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Law Summary

(Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

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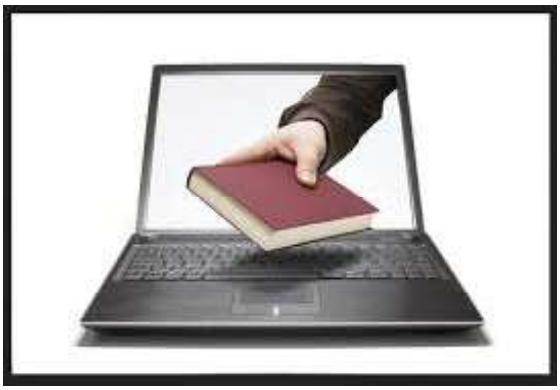

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PART -19 (15TH OCTOBER 2022)

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Respondent, while supporting the order made by the trial Court, submits that the order of trial Court need not be disturbed since that would not cause any prejudice to either of the parties, respondent admits that proper opportunity to file counter was not granted by trial Court to this revision petitioner and in the event of allowing this revision, this Court may instruct trial Court to dispose of the application by certain time lines that could be prescribed by the Court.

HELD: The trial Court did not even think to consider the version of respondent, its simpally extracted the apprehension of the petitioner in its order, the order of lower Court does not indicate to any judicial mind as to whether the required principle of law were at all considered by the trial Court, since the order is bereft of required reasoning and required consideration of the material, the same is liable to set aside. **(A.P.)** ***78***

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HELD: Petition stands dismissed with the following findings:

1. For the commission of an offence under Section 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation;

2. If the drawer of the cheque pays a part or whole of the sum between the period when the cheque is drawn and when it is encashed upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque;

3. When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in Section 56 of the Act. The cheque endorsed with the payment made may be used to

negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encashed upon maturity, then the offence under Section 138 will stand attracted;

4. The first respondent has made part-payments after the debt was incurred and before the cheque was encashed upon maturity. The sum of rupees twenty lakhs represented on the cheque was not the 'legally enforceable debt' on the date of maturity. Thus, the first respondent cannot be deemed to have committed an offence under Section 138 of the Act when the cheque was dishonoured for insufficient funds; and

5. The notice demanding the payment of the 'said amount of money' has been interpreted by judgments of this Court to mean the cheque amount. The conditions stipulated in the provisos to Section 138 need to be fulfilled in addition to the ingredients in the substantive part of Section 138. Since in this case, the first respondent has not committed an offence under Section 138, the validity of the form of the notice need not be decided.For the commission of an offence under Section 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation. **(S.C.)** ***1***

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(S.R.C.)(S.C.) 8

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SPECIFIC PERFORMANCE OF AGREEMENT - Trial Court decreed the suit, directed defendants to execute regular register sale deed and granted liberty to plaintiff to approach Court for executing sale deed by Court and delivery possession, hence this Appeal.

The appellant/defendant has totally denial of the execution of agreement of sale, but admitted receipt of Rs.9,50,000/- however, as the amount of consideration

towards sale of casuarina tope in the suit schedule property, further contended that the trial Court has wrongly placed burden on the appellants to prove that their signatures and thumb marks are forged by getting the agreement/Ex-A3, examined by an expert and that in fact, it is burden of plaintiff to prove its case that the agreement under Ex-A3 was executed and it is not the burden of the defendants to prove the agreement is forged and further contend that the suit agreement contains only the signature of the vendor, but not the vendee and thus, it is invalid.

HELD: The entire evidence relied on by the defendants is just to get over the liability under the suit transactions and also they filed to discharge their onus, hence the plaintiff is entitled to specfic performance of agreement of sale under Ex-A3 and the agreement is binding on all the defendants, further held that the suit agreement contains only the signature of vendor, an agreement of sale signed by vendor alone and delivered to the purchaser, and accepted by purchaser has always been considered to be a valid contract, in the event of breach by the vendor, it can be specifically enforced by the purchaser, in view of well settled legal position, further held that the conduct of defendants, as explicit from the evidence on the record and the defence taken bluntly denying the suit transaction, would disentitle them to get any relief in the Appeal, in the result, the Appeal is dismissed. **(A.P.)** ***86***

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Court fee to be valued only on basis of relief prayed for in plaint - Sect.24(a) of the Act provides for suit for declaration and possession of the property to which the declaration speak-about, It stipulates that the Court fee shall be computed on the market value of the immovable property or Rs.300/-, whichever is higher - Sec.24 (b) provides for suit for declaration and injunction as a consequential relief sought is with reference to any immovable property, fee shall be computed on one-half of the market value of the property or on Rs.300/-, whichever is higher.

Parties and the lower Judiciary will have to carefully scrutinize the pleadings mentioned in the plaint to arrive at a correct conclusion for payment of Court fee aspect - Civil Revision Petition stands allowed. **(T.S.)** ***59***

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IS PRINCIPLE OF NATURAL JUSTICE A REALITY OR A MYTH?

PVS SAILAJA
Assistant Professor
Mahatma Gandhi College Of Law, Hyderabad

"THE UNIVERSAL AND ABSOLUTE IS THAT NATURAL JUSTICE WHICH CANNOT BE WRITTEN DOWN, BUT WHICH APPEALS TO THE HEARTS OF ALL"

Natural Justice implies fairness, reasonableness, equity and equality. Natural Justice is a concept of Common Law and it is the Common Law world counterpart of the American concept of 'procedural due process'. Natural Justice represents higher procedural principles developed by judges which every administrative agency must follow in taking any decision adversely affecting the rights of a private individual.

Natural Justice meant many things to many writers, philosophers and systems of law. Techniques of Law1 It is used interchangeably with Divine Law, Jus Gentium and the Common Law of the Nations. It is a concept of changing content. However, this does not mean that at a given time no fixed principles of Natural Justice can be identified. The principles of Natural Justice through various decisions of courts can be easily ascertained, though their application in a given situation may depend on multifarious factors. In a Welfare State like India, the role and jurisdiction of administrative agencies is increasing at a rapid pace. The concept of Rule of Law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging these functions in a fair and just manner.

The term 'justice' has been originated from the Latin word 'jus' which means right or law, or in other words. The idea of justice is situated in different fields and perspectives comprehensive of the ideas of good rightness dependent on morals, rationality, law, religion, value and reasonableness. Justice mainly emphasizes on the three main principles of equity, equality and need which operates within a specific sphere of influence.

ORIGIN OF NATURAL JUSTICE

The concept of Natural Justice has not evolved out of a sudden but is a very ancient concept which has originated thousands of years ago. This concept was familiar to Greeks who defined it as "**no man should be condemned unheard**". The Doctrine of Natural Justice was accepted at the time of Adam and Kautilya's Arthashashtra. Even England adopted the theory of Natural justice in its judicial system by stating that "**no human**

laws are of any validity, if contrary to this". The drafting of the Constitution of USA was determined by the principle of natural justice which eventually became the basis for international laws, conventions, covenants and declarations.

The principles of natural justice are firmly grounded under various Article of the Constitution. With the introduction of the concept of substantive and procedural due process in Article 21 of the Constitution all that fairness which is included in the principles of natural justice can be read into Article 21 when a person is deprived of his life and personal liberty, In other areas it is Article 14 which incorporates the principles of natural justice. Article 14 applies not only to discriminatory class legislation on but also to arbitrary or discriminatory State action. Because violation of natural justice results in arbitrariness therefore violation of natural justice is violation of Equality Clause of Article 14. Therefore, now the principle of natural justice cannot be wholly disregarded by law because this would violate the fundamental rights guaranteed by Articles 14 and 21 of the Constitution. The two main two doctrines are the basics of entire juries' philosophy. These two doctrines are vital for the entire jurisdictional process in various levels. **'Nemo judex in causa sua'**. No one should be made a judge in his own cause and the rule against bias. **'Audi alteram partem'** means to hear the other party or no one should be condemned unheard.

RULE OF FAIR HEARING

The Rule simply implies that a person must be given an opportunity to defend himself or herself. This principle is a '**sine qua non**' of every civilized society. Administrative difficulty in giving notice and hearing to a person cannot provide any justification for depriving the person of opportunity of being heard. Furthermore, observance of the rules of natural justice has no relevance to the fatness of the stake but is essentially related to the demands of a given situation. Even if the legislature specifically authorizes an administrative action without hearing, except in cases of recognized exceptions, then the law would be violative of the principles of fair hearing as per Articles 14 and 21 of the Indian Constitution. However, refusal to participate in enquiry without valid reason cannot be pleaded as violation of natural justice at a later stage.

The Constitution of India promises to secure to all its citizens, justice – social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and opportunity; and to promote among them all, fraternity, assuring the dignity of the individual. These are the fundamental goals of our constitution. The Constitution of India promises to secure to all its citizens, justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and opportunity; and to

promote among them all, fraternity, assuring the dignity of the individual. These are the fundamental goals of our constitution.

