until further orders."

"Order-XXXIX, Rule-2. Injunction to restrain repetition or continuance of breach.- (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The court may by Order grant such injunction, on such terms, as to the duration of the injunction, keeping an account, giving security, or otherwise, as the court thinks fit."

21. In Dalpat Kumar v. Prahlad Singh (1992) 1 SCC 719) the Hon'ble Supreme Court has held that grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it. The Hon'ble Apex Court further held that there should be prima facie case in favour of the applicants which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted.

22. In Wander Ltd. v. Antox India P.Ltd. (1990 (Supp) SCC 727) the Hon'ble Supreme Court has held that usually, the prayer for grant of an interlocutory injunction

is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary and is intended to preserve in status quo, the rights of parties which may appear on a prima facie case.

23. In Shiv Kumar Chadha v. Municipal Corpn. of Delhi (1993) 3 SCC 161) it has been held by the Hon'ble Supreme Court that the grant of injunction is within the discretion of the court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The purpose of temporary injunction is, thus, to maintain the status quo. The court grants such relief according to the legal principles – ex debito justitiae. Before any such order is passed the court must be satisfied that a strong prima facie case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him. Paragraph No.30, in which the Hon'ble Supreme Court has held as under, is being reproduced:-

"30. It need not be said that primary object of filing a suit challenging the validity of the order of demolition is to restrain such demolition with the intervention of the court. In such a suit the plaintiff is more interested in getting an order of interim injunction. It has been pointed out repeatedly that a party is not entitled to an order of injunction as a matter of right or course. Grant of injunction is within the discretion of the court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The purpose of temporary injunction is, thus, to maintain the status quo. The court grants such relief according to the legal principles — ex debito justitiae. Before any such order is passed the court must be satisfied that a strong prima facie case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him."

24. From the aforesaid, we are of the considered view that Section 52 of T.P.Act although provides protection to the parties from transfers pendent lite, in as much as it makes such transfers subservient to the decree that may be passed in the suit, but it does not come in the way of passing an order of temporary injunction restraining alienation of the suit property during the pendency of the suit on the applicant satisfying all the three ingredients of prima facie, balance of convenience and causing irreparable loss or injury in his favour.

25. The distinction between Section

52 of T.P.Act and Order 39 Rules 1 and 2 CPC, is that an order of temporary injunction is of preemptive nature restraining the act of alienation by party to the suit where there is such a danger, whereas Section 52 of T.P.Act comes into play after the alienation takes place during pendency of the suit. Section 52 of T.P.Act provides for the consequences of a transfer taking place pending litigation, i.e., that the pendent lite purchaser would be entitled to or suffer the same legal rights and obligations of his vendor(s) that may be finally determined by the court. Section 52 of T.P.Act does not come in the way of applicability of Order 39 Rules 1 & 2 CPC. In other words, notwithstanding Section 52 of T.P.Act making the transfers during pendency of the suit subject to the ultimate decree that may be passed in the suit, the court may, pass an order of temporary injunction, if all the requisite pre-conditions for such grant are satisfied. If an order is passed and transfer is restrained, the question of applicability of Section 52 of T.P.Act will not arise as then there will be no transfer pending litigation. On the other hand, if the party does not apply for temporary injunction or if the application is rejected and the suit property is transferred pending litigation, Section 52 of T.P.Act shall come into play and those transfers would abide by the ultimate result of the suit.

26. In Sm.Muktakesi Dawn and others v. Haripada Mazumdar and another (1987 SCC Online Cal 51) the contention raised that an injunction restraining the defendant from transferring the suit property was absolutely unnecessary as no post-suit transfer by the defendant can adversely affect the result of the suit because of Section 52 of the T.P.Act whereunder all such transfers abide by the result of the suit, was rejected by the Division Bench of the Calcutta High Court holding that the court will in many cases interfere and preserve property in status quo during the pendency of a suit in which the rights to it are to be decided and though the purchaser pendent lite would not gain title. It is relevant to reproduce paragraphs Nos.4 and 5 as under:

"4. Mr. Roy Chowdhury has secondly urged that an injunction restraining the defendant from transferring the suit property was absolutely unnecessary as no post-suit transfer by the defendant can adversely affect the result of the suit because of the provisions of Section 52 of the T. P, Act whereunder all such transfers cannot but abide by the result of the suit. It is true that the doctrine of lis pendens as enunciated in Section 52 of the T. P. Act takes care of all pendente lite transfers; but it may not always be good enough to take fullest care of the plaintiffs interest vis-a-vis such a transfer. The suit giving rise to the impugned order is one for specific performance of sale in respect of the suit property and if the defendant is not restrained from selling the property to a third party and accordingly a third party purchases the same bona fide for value without any notice of the pending litigation and spends a huge sum for the improvement thereof or for construction thereon, the equity in his favour may intervene to persuade the Court to decline, in the exercise of its discretion, the equitable relief of specific performance to the plaintiff at the trial and to award damages only in favour of the plaintiff. It must be noted that

Rule 1 of Order 39 of the Code clearly provides for interim injunction restraining the alienation or sale of the suit property and if the doctrine of lis pendens as enacted in Section 52 of the T. P. Act was regarded to have provided all the panacea against pendente lite transfers, the Legislature would not have provided in Rule 1 for interim! injunction restraining the transfer of suit property. Rule 1 of Order 39, in our view, clearly demonstrates that, notwithstanding the Rule of lis pendens in Section 52 of the T. P. Act, there can be occasion for the grant of injunction restraining pendente lite transfers in a fit and proper case.

5. Mr. Mukherjee, appearing for the respondents has drawn our attention to an old Division Bench decision of this Court in Promotha Nath v. Jagannath, (1913) 17 Cal LJ 427 where it has been observed that a Court will in many cases interfere and preserve property in status quo during the pendency of a suit in which the rights to it are to be decided and though the purchaser pendente lite would not gain title, the Court will prevent by injunction the embarrassment that would be caused to the original purchaser in his suit against the vendor. And it has been ruled there on the authority of Turner, LJ in Hadley v. London Bank of Scotland, (1865) 3 De GJ & S 63 at 70 that if there is a clear valid contract for transfer, the Court will not permit the transferor afterwards to transfer the legal estate to third person, although such third person would be affected by lis pendens. Mr. Muhkerjee has drawn our attention to Dr. S. C. Banerji's Tagore Law Lectures on Specific Relief (2nd Edition, page 592) where the decision in Promotha Nath (supra) has been approvingly referred to and also to Fry's Treatise on Specific Performance (6th Edition) where the same rule has been enunciated as a general principle on the authority of Turner, L.J., in Hadley v. London Bank of Scotland (supra). We accordingly reject this contention of Mr. Roy Choudhury that the impugned order of injunction restraining pendente lite transfer ought not to have been granted as the rule of lis pendens, as enacted in Section 52 of the T. P. Act, is there to take care of such transfer."

27. Following Sm.Muktakesi Dawn and others v. Haripada Mazumdar and another (supra) in Nawal Kishore Tekriwal v. Jaya Gupta (1997 SCC Online Cal 244) where in a suit for specific performance of contract, the trail court had refused to grant any ad interim temporary injunction taking into account the doctrine of lis pendens, and hence the plaintiff was not to suffer out of it, the Division Bench of the Calcutta High Court allowed the appeal, observing that in view of the inbuilt legal proposition it may not always be desirable for a court of law to reject the prayer for interim injunction outright on the ground of lis pendens. It is relevant to reproduce paragraph No.6 as under:

"6. Turning attention to the impugned order, it is to be seen that what weighed much with the Trial Court was the doctrine of lis pendens. In the opinion of the Trial Court if during the pendency of the suit, the subject matter under the suit was transferred in favour of a third party, a doctrine of lis pendens would be attracted and such transfer would be subjected to the result of the suit and, hence the plaintiff was to suffer nothing out of it. As against

this Shri S.P.Roychowdhury, Learned Counsel for the appellant sought reliance to be placed on the decision of a Division Bench of this Coiurt in the case of Smt.Muktakesi Dawn v. Haripada Mazumdar, reported in AIR 1988 Cal 25. On the strength of this decision, the Learned Counsel urged that r.1 ofOr.39 of the Code of Civil Procedure did clearly provide for interim injunction with respect to the suit property in spite of the fact that there was already a Rule of lis pendens enacted under s.52 of the Transfer of Property Act. This was for a simple reason that the said Rule of Law may not always be good enough to take full care of the Plaintiff's interest vis-à-vis such a transfer. Thus, in view of this in-built legal proposition it may not always be desirable for a Court of Law to reject the prayer for interim injunction outright on the ground of lis pendens……"

28. For the aforesaid reasons, we are not inclined to accept the contention of the learned counsel for the appellant that in view of Section 52 of T.P.Act providing for the effect of transfers during pendency of the suit, the order of temporary injunction under Order 39 Rules 1 and 2 could not be passed. If such an argument is accepted, then the court cannot pass an order of temporary injunction to restrain alienation in spite of specific provision under Order 39 Rule 1(a) CPC, in any case, as in every case any alienation made pending litigation would abide by the doctrine of lis pendens embodied under Section 52 of T.P.Act. This will render the provisions of Order 39 Rules 1 & 2 CPC ineffective.

29. Now coming to the second point, the impugned judgment shows that the learned IV Additional District Judge, Kurnool, on consideration of the pleadings of the parties and the material before it, viz., Ex.P1-agreement of sale and receipt of a sum of Rs.1,00,000/-, dated 11.03.2014 and subsequent receipts of Rs.2,00,000/- on 30.06.2014, Rs.5,00,000/- on 05.04.2016 and Rs.1,00,000/- on 07.04.2016, came to the conclusion that the plaintiff/1st respondent had established prima facie case in his favour. The balance of convenience was also found in favour of the plaintiff who obtained the agreement of sale by paying amounts mentioned above, in the years 2014 and 2016. Further, the learned court below considered that the 1st defendant admitted to have executed the sale deed in favour of defendants Nos.2 and 3 during the pendency of the suit and those defendants Nos.2 and 3 had also executed sale deed in favour of third persons with respect to part of the suit property, and came to the conclusion that if such act is repeated in future it would lead to multiplicity of proceedings and would also cause irreparable loss to the plaintiff, with respect to the decree of specific performance of contract.

30. In view of the aforesaid pronouncements of the Hon'ble Apex Court and keeping in view that the primary object of grant of temporary injunction is to maintain the status quo till the adjudication of the rights of the litigating parties on satisfaction of the trial court regarding existence of three conditions of prima facie case, balance of convenience and causing irreparable loss and injury in favour of the applicant, we do not find any illegality in the order passed by the learned court below granting temporary injunction in favour of the plaintiff/

respondent, and particularly, when the findings have been recorded on all the three considerations in favour of the plaintiff/ respondent, which findings have not been put to any serious challenge as suffering from any legal infirmity except on the ground of Section 52 of T.P.Act with which we have already dealt above.

31. With respect to the exercise of appellate powers in relation to the exercise of discretion by the trial court in deciding an application for temporary injunction, the Hon'ble Supreme Court in Wander Ltd. v. Antox India P.Ltd. (supra) held that in such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not re-assess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.

32. In Esha Ekta Appartments Chs Ltd. v. Municipal Corpn.of Mumbai (2012) 4 SCC 689) the Hon'ble Supreme Court again considered the scope of appellate court power to interfere in an interim order passed by the court at the first instance and held in paragraphs Nos.19, 20 and 21, which are re-produced, as under:

"19. We have considered the respective submissions and carefully scrutinised the record. The scope of the appellate court's power to interfere with an interim order passed by the court of first instance has been considered by this Court in several cases. In Wander Ltd. v. Antox India (P) Ltd.1, the Court was called upon to consider the correctness of an order of injunction passed by the Division Bench of the High Court which had reversed the order of the learned Single Judge declining the respondent's prayer for interim relief. This Court set aside the order of the Division Bench and made the following observations: (SCC p. 733, para 14)

"14. … In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court

would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

20. In Skyline Education Institute (India) (P) Ltd. v. S.L. Vaswani, the three-Judge Bench considered a somewhat similar question in the context of the refusal of the trial court and the High Court to pass an order of temporary injunction, referred to the judgments in Wander Ltd. v. Antox India (P) Ltd.1, N.R. Dongre v. Whirlpool Corpn.3 and observed: (S.L. Vaswani case2, SCC p. 153, para 22)

"22. The ratio of the abovenoted judgments is that once the court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a de novo consideration of the matter it is possible for the appellate court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity."

21. In these cases, the trial court and the High Court have, after threadbare analysis of the pleadings of the parties and the documents filed by them concurrently held that the buildings in question were constructed in violation of the sanctioned plans and that the flat buyers do not have the locus to complain against the action taken by the Corporation under Section 351 of the 1888 Act. Both the trial court and the High Court have assigned detailed reasons for declining the petitioners' prayer for temporary injunction and we do not find any valid ground or justification to take a different view in the matter."

33. The Wander Ltd. v. Antox India P.Ltd. (supra) fell for consideration in Gujarat Bottling Co.Ltd. v. Coca Cola Co. (1995) 5 SCC 545) wherein the Hon'ble Supreme Court observed that under Order 39 CPC the jurisdiction of the court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. It is relevant to reproduce paragraph No.47 as under:

"47. In this context, it would be relevant to mention that in the instant case GBC had approached the High Court for the injunction order, granted earlier, to be vacated. Under Order 39 of the Code of Civil Procedure, jurisdiction of the Court to

interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under Order 39 Rule 1 or Rule 2 of the Code of Civil Procedure, but also in respect of the party approaching the Court for vacating the ad interim or temporary injunction order already granted in the pending suit or proceedings".

34. In the present case, the trial court, while granting temporary injunction, has discussed that during the pendency of the suit the defendant No.1, the appellant herein, transferred the suit schedule property in favour of defendants Nos.2 and 3, and those defendants, in turn, transferred the part of the suit property in favour of third persons. The defendants/appellants invoking the jurisdiction of this court are therefore responsible for bringing about the state of things complained of by the plaintiff/ respondent before the court below and cannot be prima facie said to be equitable in his dealings. In Gujarat Bottling Co.Ltd. v. Coca Cola Co. (supra) the Hon'ble Apex Court clearly laid down that the considerations of the conduct being fair and honest will arise not only in respect of an applicant seeking an order of injunction but also in respect of the party approaching the court for vacating the ad interim or temporary injunction already granted in the pending suit or proceeding.

35. We therefore hold on point No.1 in paragraph-14 that Section 52 of the Transfer of Property Act does not operate as a bar to the grant of temporary injunction under Order 39 Rules 1 & 2 CPC, in the discretion of the trial court, on fulfilment of pre-conditions for grant of temporary injunction, which are settled in law, restraining alienations as well. On point No.2, we hold that the order granting temporary injunction does not suffer from any error of law or jurisdiction and calls for no interference in the exercise of our appellate jurisdiction.