In a 1981 decision in S.P. Gupta2, a seven-judge constitution bench gave this jurisprudence firm footing when justice Bhagwati, speaking for the court, held that:

"where a legal wrong or a legal injury is caused to determinate class of persons or a legal right and such person or determinate class of person is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this Court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons..."

AUDI ALTERAM PARTEM

Audi Alteram Partem, one of the cardinal principles of natural justice envisaging the criterion of characteristic equity in which every person gets an opportunity of being heard. This principle has been implemented in the sphere of administrative action to provide fairness and justice for those individuals who have been wronged. Its application has been contingent on the factual matrix to promote administrative efficiency, justice, and expediency.

The procedure adopted under this rule must be fair and reasonable as under the court's watchful eyes, both the parties are equal and should be given an equitable opportunity of being heard. Audi Alteram Partem is the sine qua non of a civilized society. The rule of Audi alteram partem is a code of procedure and is therefore applicable to every stage of an administrative proceeding starting from the right to notice to post- decisional hearing.

The primary objective of balancing the inclusion and the exclusion of the protection of the principles of natural justice is to harmoniously comprehend the rights of the individual of fair procedure and being heard, as well as in the public interest. Audi Alteram Partem, which is one of the cardinal principles of natural justice has been implemented in the sphere of administrative action to provide fairness and justice for those individuals who have been wronged. The exceptions to Audi alteram partem are all speculative and not conclusive and each exception will be proclaimed as admissible depending upon the facts and circumstances of each case.

Hence, natural justice is a scientific term for the “nemo judex in causa sua” which means rule against bias and “audi alteram partem” which means the right to fair hearing that has largely been extended to “**duty to act fairly**”.

It is a part of the law which relates to the administration of justice that controls all actions of public authorities by applying rules relating to reasonableness, good faith, justice, equity and good conscience. It is an essential principle of law as it assures people to retain their faith in the system of adjudication. In the case of **Mohinder Singh Gill v. Chief Election Commissioner3**, it was held that the concept of fairness should be in every action whether it is judicial, quasi-judicial, administrative or quasi-administrative work. In the case of **Union of India v. Tulsiram Patel**4, the Supreme Court of India expounded the essence of Natural Justice that good conscience should be used in a given situation; nothing more or nothing less.

Recently Kerala High court Justice P Somarajan5 observed that “audi alteram partem”, i.e., the right to be heard, is a fundamental guiding principle in the judicial system.

“The “right to be heard” in the legal parlance especially in litigation is the most valuable right, which cannot be defeated in any manner except on the default of the opposite party. The principle behind the maxim “audi alteram partem” is well recognized and adopted in the judicial system as one of the fundamental guiding principles”, the Court said in its judgment.

VERACITY OF INDIAN CRIMINAL JUSTICE SYSTEM

In India, this formal system is not the way it should actually be to provide ‘justice’ to everyone. There are various problems which makes the fair criminal justice system a myth. Now, the ‘access to justice’ has changed to ‘justice achievable’ system .All Agencies are responsible for the unfairness in the criminal justice system. Besides piety offences are often not registered by the police leaving the offender free in exchange of some amount, the offenders of serious crime are also set free by the police due to various reasons like by taking ‘handsome’ bribe, pressure from higher authority, political pressure, etc.

In India, for almost every provision of law, a counter provision somehow also exists under the law which works as a defense to the accused under trial and this stretches the judgment day of the case. Keeping judgment day aside, parties in most of the cases don’t even attend the hearing and proceedings of the court and case. Parties leave everything on their lawyers and are almost completely dependent on their lawyers for everything. They even have the knowledge about the development of their case and due to such

communication gap it takes a lot of time to bring all the evidence, witnesses and accused under one roof.

The justice system is premised on the notion that rich and poor are treated equally. But today, access to justice is based on how much a person can pay. People who are poor are systemically treated worse than the wealthy. People without financial means remain in jail prior to trial because they can't afford bail, resulting in a higher conviction rate. Individuals who can't afford to pay off court debt have their licenses suspended, sending them into an inescapable cycle of unemployment and hardship. These counterproductive policies result in an endless cycle of poverty. The current criminal justice system is shaped by economic bias crimes unique to the wealthy are either ignored or treated lightly, while the so- called common crimes of the poor lead to arrest, charges, conviction, and imprisonment. The justice system in India is fast, responsive and humane. No matter how surprising it might sound, yet this observation is absolutely factual. The only problem is the system isn't so for everyone and certainly not for those who are underprivileged socially, economically and politically.

Right from filing of a case to applying for protection from arrest, seeking bail or requesting expeditious hearing to probability of getting a favorable verdict, ability to getting the appeal accepted by the higher courts and getting relief there, all crucial steps of the legal tangle, are influenced by the privilege one enjoys.

"Sometimes, I wonder at my system. Here is an appeal of the year 2013 which gets a quick hearing. In how many cases are we doing so? That's why poor man feels that the system cares only for known persons and the unknown persons (common man) gets ignored,". This observation was made by a bench of Justices H L Dattu and SJ Mukhopadhaya in September, 2013 while dismissing the appeal of former chief minister of Haryana Om Prakash Chautala. Only one month earlier in August that year, Justice B S Chauhan and Justice S A Bobde while dismissing the anticipatory bail plea of IPS officer P P Pandey, accused in Ishrat Jahan fake encounter case had observed, "**We can say on oath that only 5 per cent of the time is being used for common citizens, whose appeals are waiting for 20 or 30 years.**

We currently have two justice systems one for the rich and another for everybody else. For hundreds of thousands of arrestees every year, the difference between freedom and jail depends solely on wealth status. A wealthy person can buy their pre-trial freedom, keep their job, and live at home while preparing their defense. An arrestee who is poor must stay in jail for days, weeks, months, or years until their case resolves. Those detained prior to trial are more likely to lose their jobs, get evicted from their homes, and be unable

to care for dependent relatives. The money bail system does nothing to promote liberty, public safety, or court appearance rates; all of these goals can be better achieved through other means, and needless pretrial detention actually increases crime rates. Money bail is a price tag on freedom that only serves as wealth- based discrimination.

A principle which we know in the Criminal Justice System is **"Bail is rule; jail is an exception**". But it seems that this principle was never for a normal accused under trial, it's for only those who have good political connections or reach to higher bodies. Not granting bail during the 90s could be justified on the grounds that due to lack of technology it was hard to trace one if he or she runs away while being on bail. But now this should not be a reason for rejecting the bail request. Bail should be granted for petty offences because if an accused breaks bail-bond, he can easily be traced and be punished accordingly. An accused should not be denied on the ground that some other accused has broken his or her bail-bond in a similar situation.

The Doctrine of Natural Justice has been evolved and followed by the judiciary to protect the fundamental rights of people and to feature the concept of fairness by the administrative authorities. At every stage of the proceedings, the essentials and principles of natural justice are always kept in mind so as to prevent the miscarriage of justice and arbitrariness and to uphold fairness, reasonableness, good conscience, equity and equality. The doctrine of natural justice is so flexible in nature that it changes itself to an extent where the rights of an individual are infringed.

If any judicial authority violates the principle of "Nemo judex in causa sua" then the order passed would be voidable, i.e. it can be challenged by any court. But if any judicial authority violates the principle of "audi alteram partem", then the order would be regarded as void ab initio. Thus, the adjudicating authority must have sufficient knowledge about the principles of natural justice i.e. "nemo judex in causa sua" and "audi alteram partem" before articulating any judgment.

The situation of a criminal in prison is not less than a hell. Powerful criminals and criminals of petty offences both serve their punishment in the same prison but one would easily find out who is powerful and who is weak. Everyone knows about the human rights violation in society but in prisons, there is nothing like human rights where sometimes brutality crosses its limit. Physical harassment, sexual assault and harassment, rape, etc., has become very common in every prison. Authorities themselves are involved in such inhuman practices. Supreme Court of India in case of **Joginder Kumar v. State of U.P.6** clearly said that the quality of a nation's civilization measured by the method used in the enforcement of the criminal law when the human rights are expanding the crime rate

is increasing.It is only the courts that can curtail such repeated incursions on liberty by State agencies to ensure that Article 21 of the C**onstitution retains its glory as it did in the libertarian decade of the 1980s.**

CONCLUSION

Liberty is our most basic right. The ordinary citizen looks to the courts as the only resort for redress for their anguish and agitation at the harshness of the State's agencies. The trend of the last few decades, which have witnessed increasing enactment of laws providing for reverse burden at the stage of bail and more stringent laws and punishments, constitute an assault on the right to liberty. From police to prosecutors to courts and legislatures, both federal and state systems benefit the rich while harming people who are poor.

The Criminal Justice System is more 'access to justice' kind of system. "Justice delayed is justice denied" has become the new normal of Indian judicial system. The overall current performance of the criminal justice system is found to be inadequate or unsatisfactory. Our system should cater to all possible challenges especially in view of the new pattern of crimes happening throughout the country. Terrorism, cyber-crimes, white collar crimes, should all be curbed and there should be an organized endeavour to control anti-social behavior to attain social harmony through law and its enforcement. New reforms, improved system and proper timely administration can contribute to the desired development of the law and criminal justice system of our country.

Rule of natural justice has advanced by human progress. It has not developed from the Indian constitution but rather from human kind itself. Each individual has the privilege to talk and be heard when charge are being put towards the person in question. The Latin Maxim," Audi Alteram Partem" is the standard of characteristic equity where each individual gets ab opportunity of being heard. The significance of a proverb itself says no individual will be denounced unheard. Thus judgment of a case will be not given in the absence of another party. There are numerous situation where this rule of natural justice is barred, and no opportunity is given to the party of being heard natural justice implies that equity ought to be given to both parties in a simply reasonable and sensible way, under the watchful eye of the court, both the parties are equivalent and have an equivalent chance to speak and to prove themselves. Faith in the judiciary cannot be engendered by stray progressive pronouncements, or by its own assertions of the vital role it plays in a democracy. It arises from the institution's ability to open itself up to scrutiny as to its manner of functioning, and to make itself accountable to the people it serves. For the sake of our

Constitution, democracy and its people, we can only hope that our judiciary realises that it must rest on firmer foundations than these.

1.https://www.constitutionofindia.net/constitution_of_india/fundamental_rights/articles/ last visited 01.010.22
2.https://indiankanoon.org/doc/1294854/
3.https://main.sci.gov.in/jonew/judis/5188.pdf last visited 18.09.22
4. https://indiankanoon.org/doc/1134697/last visited 18.09.22
5. https://www.barandbench.com/news/
6. https://indiankanoon.org/doc/768175/

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2022(3) L.S. 71 (A.P.)

IN THE HIGH COURT OF
ANDHRA PRADESH

Present
The Hon'ble Mr.Justice
Ninala Jayasurya

Sk.Ameer Basha ..Petitioner
Vs.
Manthana Vani & Anr., ..Respondents

CIVIL PROCEDURE CODE, 1908 – Or.38, Rl.5 - Order of conditional attachment of property on payment of process based on an alleged memo filed by the defendant counsel reporting no counter - Challenged in two civil revision petitions by the defendant and third-party inter alia disputing the engagement of said counsel and filing of such memo on the grounds of forgery.

HELD: Merely because a memo is filed by the defendant counsel reporting no counter on behalf of defendant, which is a dispute, the court would not be absolved of satisfying itself that the defendant is making efforts to dispose or remove the whole or any part of his/her property from the local limits of jurisdiction of the court - Satisfaction of the court is sine qua non for granting an order of attachment u/ Or.38, Rl.5 CPC.

Order of conditional attachment of property payment of process based on an alleged memo filed by the defendant counsel, without giving reasons and without fixing time for furnishing security - Recording of satisfaction for grant of conditional attachment is a pre-requisite – Non-compliance of requirement of fixing a time limit for furnishing security as are ordained under Or.38(1)(b) - Order of attachment is void.

Mr.J.Prabhakar, Senior Counsel,Assisted by Smt.G.Padmavathi Srinivas Counsel for the Petitioners in CRP No:140/2022.
Mr.P.Raja Sekhar for petitioner in CRP No:423/2022.
Mr.Tandava Yogesh, Advocate for Respondent.

C O M M O N O R D E R

These two Revisions Petitions have been filed aggrieved by a docket Order dated 25.02.2021 in I.A.No.221 of 2020 in O.S.No.15 of 2020 on the file of the Court of Principal Senior Civil Judge, Bapatla and are disposed of by this Common Order.

2.The petitioner in C.R.P.No.140 of 2022, is a 3rd party and was granted leave to present the Civil Revision Petition by an Order dated 25.02.2022 in I.A.No.1 of 2022.

3.The petitioner in C.R.P.No.423 of 2002 is the defendant in the above mentioned suit. The respondent/plaintiff filed the above said suit O.S.No.15 of 2020 against the defendant therein i.e., Smt.Dasari Siva Kumari, for recovery of an amount of Rs.21,52,000/- on the strength of a Pronote dated 10.11.2017. In the said suit, the plaintiff

filed I.A.No.221 of 2020 seeking conditional attachment of the petition schedule property before judgment. The learned Trial Court passed the following docket Order dated 25.02.2021:

> "Heard the counsel for petitioner. Perused the petition and affidavit schedule filed along this petition. Since the counsel for respondent filed a memo stating that he has no counter and same is recorded. Considering the facts and circumstances of case, issue conditional attachment over the schedule mentioned property on payment of process by 10.03.2021."

Challenging the same, the present Revision Petitions came to be filed.

4.Heard Mr.J.Prabhakar, learned Senior Counsel appearing for the petitioner in C.R.P.No.140 of 2022 and Mr.P.Rajasekhar, learned counsel appearing on behalf of the petitioner in C.R.P.No.423 of 2022. Also heard Mr.Tandava Yogesh, learned counsel appearing for the respondent/plaintiff.

5.Drawing the attention of this Court to the various documents, the learned Senior Counsel, *inter alia,* submits that the Order under challenge is vitiated, as fraud was played on the Court. Referring to the Memo stated to have been filed on behalf of the defendant in O.S.No.15 of 2020, the learned counsel submits that in fact, no instructions or Vakalat was given to the counsel, who filed the said memo to the effect that "the defendant is reporting no counter" and "the I.A., may be allowed." He submits that the petitioner purchased the suit schedule property for a valuable consideration from the father of the defendant under a Registered GPA cum Agreement of Sale dated 19.04.2003, and that the property was delivered to the petitioner and he is in possession of the same. He also submits that initially one Kolleboyina Venkateswarlu filed O.S.No.385 of 2003 on the file of the Court of IV Additional Senior Civil Judge, Guntur, seeking Specific Performance of contract against one Pagadala Subba Rao, father of the petitioner in C.R.P.No.423 of 2022, that the petitioner in C.R.P.No.140 of 2022 was arrayed as defendant No.2 in the said suit and the same was dismissed on 12.03.2009. Aggrieved by which, an appeal was preferred in A.S.No.266 of 2009 and the appellate Court i.e., the III Additional District Judge, Guntur, by Judgment dated 30.07.2010, confirmed the order of the Trial Court. He also submits that aggrieved by the said orders, the matter was carried by way of Second Appeal in S.A.No.1363 of 2010 to this Court and the same was also dismissed on 25.08.2014 and on further appeal, the Hon'ble Supreme Court dismissed S.L.A.(C)No.7348 of 2015 *vide* Order dated 27.04.2015. He further submits that even the Review Petition in R.P.(C) No.3768 of 2016 in S.L.P.(C).No.14123 of 2015 was also dismissed by an Order dated 19.01.2017. He submits that during the pendency of the Second Appeal, the said Pagadala Subba Rao died and his legal heirs including the defendant in O.S.No.15 of 2020 were brought on record. The learned counsel submits that as the litigation with

regard to the petition schedule property was finally set at naught by the Hon'ble Supreme Court and as the petitioner is entitled for registration of Sale Deed by virtue of the Registered General Power of Attorney cum Agreement of Sale dated 19.04.2003, the legal heirs of the said Pagadala Subba Rao including the defendant in O.S.No.15 of 2020/petitioner in C.R.P.No.423 of 2022 executed a Sale Deed in favour of the petitioner on 04.10.2021 and when the said document was presented for registration, the authorities refused to register the same on the premise that an Order of attachment was passed in O.S.No.15 of 2020.

6.The learned counsel submits that the docket Order of the Trial Court is not sustainable as mandatory requirements of Order XXXVIII, Rule 5 of Civil Procedure Code (for short 'C.P.C.') were not complied with. Drawing the attention of this Court to the docket proceedings, he submits that the procedure of calling upon the respondent/ defendant to furnish security within stipulated time, has not been strictly adhered to and as is evident from Page 76 of the material papers, the defendant was called upon to furnish security within "Nil" hours and the notice was issued on 27.02.2021, though the attachment order was passed on 25.02.2021. Referring to the various Forms and method of service, he also points out that the material on record does not disclose an endorsement to the effect that the warrant was served and in the absence of the same, further proceedings under Order XXXVIII, Rule 6 of CPC cannot be taken. The learned counsel also submits that on mere Advocate's notice, the registration of Sale Deed was refused.

7.The learned counsel also submits that the petitioner filed I.A.No.178 of 2021 seeking to raise the attachment of property and the same is pending. Making the said submissions, the learned Senior Counsel seeks to set aside the Order under challenge.