36. The appeals are accordingly dismissed. The parties to bear their own costs of the appeals.

37. The trial court shall make endeavour to expeditiously decide the suit subject to cooperation of the parties.

38. It is clarified that any observation made herein is only to judge the validity of the judgment under challenge and shall have no effect on the adjudication on merit of the case by the trial court.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

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## 2022(1) L.S. 120 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Mr.Justice
Ahsanuddin Amanullah

K. Nageswara Rao ..Petitioner
Vs.
The State of A.P & Anr, ..Respondents

**CRIMINAL PROCEDURE CODE, Sec.482 - Petition seeking quashing of the First Information Report instituted under Section 353 of the Indian Penal Code - Allegation that on a piece of land on which the erstwhile High Court of Andhra Pradesh, had directed for maintenance of status quo - When the officials on knowing that some unknown persons had erected a six-feet statue of Dr. B.R. Ambedkar on a one-foot cement block, for ensuring compliance of the order, reached the site in question, the petitioner is said to have reached the spot and objected to such action by the officials - On the said allegation, the FIR came to be instituted.**

**HELD: Court finds that the statements of all five officials do not even have a whisper of any gesture and/or the alleged specific overt acts of petitioner which may give an impression that petitioner was about to commit assault - Hence, there is no specific instance of assault or use of criminal force on any public servant attributed to petitioner - Even otherwise, merely a bald allegation that petitioner objected to further action in purported implementation of order of High Court - High Court while exercising its power under Section 482 of Cr.P.C. to quash FIR instituted against second respondent-accused should have applied following two tests: i) whether allegations made in complaint, prima facie constitute an offence; and ii) whether allegations are so improbable that a prudent man would not arrive at the conclusion that there is sufficient ground to proceed with the complaint - Petitioner alone could obstruct three officials in presence of a total of five officials is improbable - Criminal petition stands allowed and FIR is accordingly, quashed.**

Mr.T. Janardhan Rao, Advocates for the Petitioner.
Mr.Soora Venkata Sainath, Special Assistant Public Prosecutor, Advocate for R1.
Mr.Anand Kumar Kochiri, Assistant Public Prosecutor, Advocate R2.

**O R A L J U D G M E N T**

1. Heard Mr. T. Janardhan Rao, learned counsel for the petitioner and Mr. Anand Kumar Kochiri, learned Assistant Public Prosecutor, for the State.

2. The petitioner has preferred the present application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Code") seeking quashing of the First Information Report bearing No.146 of 2013 at Alipiri Police Station, Tirupathi Urban, Chittoor

District instituted under Section 353 of the Indian Penal Code, 1860 (hereinafter referred to the "IPC").

3. The FIR was instituted on the basis of a written report given by the 2nd respondent – the then Tahsildar and Mandal Executive Magistrate, Tirupathi Urban addressed to the Station House Officer, Alipiri Police Station, Tirupati, under Roc.A/87/2008, dated 15.04.2013, in which it is alleged that on a piece of land on which the erstwhile High Court of Andhra Pradesh vide order dated 27.03.2008 in Writ Petition No.6472 of 2008, had directed for maintenance of status quo. When the officials on knowing that some unknown persons had erected a six-feet statue of Dr. B.R. Ambedkar on a one-foot cement block in the late hours of 14.04.2013, for ensuring compliance of the order, reached the site in question on 15.04.2013 at about 05.45 p.m., the petitioner is said to have reached the spot and objected to such action by the officials. On the said allegation, the FIR came to be instituted.

4. Learned counsel for the petitioner submitted that the petitioner, on the date of incident, was working in a Carriage Repair Shop (CRS) as a Senior Section Engineer and this case has been lodged against the petitioner only because he had filed Writ Petition No.6472 of 2008, and having obtained an order of status quo, the petitioner could not have been either a violator of such order or have any reason to oppose the implementation of the order of the Court. Moreover, learned counsel submitted that the officials, both to gloss over their mistake and also intimidate him against filing any application alleging non implementation of the Court"s order, made the petitioner a scapegoat. It was contended that even otherwise, the Court may take notice of the fact that there were five officers present at the spot, out of which three were allegedly obstructed which is unbelievable for the reason that in the presence of five government officials, one person alone could not have resisted and obstructed them from discharging their official duty/ies. It was submitted that even the allegation of obstructing the officials in performing their duty is only a bald and vague statement, bereft of any overt act alleged with regard to the manner in which such obstruction was made by the petitioner.

5. On an earlier occasion, the Court had asked the learned Assistant Public Prosecutor to assist the Court on the basis of the materials which may have emerged during investigation, especially the statements, if any, recorded of the witnesses.

6. The learned Assistant Public Prosecutor submitted that five officials had been examined and in their statements, the singular stand adopted by the officials is that the petitioner had obstructed them in discharging their official duty. However, no overt act or specific instance has been mentioned with regard to what had actually been done by the petitioner.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out.

8. The charge sheet filed against the

petitioner was for the offence punishable under Section 353 of the IPC, which reads thus:

> "353. Assault or criminal force to deter public servant from discharge of his duty.— Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

9. The term "assault" is defined in Section 351 of the IPC and it reads:

> "351. Assault- Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.
>
> Explanation- Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.
>
> Illustrations
>
> (a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z, A has committed an assault.
>
> (b) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.
>
> (c) A takes up a stick, saying to Z, "I will give you a beating". Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault."

10. The Court may take note of certain precedents at this stage. In State of Haryana v Bhajan Lal, 1992 Supp (1) SCC 335, it was held as follows:

> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories

of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

11. In State of Karnataka v M Devendrappa, (2002) 3 SCC 89, while

noticing R P Kapur v State of Punjab, AIR 1960 SC 866 and Bhajan Lal (supra), it was held as under:

> "6. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

12. The powers of the Court under

Section 482 of the Code have been restated and reiterated, amongst others, in State of Telangana v Habib Abdullah Jeelani, (2017) 2 SCC 779 and Ahmad Ali Quraishi v State of Uttar Pradesh, (2020) 13 SCC 435. In Habib Abdullah Jeelani (supra), it was also impressed upon the High Courts that "inherent power in a matter of quashment of FIR has to be exercised sparingly and with caution and when and only when such exercise is justified by the test specifically laid down in the provision itself. There is no denial of the fact that the power under Section 482 CrPC is very wide but it needs no special emphasis to state that conferment of wide power requires the Court to be more cautious. It casts an onerous and more diligent duty on the Court."

13. In Mahendra K C v State of Karnataka, 2021 SCC OnLine SC 1021, the Hon"ble Supreme Court stated:

> "23. ... the High Court while exercising its power under Section 482 of the CrPC to quash the FIR instituted against the second respondent-accused should have applied the following two tests:
>
> i) whether the allegations made in the complaint, prima facie constitute an offence; and
>
> ii) whether the allegations are so improbable that a prudent man would not arrive at the conclusion that there is sufficient ground to proceed with the complaint."

14. In the instant case, the Court finds that the statements of all five officials do not even have a whisper of any gesture and/or the alleged specific overt acts of the petitioner which may give an impression that the petitioner was about to commit assault. Hence, admittedly, there is no specific instance of assault or use of criminal force on any public servant attributed to the petitioner. Even otherwise, merely a bald allegation that the petitioner objected to further action in purported implementation of the order of the High Court (supra) cannot be construed ipso facto to be an act of obstruction against officials in discharge of their official duties. Further, that the petitioner alone could obstruct three officials in presence of a total of five officials is improbable. In the considered opinion of the Court, this would fall within the ambit of category (5) of paragraph no. 102 of Bhajan Lal (supra).

15. For the aforesaid reasons, this criminal petition deserves to be, and is, hereby allowed. FIR No.146 of 2013 dated 16.04.2013 of Alipiri Police Station, Tirupati Urban, Chittoor District is, accordingly, quashed. As a necessary sequel thereto, consequential orders, if any, passed on the basis of the said FIR are also set aside.

16. Pending Miscellaneous Applications, if any, stand consigned to records.

–X--

## 2022(1) L.S. 126 (A.P.) (D.B.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Mr.Justice
C. Praveen Kumar &
The Hon'ble Mr.Justice
Ravi Nath Tilhari

Bhimavarapu Nageswaramma ..Petitioner
Vs.
Bommu Siva Reddy ..Respondent

**CIVIL PROCEDURE CODE, Sec.104 r/w. Or.43(1)(r) - Civil Miscellaneous Appeal under Sec.104 r/w. Or.43(1)(r) of Code has been filed by the Appellants/Plaintiffs challenging the judgment and order, in I.A. by which their application for grant of temporary injunction under Order 39 Rules 1 and 2 CPC was rejected - Appellants filed a suit for partition of immovable properties and for mesne profits and for declaration of title over B-schedule immovable property and for consequential permanent injunction - Suit was instituted on 27.07.2016, along with I.A. for grant of temporary injunction was also filed with respect to B-schedule property.**

**HELD: Grant of injunction is a discretionary relief and exercise thereof is subject to the court satisfying that—**

**(1) There is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/ defendant;**

**(2) Irreparable injury or damage would ensue before the legal right would be established at trial; and**

**(3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.**

**Unfortunately, Court below has not adverted to the documents filed by the appellants/plaintiffs at least prima facie - Order in I.A. stands set aside and the matter is remanded to the court below for consideration afresh of I.A., in accordance with law, after affording opportunity of hearing to all the parties concerned - Appeal as allowed in part.**

K H V Siva Kumar, advocate for the Petitioner.
Raja Reddy Koneti, Advocate for the respondent.

**J U D G M E N T**
(per the Hon'ble Mr.Justice Ravi Nath Tilhari )

Heard Sri K.H.V.Siva Kumar, learned counsel for the appellants, Sri Raja Reddy Koneti, learned counsel for the 3rd respondent and perused the material on record.

2.This Civil Miscellaneous Appeal under Section 104 r/w. Order 43 (1)(r) of Code of Civil Procedure (for short "CPC") has been filed by the appellants/plaintiffs

challenging the judgment and order, dated 27.12.2019, on the file of III Additional District Judge, Guntur in I.A.No.752 of 2016 in O.S.No.281 of 2016, by which their application for grant of temporary injunction under Order 39 Rules 1 and 2 CPC was rejected.

3.The appellants herein filed O.S.No.281 of 2016 (*Bhimavarapu Nageswaramma & 2 ors. vs. Bommu Sivareddy & 2 ors.*) for partition of A- schedule items of immovable properties and for *mesne* profits and for declaration of title over B-schedule immovable property and for consequential permanent injunction. The suit was instituted on 27.07.2016. Along with the suit, I.A.No.752 of 2016 for grant of temporary injunction was also filed with respect to B-schedule property.

4.The undisputed part of the case is that plaint B-schedule property originally belonged to Mr.Bommu Panakala Reddy. Mr.Panakala Reddy firstly married Venkata Subbamma and to them the 1st appellant-B.Nageswaramma was born. On the death of Venkata Subbamma, the first wife, Mr.Panakala Reddy married Venkayamma and out of that wedlock, the 1st respondent-B.Sivareddy was born. The further case of

the appellants herein is that marriage of the 1st appellant- B.Nageswaramma was solemnized by her father Mr.Panakala Reddy in the year 1966 and at that time, towards pasupukumkuma, he had given B-schedule property to her. The 1st appellant thereafter executed registered gift deed, Ex.P2, dated 08.06.2007, in favour of her children, i.e., 2nd and 3rd appellants herein. Since 1966 the 1st appellant was in possession of B- schedule property and under the gift deed, Ex.P2, appellants Nos.2 & 3 have been in possession of B-schedule property. The appellants, in order to show the line of possession from B.Nageswaramma and thereafter to B.Venkata Siva Reddy and B.Srinivasa Reddy, filed Ex.P12-adangal pahani dated 30.04.2016, Ex.P13-1B namuna ROR dated 30.04.2016 in favour 2nd appellant, Ex.P14-1B namuna ROR dated 30.04.2016 in favour of 3rd appellant, and in view of these documents, the appellants contended that they were in possession of plaint B-schedule property.

5.The appellants/plaintiffs/petitioners in I.A.No.752 of 2016 in O.S.No.281 of 2016 prayed for grant of temporary injunction restraining the respondents/defendants and their people from in any way interfering with their peaceful physical possession and enjoyment of the plaint B- schedule property pending disposal of the suit.

6.Plaint B-schedule property consists of the following property:

B-SCHEDULE FILED ON BEHALF OF THE PLAINTIFFS

Guntur District, Pedakakani Sub-District, Kaza village and Gram Panchayath, an extent of Ac.0.39 cents, D.No.491/2 and an extent of Ac.0.30 cents in D.No.491/4 making a total of Ac.0.69 cents of dry land bounded by:-

East : Land of Konanki Sambasiva Rao
South : Land of Bommu Rathamma
West : Circar Donka; and
North : Land of Jolla Subbareddy

7. The present respondent No.3-Eeda Prabhakara Reddy, defendant No.3 before the court below, filed written statement and denied the allegations made by the appellants and contended that the defendants/respondents Nos.1 & 2 B.Sivareddy and B.Sankararеddy respectively,along with Smt.B.Venkayamma, mother of B.Sivareddy, made him to believe that they succeeded the plaint B-schedule property on intestate death of B.Panakala Reddy on 26.11.1970 and since then they have been enjoying the property as absolute owners and at the family oral partition, B-schedule property fell to the share of B.Venkayamma and she got mutated her name in the revenue records. The defendants/respondents Nos.1 & 2 along with said B.Venkayamma executed an agreement of sale in favour of respondent No.3 for sale of Ac.0.69 cents of B-schedule property for Rs.2,00,000/-, out of which Rs.50,000/- was given as advance money. The said property was also alleged to be under mortgage towards bank loan and they agreed to discharge the mortgage loan. The further case of the 3rd respondent is that thereafter on 03.08.2007 Smt.Venkayamma died intestate and defendants/respondents Nos.1 & 2 became liable to perform the liabilities and obligations under the agreement. On 20.01.2009 both of them received an amount of Rs.75,000/- from the 3rd respondent and made an endorsement on the reverse of the 1st page of the agreement for sale that they would discharge the liabilities and obligations to sale. However, as in spite of defendants/ respondents Nos.1 & 2 having received some more amounts on different dates under the same agreement, but having avoided to execute the sale deed, the 3rd respondent filed O.S.No.232 of 2014 on the file of the Senior Civil Judge, Mangalagiri for a decree for

specific performance, which suit was decreed on 22.12.2014. In execution of that decree, E.P.No.13 of 2015 was filed in which sale deed was executed and registered and the possession of the property was also delivered to respondent No.3 through process of law. The 3rd respondent, thus, claimed that he was in possession of plaint B-schedule property even prior to the institution of O.S.No.281 of 2016.

8.Initially *ex parte ad interim* temporary injunction was granted.

The 3rd respondent filed I.A.No.2373 of 2017 to vacate the *ex parte ad interim* temporary injunction.

9. The III Additional District Judge, Guntur, by means of the order under challenge, dated 27.12.2019, rejected the application/petition I.A.No.752 of 2016 and the *ad interim* temporary injunction granted earlier was vacated.

10. The learned III Additional District Judge, Guntur while vacating the *ad interim* temporary injunction considered that respondent No.3 filed O.S.No.232 of 2014 for specific performance against the present respondents Nos.1 and 2, which was decreed on 22.12.2014 under Ex.P6 and in execution of the said decree in EP.No.13 of 2015 the court got executed a registered sale deed in favour of respondent No.3, Ex.P11, which is the extract of the sale deed, dated 22.02.2016. During execution proceedings, in pursuance of the delivery warrant Ex.P9, the B-schedule

property was delivered to respondent No.3, of which delivery receipt is Ex.P10. In view of these documents, the learned court below held that the disputed property i.e., B-schedule property was delivered to the possession of respondent No.3 by the court officers on 10.03.2016 and on 04.04.2016 delivery was recorded by the executing court as per Ex.P7, and thus, according to the learned court below respondent No.3 appeared

to be in possession of the disputed plaint B-schedule property, meaning thereby that on the date of filling of the suit O.S.No.281 of 2016 on 27.07.2016 the 3rd respondent, *prima facie,* held in possession.

11. Sri K.H.V.Siva Kumar, learned counsel for the appellants submits that the finding recorded by the learned court below on the point of possession for purposes of I.A.No.752 of 2016 is vitiated by error of law, as the documents Ex.P12-adangal pahani, Ex.P13-1B namuna ROR in favour of the 2nd appellant and Ex.P14-1B namuna ROR in favour of the 3rd appellant of dated 30.04.2016 have not been considered at all, whereas the entries in Exs.P12, P13 and P14, all dated 30.04.2016, clearly demonstrated the actual possession of the appellants over B-schedule property. While considering the question of possession even for grant of temporary injunction, those documents could not be brushed aside by the court below.