8.Mr.Rajasekhar, learned counsel for the petitioner in C.R.P.No.423 of 2022, while supporting the contentions advanced by the learned Senior Counsel submits that the Court below has not recorded any reasons nor its satisfaction that the petitioner/defendant is trying to remove the property from the jurisdiction of the Court. He also submits that in fact the petitioner/ defendant had not engaged the counsel, who had filed Memo and the signature on the Vakalat is a rank forgery. He also supports the case of the petitioner in C.R.P.No.140 of 2022 with regard to execution of G.P.A. cum agreement of sale, dated 19.04.2003 and also execution of Sale Deed dated 04.10.2021, referred to supra. The learned counsel, asserts that the petitioner/defendant had not received any notice in I.A.No.221 of 2020, as also the warrant of conditional attachment pursuant to the Orders dated 25.02.2021. The learned counsel submits that in the facts and circumstances of the case, the Order of attachment is liable to be set aside.

9.In support of their contentions, the learned counsel placed reliance on the decisions in **Raman Tech and Processing**

Engineering Company2008(2) SCC 302**, Surender Singh Bajaj v. Kitty Steels Limited and another**2002(3) ALD 191(DB)**, Mandala Suryanarayana @ Babji v. Barla Babu Rao**2010(2) ALD 417(DB)**, Savita Chemicals (P) Ltd., v. Dyes & Chemical Workers' Union and Another**(1999) 2 SCC 143 and **Himalayan Coop.Group Housing Society v. Balwan Singh and Others**(2015) 7 SCC 373**, Premraj Mundra** v. Md.Maneck Gazi and Others AIR 1951 Calcutta 156, M/s.R.B.M.Pati Joint Venture v. M/s.Bengal Builder Opposite Party AIR 2004 Calcutta 58 (DB), The Nellimarla Jute Mills Co. Ltd., v. Sree Mahaveer Rice and Oil Mills AIR 1989 AP 214, Skoda Auto India Pvt. Ltd., v. St.Antony's Trading Company and Others2018 2 CurCC 404(DB) **and** Sports Authority of A.P., Hyderabad v. Regal Sports Company, Secunderabad(2008) 6 ALD 759.

10.*Per contra,* the learned counsel for the respondent/plaintiff submits that the allegations made against the concerned Advocate who filed Memo are not correct and tenable. He submits that the Order under challenge has been passed after due compliance with the procedure contemplated under Order XXXVIII, Rule 5 of C.P.C. Learned counsel also submits that the Revision Petitioner in C.R.P.No.140 of 2022 is not having any title or possession in respect of the suit schedule property and the Revision Petitioners acting in collusion, are making attempts to frustrate the claim of the plaintiff in the suit. He also submits that the petitioner in C.R.P.No.140 of 2022 had filed applications in the suit and instead of pursuing the same, had filed the present C.R.P., and the same is not maintainable. The learned counsel would also submit that if the Order of Attachment is set aside, the plaintiff/respondent being a lady, would not be in a position to recover the suit amount, in the event of decree being granted in her favour. He submits that there are no grounds, much less valid grounds to interfere with the Order under Revision and in the absence of any irregularity or perversity, the same cannot be interfered in exercise of powers under Article 227 of Constitution of India. Accordingly, learned counsel urges for dismissal of the Revision Petitions.

11.This Court has considered the submissions made and perused the material on record. On appreciation of the rival contentions, the point that falls for consideration is, "*Whether the docket Order dated 25.02.2021 warrants interference by this Court in the facts and circumstances of the case"*?

12.One of the main contentions advanced by the learned counsel for the petitioners is that the Order under challenge is vitiated by fraud. It is their contention that the defendant in the suit had not engaged the Advocate one Mr.Ravi, who had filed a Memo to the effect that the defendant consented for the Order of Attachment. This is a serious allegation, which in the considered opinion of this Court, needs to be examined by the Trial Court on the basis of material, after giving due opportunity to the concerned parties. It would also appear that a complaint is lodged against the concerned Advocate and the same is pending consideration. Therefore, this Court

is not inclined to examine the said aspect and deems it appropriate to leave the same to the learned Trial Court.

13.Insofar as the contention with regard to non- compliance/adherence to requirements under Order XXXVIII, Rule 5 of CPC, it may be appropriate to reproduce the same for ready reference.

> 5. Where defendant may be called upon to furnish security for production of property.
>
> **(1)**Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,-
>
> **(a)**is about to dispose of the whole or any part of his property, or
>
> **(b)**is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.
>
> **(2)**The plaintiff shall, unless the court otherwise directs, specify the property required to be attached and the estimated value thereof.
>
> **(3)**The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.
>
> **(4)**If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule such attachment shall be void.

14.The above provision of Law contemplates that if the Court is satisfied by an affidavit or otherwise, that the defendant with an intention to obstruct or delay the execution of any decree that may be passed against him is about to dispose of the whole or any part of his property or about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, the defendant, *inter alia,* may be called upon either to furnish security or to appear and show cause why he should not furnish security, within the stipulated time.

15.In the present case, the docket orders dated 22.02.2021 and 25.02.2021 does not contain any reasons recording satisfaction of the Court for ordering Conditional Attachment. No time is fixed for furnishing security / to show cause as to why the defendant should not furnish a security, in compliance with Order XXXVIII, Rule 5 of CPC. Merely because a memo is filed, the authenticity of which is in

question, stating that there is no counter on behalf of the defendant, the Court would not be absolved of satisfying itself that the defendant is making efforts to dispose or remove the whole or any part of his/her property from the local limits of the jurisdiction of the Court. Satisfaction of the Court is *sine-qua non for* granting an Order of attachment under Order XXXVIII, Rule 5 of CPC.

16.In **Raman Tech's case**, the Hon'ble Supreme Court, *inter alia,* held that "the power under Order XXXVIII, Rule 5 of CPC is a drastic and extraordinary power and that such power should not be exercised mechanically or merely for the asking". It was also held that the power should be used sparingly, strictly in accordance with the Rule and the purpose of the said Order is not to convert an unsecured debt into secured debt. It was further held that a defendant is not debarred from dealing with his property merely because a suit is filed or about to be filed against him and that the plaintiff should show, *prima facie,* that his claim is bona fide and valid and also satisfy the Court that the defendant is about to remove or dispose of the whole or part of his property with an intention of obstructing or delaying the execution of any decree that may be passed against him, before power is exercised under Order XXXVIII, Rule 5 of CPC.

17.In **Surender Singh Bajaj's case** referred to supra, a Division Bench of the erstwhile High Court of Andhra Pradesh at Hyderabad, *inter alia,* held that the satisfaction of the Court that the defendant with an intention to obstruct or delay the execution of the decree that may be passed by it, is about to dispose of the whole or part of his property, or is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, is *sine-qua non* for exercising the power under Order XXXVIII, Rule 5 of CPC. In the facts and circumstances of the case, the Hon'ble Division Bench was pleased to set aside the impugned Order as the Trial Court has not recorded the said satisfaction.

18.In **Mandala Suryanarayana's case** referred to supra, another learned Division Bench *inter alia* held that an Order of attachment before the judgment without giving reasons would be an illegal Order and that even when a *prima facie* case is proved, an Order of attachment cannot be straight away issued without following the procedure contemplated under XXXVIII, Rule 5 of CPC. The Hon'ble Bench further opined that satisfaction of the Court must be arrived at with reference to necessary material placed before the Court and it is always open to the defendant to appear and plead and prove contra.

19.In **M/s.R.B.M.Pati Joint Venture,** a Division Bench of the High Court of Calcutta was dealing with an Order passed by the Trial Court granting attachment before judgment. While referring to the case of Premraj Mundra v. Md.Maneck Gazi(AIR 1951 Cal 156) and the guiding principles laid down therein, it set aside the Order passed by the Trial Court. It is apposite to extract the relevant para, which reads

as follows:

> "17. The fact which was taken into consideration in the impugned order that the defendant in spite of notice did not appear in the Court, is not sufficient for passing any order of attachment before judgment. The contention of the learned counsel for the respondent that materials being available on record, it is not important that necessary reasons have not been stated in the impugned order, does not appear to be correct as the satisfaction of the Court has to be indicated in the order itself."

20.In **Skoda Auto India Pvt. Ltd.,** referred to supra, a Division Bench of Kerala High Court, while opining that attachment before judgment is an extraordinary power and the Court may grant with some care and caution, *inter alia,* held that vague and general allegation that the defendant is about to dispose of the property or remove the property beyond the jurisdiction of the Court, unsupported by particulars, would not be sufficient compliance with the Rule. The Hon'ble Division Bench held that incumbent upon the plaintiff to state the grounds on which he entertains belief or apprehension that the defendant would dispose of or remove the property.

21.In **Nellimarla Jute Mills Co. Ltd's case** referred to supra, the learned Judge, *inter alia,* found fault with the Order of attachment passed without observing the formalities, which are mandatory in nature and set aside the same.

22.In **Sports Authority of Andhra Pradesh, Hyderabad,** the learned Judge of erstwhile High Court of Andhra Pradesh at Hyderabad, set aside the order of attachment, *inter alia,* holding that the same was made in mechanical way, without proper application of mind and without exercising the discretion in a proper perspective.

23.In **Savita Chemicals Private Limited's case**, the Hon'ble Supreme Court was not inclined to interfere with the Order passed by the High Court under Article 227 of the Constitution of India, in setting aside patently illegal findings of the Labour Court.

24.Applying the above well settled legal principles to the facts of the present case, this Court finds merit in the submissions made on behalf of the petitioners and the same deserves acceptance. Though, it appears that the Order of attachment dated 25.02.2021 came to be passed in the light of the Memo filed allegedly without authorization of the defendant by a counsel, which is in dispute, the Trial Court had not recorded its satisfaction for grant of conditional attachment, which is a pre-requisite. Further, as pointed out by the learned counsel for the petitioners, the other requirements of fixing a time limit for furnishing security or issuance of show cause notice as to why the defendant shall not furnish security as ordained under Order XXXVIII, Rule (1)(b) of CPC, have not been complied with. Under such circumstances, by virtue of Order XXXVIII Rule 5(4) of CPC, the Order of attachment, under Order XXXVIII, Rule 5 of CPC is void and accordingly, the

same is set aside.

25.Though the learned counsel for the respondent/plaintiff tried to impress upon this Court that the plaintiff being a lady would not be in position to realize the fruits of decree, in the event the suit being allowed in her favour in the absence of an Order of attachment, unless the Court records its satisfaction about existence of a *prima facie* case, no Order of attachment before judgment can validly be granted, let alone be continued. In view of the settled legal position, this Court has no option except to reject the contentions advanced by the learned counsel for the respondent/plaintiff.

26.For the conclusions arrived at supra, the Docket Order dated 25.02.2021 is set aside. The learned Trial Court shall take up I.A.No.221 of 2020 and decide the same in accordance with Law, as expeditiously as possible, within a period of four (4) weeks from the date of receipt of copy of this Order. It shall also consider the issue with regard to Memo referred to above, while adjudicating I.A.No.221 of 2020.

27.With the above directions, the Civil Revision Petitions stands allowed. No costs.

As a sequel, miscellaneous applications, if any, pending shall stand closed.

–X–

2022(3) L.S. 78 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Dr.Justice
V.R.K.Krupa Sagar

Namburi Venkata Gopala Panduranga Raju ..Appellant

Vs.

Lalam Appa Rao ..Respondent

CIVIL PROCEDURE CODE - Revision petitioner challenged the order passed by trial Court, allowed the application filed by plaintiff u/Sec.151 CPC, direct the defendant to deposit Rs.42,30,000/- to the credit of suit.

Revision petitioner contended that the lower Court has not permit him to file counter in IA and further contended the order in IA suffers from absence of reasons and the order failed to consider that granting a prayer in the nature that was made in the said petition would amount to granting the alternative relief in the suit itself and seeks to set aside that order.

Respondent, while supporting the order made by the trial Court, submits that the order of trial Court need not be disturbed since that would not cause any prejudice to either of the parties, respondent admits that proper opportunity to file counter was not granted by trial Court to this revision petitioner and in the event of allowing

this revision, this Court may instruct trial Court to dispose of the application by certain time lines that could be prescribed by the Court.

HELD: The trial Court did not even think to consider the version of respondent, its simpally extracted the apprehension of the petitioner in its order, the order of lower Court does not indicate to any judicial mind as to whether the required principle of law were at all considered by the trial Court, since the order is bereft of required reasoning and required consideration of the material, the same is liable to set aside.

Mr.M.Radhakrishna, Advocate or Petitioner.
Mr.K.V.Satya Ramachendra Rao, Advocate for Respondent.

O R D E R

The defendant before the trial Court has filed this civil revision petition under Article 227 of the Constitution of India questioning the correctness of order dated 10.12.2018 of learned VII Additional District and Sessions Judge, Visakhapatnam in I.A.No.1680 of 2018 in O.S.No.496 of 2017. The respondent herein is the plaintiff before the trial Court.

2.O.S.No.496 of 2017 is based on the agreement for sale dated 13.04.2016. The plaintiff prayed for specific performance of that agreement for sale or in the alternative for refund of the part sale consideration paid along with interest and compensation and for costs and such other reliefs.

3.Traversing those pleadings, the defendant put in his written statement. While the suit was pending, the plaintiff moved an application under Section 151 C.P.C. before the trial Court, which is I.A.No.1680 of 2018. In that petition, it is stated that the defendant in the suit, not only failed to comply with the promise made in the agreement for sale but he was also making several other people suffer and a reference is made to three other cases in which the present suit defendant and others are parties. It further states that plaintiff has apprehension that the defendant may escape with money and defraud everyone in which event the decree that he may obtain may become fruitless and it is in those circumstances, he moved that application. The prayer in that application is to direct the defendant to deposit Rs.42,30,000/- to the credit of the suit. This amount was the amount that was allegedly paid by the plaintiff to the defendant towards part of sale consideration when the agreement for sale was said to have been executed. By the impugned order dated 10.12.2018, the learned trial Court agreed with that submission and granted the relief stating that the defendant in the suit should deposit that money within a month from the date of that order. It is that order which has come up for challenge here. The principal contention raised is that on the application that was moved by the present respondent before the learned trial Court, this revision petitioner/defendant in the suit was not even permitted to file counter and further the order suffers from absence of reasons and the order failed to consider that granting

a prayer in the nature that was made in the said petition would amount to granting the alternative relief in the suit itself. For all these reasons, revision petitioner seeks to set aside that order.

4.During the course of hearing of this revision, the submission made by the learned counsel for revision petitioner is that the revision petitioner be given opportunity to file counter and agitate his cause.

5.Learned counsel for respondent, while supporting the order made by the trial Court, submits that the said order need not be disturbed since that would not cause any prejudice to either of the parties. However, learned counsel for respondent admits that proper opportunity to file counter was not granted by the learned trial Court to this revision petitioner and in the event of allowing this revision, this Court may instruct the trial Court to dispose of the application by certain time lines that could be prescribed by this Court. Learned counsel on both sides submitted arguments.

6.The point that falls for consideration is:

> "Whether the impugned order suffers from illegality or irregularity requiring interference?

7. Point:

A laconic order is draconic and is thus considered a dud. The application moved by the plaintiff before the trial Court was put up before the trial judge on 23.11.2018 and the trial judge ordered for counter and listed the matter on 30.11.2018. A photostat copy of the docket sheet that is filed with this revision would show that on 30.11.2018 the learned trial judge has not made a mention about the presence or absence of both parties and also did not mention the presence or absence of learned counsel on both sides. It has mentioned 'counter not filed' and then struck it off and then recorded Heard. It is not seen from it, whether he has heard only one side or both sides. Then he posted the matter for orders. On the day to which it was posted for orders, he was unable to pronounce the orders and it went on for two more adjournments and finally, the trial Court passed the order on 10.12.2018, which is now impugned. This makes the matter very clear that this revision petitioner, who was respondent in the proceedings before the trial Court, was not given the required time to file a counter and the trial Court did not record as to why it did not grant time for filing counter and it did not make it on record whether it had forfeited the right to file counter etc. It simply recorded Heard. The fact remains, as is stated by learned counsel on both sides before this Court, the needed opportunity for filing a counter was not given to this revision petitioner. Thus, this fact alone should make this Court to think that the procedure adopted by the trial Court is wholly irregular. Every proceedings before it is required to be considered in the manner that is prescribed by law. When an application for a relief is prayed, proper opportunity to ventilate the contentions by the opposite side should be afforded to and

only then both sides be heard and the judge has to take a considered view and record its order. Since such primary principle of law is not found compliance, the impugned order shall be held as irregular and shall be set aside. Coming to the order that is passed, the same is extracted here:

> "This petition is filed U.Sec.151 of C.P.C. to direct the respondent/ defendant to deposit the account amount sum of Rs.42,30,000/-.
>
> The reason assigned by the petitioner for filing this petition is the respondents indebted to several others and trying leave the jurisdiction of this Court. If the respondents succeed his effort there is no possibility to the petitioner either specific performance of contract and also taking back of advance (Earnest) amount. The respondent though opposed not chosen to furnish security. Considering the fact, representation of the counsel of the petitioner and urgency pleaded by the petitioner, this petition can be allowed.
>
> In the result, the respondent is directed to deposit the advance (Earnest) amount within a month."

8.This order itself indicates that the trial Court did not even think to consider the version of the respondent therein. It simply extracted the apprehension of the petitioner in its order and then passed the order. This order does not indicate to any judicial mind as to whether the required principles of law were at all considered by the trial Court. Since the order is bereft of required reasoning and required consideration of the material, the same is liable to be set aside. Point is answered in favour of the revision petitioner.