12. Sri K.H.V.Siva Kumar further submits that the order of the court below is based on Ex.P10 alleged copy of delivery receipt of immovable property in pursuance of Ex.P9 copy of delivery warrant in EP.No.13 of 2015 in O.S.No.232 of 2014, but in the said suit or in execution proceedings the appellants herein were not party and therefore the decree passed in O.S.No.232 of 2014 or any subsequent proceedings pursuant to the decree are not binding on the appellants. He has placed reliance on the judgment in the case of ***Payappar Sree Dharmasastha Temple A.Com. v. A.K.Josseph & Ors*** 2009 (14) SCC 628 of the Hon'ble Apex Court in support of his contention that a decree would be binding on the parties to the suit and not on third party. For the same proposition reliance has also been placed on the judgment of this court in ***Atluri Kuchela Rao vs. The District Collector and Another*** 2012 (3) ALD 83. He has further placed reliance on the judgment of the High Court of Punjab & Haryana in the case of ***Mehar Singh son of Soran Singh v. Ram Diya Verma*** 2013 (0) Supreme (P&H) 966 to contend that the injunction will be issued on the basis of materials brought at the time when the suit was instituted and not when the evidence was collected during the course of trial.

13. On the other side, Sri Raja Reddy Koneti, learned counsel for the 3rd respondent, submits that the 3rd respondent is in possession of plaint B-schedule property in pursuance of the decree for specific performance passed in O.S.No.232 of 2014 in execution of which the 3rd respondent was delivered possession by court. He submits that the delivery warrant Ex.P9 and Ex.P10 the immovable property delivery receipt, on record, clearly show that the immovable property was delivered after removing the physical possession of the judgment debtors in O.S.No.232 of 2014 without any obstruction from anybody in

the presence of the mediators. He submits that the finding recorded by the court below that on the date of institution of O.S.No.281 of 2016 the 3rd respondent was in possession and not the appellants/plaintiffs, is a finding of fact and being based on the documents above mentioned does not call for any interference and consequently, the order rejecting the I.A.No.752 of 2016 also does not suffer from any error of law or jurisdiction.

14.We have considered the submissions advanced by the learned counsels for the parties and perused the material available on record.

15.The point that arises for determination is as follows:

"*Whether the rejection of the I.A.No.752 of 2016 by the court below is justified?"*

16. From perusal of the record it is undisputed that the appellants/plaintiffs prayed for grant of temporary injunction with respect to plaint B-schedule property. The said application has been rejected only on the ground that *prima facie* the appellants/ plaintiffs are not in possession, but it is the 3rd respondent who is in possession over the B- schedule property. This has been so recorded considering Ex.P9, which is the warrant for possession and Ex.P10 the delivery receipt in E.P. No.13 of 2015 for execution of decree passed in O.S.No.232 of 2014. It is undisputed that the appellants/ plaintiffs were not party in O.S.No.232 of 2014 or in E.P.No.13 of 2015. Ex.P10 mentions the removal of physical possession of the judgment debtors. The appellants/ plaintiffs not being party in O.S.No.232 of 2014 cannot be the judgment debtor.s. While considering Ex.P10 the court below did not consider it in correct perspective.

17.The appellants herein claim to be in possession of plaint B- schedule property and in support of their claim, they filed documentary evidence Ex.P12-adangal pahani, Ex.P13-1B namuna ROR and Ex.P14-1B namuna ROR, all dated 30.04.2016, i.e, of a date after the date of Ex.P10, which is dated 10.03.2016. Ex.P12 records the name of Bhimavarapu Srinivasa Reddy, 3rd appellant, in the columns of 'name of pattadar' and 'name of enjoyer' with respect to Sy.No.491-2, Ac.0.39 cents in Fasali No.1425. Ex.P13, which is Land Records Pattadar's 1-B Namuna (ROR), shows the name of the 2nd appellant-Bhimavarapu Venkata Siva Reddy in the column of 'name of pattadar' with respect to Sy.No.491-2 and Ex.P14, the Land Records Pattadar's 1-B Namuna (ROR) also shows the name of the 3rd appellant-Bhimavarapu Srinivasa Reddy in the column of 'name of pattadar' with respect to Sy.No.491-2, Ac.0.450 cents.

18. From perusal of the judgment under challenge, it is evident that Exs.P12, P13 and P14 were filed before the court below, but these documents do not find consideration by the court below. Once there was an entry of the name of the appellants in the revenue records, mentioned above, in the column of 'name of enjoyer' also those documents could not be ignored and the finding on possession could not be rested solely on Exs.P9 and P10. This is not to say that the appellants are in possession and not the 3rd respondent, but to say that these documents

Exs.P12, P13 and P14 which have bearing on the point of possession on the date of institution of the suit, for considering the application for temporary injunction, were required to be considered along with the other documents/material on record, and on such consideration a finding on the point of possession ought to have been recorded. Non-consideration of the material documents on record on the point in issue, vitiates the finding recorded by the court below.

19. In ***Dalpat Kumar v. Prahlad Singh***(1992) 1 SCC 719 the Hon'ble Supreme Court has held that grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it. It has further held that there should be *prima facie* case in favour of th applicants which needs adjudication at the trial. The court has to satisfy that non-interference by the court would result in irreparable injury to the party seeking relief and that there is no other remedy available, and thirdly that balance of convenience must be in favour of the applicant granting injunction. It is relevant to re-produce paragraphs Nos.4 and 5 as under:

"**4.** Order 39 Rule 1(*c*) provides that temporary injunction may be granted where, in any suit, it is proved by the affidavit or otherwise, that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing … or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit until the disposal of the suit or until further orders. Pursuant to the recommendation of the Law Commission clause (*c*) was brought on statute by Section 86(*i*)(*b*) of the Amending Act 104 of 1976 with effect from February 1, 1977. Earlier thereto there was no express power except the inherent power under Section 151 CPC to grant ad interim injunction against dispossession. Rule 1 primarily concerned with the preservation of the property in dispute till legal rights are adjudicated. Injunction is a judicial process by which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the court, on exercise of the power of granting ad interim injunction, is to preserve the subject matter of the suit in the status quo for the time being. It is settled [illegible]721law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/ defendant; (2) the court's interference is

necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

**5.** Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

20.In ***Wander Ltd. v. Antox India P.Ltd***1990 (Supp) SCC 727 the Hon'ble Supreme Court has held that usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. It was further held that the interlocutory remedy is intended to preserve in *status quo,* the rights of parties which may appear on a *prima facie* case.

21. In ***Shiv Kumar Chadha v. Municipal Corpn. of Delhi1993 (3) SCC 161*** it has been held by the Hon'ble Supreme Court that the grant of injunction is within the discretion of the court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the court that unless the

defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The purpose of temporary injunction is, thus, to maintain the *status quo*. The court grants such relief according to the legal principles – *ex debito justitiae*. Before any such order is passed the court must be satisfied that a strong *prima facie* case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him. Paragraph No.30, in which the Hon'ble Supreme Court has held as under, is being reproduced:-

**"30.** It need not be said that primary object of filing a suit challenging the validity of the order of demolition is to restrain such demolition with the intervention of the court. In such a suit the plaintiff is more interested in getting an order of interim injunction. It has been pointed out repeatedly that a party is not entitled to an order of injunction as a matter of right or course. Grant of injunction is within the discretion of the court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The purpose of temporary injunction is, thus, to maintain the status quo. The court grants such relief according to the legal principles — ex debitojustitiae. Before any such order is passed the court must be satisfied that a strong prima facie case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him."

22.From the order passed by the court below it is not possible to come to the conclusion that on an appropriate advertence from the relevant materials, *prima facie* finding has been rendered by the court below on the aspect of possession. Further, it is evident that with respect to *prima facie* case, balance of convenience and irreparable loss or injury there is no consideration at all nor any finding has been recorded on these aspects. It is well settled that for considering the temporary injunction matter, the court has to record specific findings on all the above three considerations.

23. With respect to the exercise of appellate powers in relation to the exercise of discretion by the trial court in deciding an application for temporary injunction, the Hon'ble Supreme Court in ***Wander Ltd. v. Antox India P.Ltd.*** (5 supra) held that in such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not re-assess the material and seek

to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion

under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.

24.In ***Esha Ekta Appartments Chs Ltd. v. Municipal Corpn.of Mumbai***(2012) 4 SCC 689 the Hon'ble Supreme Court again considered the scope of appellate court power to interfere in an interim order passed by the court at the first instance and held in paragraphs Nos.19, 20 and 21, which are re-produced, as under:

**"19.** We have considered the respective submissions and carefully scrutinised the record. The scope of the appellate court's power to interfere with an interim order passed by the court of first instance has been considered by this Court in several cases. In *Wander Ltd.* v. *Antox India (P) Ltd.*1, the Court was called upon to consider the correctness of an order of injunction passed by the Division Bench of the High Court which had reversed the order of the learned Single Judge declining the respondent's [illegible]698prayer for interim relief. This Court set aside the order of the Division Bench and made the following observations: **66**

(SCC p. 733, para 14)

"*14*. … In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

**20.** In *Skyline Education Institute (India) (P) Ltd.* v. *S.L. Vaswani*2, the three-Judge Bench considered a somewhat similar question in the context of the refusal of the trial court and the High Court to pass an order of temporary injunction, referred to the judgments in *Wander Ltd.* v. *Antox India (P) Ltd.*1, *N.R. Dongre* v. *Whirlpool Corpn.*3 and observed: (*S.L. Vaswani case*2, SCC p. 153, para 22)

"*22*. The ratio of the abovenoted judgments is that once the court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a de novo consideration of the matter it is possible for the appellate court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity."

**21.** In these cases, the trial court and the High Court have, after threadbare analysis of the pleadings of the parties and the documents filed by them concurrently held that the buildings in question were constructed in violation of the sanctioned plans and that the flat buyers do not have the locus to complain against the action taken by the Corporation under Section 351 of the 1888 Act. Both the trial court and the High Court have assigned detailed reasons for declining the petitioners' prayer for temporary injunction and we do not find any valid ground or justification to take a different view in the matter."

25.In ***Anand Prasad Agarwalla v. Tarkeshwar Prasad***(2001) 5 SCC 568 the Hon'ble Supreme Court has held that when the contesting respondents were in possession as evidenced by the record of rights, it cannot be said that such possession was by a trespasser. In the present case in the record of rights the appellants are recorded with respect to the plaint B- schedule property, and in view of such documentary evidence, it cannot be said that those documents were of no relevance. The same could not be ignored. Though there is mention of these documents filed by the appellants/plaintiffs, but there is absolutely no discussion by the trial court and it has not adverted to those documents nor the entries made therein.

26. In the matter of granting temporary injunction, it is the duty of the court to take into consideration the affidavit and the relevant documents before it records a finding. Taking into consideration the documents does not mean merely referring the same in the judgment but there must be some discussion about them before any conclusion arrived at. Unfortunately, the court below has not adverted to the documents filed by the appellants/plaintiffs at least *prima facie*. The interim injunction is no doubt a discretionary relief, but it has to be granted only after applying judicial mind and on a proper discussion of the evidence on record. Mere reference to the documents filed and the affidavits placed before the court does not satisfy the requirement of exercise of discretionary power in a judicial manner.

27. So far as the judgments in the cases of ***Payappar Sree Dharmasastha Temple A.Com. vs. A.K.Josseph & Ors.*** (1 supra) and ***Atluri Kuchela Rao vs. The District Collector and Another*** (2 supra) upon which reliance has been placed by the learned counsel

for the appellants are concerned, there is no dispute on the proposition of law that a decree would be binding on the parties to the suit and not on third party, but the question as to whether on the date of institution of O.S.No.281 of 2016 the appellants were in possession or not, is to be considered and a finding to be recorded on the basis of the material

available before the court. The decree may not be binding on a person unless he was party to the suit or stood in the shoes of the party to the suit, but if in execution of the decree, the actual position of possession is changed, then a non-party to the suit cannot say that actual position of possession be ignored for grant of temporary injunction only because such person was not party in the suit and the decree passed therein was not binding on such non-party.

28.Since we are of the view that the matter deserves to be remanded for fresh consideration of I.A.No.752 of 2016 in O.S.No.281 of 2016, we refrain ourselves from making any observation with respect to the proposition as laid down in ***Mehar Singh son of Soran Singh v. Ram Diya Verma*** (3 supra), keeping it open to the parties to raise such point before the court below.

29. For all the aforesaid reasons, We set aside the order, dated 27.12.2019, passed by the III Additional District Judge, Guntur in I.A.No.752 of 2016 in O.S.No.281 of 2016 and remand the matter to the court below for consideration afresh of I.A.No.752 of 2016 in O.S.No.281 of 2016, in accordance with law, after affording opportunity of hearing to all the parties concerned.

30. As the suit pertains to the year 2016 and involves determination of rights of the parties to immovable property, we direct the court below to make earnest endeavour to expeditiously decide the suit, subject to cooperation of the parties.

31.In the suit there was *ex parte* temporary injunction. In the present appeal also there is order of *status quo* with regard to possession of the subject property. As such it is provided that till disposal of I.A.No.752 of 2016 or for a period of 6 months from today whichever is

earlier the *status quo* shall be maintained with regard to possession of the subject property.

32. We make it clear that any observations made herein shall not affect the disposal of I.A.No.752 of 2016 in O.S.No.281 of 2016 afresh on its' own merits.

33. The Appeal is accordingly allowed in part. No order as to costs. Pending miscellaneous petitions, if any, shall stand closed in consequence.

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**2022(1) L.S. 137 (A.P.)**

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Mr.Justice
R. Raghunandan Rao

Ayira Vaisyar Telugu Beri Vysya Sabha,Chennai ..Petitioner

Vs.

The Asst.Commissioner of Endowments & Ors., .Respondents

**A.P. CHARITABLE AND HINDU RELIGIOUS INSTITUTIONS AND ENDOWMENTS ACT - Writ Petitions - Whether the Petitioner-Sabha can be registered under the Endowments Act, 1987 and brought within the control and regulation of the Endowments Department and its officers under the provisions of the Act.**

**HELD: Any religious or charitable institution would be governed and regulated by the Endowment Law applicable to the State in which the head quarters of the said institution is situated - In the event of such an institution holding properties, even extensive properties, in any other State, the law applicable to the institution would remain the Endowment law applicable in the State in which it is situated - Since the Petitioner-Sabha is situated in the State of Tamilnadu, the provisions of the Endowments Act, would not apply to the Petitioner and the registration of the Petitioner, under the provisions of the Endowments Act, 1966 or the Endowments Act, 1987 is not permissible and stands set aside - Authorities under the Endowments Act, 1987 cannot interfere with the activities of the Petitioner.**

Mr.Vidya Sagar, Advocate for the Petitioner.
GP for Endowments, Advocate for the Respondents No.1 & 2.
Mr.G.Ramana Rao, Advocate for the Respondent No;3.

**C O M M N O R D E R**

1. As all the three petitions have been filed by the same petitioner and are challenging actions of the State which are consequential to each other, these writ petitions are being disposed of by a common order.

2. In W.P.No.31438 of 2012, the petitioner is challenging the action of the Assistant Commissioner of Endowments, Chittoor District in registering the petitioner institution under the provisions of Section 38 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1966 on 21.10.1981.

3. In W.P.No.31476 of 2016, the petitioner is challenging G.O.Ms.No.432 dated 12.09.2016, issued by the Government directing the Executive Officer of Sri Kalahasteeswara Swamy Devasthanam to take over Ac.2.24 cents of land in Sy.No.218/3 of Pangallu Village, Sri Kalahasthi belonging to the petitioner-sabha.

4. In W.P.No.1931 of 2020, the petitioner is challenging the actions of the Executive Officer of the above referred temple, trying to take over the aforesaid land by prohibiting the petitioner from entering in to the said land.

5. The petitioner was registered as a Public Society on 21.12.1955 in Chennai, Tamil Nadu, under the Societies Registration Act of 1860, as the Telugu Beri Vaisya Kulabhimana Sabha, Madras. The address of the society was given as old No.4, New No.28, Kalappaachari Street, Chennai. The name of the petitioner-sabha was changed to that of Ayira Vaisyar Telugu Beri Vysya Sabha under the provisions of the Tamilnadu Societies Registration Act, 1975 and a certificate to that effect was issued by the Registrar of Societies on 19.11.2006.

6. The contention of the petitioner is that the petitioner was initially established in the year 1921 and had been registered as a Society in 1955 with its Registered Office at Chennai. The petitioner contends that it had certain properties which are specifically donated for a charitable purpose including a charitable institution known as "Änkamma Charities" which had been donated by late Smt. Annadisetty Ankamma, in the year 1965, settling the house in which the registered office of the petitioner-sabha is situated.

7. The petitioner-sabha also owns Ac.2.24 cents of land in Pangallu village, Sri Kalahasti, Chittoor District. This land is said to have been donated to the petitioner-sabha by one of its members for the purpose of using the said land, for growing flowers, which were to be offered to Sri Kalahasteeswara and Gnanaprasunamba, who are the presiding Deities of the Sri Kalahasteeswara Temple, Sri Kalahasthi (hereinafter referred to as the Temple). The petitioner has also been issued pattadar pass books by the revenue authorities showing the said land is the property of the petitioner-sabha.

8. The petitioner approached this Court by way of W.P.No.31438 of 2012 contending that the Assistant Commissioner, Endowments, Chittoor District had registered the petitioner-sabha under Section 38 of the Endowments act, 1966 without any intimation to the petitioner and also that such registration is contrary to the principles laid down by the Hon'ble Supreme Court in the case of Anant Prasad lakshmi Nivas ganerival Vs. State of Andhra Pradesh AIR (1963) SC 853), and the judgment in State of Bihar Vs. Charuseeladasi (AIR 1959 SC 1002), which was followed in the case of Panchanan Dhara and Ors., Vs Monmtha Narth Maity (2006) 5 SCC page 330). The Hon'ble Supreme Court, in these judgments had held that the Endowment law applicable in the State in which the seat of the Endowment Institution is situated would apply to all properties of such an institution irrespective of the location of such property in any other State.

8. Aggrieved by the said conviction and sentence imposed by the Special Court, the accused preferred this appeal contending that the court below failed to appreciate the evidence in a proper perspective by misconstruing the facts on record. The court failed to appreciate that P.W.2 was already a married woman and was blessed with a child through her husband and she left him without any dissolution of marriage much less customary, allowed her husband to re-marry and opted herself to lead the life of her choice. P.W.2 knowing fully well that the accused was a married man and was blessed with children developed intimacy with the accused. The alleged customary divorce of P.W.2 with her husband was dubious and was not sufficient for her to go on with remarriage, in the absence of a decree from competent civil court or even in the absence of customary deed showing dissolution with her former husband. The disqualification of P.W.2 for re-marriage itself was a justifiable ground and would not fall within the meaning of simple cheating as she suppressed the fact regarding her marital status. The P.W.2 was very well aware that the appellant was a married man and was having family, the person living in an immoral unchaste life for quite longer time could not take the pretext of promise to marry as such, the case would not fall within Section 417 IPC. The trial court went wrong in holding that the proof of customary deed was not compulsory in certain communities. Indeed the proof of dissolution from competent court was must so as to avoid perpetration of further illegality. The trial court should have taken the age, status into consideration and must have taken lenient view and prayed to allow the appeal by setting aside the conviction and sentence passed by the Special Court.

9. Heard the learned counsel for the appellant, the learned Public Prosecutor and perused the material made available on record.

10. The learned counsel for the appellant argued on similar lines as mentioned in the grounds of appeal. He relied on the judgments of the Hon'ble Apex Court in **Tilak Raj Vs. State of Himachal Pradesh** (2016) 4 Supreme Court Cases 140)**, Vaddi Srinivasa Rao @ Sreenu and another Vs. Public Prosecutor, High Court of A.P., Hyderabad (**2005 (1) ALD (Crl.) 947 (AP)**, Surapathi Laxmana Rao Vs. State of A.P. (**2003 (2) ALD (Crl.) 355 (AP)**, M.Giriprasad and others Vs. K. Munikrishna Reddy and another (**2014 (2) ALD (Crl.) 52 (AP)**, Mylarapu Mallamma Vs. Mylarapu Saroja and other (**2005 (4) ALD 24)**, R. Sudhakar Reddy Vs. J.Govinda Reddy (**2015 (2) ALD 531)**.**

11. The learned Public Prosecutor, on the other hand, supported the judgment of the trial Court and contended that the evidence of the victim P.W.2 was corroborated with the evidence of all other witnesses and the trial Court was justified in recording the conviction and sentence against the accused for the offence under Section 417 IPC and prayed to dismiss the appeal.

12. On perusal of the evidence on record, P.W.1 is the complainant, mother of the victim woman. P.W.2 is the victim woman. P.W.3 is the house owner of the house at Vanasthalipuram where the P.W.2 and the accused lived as tenants as husband and wife. P.W.4 is the house owner at Amberpet where the P.W.2 and the accused lived together as husband and wife

as tenants. P.W.5 is the S.I., who conducted part of the investigation. P.W.6 is the paternal uncle of the victim. P.W.7 is the S.I., who registered the FIR. P.W.8 is the ACP of Saroornagar Division, who filed the charge-sheet. P.W.9 is the Inspector of Police of Vanasthalipuram, who filed a memo before the court altering the Section of law from 420 IPC to Section 3(1)(xii) of SC/ ST (POA) Act, 1989 and 417 IPC. P.W.10 is the MRO, Kandukur, who issued the caste certificate to P.W.2 that she belonged to SC.

13. Ex.P1 is the report given by the complainant. Ex.P2 is the caste certificate of P.W.2. Ex.P3 is the FIR. Ex.P4 is the proceedings issued by the Commissioner appointing P.W.8 as the Investigating Officer to conduct investigation in the case pertaining to SC/ST Act against the accused. Ex.P5 is the Memo filed before the Court for alteration of Section of law from 420 IPC to Section 3(1)(xii) of SC/ST Act and Section 417 IPC. Section 417 IPC is the punishment for cheating. Section 415 IPC describes the offence of cheating as follows:

> "415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".
>
> Explanation.—A dishonest concealment of facts is a deception within the meaning of this section."

14. In **Surapathi Laxmana Rao** (3rd supra) case, the learned single Judge held as follows:

> "6....The first part of the definition relates to property. The second part need not necessarily relate to property. The second part speaks of intentional deception which must be intended not only to induce the person deceived to do or omit to do something but also to cause damage or harm to that person in body, mind, reputation or property. It has been held by the Supreme Court in G.V. Rao v. L.H.V. Prasad and Ors., (2000) 3 SCC 693, that intention and deception presupposes the existence of a dominant motive of the person making the inducement. Such inducement should have laid the person deceived or induced to do or omit to do anything which he would not have done or omitted to do it he were not deceived. The further requirement is that such act or omission should have caused damage or harm to body, mind, reputation or property. As mentioned above Section 415 of IPC has two parts. While in the first part, the person must "dishonestly" or "fraudulently" induce the complainant to deliver any property and the second part need not necessarily relate to property. In the second part, the person should intentionally induce the complainant to do or, omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional.

The Supreme Court in Jaswantrai Manilal Akhaney v. State of Bombay, AIR 1956 SC 575, held that a guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to secure conviction of a person for the offence of cheating, "mens rea" on the part of that person must be established. It was also observed by the Supreme Court in Mahadeo Prasad v. State of W.B., AIR 1954 SC 724, that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered."

15. In the light of the ingredients necessary to constitute an offence of the cheating under Section 415 IPC, the evidence of the witnesses need to be looked into. As the evidence of the victim woman is material to know the intention of the accused whether it was dishonest or not and whether she was deceived by the accused or not, her evidence is considered primarily.

16. P.W.2 stated that her marriage was performed with one Sheshu on 26.02.2002. It was an arranged marriage and due to disputes between her and her husband a panchayath was raised before the elders and they had obtained customary divorce. She left her daughter with her mother and came to Hyderabad in search of a job and got appointed as Home Guard and was posted in bomb difussal squad at Amberpet. She obtained a room in the house of one Narsimha at Amberpet and resided there. The accused also worked as a constable in the bomb difussal squad at Amberpet. The accused was her superior and developed acquaintance with her and she obliged him because he was her superior. The accused made marriage proposal and they started living together as wife and husband and informed the others as if they were wife and husband. Their conjugal life started in 2008 in the same house. She informed about the proposal made by the accused and also about their conjugal life to her mother. The accused made a promise that he would marry her and she believed his version and accepted him. Her mother informed the entire episode to her junior paternal uncle and requested him to enquire about the accused. Accordingly he caused enquiry and informed her mother that the accused had got wife and two children. Therefore, the accused was called to the house of her paternal uncle and they enquired him about his wife and children. The accused told her mother that his wife was suffering from mental illness and he would marry her by convincing his wife. Later the wife of accused committed suicide. Thereafter, the accused got the house at Amberpet vacated and shifted her to Vanasthalipuram and again started living at Vanasthalipuram without any troubles. The accused demanded Rs.3,00,000/- to marry her and he told that he was not ready to marry her without dowry. Since, her mother had no trust on the accused, they searched for another alliance and the accused having come to know about the alliance came to her and stated that he was ready to marry her and on that promise they got the alliance cancelled through her uncle. When she asked the accused for marriage, he informed her that he would marry her in April, 2010. Again the accused demanded Rs.3,00,000/- as she belonged to Mala community. He was not ready to marry her without dowry and stated that it would effect his reputation. She informed her mother about the demand of the

accused. Her mother also asked the accused for marriage but he was not ready without dowry. She came to know that he married another woman in November, 2009. She came to know about the marriage through her colleagues and enquired the accused for which the accused did not give proper explanation and stated that he wanted to marry her as his second wife and promised that he would look after her. When her mother questioned the accused he did not give proper reply and challenged that they could not do anything in view of his employment in Police department. They felt insulted by the acts of the accused and approached the Police.

17. It was suggested to her in the cross examination that she obtained money from the accused and since the accused demanded money she foisted a false case, which was denied by her.

18. Thus, the evidence of P.W.2 would clearly disclose the deception played by the accused. He developed the acquaintance with the P.W.2, made marriage proposal to her and thereafter they started living together as husband and wife. She clearly stated that the accused made a promise that he would marry her and she believed his version and accepted him. He suppressed the fact of his having a wife and children and when P.W.2 came to know about it and enquired with him he stated that his wife was suffering from mental illness and he would marry her by convincing his wife. Though his wife died committing suicide, he had no intention to marry P.W.2 and demanded Rs.3,00,000/- to marry her. When the elders of P.W.2 looked for an alliance to her he got the alliance cancelled informing them that he was ready to marry her but failed to marry her and got married another woman in November, 2009. Her evidence further reveal that when P.W.2 questioned him about the same, the accused did not give proper explanation and still tried to continue his relationship with her stating that he wanted to marry her as his second wife and made false promises that he would look after her. All these would disclose that he had no intention to marry her from the beginning and made false promises to her and sexually exploited her and continued his relationship with her on false promises, which would clearly show his dishonest or fraudulent intention to deceive P.W.2 and to continue relationship with her on the false promise of marriage attracting the ingredients of Section 415 IPC Part-II. P.W.2 might not have continued her relationship with the accused had she not deceived by the accused on the promise of marriage by him. She discontinued her relationship with him an coming to know about the deception played by him.

19. The learned counsel for the appellant relied upon the judgment of the Hon'ble Apex Court in **Tilak Raj** (1 supra) wherein it was held that:

> "the prosecutrix was an adult and mature lady of around 40 years at the time of incident. It was admitted by the prosecutrix in her testimony that she was in a relationship with the appellant for last two years prior to incident and appellant used to stay overnight at her residence. After perusal of a copy of the FIR, testimony of prosecutrix and MLC report clearly indicates that the story of prosecutrix regarding sexual intercourse on false pretext of marrying her is concocted and not believable. In fact, the said act of the

appellant seems to be consensual."

20. As per the facts of the above case, after the sexual contact some talk about the marriage had cropped up between the said two persons, as such it was said that consent had been given by the prosecutrix for sexual intercourse but no under some misconception of marriage. But the facts of the present case are distinguished from the facts of the above case. Each case should be decided basing on the facts of that particular case.

21. In the judgment of the High Court of A.P. in **Surapathi Laxmana Rao** (3 supra) relied upon by the learned counsel for the appellant, it was held that:

> "prosecutrix consented to sexual intercourse because of her deep love for accused and not because of accused promising to marry her – no inducement – accused cannot be held guilty of cheating."
>
> The acquittal of the accused under Secretion 417 IPC is also based upon the facts of the said case.

22. The Hon'ble Judge had referred to the case of the Hon'ble Apex Court in **Uday Vs. State of Karnataka** (2003 (1) ALD (Crl) 498 (SC), wherein it was held as follows:

> "8.....The consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. But there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the Courts provide at best guidance to the judicial mind while considering a question of consent, but the Court must in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them."

23. Thus, the Hon'ble Apex Court held that each case should be considered basing on the evidence before it and the surrounding circumstances before reaching to a conclusion basing on its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden was on the prosecution.

24. The evidence of P.W.1, mother of the victim, corroborates with the evidence of P.W.2 the victim woman. She stated about her daughter informing her over phone about the promise of the accused that he wanted to marry her and on her enquiry

her daughter revealed that the accused was a married man. She came to Hyderabad and enquired the accused as to how he could marry his daughter when he got a wife, the accused told them that his wife was suffering from mental illness, thereby he wanted to marry her. She informed the same to her brother-in-law, who was also working in the Police department and her brother-in-law enquired and told her that the accused had got wife and two children but the accused made her daughter to believe that he would marry her and he informed her that he would convince his wife and marry her daughter but in the meanwhile, wife of the accused died. When she and her daughter requested the accused for marriage, he postponed the same on the ground that his wife died very recently. When her brother-in-law brought alliance to her daughter, the accused approached her brotherin- law and informed that he intended to marry P.W.2 and requested him to cancel the alliance. Accordingly, they cancelled the said alliance.

25. Thus, the accused not only made P.W.2 to believe her that he would marry her inspite of having a wife and children but also made the mother of P.W.2 and the uncle of P.W.2 to believe that he would perform marriage with P.W.2 and made them to cancel the alliance brought to P.W.2. P.W.1 further stated that the accused demanded Rs.3,00,000/- as dowry and when they expressed their inability he married another lady and when they questioned him, he stated that they could do whatever they can and he was not ready for marriage with P.W.2. Thus, she stated about the manner in which the accused cheated P.W.2 and the various instances or events happened between them.

26. The paternal uncle of P.W.2 was examined as P.W.6 and he stated that he was a constable in Armed reserve. P.W.1 was his sisterin- law and P.W.2 was her daughter. They belonged to SC community. P.W.2 joined as home guard in Bomb diffusal squad at Amberpet during 2005 and he came to know through P.W.1, that the accused developed acquaintance with P.W.2 and informed her that he was a bachelor and promised her that he would marry her. Then he summoned the accused to the house of P.W.1 and enquired with him as to how he could marry P.W.2 since he was already married and got children. He got personal knowledge that the accused was a married man with wife and children as they both worked in the same office. The accused informed him that his wife was suffering from mental illness, as such, he would marry P.W.2. The wife of the accused came to know about his affair with P.W.2, thereby she committed suicide and died. Even after the death of his wife, accused told him and P.Ws.1 and 2 that since his wife already died he would marry P.W.2. The accused promised them that he would marry P.W.2 in 2010. But against his promise, he got married another lady in 2009 itself. P.W.6 also stated that during the life time of the wife of accused, he fixed another match to P.W.2 but the accused approached them and got the said match cancelled with a promise that he would marry P.W.2. When they questioned his acts, the accused demanded dowry of Rs.3,00,000/- to marry P.W.2. He stated that the accused induced P.W.2 and started living with her but subsequently refused to marry her. Thus, the evidence of P.Ws.1 and 6 corroborates with the evidence of

P.W.2 on the sequence of events and proves the deception played by the accused in making continuous false promises to marry P.W.2, without any intention to marry her from the beginning. He finally married another woman but still continued to deceive P.W.2 making false promises that he would marry her as his second wife, which would show his dishonest intention of sexually exploiting her to his needs.