9.In the result, this Civil Revision Petition is allowed setting aside the order dated 10.12.2018 in I.A.No.1680 of 2018 in O.S.No.496 of 2017 on the file of learned VII Additional District and Sessions Judge, Visakhapatnam. I.A.No.1680 of 2018 is restored. The trial Court shall grant opportunity to the respondent in I.A.No.1680 of 2018 to file his counter within 15 days from the date of taking up the suit at the Bench after receipt of this order and after such 15 days, within a period of 30 days, it shall complete the enquiry in that application and dispose of it in accordance with law. Parties to the litigation are directed to participate in the legal process with all expedition. There shall be no order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

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2022(3) L.S. 82 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Mr.Justice Ninala Jayasurya

K.Rama Kumar ..Petitioner

Vs.

The Bezwada Commercial Association, rep.by its President, Vijayawada, & Ors., ..Respondents

CIVIL PROCEDURE CODE, Sec.115 - CONSTITUTION OF INDIA, Art.227 - Revision petition filed against the orders of Rent Controller - Respondent contends that no revision lies against an interlocutory order passed in the proceedings under Rent Controller Act either u/Sec.151 of CPC or under Art.227 of Constittion of India.

HELD: From the reading of Sec.22 of Rent Control Act, it is clear that a revision against an interlocutory order in an Appeal is not maintainable and revision u/Sec.22 is maintainable only against an order passed in Appeal u/Sec.20 of the Act or Sec.15 of the Act, when specific provision is there under the Act, recourse cannot be taken to Sec.115 of CPC, hence the revision is not maintainable under the Act, in view of settled legal position, the contentions for petitioner merits no consideration, the civil revision petition is accordingly dismissed.

Mr.Sai Gangadhar Chamarthy, Advocate for the Petitioner.
Mr.M.Radha Krishna, Advocate for the Respondents.

O R D E R

Heard Mr.Sai Gangadhar Chamarthy, learned counsel for the petitioner and Mr.M.Radha Krishna, learned counsel for the respondents.

2.The present Civil Revision Petition is filed against an Order dated 06.12.2021 in I.A.No.74 of 2020 in R.C.C.No.34 of 2018 on the file of the Court of the Rent Controller-cum-IV Additional Junior Civil Judge at Vijayawada, Krishna District.

3.The petitioner herein, who is a tenant filed the above referred R.C.C, seeking an order granting permission to deposit the rents in respect of the petition schedule property at the rate of Rs.2,900/- per month w.e.f., 01.08.2018 to till date and to deposit the future rents to the credit of the proceedings before the Court under Section 8(5) of A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short, "the Act"). In the said proceedings, the petitioner filed the above mentioned miscellaneous application i.e., I.A.No.74 of 2020, inter alia, seeking to struck off the defence of the 1st respondent on the premise that there is no authority or authorization to represent the respondent-society and in the absence of any proof of authority of the Secretary to represent

the society, as duly elected and authenticated by the Registrar of Societies, the respondents are not entitled to file counter representing the 1st respondent and that consequently the defence put up by the respondents is non-est and liable to be rejected.

4.The respondents filed counter to the said application and contested the matter by taking a plea, inter alia, that the evidence regarding the authority of the Secretary will be filed at the time of the Trial that the petition in question is premature and liable to be dismissed.

5.The Learned Rent Controller after considering the contentions advanced by the both the parties dismissed the application, inter alia, opining that there is no provision in the Rent Control Act for the tenant, to seek striking of defence when he filed petition under Section 8(5) of the Rent Control Act admitting the ownership of the respondents and further that such right is available only to the landlord and that too, when he filed a petition under Section 10(2) of the Rent Control Act on the ground of willful default and when the tenant failed to pay the rents as ordered by the Court under Section 11(4) of the Rent Control Act. Aggrieved by the said order, the present Revision Petition is filed.

6.The counsel for the petitioner, inter alia, contends that the Learned Rent Controller failed to consider the case of the petitioner in a proper perspective and failed to exercise the jurisdiction vested with the Court. He submits that unless the respondents establish their authority to depose on behalf of the 1st respondent, which is a society registered under the Societies Registration Act, they cannot be permitted to adduce any evidence by deposing on behalf of the association. The learned counsel contends that the material on record would go to show that the registration of the society was not renewed after 1968. He further contends that where no adequate provision is made in the Act or Rules, the provisions of C.P.C are applicable and therefore the present Revision Petition under Article 227 of the Constitution of India is maintainable and seeks to set aside the order under challenge.

7.On the other hand, the learned counsel for the respondents while supporting the order under challenge, contends that the same contains cogent reasons and warrants no interference by this Court. The learned counsel specifically contends that in fact, no Revision lies against an interlocutory order passed in the proceedings under the Rent Control Act either under Section 115 of CPC or under Section 227 of the Constitution of India. In support of the contentions advanced, the learned counsel places reliance on the decisions in **Md.Kutubiddin and others vs. Bhaikar Raja Mitraji Anand Kumar and others** 2000(1) ALT 83 and **B.Chinnva Raju vs. B.V. Rama Rao**2001(6) ALT 93.

8.In **Md.Kutubiddin**'s case, a learned Judge of the erstwhile High Court of Andhra Pradesh at Hyderabad was dealing with a batch of Civil Revision

Petitions filed against the orders allowing the amendment of pleadings under Order VI, Rule 17 of CPC R/w Rule 28 of Civil Rules of Practice, at the instance of the landlord. A preliminary objection was raised on behalf of the respondents/landlords with regard to maintainability of the Revision Petitions on the premise that the same would not lie against an order of amendment, which is only an interlocutory order and it does not fall under the purview of Section 22 of the Act. It was contended on behalf of the revision petitioners/tenants, inter alia, that it is an elementary principle that every order passed by any forum or authority is to be subjected to a second test either by way of an appeal or revision and the order of amendment cannot be an exception. It is also contended that a revision lies under Article 227 of the Constitution of India, if not under Section 115 of CPC. The learned Judge formulated the point for consideration, inter alia, as to "Whether an order allowing the amendment of pleadings by an appellate authority under the Act is revisable by the High Court under Section 22 of the Act or under Section 115 of CPC?"

Answering the said point against the revision petitioners, the learned Judge at Para 13 opined as follows:-

> "It is well settled that the Rent Control Act is a special enactment, by which the statutory protection is granted to the tenant and at the same time the landlord is provided with a speedier remedy. Although Code of Civil Procedure is held to be applicable to the Rent Control Proceedings, it is hedged by certain limitations viz., "where no adequate provision is made in the Act or in the Rules and that the provision sought to be applied are not inconsistent with any express provisions of the Act or with the scheme and purpose of the enactment'. That is the view taken by a Division Bench of this Court in Hari Kishan Singh v. U.Narayana, 1969(2) APLJ 290 and the said view has been approved by a Full Bench of 5 Judges in P.N.Rao vs. K.Radhakrishnama Charyulu, AIR 1978 SC 319."

9.Further, the learned Judge after referring to Section 22 of the Act held that an order under Order VI, Rule 17 of CPC is outside the scope of Section 22 of the Act. It is profitable to extract the relevant portion of the decision for better understanding, which reads thus:

> "**Revision**:
>
> (1)The High Court may, at any time, on the application of any aggrieved parry, call for an examine the records relating to any order passed or proceeding taken under this Act by the Controller in execution under Section 15 or by the appellate authority on appeal under Section 20, for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceeding, and may pass such order in reference thereto as it thinks fit.

(2)The costs of and incident to all proceedings, before the High court under sub-section (1) shall be in its discretion.

A plain reading of the above provision shows that only two orders are contemplated therein. As rightly pointed out by Sri P.R. Prasad, an order passed or proceeding taken under the Act by the Controller in execution under Section 15 or by the appellate authority on appeal under Section 20 are those two orders. It is not in dispute that the impugned order was not passed under the Act, but it was passed under Order VI, Rule 7 CPC. It is evident to the naked eye that an order under Order VI, Rule 17 CPC is outside the scope of Section 22 of the Act……"

10.The learned Judge also rejected the contentions advanced on behalf of the petitioners with regard to maintainability of the Revision Petition either under Section 115 of CPC or under Article 227 of the Constitution of India, inter alia, opining as follows:-

"……..On a careful consideration of the scheme and purpose of the Act and since it is authoritatively held that CPC has limited application, I do not agree. When there is a specific provision for revision under the Act, there is no question of invoking Section 115 CPC. It is not necessary that every order passed by any Forum has to be subjected to a second test either by way of appeal or revision. In fact Section 115 CPC itself is hedged with limitations by a proviso to sub-section(1) which excludes umpteen types of orders passed by the lower Courts. In such cases neither there is revision nor appeal. Hence, I hold that Section 115 CPC is not applicable to the proceedings under the Act."

The Learned Judge also rejected the plea regarding Revision under Article 227 of the Constitution of India, relying on the decision in **N.S. Reddy vs. T.V. Reddy** 1997(2) ALT 534 wherein it was held that a Revision Petition filed under Section 115 CPC is separate and distinct and it cannot be converted into one under Article 227 of the Constitution of India.