27. The evidence of P.Ws.3 and 4, the house owners of the houses at Vanasthalipuram and Amberpet wherein the P.W.2 and accused lived together would show that they lived as husband and wife by taking the portions of their house on rent. P.W.3 stated that he let out one portion on the ground floor to P.W.2 and the accused used to visit P.W.2 and declared before him that he was the husband of P.W.2.

28. P.W.4 stated that P.W.2 was his tenant for two years. She was working as Home guard and the husband of P.W.2 was also working as constable. The accused was the husband of P.W.2. Thus, the evidence of both these witnesses also corroborated with the evidence of P.W.2 that they lived together as husband and wife.

29. The other witnesses are official witnesses and they stated about the investigation conducted by them and the caste certificate issued in the official capacity.

30. Considering the evidence on record, the trial court rightly came to the conclusion that the offence was proved against the accused under Section 417 IPC and convicted him for the said offence. The sentence of six months simple imprisonment is also not on higher side for the offence proved against the accused.

31. The contention of the learned counsel for the appellant that P.W.2 failed to prove that she had divorce with her former husband and the customary divorce alleged by her was not in accordance with law and she suppressed the information to the accused that she was also having a child from her former husband, were not material facts to be considered in this case, as the prosecution for the offence of cheating is conducted against the accused but not against the victim. The prosecution is able to prove its case beyond all reasonable doubt against the accused for the offence under Section 417 IPC with which he was charged and rightly convicted him for the said offence. Hence, I do not find any illegality in the judgment of the conviction and sentence passed by the trial court to set aside the same.

32. The citations relied upon by the learned counsel for the appellant are not applicable to the facts of the case.

33. In the result, the appeal is dismissed confirming the conviction and sentence recorded against the appellant – accused vide judgment dated 28.08.2021 in S.C. No.63 of 2010 by the Special Sessions Judge-cum-Additional District and Sessions Judge, Ranga Reddy District for the offence under Section 417 IPC and the appellant - accused is directed to surrender before the trial court forthwith to serve the sentence of imprisonment passed against him. The bail bonds of the accused shall

stand cancelled. If the appellant fails to surrender as ordered, the trial court is directed to issue non-bailable warrants against him and to take all consequential measures.

Miscellaneous applications, if any pending, shall stand closed.

–X--

## 2022 (1) L.S. 78 (T.S)

IIN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Mr.Justice
B. Vijaysen Reddy

Akkinapalli Sujatha
& Ors., ..Petitioners

Vs.

The State of Telangana.,
& Anr, ..Respondents

**NEGOTIABLE INSTRUMENTS ACT, Sec.138 - Criminal Petition by the Accused Nos.5, 7, 8 and 9 to quash the proceedings in C.C. - Allegation that the complainant is a wholesale dealer in gold and jewellery business - A1 is the Jewellery Shop and A3 to A9 are the Directors of A1 company.**

**HELD: Mere assurance of payment or selection of jewellery cannot be the basis to rope in the Petitioners - Mere verbatim reproduction of the words contained in Sec.141 of the Negotiable Instruments Act without any specific role attributed to each of the petitioners in the A1 company, cannot be the basis to prosecute the Petitioners, as the same would be unjust and result in abuse of process of law - Complaint, where no specific role is attributed to the Director Accused, is liable to be quashed - Criminal Petition stands allowed and the proceedings in CC., against the Petitioners/Accused Nos.5, 7, 8 and 9, are hereby quashed.**

Mr.P. Ramachandran, Advocate for the Petitioners.
Public Prosecutor (TG), N. Vinesh Raj, Advocate for the Respondents

**J U D G M E N T.**

1. This criminal petition is filed by the petitioners/accused Nos.5, 7, 8 and 9 to quash the proceedings in CC.No.1011 of 2010 on the file of the II Additional Chief Metropolitan Magistrate, Hyderabad.

2. The complaint in CC.No.1011 of 2010 is filed by the respondent No.2 to prosecute the petitioners for the offence under Section 138 of the Negotiable Instruments Act.

3. It is alleged in the complaint that the complainant is a wholesale dealer in gold and jewellery business run in the name of M/s. Sanghi Jewellers Private Limited. A1 is the Jewellery Shop situated at Sapthagiri Complex, KPHB Colony, Hyderabad. A2 is the Managing Director of the A1 company and signatory of the subject cheques. A3 to A9 are the Directors of A1

company. In the month of July, 2010, A2 to A9 visited the complainant's jewellery shop at Hyderguda, Hyderabad. A2 to A9 represented that they are interested in doing business transactions in the complainant company. They also stated that the complainant company is known for designer jewellery adhering to the contemporary standards. On the representation of A2 to A9, the complainant, believing their version, showed them various types of jewellery pertaining to men and women. A5, A6, A7, A8 and A9 selected various jewellery items like necklace, ear rings etc. as they are women, they showed keen interest in selecting jewellery. They assured the complainant that they going to be permanent customers and would place more orders on various occasions like marriage season, festivals like Akshaya Tritiya. A2, A3 and A4 selected various kinds of jewellery like bracelets, rings etc. and placed orders for the same.

4. It is alleged that A2 to A9 purchased gold ornaments worth about Rs.25,49,121/- and issued two cheques drawn on Allahabad Bank, Balangar Branch and Axis Bank, Kukatpally Branch and assured that the cheques would be honoured on their presentation. Believing the representation of the accused, the complainant presented the cheques with its bank, SBI, Koti Branch, Hyderabad, which were dishonoured with an endorsement 'insufficient funds'. The cheque dated 26.06.2010 for a sum of Rs.4,75,000/- was dishonoured on 01.07.2010 and another cheque dated 03.07.2010 for a sum of Rs.20,74,121/- was dishonoured on 17.07.2010. The complainant informed about the dishonoured cheques to A2 to A9 and went personally to their shop and residences and expressed his anguish over failure of the accused to fulfill their commitment. A2 to A9 gave evasive replies and assured to settle the matter amicably but failed to fulfill their commitment.

5. It is alleged that at the time of issuing cheques, the accused were well aware there were no sufficient funds in the accounts maintained by them in the bank. After statutory notice dated 28.07.2010 was issued A1 to A9 calling upon them to pay cheque amount within 15 days, notices were received by A2 to A5 and A7 to A9 on 30.07.2010. The legal notice sent to A1 and A6 was returned back with an endorsement 'not claimed'. A1 company along with A2 to A9, who are Directors, thus, committed offence punishable under Section 138 of the Negotiable Instruments Act.

6. The petitioners/accused contend that all of them have resigned from A1 company with effect from 02.07.2010 and Form 32 to that effect was issued by the Registrar of Companies. The company was wholly managed and operated by A2, who is the Managing Director and involved in the day-to-day affairs of the company. The petitioners though are Directors, did not have direct access to the purchases or sales or to the accounts or to the receipts or payments pertaining to the business of A1 company. It is only A2 who was responsible for the affairs of A1 company. From 02.07.2010 onwards the petitioners are no way concerned with A1 company since they have resigned as Directors and

by suppressing the same, the present complaint is filed.

7. It is further contended that the respondent No.2 also filed a recovery suit in O.S.No.388 of 2010 on the file of the III Additional Chief Justice, City Civil Court, Hyderabad. There is no allegation in the suit proceedings that the petitioners have approached the complainant and taken the gold ornaments and that they have selected ornaments and contradictory statement is made in the instant complaint.

8. All the petitioners/Accused Nos.5, 7, 8 and 9 are household ladies. Their occupation in the cause title of the petition is shown as 'House wife'. The same is not controverted by the counsel for the complainant. Though allegations are made against all the petitioners that they have selected the jewellery and assured payment to complainant, such facts are not relevant to prosecute them for the offence under Section138 read with Section 141 of the Negotiable Instruments Act. The petitioners are neither signatory of the cheques nor in any way responsible for issuance of the subject cheques. Accused No.2 is said to be the Managing Director, who signed the cheques.

9. The prosecution under Section 138 of the Negotiable Instruments Act is against persons who have issued the cheque, which is later dishonored. Mere assurance of payment or selection of jewellery cannot be the basis to rope in the petitioners. It is vaguely stated in the complaint that the petitioners are directors and responsible for the day-to-day affairs of the A1 company. But in the given facts and circumstances of the case and particularly the uncontroverted claim of the petitioners that they are household ladies, this Court is of the opinion that vague and omnibus against the petitioners/directors as being responsible for the day-to-day affairs of A1 company is not sufficient. Mere verbatim reproduction of the words contained in Section 141 of the Negotiable Instruments Act without any specific role attributed to each of the petitioners in the A1 company, cannot be the basis to prosecute the petitioners, as the same would unjust and result in abuse of process of law.

10. In **POOJA RAVINDER DEVIDASANI v. STATE OF MAHARASHTRA** (2014) 16 SCC 1) the Supreme Court made the following observations:

> "... Time and again, it has been asserted by this Court that only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of commission of an offence will be liable for criminal action. A Director, who was not in charge of and was not responsible for the conduct of the business of the Company at the relevant time, will not be liable for an offence Under Section 141 of the N.I. Act. In **National Small Industries Corporation** (supra) this Court observed:
>
> Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory

statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.

A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfillment of the requirements Under Section 141.

(emphasis supplied)

**27**. Unfortunately, the High Court did not deal the issue in a proper perspective and committed error in dismissing the writ petitions by holding that in the Complaints filed by the Respondent No. 2, specific averments were made against the Appellant. But on the contrary, taking the complaint as a whole, it can be inferred that in the entire complaint, no specific role is attributed to the Appellant in the commission of offence. It is settled law that to attract a case Under Section 141 of the N.I. Act a specific role must have been played by a Director of the Company for fastening vicarious liability. But in this case, the Appellant was neither a Director of the accused Company nor in charge of or involved in the day to day affairs of the Company at the time of commission of the alleged offence. There is not even a whisper or shred of evidence on record to show that there is any act committed by the Appellant from which a reasonable inference can be drawn that the Appellant could be vicariously held liable for the offence with which she is charged."

11. In **POOJA RAVINDER DEVIDASANI's** case (1 supra), the Supreme Court allowed the quash petition not only on the ground that there is no specific role attributed to the appellant but also on the ground that the appellant has resigned as Director much prior to issuance of the cheque. The Supreme Court taking into consideration its earlier decisions in **National Small Industries Corporation v. Harmeet Singh Panital** [(2010) 3 SCC 330]; **Gunmala Sales Private Ltd. v. Anu Mehta** [(2015) 1 SCC 103] and **PepsiFoods Ltd. v. Special Judicial Magistrate** [(1998) 5 SCC 343], reiterated the ratio that a complaint, where no specific role is attributed to the Director – Accused, is liable to be quashed.

12. In the light of the above observations, this Court is not inclined to go into the other point regarding resignation of the petitioners as Directors on 02.07.2010, which is unnecessary.

Accordingly, the criminal petition is allowed and the proceedings in CC.No.1011 of 2010 on the file of the II Additional Chief Metropolitan Magistrate, Hyderabad, against the petitioners/accused Nos.5, 7, 8 and 9, are hereby quashed.

Pending miscellaneous petitions, if any, shall stand closed.

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## 2022 (1) L.S. 82 (T.S)

IIN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Mr.Justice
B. Vijaysen Reddy

M. Ravi ..Petitioner

Vs.

The State of A.P., & Anr., ..Respondents

**NEGOTIABLE INSTRUMENTS ACT, Sec.138 - Criminal Petition is filed to quash the proceedings in C.C., wherein the Petitioner is arrayed as A2 - Case of the Complainant/Respondent No.2 that A1/Company owes the complainant a sum, were issued by A1/ company towards discharge of its liability - A2 is the Vice President of A1/company.**

**HELD: It is not in dispute that the petitioner accused No.2 was shown in cause title as Vice President, but there is no averment in the entire complaint that all the accused are responsible for day to day affairs of the Company - Basic reading of the complaint would not prima facie disclose commission of any offence, so as to prosecute the petitioner for the offence under Sec.138 read with 141 of the Act - Court exercising equitable jurisdiction may decline to grant relief to the party if he or she approaches the Court with unclean hands - However, such suppression should be of material facts - In the instant case dismissal of discharge petition cannot be considered to be a material fact - Criminal petition stands allowed quashing the proceedings in C.C.**

Mr.M. Ratan Singh, Advocate for the Petitioner: .
Shreya Mundra, Rep Damodar Mundra, Advocate for the Respondents: R2.

**J U D G M E N T**

1. This criminal petition is filed to quash the proceedings in C.C.No.83 of 2012 on the file of the Special XI Metropolitan Magistrate, Erramanzil, Hyderabad, wherein the petitioner is arrayed as A2.

2. It is the case of the complainant/ respondent No.2 that A1/company owes the complainant a sum of Rs.1,32,311/- and accordingly, two cheques bearing Nos.461594 and 461595 dated 27.08.2011 and 30.08.2011 were issued by A1/company towards discharge of its liability. The aforesaid cheques were dishonoured when presented for encashment. The complainant issued statutory notice dated 01.12.2011 under Section 138 of the Negotiable

Crl.P.No.11573/2013 Date:12/03/2021

Instruments Act (for short 'the Act') and as the same evoked no response, the present complaint was filed.

3. A2 is the Vice President of A1/ company. This Court is not concerned with the other accused since the quash petition is filed by A2 only.

4. Mr. Rathan Singh, learned counsel for the petitioner, submitted that the complaint is filed on vague and bald allegations with an intention to harass A2, who is no way responsible for the day-to-day affairs of A1/company. The averments in the complaint do not disclose as to how A2 is responsible for issuance of cheques. Learned counsel further submits that this case is squarely covered by the decision of the Supreme Court in **S.M.S PHARMACEUTICALS v. NEETA BHALLA** (2005) 8 SCC 89).

5. On the other hand, Ms. Shreya Mundra, learned counsel representing Mr. Damodar Mundra, learned counsel for the respondent No.2, submits that A2 is the Vice President of A1/company and he is involved in the day-to-day affairs of the company. More so, as on the date of the dishonour of cheques, A2 was on the rolls of A1/company as Vice President. The issue whether A2 is responsible for the day-to-day affairs of A1/company is a question of fact, which needs to be determined in the trial and such question cannot fall for consideration in exercise of extraordinary jurisdiction of this Court under Section 482 of the Criminal Procedure Code. It is not in dispute that A2 was the Vice President of A1/company when the cheques were dishonoured and A2 cannot be allowed to go scot-free.

6. On a perusal of the contents of the complaint, it is found that the averments therein are very vague so far as the role of A2 is concerned. There is no averment in the complaint as to how and in what manner A2 was responsible for the conduct of the business of the company and in regard to its functioning. Further, A2 is not the signatory of the cheques. There is no specific averment in the complaint based on which this Court can prima facie form an opinion that A2 is responsible for the day-to-day affairs of the company. The Supreme Court in **S.M.S PHARMACEUTICALS'**s case (1 supra) held as under:

> **19.** In view of the above discussion, our answers to the questions posed in the reference are as under:
>
> (a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.
>
> (b) The answer to the question posed in sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable under Section 141

of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to Question (c) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141.

7. The learned counsel for the 2nd respondent submitted that the petitioner/ A-2 is the Vice President of A1/Company. There is a presumption against the petitioner and deemed liability which he has to rebut during the trial. The judgment of the Hon'ble Supreme Court in **S.M.S PHARMACEUTICALS**'s case (1 supra) cannot be read out of context. The petitioner has approached this Court with unclean hands by not disclosing the fact that the discharge petition filed by him before the Court below in Crl.MP. No.929 of 2013 in C.C. No.83 of 2012 was dismissed. The Hon'ble Supreme Court in recent decisions held that it is not necessary to reproduce the language in Section 141 of the Act, and it would suffice if basic averments are made in the complaint. If the complaint contains the averments against accused it has to be taken in plural sense and individual allegations against each of the accused is not necessary. The learned counsel relied on several decisions, which are discussed herein below:

In **GUNMALA SALES (P) LIMITED Vs. ANU MEHTA** (2015) 1 Supreme Court Cases 103)**,** it was held by the Hon'ble Supreme Court in paras 34, 34.1, 34.2, 34.3 and 34.4, which read as under:

**"34.** We may summarize our conclusions as follows:

**34.1.** Once in a complaint filed under Section 138 read with Section 141 of the NI Act the basic averment is made that the Director was in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, the Magistrate can issue process against such Director;

**34.2.** If a petition is filed under Section 482 of the Code for quashing of such

a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director.

**34.3.** In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about role of the Director in the complaint. It may do so having come across some unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of the process of the court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director. Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactics, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed;

**34.4.** No restriction can be placed on the High Court's powers under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the Court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but, nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director."

In **G. RAMESH v. KANIKE HARISH KUMAR UJWAL AND ANOTHER (**2019 SCC ONLINE SC 577)**,** it was held in paras 14, 17 and 18, which read as under:

"14. The issue is whether there are sufficient averments in the complaint to meet the requirement of Section 141(1). This is a matter which has to be determined on a holistic reading of the complaint. From the averments in the complaint, the case of the complainant is that the partnership firm of which the first respondent is a partner had obtained contracts for data entry, which were being sub-contracted to the complainant.

The accused are alleged to have obtained a caution deposit of Rs 1,00,000

and to have assigned the job of data entry to the complainant. After completing the job of data entry, the accused issued two cheques dated 1 November 2010 and 18 December 2010 for the amount of Rs 2,00,000 and Rs 2,50,000 respectively. On presentation, the cheques were returned due to insufficiency of funds. It was thereafter that the first respondent is alleged to have transferred an amount of Rs 1,00,000 from his account on 8 February 2011 and 10 February 2011. The complaint contains the statement that the parties are related. Thereafter, two further cheques were issued by the managing partner on 30 May 2011 and 19 July 2011 each in the amount of Rs 2,00,000. After the cheques were returned unpaid due to insufficiency of funds, the complainant is alleged to have informed the accused who are stated to have assured him that both the cheques would be honoured on re-presentation in the month of July 2011.

17. In the present case, it is evident from the relevant paragraphs of the complaint which have been extracted above that the complaint contains a sufficient description of (i) the nature of the partnership; (ii) the business which was being carried on; (iii) the role of each of the accused in the conduct of the business and, specifically, in relation to the transactions which took place with the complainant. At every place in the averments, the accused have been referred to in the plural sense. Besides this, the specific role of each of them in relation to the transactions arising out of the contract in question, which ultimately led to the dishonour of the cheques, has been elucidated.

18. The complaint contains a recital of the fact that the first set of cheques were returned for insufficiency of funds. It is alleged that the first respondent transferred an amount of Rs 1,00,000 on 8 February 2011 and 10 February 2011. The complaint also contains an averment that after the second set of cheques were dishonoured, the accused assured the complainant that they will be honoured on re-presentation in the month of July 2011. The averments are sufficient to meet the requirement of Section 141(1)."

In Gunmala's case (2 supra) the Hon'ble Apex Court has taken into consideration the judgment of **S.M.S PHARMACEUTICALS'**s case (1 supra) and held that the ratio laid down therein still holds the field (see para 27). In the facts and circumstances available in GUNMALA'S case (2 supra) the Hon'ble Apex Court held that the averment that all the Directors of the Company are responsible for day to day affairs of the Company would suffice to continue prosecution against them and no clear case was made out, at the material time, that the Directors were not in charge of and were not responsible for the conduct of the business of the Company by referring to or producing any incontrovertible or unimpleachable evidence which is beyond suspicion or doubt or any totally acceptable circumstances.

8. Now coming to the facts of the present case, it is not in dispute that the petitioner accused No.2 was shown in cause title as Vice President. There is no averment that the petitioner is Director of the Company. Apart from that, there is no averment in the entire complaint that all the accused are responsible for day to day affairs of the

Company. Thus basic reading of the complaint would not prima facie disclose commission of any offence, so as to prosecute the petitioner for the offence under Section 138 read with 141 of the Act.

9. Further submission of the learned counsel Ms. Shreya Mundra is that this Court may not exercise extraordinary jurisdiction under Section 482 Cr.P.C. since the petitioner approached this Court with unclean hands. The petitioner having suffered an adverse order in discharge petition does not disclose the same. The learned counsel placed on record the order dated 19.09.2013 passed in Crl.MP. No.929 of 2013 in C.C. No.83 of 2012 by the XI Special Magistrate, Secunderabad. The discharge petition was dismissed on the ground that unless all the accused appear and examined under Section 251 Cr.P.C., no discharge petition can be entertained in a summons case.

10. In **SUBRAMANIUM SETHURAMAN Vs. STATE OF MAHARASHTRA AND ANOTHER** (2004) 13 Supreme Court Cases 324) it was held by the Hon'ble Apex Court that the discharge petition in summons case is not maintainable. Thus dismissal of the discharge petition would not have any bearing on the decision in this criminal petition. It is settled law that a Court exercising equitable jurisdiction may decline to grant relief to the party if he or she approaches the Court with unclean hands or indulged in suppressing of facts. However, such suppression should be of material facts. In the instant case dismissal of discharge petition cannot be considered to be a material fact. As stated above, the dismissal of discharge petition is totally immaterial for this Court since this Court is not examining the correctness or otherwise of the order in the discharge petition. The learned counsel Ms. Shreya Mundra relied on the judgment of the Hon'ble Supreme Court in **K.D. SHARMA Vs. STEEL AUTHORITY OF INDIA LIMITED AND OTHERS (**MANU/SC/3371/2008). The said case arose out of writ petition relating to tenders. It was held in para 26, which reads as under:

26. A prerogative remedy is not a matter of course. While exercising extraordinary power a Writ Court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the Court, the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating "We will not listen to your application because of what you have done". The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it.

The judgment of the Hon'ble Supreme Court in **K.D. SHARMA** (5 supra) is not applicable to the facts of the present case, more so, since the alleged suppression is not with regard to any material fact.

11. In view of the above observations, this Court holds that continuance of proceedings against the petitioner would amount to gross abuse of process of law.

Accordingly, the criminal petition is allowed quashing the proceedings in C.C.No.83 of 2012 on the file of the Special XI Metropolitan Magistrate, Erramanzil, Hyderabad, as against A2. Pending miscellaneous applications, if any, shall stand closed.

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## 2022 (1) L.S. 88 (T.S)

IIN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Mr.Justice
B. Vijaysen Reddy

M/s. Madhavi Vuppalapati & Anr., ..Petitioners

Vs.

Sojitz Corporation & Anr., ..Respondents

**INDIAN PENAL CODE, Secs.405, 406, 409, 430, 120-B read with Section 34 – CRIMINAL PROCEDURE CODE - QUASH PETITION - Respondent No.1 is the complainant in C.C. to prosecute the Petitioners/Accused – Allegation that A1 company, its Directors and some of its officers in conspiracy with one another and with a common intention have unlawfully caused financial loss to the complainant company by indulging in acts of cheating and breach of trust.**

**HELD: Merely because A3 is the Chairperson, she cannot be prosecuted as no specific role is attributed to her in the instant complaint - As against A12 and A13, though there is an allegation of misrepresentation and assurance of payment, the same cannot be a ground to prosecute them since it is not the assurance of payment for which the accused are being prosecuted - Vicarious liability of the Chairman, Managing Director, Directors and Officers in-charge of a company under criminal law cannot be presumed unless the statute specifically provides for the same - For instance, for the offence under Section 138 of the Negotiable Instruments Act, the vicarious liability is provided for under Section 141 of the Act and such similar provision is not available for the offences under the Indian Penal Code.**

**No material on record nor any case is made out to proceed against the Petitioners - In the event any evidence is let in by the complainant showing complicity of the petitioners during trial, Complainant is always entitled to proceed against the Petitioners by filing an application under Section 319 Cr.P.C - Criminal petitions are allowed and the proceedings in C.C. are quashed.**

Mr.C. Sharan Reddy (Representing), A. Hariprasad Reddy, Advpcate for the Petitioners.
Public Prosecutor (TG), Rajesh Maddy, Advocates for the Respondents.

**C O M M O N O R D E R**

1. CRLP.No.1951 of 2010 is filed by A3, A6, A8 and A12 and CRLP.No.6364 of

2010 is filed A5, A7 and A13 to quash the proceedings in CC.No.140 of 2010 on the file of the IX Metropolitan Magistrate, Miyapur, Ranga Reddy District.

2. The respondent No.1 is the complainant in CC.No.140 of 2010 filed under Section 200 of the Criminal Procedure Code to prosecute the petitioners/accused and the other accused for the offences under Sections 405, 406, 409, 430, 120B read with Section 34 of the Indian Penal Code.

3. In the complaint, it is stated by the respondent No.1 that A1 company, its Directors and some of its officers in conspiracy with one another and with a common intention have unlawfully caused financial loss to the complainant company by indulging in acts of cheating and breach of trust and the acts are of such nature, which will have the possible effect of seriously affecting the ability of Hyderabad to attract foreign investments and in particular form Japan.

4. The complainant company is represented through its authorized representatives vide Special Power of Attorney dated 06.08.2010. The complainant company is engaged in the business of international trade and inter alia, provides trade finance in respect of sale equipment and accessories required in the field of telecommunications. A2 is the Chairman of A1 company (registered under the Indian Companies Act, 1956). However, the 10th Annual Report of A1 company for the financial year 2007-2008 makes no reference to A2 holding the said office. A3 is stated to be the Chairperson of A1 and inter alia looks after the affairs of A1 company in US. A4 is the Managing Director of A1 company; A9 and A12 are based in Delhi at the relevant period and were interacting with the complainant's representatives on regular basis. A9 and A12 made numerous misrepresentations to the representatives of the complainant's company. A9 signed a letter calling upon the Bharat Sanchar Nigam Limited (BSNL) to set aside the instructions earlier received by it from A1 to make all payments in stipulated Escrow agreement. A10, inter alia, signed the mandate forms with respect to Axis Bank wherein most of the dishonestly misappropriated funds were diverted. A13 with active support of A2 and A4 held himself out to be an Advisor of the A1 and in that capacity attended most of the meetings at Hyderabad and was actively involved in misrepresentations made and false undertakings given to the complainant. The other accused are variously involved in fraudulent activities of A1 whereby unlawful gain was attained by A1 and unlawful loss was caused to the complainant.

5. The main substratum of the allegations in the complaint is as under:

(a) In March 2007, BSNL announced tender for procurement of certain telecommunication equipment. Clause XI of the tender document clearly stipulates that 95% of the value of the equipment would be payable by BSNL immediately upon satisfactory supply of equipment, which was subject matter of the tender and the remaining 25% was payable by BSNL within six months thereafter. A1 was one of the bidders in respect of the said tender. HUAWEI, Chinese Company, who manufactured the equipment to be supplied, entered into negotiations with A1 and the salient features of the bid such as price

bid, specifications, delivery schedule, logistics, hardware/software ratio, other commercial conditions were decided between HUAWEI and A1. The bid was submitted by A1 on 04.06.2007 at BSNL Corporate Office in New Delhi and on the same day, the bids were opened and A1's bid was found to be in order.

(b) HUAWEI has done business with complainant in the past. It contacted the complainant and asked it to consider grant of trade finance to A1. Thereafter, pursuant to the telephonic discussions between HUAWEI, the complainant and A1, a meeting was held on 26.06.2007, which was attended by the Mr. Woichi and Mr. Gopalan on behalf of the complainant and A2, A11 and A13 on behalf of A1. The meeting was chaired by A2, who held himself out to as being Chairman of A1 company, made numerous claims about his company's order book, financial standing and his belief in conducting his company's business in an absolutely honest manner. The complainant raised numerous queries regarding reason for A1 tendering for hardware contract when A1 was essentially a software solutions company. The accused at the meeting responded by indicating that they are looking towards expanding the A1 company's business and developing software-hardware synergy. There were discussions during the meeting regarding modalities of repayment in respect of trade finance that the complainant may extend to A1 and the accused assured the complainant's representatives that HUAWEI, who already had numerous dealings with the complainant's company has informed them of complainant company's requirement including the need to set up a dedicated Escrow account into which all monies received from BSNL would have to be deposited.

(c) Further meetings took place between the complainant's company and accused persons on 02.07.2007 and 17.08.2007. The meeting was attended by the accused persons at Delhi and represented on behalf of accused by A9 and A12. The accused company assured the complainant that there would not be any delay in repayment of the amount that would be extended as trade finance to the accused by the complainant. Further negotiations took place between the accused and the complainant. On 08.11.2007, BSNL placed an advanced order upon A1. Pursuant to the representations made by the accused persons and believing them to be true, an agreement dated 29.11.2007 was entered between the complainant and the A1 for procurement of goods and supply of goods to BSNL. The goods consisted of 10G, 400 channels DWDM equipment manufactured by M/s. HUAWEI Technologies Company Limited. As per the supply agreement dated 29.11.2007, HUAWEI were to manufacture the equipment and the complainant was to purchase the same on letter of credit basis. Subsequently, the complainant sold the same to A1 company on document against payment basis. After completion of custom clearance at Indian Seaport/Airport, the said equipment would be supplied by A1 in terms of the tender conditions and BSNL's purchase order to BSNL. Upon satisfactory receipt of equipment, BSNL would be release payment into Escrow account with a view to protecting the complainant's substantial financial exposure.

12. In the light of the above provision that defines the word "dowry" and takes in its ambit any kind of property or valuable security, in our opinion, the High Court fell into an error by holding that the demand of money for construction of a house cannot be treated as a dowry demand. In Appasaheb's case [supra] referred to in the impugned judgment, this Court had held that a demand for money from the parents of the deceased woman to purchase manure would not fall within the purview of "dowry", thereby strictly interpreting the definition of dowry. This view has, however, not been subscribed to in Rajinder Singh's case [supra] wherein it has been held that the said decision as also the one in the case of Vipin Jaiswal[a-1] v. State of Andhra Pradesh represented by Public Prosecutor [(2013) 3 SCC 684], do not state the law correctly. Noting that the aforesaid decisions were distinct from four other decisions of this Court, viz., Bachni Devi and Another v. State of Haryana [(2011) 4 SCC 427], Kulwant Singh and Others v. State of Punjab [(2013) 4 SCC 177], Surinder Singh v. State of Haryana [(2014) 4 SCC 129], and Raminder Singh v. State of Punjab [(2014) 12 SCC 582], the Court opined that keeping in mind the fact that Section 304-B was inserted in the IPC to combat the social evil of dowry demand that has reached alarming proportions, it cannot be argued that in case of an ambiguity in the language used in the provision, the same ought to be construed strictly as that would amount to defeating the very object of the provision. In other words, the Court leaned in favour of assigning an expansive meaning to the expression "dowry" and held thus:-

> 20. Given that the statute with which we are dealing must be given a fair, pragmatic, and common sense interpretation so as to fulfil the object sought to be achieved by Parliament, we feel that the judgment in Appasaheb case [Appasaheb v. State of Maharashtra, (2007) 9 SCC 721(2007) 9 SCC 721 : (2007) 3 SCC (Cri) 468] followed by the judgment of Vipin Jaiswal [Vipin Jaiswal v. State of A.P., (2013) 3 SCC 684 : (2013) 2 SCC (Cri) 15] do not state the law correctly. We, therefore, declare that any money or property or valuable security demanded by any of the persons mentioned in Section 2 of the Dowry Prohibition Act, at or before or at any time after the marriage which is reasonably connected to the death of a married woman, would necessarily be in connection with or in relation to the marriage unless, the facts of a given case clearly and unequivocally point otherwise." [emphasis added]

13. The Latin maxim "Ut Res Magis Valeat Quam Pereat" i.e, a liberal construction should be put up on written instruments, so as to uphold them, if possible, and carry into effect, the intention of the parties, sums it up. Interpretation of a provision of law that will defeat the very intention of the legislature must be shunned in favour of an interpretation that will promote the object sought to be achieved through the legislation meant to uproot a social evil like dowry demand. In this context the word "Dowry" ought to be ascribed an expansive meaning so as to encompass any demand

made on a woman, whether in respect of a property or a valuable security of any nature. When dealing with cases under Section 304-B IPC, a provision legislated to act as a deterrent in the society and curb the heinous crime of dowry demands, the shift in the approach of the courts ought to be from strict to liberal, from constricted to dilated. Any rigid meaning would tend to bring to naught, the real object of the provision. Therefore, a push in the right direction is required to accomplish the task of eradicating this evil which has become deeply entrenched in our society.