11.B.Chinnava Raju is also a case arising out of the Rent Control proceedings. The Revision Petitioner therein is aggrieved by an order rejecting the application seeking to appoint an Advocate Commissioner. Dismissing the Civil Revision Petition, the learned Judge at Para 6 held as follows:-

"6. From the reading of Section 22 of the Act, it is clear that a Revision against an interlocutory order in an appeal is not maintainable and revision under Section 22 is maintainable only against an order passed in appeal under Section 20 of the Act or Section 15 of the Act. When specific provision is there under the Act, recourse cannot be taken to Section 115 of the Code of

CivilProcedure. Hence in any view of the matter, the Revision is not maintainable under the Act. Since the Revision itself is not maintainable, the other contentions need not be considered while disposing of the Revision."

The learned Judge accordingly rejected the application seeking permission to convert the Revision into one under Article 227 of the Constitution of India.

12.The above referred decisions relied on by the learned counsel for the respondents, applies in all fours to the case on hand. In view of the above settled legal position, the various contentions advanced by the learned counsel for the petitioner merits no consideration.

13.The Civil Revision Petition is accordingly dismissed. As the R.C.C is of the year 2018, the Learned Rent Controller shall make endeavour to dispose of the same, as expeditiously as possible, within a period of three (3) months, from the date of receipt of copy of this order. There shall be no order as to costs.

As a sequel, miscellaneous applications if any, pending shall stand closed.

–X–

2022(3) L.S. 86 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Ms.Justice B.S.Bhanumathi

Gorla Jaggu Naidu ..Petitioner

Vs.

M/s. Sri Aditya Estates ..Respondents

SPECIFIC PERFORMANCE OF AGREEMENT - Trial Court decreed the suit, directed defendants to execute regular register sale deed and granted liberty to plaintiff to approach Court for executing sale deed by Court and delivery possession, hence this Appeal.

The appellant/defendant has totally denial of the execution of agreement of sale, but admitted receipt of Rs.9,50,000/- however, as the amount of consideration towards sale of casuarina tope in the suit schedule property, further contended that the trial Court has wrongly placed burden on the appellants to prove that their signatures and thumb marks are forged by getting the agreement/Ex-A3, examined by an expert and that in fact, it is burden of plaintiff to prove its case that the agreement under Ex-A3 was executed and it is not the burden of the defendants to prove the agreement is forged and further contend that the suit agreement contains only the signature of the vendor, but not the vendee and thus, it is invalid.

A.S.No.27/2012 Date:28-7-2022

HELD: The entire evidence relied on by the defendants is just to get over the liability under the suit transactions and also they filed to discharge their onus, hence the plaintiff is entitled to specfic performance of agreement of sale under Ex-A3 and the agreement is binding on all the defendants, further held that the suit agreement contains only the signature of vendor, an agreement of sale signed by vendor alone and delivered to the purchaser, and accepted by purchaser has always been considered to be a valid contract, in the event of breach by the vendor, it can be specifically enforced by the purchaser, in view of well settled legal position, further held that the conduct of defendants, as explicit from the evidence on the record and the defence taken bluntly denying the suit transaction, would disentitle them to get any relief in the Appeal, in the result, the Appeal is dismissed.

Mr.Vedula Srinivas, Advocate for Appellant.
Mr.M.Radhakrishna, Advocate for Respondent.

J U D G M E N T

This appeal is preferred against the judgment and decree, dated 30.11.2011, passed in O.S.No.96 of 2003 on the file of the Court of IX Additional District & Sessions Judge, Fast Track Court, Visakhapatnam.

2.The pleadings of the parties, as narrated before the trial Court, in brief, are as follows:

The plaintiff is a registered partnership firm engaged in the Real Estate business and is represented by its Managing Partner, Nallamilli Satyanarayana Reddy. The defendants are closely related to each other. The father of the 1st defendant, grandfather of defendants 2 to 4 and great grandfather of the 5th defendant, by name, Gorle Chinnayya has succeeded to the suit schedule property from his ancestors and on his death, it was inherited by the defendants and the defendants have been in possession of the same. Defendants 1 to 5 are the absolute owners of the suit schedule property to an extent of Ac.5.60 cents covered by S.Nos.3/3, 3/1, 1/4, 1/3, 1/7 and 1/9 as prescribed in the plaint schedule. The defendants 1 to 5 have offered the suit schedule

property and the plaintiff agreed to purchase the same at the rate of Rs.1.85 lakhs one year prior to the agreement of sale by way of cheque drawn on Vysya Bank, and apart from an amount of Rs.65,000/-, altogether a sum of Rs.2.5 lakhs was paid which was acknowledged by the defendants in the agreement of sale. As on the date of agreement, the plaintiff paid Rs.4.35 lakhs to defendants 1 to 5. Subsequently also, the plaintiff made several payments and altogether, a sum of Rs.9.5 lakhs was paid and the balance remaining was only Rs.58,900/-. Time was not the essence of the contract. Plaintiff requested the defendants to accept the balance sale consideration and to execute registered sale deed, however, the defendants are postponing the same on one pretext or the other. Finally, on 09.07.2003, the plaintiff got issued registered legal notice in favour of defendants 1 to 5 demanding them to execute sale deed by

receiving balance sale consideration for which the defendants have issued reply, dated 30.07.2003, which amounts to refusal. The plaintiff got issued a paper publication, dated 12.08.2003, appraising and cautioning the public about the agreement of sale between the plaintiffs and the defendants. The defendants have also got issued a reply paper notice, dated 10.10.2003, with all false averments. Subsequently, defendants 1 to 5 have executed agreement of sale-cum-general power of attorney in favour of defendant no.6, who, in turn, executed sale deeds in favour of defendant no.7 without any manner of right or authority whatsoever. Hence, the suit.

3.The 4th defendant filed written statement which was adopted by defendants 1 to 3 and 5. It is alleged in the written statement that the defendants never offered the suit schedule property for sale to the plaintiff at any point of time. The boundaries in item Nos.1 to 6 as shown in the plaint are incorrect and by perusing the sale deeds of the ancestors of the defendants executed by Animireddy Satyavathamma, Demudu, Varahalamma, the plaintiff got fabricated the agreement of sale. The signatures and thumb impressions of defendants 1 to 5 are forged on the agreement of sale, dated 21.05.1999. The defendants never received any payments as represented by the plaintiff nor made any endorsement. The plaintiff might have purchased Ac.1.80 cents from Gorle Satyam S/o Chittenna, Gorle Chinnam Naidu S/o Chittenna, Gorle Chandraiah S/o Pydanna under the registered sale deed. But, defendants 1 and 2 did not sell their respective property to an extent of Ac.0.60 cents each and the other property, Ac.1.81 cents each in Sy.No.3/3. The plaintiff asked the defendants to remove the Casuarina trees for which they have not agreed and they have not agreed to sell the land to the plaintiff. Plaintiff undertook the sale of casuarina trees on behalf of the defendants. Since the defendants are illiterate, they have received sale proceeds of the casuarinas trees by way of cheques from the defendants but not towards sale consideration of the land. Plaintiff paid Rs.9.5 lakhs only towards sale consideration of Casuarina trees. Plaintiff is not entitled for any damages as claimed at Rs.3,00,000/-. There is no cause of action for the suit and the alleged cause of action is false. The plaint is not properly valued and court fee is not properly paid. One year prior to the agreement of sale, dated 21.5.1999, plaintiff firm was not in existence and it is registered only on 12.05.1999. The plaintiff has no *locus standi* to file the suit. The suit is liable to be dismissed with exemplary costs.

4.In the written statements of defendant No.6, the pleadings are almost similar to those in the written statement of defendants 1 to 5. In addition, it is pleaded that defendants 1 to 5 executed an agreement of sale-cum-general power of attorney in favour of defendant No.6 and that the defendant No.6 executed a registered sale deed to defendant No.7 as a GPA holder of defendants 1 to 5.

5.The written statement of defendant No.7 is similar to the written statement of defendant Nos.1 to 6 and it is further pleaded that he is a *bona fide* purchaser, without notice, of the suit property from defendants 1 to 5 through their GPA holder, defendant No.6 under two (2) registered sale deeds, dated 08.06.2005 bearing Document Nos.3398/2005 and 3399/2005 and since

then, he is in Lawful and peaceful possession of the same and further that prior to that the property was in possession of defendants 1 to 7.

6. Basing on the above pleadings, the trial Court settled the following issues for trial:-

1.Whether the plaintiff is entitled for specific performance of the agreement of sale, dated 21.5.1999 and for delivery of vacant possession of the suit schedule property?

2.Whether the suit document agreement of sale is fabricated?

3.Whether the defendant is entitled for exemplary costs?.

4.To what relief?

The following additional issue was also framed by the trial Court:-

Additional Issue:

Whether the suit sale agreement, dated 21.5.1999, in the name of the Managing Partner of the plaintiff binds the defendants 6 & 7?