14. In the facts of the instant case, we are of the opinion that the trial Court has correctly interpreted the demand for money raised by the respondents on the deceased for construction of a house as falling within the definition of the word "dowry". The submission made by learned counsel for the respondents that the deceased was also a party to such a demand as she had on her own asked her mother and maternal uncle to contribute to the construction of the house, must be understood in the correct perspective. It cannot be lost sight of that the respondents had been constantly tormenting the deceased and asking her to approach her family members for money to build a house and it was only on their persistence and insistence that she was compelled to ask them to contribute some amount for constructing a house. The Court must be sensitive to the social milieu from which the parties hail. The fact that the marriage of the deceased and the respondent No.1 was conducted in a community marriage organization where some couples would have tied the knot goes to show that the parties were financially not so well off. This position is also borne out from the deposition of P.W.-1 who had stated that he used to bear the expenses of the couple. Before the marriage of the deceased also, P.W.-1 had stated that he used to bear her expenses and that of her mother and brother [his sister and nephew] as her father had abandoned them. In this background, the High Court fell in an error in drawing an inference that since the deceased had herself joined her husband and father-in-law, respondents herein and asked her mother or uncle to contribute money to construct a house, such demand cannot be treated as a "dowry demand". On the contrary, the evidence brought on record shows that the deceased was pressurized to make such a request for money to her mother and uncle. It was not a case of complicity but a case of sheer helplessness faced by the deceased in such adverse circumstances.

15. Now, coming to the second point urged by learned counsel for the State that the High Court has overlooked the fact that Geeta Bai had been subjected to cruelty/ harassment at the hands of the respondents soon before her death, which submission is strictly contested by learned counsel for the respondents, we may note that the meaning of the expression "soon before her death" has been discussed threadbare in several judgments. In Surinder Singh (supra), while relying on the provisions of Section 113-B of the Indian Evidence Act, 1872 [For short 'the Evidence Act'] and Section 304-B IPC, where the words "soon before her death" find mention, the following pertinent

observations have been made: -

> "17. Thus, the words "soon before" appear in Section 113-B of the Evidence Act, 1872 and also in Section 304- B IPC. For the presumptions contemplated under these sections to spring into action, it is necessary to show that the cruelty or harassment was caused soon before the death. The interpretation of the words "soon before" is, therefore, important. The question is how "soon before"? This would obviously depend on the facts and circumstances of each case. The cruelty or harassment differs from case to case. It relates to the mindset of people which varies from person to person. Cruelty can be mental or it can be physical. Mental cruelty is also of different shades. It can be verbal or emotional like insulting or ridiculing or humiliating a woman. It can be giving threats of injury to her or her near and dear ones. It can be depriving her of economic resources or essential amenities of life. It can be putting restraints on her movements. It can be not allowing her to talk to the outside world. The list is illustrative and not exhaustive. Physical cruelty could be actual beating or causing pain and harm to the person of a woman. Every such instance of cruelty and related harassment has a different impact on the mind of a woman. Some instances may be so grave as to have a lasting impact on a woman. Some instances which degrade her dignity may remain etched in her memory for a long time. Therefore, "soon before" is a relative term. In matters of emotions we cannot have fixed formulae. The time-lag may differ from case to case. This must be kept in mind while examining each case of dowry death.
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> 18. In this connection we may refer to the judgment of this Court in Kans Raj v. State of Punjab [(2000) 5 SCC 207 : 2000 SCC (Cri) 935] where this Court considered the term "soon before". The relevant observations are as under: (SCC pp. 222-23, para 15)
>
> "15. ... 'Soon before' is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term 'soon before' is not synonymous with the term 'immediately before' and is opposite of the expression 'soon after' as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence

of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be 'soon before death' if any other intervening circumstance showing the nonexistence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough."

Thus, there must be a nexus between the demand of dowry, cruelty or harassment, based upon such demand and the date of death. The test of proximity will have to be applied. But, it is not a rigid test. It depends on the facts and circumstances of each case and calls for a pragmatic and sensitive approach of the court within the confines of law. [emphasis added]

16. In Rajinder Singh [supra], falling back on the rulings in Kans Raj v. State of Punjab and Others [(2000) 5 SCC 207], Dinesh v. State of Haryana [(2014) 12 SCC 532] and Sher Singh @ Partapa v. State of Haryana [(2015) 3 SCC 724], it has been emphasized that "soon before" is not synonymous to "immediately before" and the following observations have been made: -

> "24. We endorse what has been said by these two decisions. Days or months are not what is to be seen. What must be borne in mind is that the word "soon" does not mean "immediate". A fair and pragmatic construction keeping in mind the great social evil that has led to the enactment of Section 304-B would make it clear that the expression is a relative expression. Time-lags may differ from case to case. All that is necessary is that the demand for dowry should not be stale but should be the continuing cause for the death of the married woman under Section 304-B." [emphasis added]

17. In the above context, we may usefully refer to a recent decision of a three Judge Bench of this Court in Gurmeet Singh v. State of Punjab [(2021) 6 SCC 108] that has restated the detailed guidelines that have been laid down in Satbir Singh and Another v. State of Haryana [(2021) 6 SCC 1], both authored by Chief Justice N.V. Ramana, relating to trial under Section 304-B IPC where the law on Section 304-B IPC and Section 113-B of the Evidence Act has been pithily summarized in the following words:

"38.1. Section 304-B IPC must be

interpreted keeping in mind the legislative intent to curb the social evil of bride burning and dowry demand.

38.2. The prosecution must at first establish the existence of the necessary ingredients for constituting an offence under Section 304-B IPC. Once these ingredients are satisfied, the rebuttable presumption of causality, provided under Section 113-B of the Evidence Act operates against the accused.

38.3. The phrase "soon before" as appearing in Section 304- B IPC cannot be construed to mean "immediately before". The prosecution must establish existence of "proximate and live link" between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives.

38.4. Section 304-B IPC does not take a pigeonhole approach in categorising death as homicidal or suicidal or accidental. The reason for such non-categorisation is due to the fact that death occurring "otherwise than under normal circumstances" can, in cases, be homicidal or suicidal or accidental." [emphasis added]

18. In the instant case, it is not in dispute that the marriage between the deceased and the respondent No. 1 – accused had taken place on 7th May, 1998 and the deceased was brought in a severely burnt condition from her matrimonial home to the Health Care Centre at Baroda on 20th April, 2002 and she had expired on the very same day. It is also not in dispute that the death had occurred on account of the deceased dowsing kerosene oil and setting herself on fire. The evidence brought on record amply demonstrates that the harassment of the deceased for money had commenced within a few months of her marriage and had continued thereafter on several occasions. This fact is borne out from the deposition of PW-1, which shows that on not being able to fulfil the demand for Rs. 50,000/- [Rupees Fifty thousand] made bythe respondent No. 2 [father-in-law], he had thrown out the deceased and the respondent No.1 from the matrimonial home. They had then shifted to Kota and resided there. Thereafter, respondent No.2 had brought the couple back to Baroda and had again started demanding money from the deceased. Then the deceased and the respondent No. 1 moved to Tankarwada. This time, it was respondent No. 1 who had demanded a sum of Rs. 20,000/- [Rupees Twenty thousand] from thedeceased and her uncle for constructing a house. On being persistently hounded with the repeated demands for money made on her which her family could not fulfil, the hapless deceased who was well into the second trimester of her pregnancy, immolated herself at her matrimonial home.

19. The above glairing circumstances when viewed together, can hardly mitigate the offence of the respondents or take the case out of the purview of Section 304-B IPC, when all the four pre-requisites for

invoking the said provision stand satisfied, namely, that the death of Geeta Bai took place at her matrimonial home within seven years of her marriage; that the said death took place in abnormal circumstances on account of burning and that too when she was five months pregnant; that she had been subjected to cruelty and harassment by the respondents soon before her death and such cruelty/harassment was in connection with demand for dowry. Though the High Court found the testimony of P.W.-1 [maternal uncle of the deceased] to be trustworthy and consistent and no credible evidence could be produced by the respondents to demolish the prosecution version, surprisingly, their conviction under Section 304-B IPC has been set aside and furthermore, respondent No. 2 has been acquitted for the offence punishable under Section 498-A IPC.

20. Taking into account the evidence brought on record by the prosecution, particularly, the testimony of P.W.-1, this Court has no hesitation in holding that the analysis of the trial Court was correct and the respondents deserved to be convicted under Sections 304-B and 498-A IPC. However, we do not propose to disturb the findings returned by the High Court that has acquitted the respondents for the offence of abetment to commit suicide under Section 306 IPC, as the prosecution could not bring any conclusive evidence on record to satisfactorily demonstrate that it was due to the abetment on the part of the respondents that the deceased had committed suicide by immolating herself. Accordingly, the judgment of conviction and sentence passed by the trial Court in respect of both the respondents under Section 304-B and Section 498-A IPC, is restored. However, the sentence imposed on them by the trial Court of RI for life is reduced to RI for seven years, which is the minimum sentence prescribed for an offence under Section 304-B IPC.

21. In view of the foregoing discussion, the present appeal is partly allowed. The respondents shall surrender before the trial Court within four weeks to undergo the remaining period of their sentence. The appeal is allowed in the above terms.

–X–

## 2022 (1) L.S. 14 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
L. Nageswara Rao &
The Hon'ble Mr.Justice
B.R. Gavi

Ajanta Llp ..Petitioner

Vs.

Casio Keisanki Kabushiki
Kaisha D/B/A Casio Computer
Co. Limited & Another ..Respondents

**CIVIL PROCEDURE CODE - Appeal aggrieved by the judgment of the High Court, dismissing the application filed by the Appellant under Sections 152 and 153 read with Section 151 of the Code of Civil Procedure, seeking modification of the judgment.**

C.A.No.1052/2022 Date:4-2-2022

**HELD: Even assuming there is a mistake, a consent decree cannot be modified/altered unless the mistake is a patent or obvious mistake - Or else, there is a danger of every consent decree being sought to be altered on the ground of mistake/misunderstanding by a party to the consent decree - We are unable to agree with the Appellant that there was a mistake committed while entering into a settlement agreement due to misunderstanding - Correspondence between the advocates for the parties who are experts in law would show that there is no ambiguity or lack of clarity giving rise to any misunderstanding – Appeal stands dismissed.**

**J U D G M E N T**

(per the Hon'ble Mr.Justice L. Nageswara Rao )

Leave granted.

1. Aggrieved by the judgment dated 22.11.2019 of the High Court of Delhi, dismissing the application filed by the Appellant under Sections 152 and 153 read with Section 151 of the Code of Civil Procedure, 1908 (for short "the CPC") seeking modification of the judgment dated 03.07.2019, the Appellant is before this Court.

2. The Respondent filed a suit against the Appellant for the following reliefs:

"A. The Defendants, their directors, agents, sellers, retailers, distributors, suppliers, franchisees, representatives, employees, affiliates and assigns be restrained by a permanent injunction from manufacturing, importing, marketing, advertising, promoting, offering for sale, selling, exporting and/ or using the impugned product ORPAT FX-991ES PLUS bearing the Plaintiff's Registered Design bearing Nos. 214283 and 214282 dated 16/01/2008 in Class 18-01 for its scientific calculator CASIO FX-991ES PLUS by itself or in combination with any other design(s); and/ or other articles/ goods/ products bearing the impugned design or any other design which is identical to or is a fraudulent imitation of Plaintiff's Registered Designs, so as to commit piracy of the Plaintiff's Registered Design Nos. 21483 and 214282.

B. The Defendants, their directors, agents, sellers, retailers, distributors, suppliers, franchisees, representatives, employees, affiliates and assigns be directed by a decree of mandatory injunction directing that they at their own expense:

i. Recall all the impugned products and/ or any marketing, promotional and advertising materials that bear or incorporate the impugned design or any other articles/ goods/ products which bears a design which is a fraudulent or an imitation of the Plaintiff's Registered Designs, which has been manufactured and/ or sold, distributed, displayed or advertised or promoted in the market, including on online retail/ e-commerce websites,

ii. Deliver to the Plaintiff for destruction all the materials including impugned products and/ or any marketing, promotional and advertising materials that bear or incorporate the impugned design or any

other articles/ goods/ products which bears a design which is a fraudulent or an imitation of the Plaintiff's Registered Designs.

iii. Make full and fair disclosure to the Plaintiff any design application or registration for the impugned design and/ or any other design which is a fraudulent or an imitation of the Plaintiff's Registered Designs, and withdraw such applications and/ or surrender such registrations under intimation to the Plaintiff,

iv. Make a full and fair disclosure to the Plaintiff of the full details such as names and addresses of the party(s) involved in the manufacturing, marketing, distributing and selling the impugned products.

C. The Defendant be called upon to allow inspection of their accounts to assist in ascertaining the amount of profits made by them and/ or damages including exemplary and penal damages suffered by the Plaintiff on account of the Defendants' offending activities and a decree is passed in favour of the Plaintiff and against the Defendant for the amount found due.

D. Cost of the suit be awarded to the Plaintiff;

and

E. Any other relief which this Hon'ble Court thinks fit and proper in the circumstances of the case is allowed in favor of the Plaintiff and against the Defendant."

3. According to the Plaintiff, the Defendant lifted each and every novel element of the original design, shape and configuration for its scientific/ electronic calculator 'ORPAT FX-991ES PLUS'. The Respondent applied for a design registration for its electronic calculator namely 'CASIO FX-991ES PLUS' and it was introduced in India in October, 2011. Having knowledge about the sale of the scientific calculator by the Appellant under the name 'ORPAT FX-991ES PLUS', the Respondent filed a civil suit for the reliefs referred to above. The High Court of Delhi passed an ex-parte ad-interim order of stay on 28.11.2018. Thereafter, the parties were referred to mediation by the High Court of Delhi on 18.12.2018. After a detailed correspondence and exchange of e-mails between the counsel appearing for the parties, a settlement was arrived at vide a Settlement Agreement dated 16.05.2019. The High Court decreed the suit on 03.07.2019 in terms of the Settlement Agreement. Subsequently, an Application was filed by the Appellant under Sections 152 and 153 read with Section 151 of the CPC for correction/ rectification/ amendment of the judgment dated 03.07.2019. The Appellant stated in the said Application that the Settlement Agreement pertains only to trademark "FX-991ES PLUS'/ 'FX-991". However, there was an inadvertent typographical error of the trademark in the Settlement Agreement as "FX-991ES PLUS/ FX/ 991". As stated above, the High Court dismissed the Application. Hence, this Appeal.

4. We have heard Mr. K.V. Viswanathan, learned Senior Counsel appearing for the Appellant and Dr. Abhishek Manu Singhvi and Mr. Chander Lal, learned Senior Counsel appearing for the

Respondents. On behalf of the Appellant, it was contended that the High Court committed an error in dismissing the Application by considering the same to have been filed only under Section 152 of the CPC. It was submitted that the High Court ought to have considered the Application by referring to Order 23 Rule 3 read with Section 151 of the CPC. The learned Senior Counsel argued that misunderstanding between the parties is a valid ground to interfere with a consent decree by relying upon the judgment of this Court in Shankar Sitaram Sontakke & Anr v. Balkrishna Sitaram Sontakke & Ors., AIR 1954 SC 352 and Byram Pestonji Cariwala v. Union Bank of India & Ors., (1992) 1 SCC 31. The learned Senior Counsel further argued that the High Court has inherent jurisdiction to correct the terms of a consent award to bring it in conformity with the intended compromise by placing reliance on a judgment of this Court in Com pack Enterprises India Pvt. Ltd. v. Beant Singh, (2021) 3 SCC 702. He also relied upon the judgment of the Privy Council in Sourendra Nath Mitra & Ors. v. Srimati Tarubala Dasi, AIR 1930 PC 158 to contend that the inherent power of a Court should be exercised not to allow its proceedings to give rise to substantial injustice. Mr. Viswanathan referred to the e-mails exchanged between the advocates of the parties and submitted that the intention of the parties throughout related to the use of scientific calculator 'FX-991ES PLUS' only. He submitted that it would be clear from the correspondence that all along 'FX' and '991' were separated by a '-' (hyphen) and for the first time a '/' (slash) was introduced in the final version of the Settlement Agreement. According to the Appellant 'FX' is a common generic name that is used to denote "function of" and it is not capable of being independently trademarked. The Appellant realized the mistake only after a legal notice was issued by the Respondent on 26.07.2019 in which it was mentioned that the Appellant had agreed not to use "FX" or "991" as per the Settlement Agreement in spite of which the Appellant was using "FX" in violation of the Settlement Agreement.

5. The Respondents submitted that there is no allegation of fraud or misrepresentation in arriving at the Settlement Agreement and the High Court was right in dismissing the Application seeking modification of the decree. It was submitted on behalf of the Respondents that the parties agreed that the advocates would act as mediators. Several mediation sessions were held, and e-mails were exchange between the advocates appearing for the parties where after a Settlement Agreement was entered into between the parties. The Final agreement was checked and signed by the mediator and finally, the Court examined the terms of the Agreement in terms of which a decree was passed. After applying its mind to the Settlement Agreement, the High Court passed a decree in terms of the Agreement. A perusal of the correspondence between the advocates for the parties would clearly demonstrate that the Respondent made it clear that the Appellant should not use "FX-991ES PLUS"/ "FX-991ES" or any deceptively or confusingly similar mark. Referring to the judgments relied upon by the learned Senior Counsel for the Appellant, Dr. Singhvi argued that consent decrees create estoppel by judgment against the parties and cannot

be interfered with unless the decree is vitiated by fraud, misrepresentation or a patent or obvious mistake. He submitted that Respondent No. 1 has adopted trademark 'FX' for scientific and electronic calculators since the year 1985. Respondent No. 1 obtained a Design registration for the mark "FX" bearing No. 5010491 in Class-9 and claiming use since 29.01.1999. Countering the submissions of Mr. Viswanathan, learned Senior Counsel that "FX" is used by other manufacturers, Dr. Singhvi, learned Senior Counsel relied upon a list of 3rd party manufacturers of scientific calculators who have adopted their respective marks for their scientific calculators without using their trade mark "FX".

6. It is necessary to refer to the correspondence between the advocates of the parties for better appreciation of the contention that there was a misunderstanding between the parties while entering into the Settlement Agreement which needs to be corrected. On 07.02.2019, the advocate for the Respondent communicated the proposed terms to the advocate for the Appellant. It was stated in the said e-mail that the Appellant will cease and desist using the mark "FX-991ES PLUS" / "FX-991ES" or any other similar mark as well as the impugned design or any other similar design. In response, an e-mail was sent by the Appellant on the same day that the Appellant will cease and desist using the mark "FX-991ES PLUS"/ "991ES" or any other similar mark as well as the impugned design or any other similar design. In addition, it was stated as follows: "Approved and already detailed in the affidavit (w.e.f. 30.11.2018) filed before the High Court." The draft terms for mediation were prepared by the advocate for the Respondent and communicated to the advocate for the Appellant on 04.03.2019. It was mentioned therein as follows:

"a. The Third Party acknowledges that the First Party has the exclusive rights over the design of its scientific calculator CASIO FX-991ES PLUS and the trademarks FX-991ES PLUS/ FX-991ES. The third party further undertakes never to adopt and/ or manufacture and/ or sell and/or offer of sale and/ or advertise/ promote or use in any manner the impugned design or any other design similar to that of the First party's registered designs bearing nos. 214283 and 214282, dated 16/01/2008 in Class 18-01. The Third Party further undertakes never to adopt and/ or advertise/ promote or use in any manner, any goods or services which incorporate the First Party's FX-991ES PLUS/ FX-991ES or any deceptively or confusing similar mark;

b. xx xx xx

c. The Third Party undertakes that it has already ceased use of the impugned design and the marks FX-991ES PLUS/ FX-991ES and refrains from any use in the future as well;

d. The Third Party undertakes to never use the packaging/ trade dress of the First Party's scientific calculator FX-991ES PLUS, annexed herewith as Annexure A or any other deceptively and confusing similar packaging, which is identical and/ or deceptively and confusingly similar to the First Party's packaging/ trade dress for its scientific calculators FX-991ES PLUS;"

7. A modified Settlement Agreement was communicated by the advocate for the Appellant to the advocate for the Respondent on 07.03.2019 in which it was mentioned as follows:

"a. The third party undertakes never to adopt and/ or manufacture and/ or sell and/ or offer of sale and/ or advertise/ promote or use in any manner the impugned design, which shall mean and include the subject matter of the challenge in Suit being C.S.(COMM.) No. 1254 of 2018 before the High Court of Delhi or any other design similar to that of the First party's registered designs bearing nos. 214283 and 214282 dated 16/01/2008 in Class 18-01. The Third Party further undertakes never to adopt and/ or advertise/promote or use in any manner, any goods or services which incorporate the First Party's FX-991ES PLUS/ FX-991ES marks, in their entirely or the numeral 991.;

b. xx xx xx

c. The Third Party reiterates that since and from 30.11.2018 it has neither manufactured nor marketed nor dispatched any calculator bearing the impugned Design and that it has already ceased use of the Impugned Design and the marks FX-991ES PLUS/ FX-991ES and would refrain from any use in the future as well.;

d. The Third Party undertakes to never use the packaging/ trade dress of the First Party's scientific calculator FX-991ES PLUS, annexed herewith as Annexure A or any other packaging, which is identical and/ or deceptively and confusingly similar to the First Party's packaging/ trade dress as described in aforementioned Annexure A.;"

8. As response to mediation terms sent by the advocate for the Respondent on 27.03.2019, the advocate for the Appellant suggested some alterations in the mediation terms in his e-mail dated 10.04.2019. The relevant changes that were suggested were made in track mode and are as follows:

"a. The third party undertakes never to adopt and/ or manufacture and/ or sell and/ or offer of sale and/ or advertise/ promote or use in any manner the impugned design, or any other design similar to that of the First party's Design registration No.'s/ trodc dress of FX-991ES PLUS bearing nos. 214283 and 214282 dated 16/01/2008 in Class 18-01. The Third Party further undertakes never to adopt and/ or manufacture and/ or sell and/ or offer of sale and/ or advertise/ promote or use in any manner, any goods or services which incorporate the First Party's designs of FX-991ES PLUS bearing nos. 214283 and 214282 dated 16/01/2008 in Class 18-01 trade mark FX991ES PLUS/ FX 991ES in their entirety and/ or the term FX and/ or numeral 991.;

b. The Third Party agrees to never challenges in any way, or create any hindrance to, either by themselves or with any other party or supporting any party in any such action, the rights of First Party in the Design registration No's. 214283 and 214282 dated 16/01/2008 in Class 18-01 for its scientific calculator during the term of their registration.

c. The Third Party reiterates that since and from 30.11.2018, as undertaken

in the Affidavit dated December 7, 2018 of Mr. Nevil P. Patel, it has neither manufactured nor marked nor dispatched any calculator bearing the Impugned Design and the marks FX 001ES PLUS/ FX 001ES that it has already ceased use of the First Party's registered designs of FX-991ES PLUS bearing nos. 214283 and 214282 dated 16/01/2008 in Class 18-01 and would refrain from any use in the future as well.;

d. The Third Party undertakes to never use the packaging/ tradedressof theFirst Party's scientific calculator FX BOIES PLUS First Party's registered designs of FX-991ES PLUS bearing nos. 214283 and 214282 dated 16/01/2008 in Class 18-01, annexed herewith as Annexure A or any other packaging, which is identical and/ or deceptively and confusingly similar to the First Party'spackaging/tradedress above as described in aforementioned Annexure A.'

e. The Third Party has already recalled all the products bearing the impugned design and/ or any marketing, promotional and advertising materials that bear or incorporate the impugned design or any other articles/ goods/ products which bears the impugned design, which have been manufactured or promoted in the market, including but not limited on online retail/ e-commerce websites.;

f. In view of the aforesaid recall, the Third Party undertakes that it has already sent e-mails/ notice to all its distributors and retailers who have having direct business relation with the Third party to recall the impugned products from the market. Copy ies-of one such e-mails/ notices dated sent by the Third Party are collectively annexed herewith as Annexure BfCo/ly] However, the Third Party is not in a position to recall unsold products bearing the impugned design in the open market and therefore would not be held responsible for such products bearing the impugned design.

g. The Third Party undertakes that the quantum of stocks mentioned in their affidavit dated December 07, 2018 are true and correct and the Third Party has not manufactured and/or distributed the impugned products since November 30, 2018. The Third Party further undertakes that as mentioned in the affidavit dated December 7, 2018, the Defendants has removed the external body of the remaining 2560 products bearing the impugned design and destroyed the said pieces, which were lying in its factory.

h. The Third Party undertakes that there is no pending design application or registration for the impugned design and/ or any other design which is identical to or an obvious imitation of the First Party's registered Design No.'s 214283 and 214282.;

i. The Third Party undertakes that there is no pending-----trade-----mark----- application-----or registration for the marks FX 091ES Plus/ FX DDES and/ or any other mark comprising of the term FX and/or numeral DDL;"

9. Thereafter, on 14.05.2019 a final draft of the Settlement Agreement from the Respondents' side was communicated to the advocate for the Appellant in which it was categorically stated that the Appellant undertakes not to adopt/ manufacture/ sell/

offer/ advertise/ promote/ use in any manner, any goods incorporating the Design of the Respondent of 'FX-991ES PLUS' bearing Nos. 214283 and 214282 dated 16.01.2008 in Class 18-01 and/ or the trade mark 'FX-991ES PLUS'/ 'FX'/ '991' and/ or its packaging or any other identically, deceptively and/ or confusingly similar packaging to that of the Respondents' packaging. In response, an e-mail was sent by the advocate of the Appellant enclosing the mediations terms in the same terms as proposed by the advocate for the Respondents in his e-mail dated 14.05.2019. Finally, the Settlement Agreement was executed between the parties on 16.05.2019.

10. Though, there were alterations that were proposed by the advocate for the Appellant during the course of correspondence, no objection was raised to the proposed terms of the Settlement Agreement communicated by the Advocate for the Respondent on 14.05.2019 which ultimately was the final Settlement Agreement signed by the parties.

11. In Banwari Lal v. Chando Devi (Smt.) (through LRs.) & Anr, (1993) 1 SCC 581 this Court was concerned with a compromise on the basis of which the Appellant delivered possession of the disputed land to the Respondent. Later, on verification and inspection of the records, the Appellant realized that his advocate colluded with the defendants in the suit and had played fraud on him by filing a fabricated petition of compromise. The Trial Court recalled the order on the ground that the compromise petition was not signed by the parties as required by proviso to Rule 3 of Order 23 of the CPC. The Revision Petition filed by the Respondent was allowed by the High Court against which the Appellant filed an Appeal before this Court. It was held in the said case that an Application to exercise the power under proviso to Rule 3 of Order 23 can be labelled under Section 151 of the CPC. It was observed in the judgment that the illegality and validity of a compromise can be examined under Section 151 of the CPC. Mr. Viswanathan, learned Senior Counsel relied upon a judgment of the Privy Council in Sourendra Nath Mitra & Ors. (supra) in support of his submission that the Courts retain an inherent power not to allow their proceedings to be used to further substantial injustice. In view of the law laid down by this Court in Banwari Lal (supra), the question that arises for consideration is whether the Appellant has made out a case for modification/ alteration of the decree by his application being treated to be one under Rule 3 of Order 23 of the CPC. Resolving a dispute pertaining to a compromise arrived at between the parties, this Court in Shankar Sitaram Sontakke & Ann (supra) held as under: "If the compromise was arrived at after due consideration by the parties and was not vitiated by fraud, misrepresentation, mistake or misunderstanding committed by the High Court -the finding which was not interfered with by the High Court - it follows that the matter which once concluded between the parties who were dealing with each other at arm's length cannot now be reopened."

12. A judgment by consent is intended to stop litigation between the parties just as much as a judgment resulting from a decision of the Court at the end of a long drawn-out fight. A compromise decree creates an estoppel by judgment (Byram

Peston Gariwala v. Union of India, (1992) 1 SCC 31). It is relevant to note that in Byram Peston Gariwala (supra), this Court held that the Appellant-therein did not raise any doubt as to the validity or genuineness of the compromise nor a case was made out by him to show that the decree was vitiated by fraud or misrepresentation. While stating so, this Court dismissed the Appeal.

13. A consent decree would not serve as an estoppel, where the compromise was vitiated by fraud, misrepresentation, or mistake. The Court in exercise of its inherent power may rectify the consent decree to ensure that it is free from clerical or arithmetical errors so as to bring it in conformity with the terms of the compromise. Undoubtedly, the Court can entertain an Application under Section 151 of the CPC for alterations/ modification of the consent decree if the same is vitiated by fraud, misrepresentation, or misunderstanding. The misunderstanding as projected by the learned Senior Counsel for the Appellant between parties relates to use of "FX" or "991" as separate marks in the Settlement Agreement. The understanding between the parties was with respect to "FX-991 ES PLUS" as a whole and not with reference to "FX". A close scrutiny of the correspondence between the parties would show that the Settlement Agreement was arrived at after detailed consultation and deliberations. Thereafter, the parties were communicating with each other and they took six months to arrive at a settlement. The final Settlement Agreement was approved by the mediator. The High Court applied its mind and passed a decree in terms of the Settlement Agreement dated 16.05.2019. Though, the High Court dismissed the Application by refusing to entertain the Application on the ground that it was filed under Section 152 of the CPC, we have considered the submissions of the parties to examine whether the Appellant has made out a case for modification of the decree by treating the Application as one under the proviso to Order 23 Rule 3 read with Section 151 of the CPC. There is no allegation either of fraud or misrepresentation on the part of the Respondent. We are unable to agree with the Appellant that there was a mistake committed while entering into a settlement agreement due to misunderstanding. Correspondence between the advocates for the parties who are experts in law would show that there is no ambiguity or lack of clarity giving rise to any misunderstanding. Even assuming there is a mistake, a consent decree cannot be modified/ altered unless the mistake is a patent or obvious mistake. Or else, there is a danger of every consent decree being sought to be altered on the ground of mistake/ misunderstanding by a party to the consent decree.

14. For the foregoing reasons, we uphold the judgment of the High Court and dismiss the Appeal.

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