7.The 1st defendant died during the course of proceedings. Defendants 3 and 4 are the only legal heirs of the 1st defendant, who are already on record

8.During the course of trial, on behalf of the plaintiff, PWs 1 to 6 were examined and exhibits A1 to A19 were marked. DWs 1 to 5 were examined on behalf of the defendants and no documents were marked.

9.On the above evidence and on hearing the counsel for the parties, the trial Court decreed the suit with costs holding that the plaintiff shall deposit the balance amount of Rs.58,900/- to the suit account within one month from the date of the judgment. It further directed the defendants 1 to 5 and defendant No.7 to execute the regular registered sale deed in favour of the plaintiff and granted liberty to the plaintiff to approach the Court for executing the sale deed by the Court and delivery of possession.

10. Heard *Sri Vedula Srinivas*, learned counsel for the appellants/t defendants 1 to 6 and *Sri M.Radhakrishna,* learned counsel for the 1st respondent/plaintiff.

11. The case of the plaintiff is that as the defendants 1 to 5 have executed the agreement of sale and received the consideration amount except Rs.58,900/- out of total of Rs.9,50,000/-, the plaintiff is entitled to specific performance of agreement of sale under exhibit A3, but the defence of the defendants 1 to 5, as also pleaded by Defendants 6 and 7, is a total denial of the execution of the agreement of sale, but admitted receipt of Rs.9,50,000/-, however, as the amount of consideration towards sale of casuarina tope in the suit schedule property. After having considered the evidence of both parties, the trial Court believed the case of the plaintiff. But, the defendants who filed the appeal contend that the trial Court has wrongly placed burden on the appellants to prove that their signatures and thumb marks are forged by getting the agreement, exhibit A3 examined by an expert and that in fact, it is the burden of the plaintiff to prove its case that the agreement under exhibit A3 was executed and it is not the burden of the

defendants to prove the agreement is forged.

12. On the other hand, learned counsel for the 1st respondent/ plaintiff submitted that if it is a case of simple denial of the agreement in toto, the initial burden could have been on the plaintiff, but, in view of peculiar defence taken by the defendants 1 to 5 that the amount received is towards sale consideration price of casuarina tope, but not for sale of property under exhibit A3, the total burden cannot be placed on the plaintiff, but, it is also the burden of the defendants to show that the amount so received is for the purpose as alleged by them and since they failed to discharge the same, the said amount is to be considered as the amount received towards part of the sale consideration under exhibit A3, which is duly proved by examining the attestors, scribe and further the endorsements regarding the subject part-payments towards sale consideration and the same has been established by examining the two attestors of all the endorsements. He further submitted that DW5, who is the 2nd defendant admitted his signature on exhibit A3 and the admissions of DW4 (3rd defendant) and DW5 (2nd defendant) clearly show that they do not know even the defence taken by them in the written statement and it just for the sake of denying the liability in the suit, they deposed falsely. It is further contended that when once evidence is lead by both the parties, the burden of proof disappears. In this regard, he placed reliance on the judgments in (i) **Sri Chidambara Sivaprakasa Pandara Sannadhigal v. Veerama Reddi @ Mooka Reddi** AIR 1938 PC 2455 wherein it was held that when the entire evidence on both sides is before the Court, the debate as to onus is purely academical, and (ii) **Sita Ram Bhau Patil Vs. Ramchandra Nago Patil (Dead) by Lrs. and Ors**(1977) 2 Supreme Court Cases 49, it was held at paragraph No.23 as under:

> "23. The Revenue Tribunal seemed to consider the approach of the Mamlatdar and the Deputy Collector to be erroneous because according to the Revenue Tribunal the burden was shifted to the respondent to rebut the entry in the record of rights and that the respondent failed to discharge that burden. When the entire evidence is before the Court, it is well settled that the burden of proof becomes immaterial."

13. The above proposition of law is not in dispute. Since both parties have lead common evidence, the oral evidence is to be read together. Irrespective of the same, in the present case, the plaintiff has taken steps to discharge the initial burden on it to establish the fact that exhibit A3 was executed by defendants 1 to 5 by examining the 2nd and the 3rd attestors to it as PWs 2 and 3 and its scribe as DW4 and further PWs 5 and 6 who are attestors to three endorsements are also examined as PWs 5 & 6. In their cross- examination, nothing was elicited to disbelieve their evidence. Their evidence is consistent to prove that defendants 1 to 5 have executed the agreement under exhibit A3 as well as other endorsements marked as exhibits A14 to A17. PW 5 deposed about exhibits A14, A15 and A17 endorsements and PW6 deposed about exhibits A14, A15 and A16 endorsements.

14. As rightly pointed out by the learned counsel for the respondent, DW5, in his cross-examination, categorically admitted his signature on exhibit A3. It is also pertinent to note that in the cross-examination of DWs 4 & 5, they admitted their ignorance about the suit agreement since DW4 stated that his advocate informed him after the suit was filed about the contents of the agreement and that he had not seen the sale agreement nor had he seen its copies and further DW5 also admitted in his cross- examination that he had not given any instructions to his advocate that they had been paid the amount towards casuarina tope and that the other defendants in the suit might have got it mentioned. Of course, he denied the suggestion that they had received the amount towards sale consideration under exhibit A3. But, his admission of signature on exhibit A3 cannot be disregarded at all.

15. In addition to that, his one more important admission in his cross-examination is that they sold the suit schedule land to defendant 6 after receiving the suit summons. Similarly, DW4 also admitted that during pendency of the suit, they sold 12 acres of land to their advocate, Koduri Bangarayya who is no other than the defendant 6 in this suit. It is his case that he obtained agreement- cum-GPA pending suit and sold the property to defendant 7 who is no other than his son. Though he filed written statement, he has not turned up to give evidence and failed to prove his defence as mere filing of documents by the plaintiff would not prove his case. Similarly, defendant 7 also did not turn up to give evidence, though he took the defence that he is a *bona fide* purchaser which can be proved only with the evidence and failed to prove the same.

16. Though there is no decree against defendant 6, as the trial Court directed defendants 1 to 5 and defendant 7 to execute the sale deed in favour of the plaintiff, defendant 6 joined defendants 1 to 5 in filing the appeal. The active role played by defendant 6 is vital in this case. DWs 4 & 5, though parties to the suit, their affidavit in chief-examination is filed as if they are mere witnesses, without mentioning that they are the defendants. It is in the cross-examination, their status in the suit was elicited. All the defendants took the plea that defendants 1 to 5, being illiterates, are not aware of the legalities and denied the entire suit transaction. On a careful reading, as rightly analyzed by the trial Court as well, it is evident that the defendants wanted to take advantage by stating that defendants 1 to 5 are illiterate and denying the suit transaction. The evidence lead by the plaintiffs, as well as the evidence in the cross-examination of defendants' witnesses, clearly make out that the plaintiff could discharge its primary burden of proving that exhibit A3 was executed and similarly endorsements under exhibits A14 to A17 were duly executed. Thereafter, the onus shifts to defendants to make out their case. But, they utterly failed to do so, since there is no evidence that there was any agreement to sell casuarina tope as alleged or what is the price of such casuarina tope and what extent the casuarina tope was on land at that time in the suit schedule property and its value. DWs 2 & 3 were examined to deny the suit transaction and support the case of the defendants that the amount was received towards consideration of sale price of casuarina tope. However, their admissions in the cross-examination proved

that they do not know anything of what they stated in their chief examination. In this regard, it is pertinent to mention that DW3 in his cross-examination stated that he did not know which dispute he has to depose and that he does not know about the sale agreement referred to in his affidavit and that defendant 1 told him one thing that as and when Court summons were received by him to give evidence and he shall depose whatever is true. Similarly, DW2 deposed in cross-examination that he does not know whether there was an agreement, dated 21.05.1999 as suit agreement and that he had no personal knowledge about transaction between the plaintiff and the defendants. He further stated that he does not know about the attestors to suit agreement. However, his chief examination affidavit contains many allegations against them as well. Thus, the entire evidence relied on by the defendants is just to get over the liability under the suit transaction. They failed to discharge their onus. Hence, the plaintiff is entitled to specific performance of the agreement of sale under exhibit A3 and the said agreement is binding on all the defendants.

17. Another main ground taken in appeal is that the suit agreement contains only the signature of the vendor, but not the vendee and thus, it is invalid. In this regard, learned counsel for the respondent placed reliance on the decision of this Court in **Aloka Bose v. Parmatma Devi and others** AIR 2009 SUPREME COURT 1527 and the decision of High Court of Madras in **N.Sankaran v. R.Shanmuga Raj** S.A.No.94 of 2008, dated 19.04.2021 in which the decision of the Supreme Court in **Aloka Bose** (3 supra) was followed.

In the cited decision, it is held by the Supreme Court as follows:

"All agreements of sale are bilateral contracts as promises are made by both - the vendor agreeing to sell and the purchaser agreeing to purchase. On the other hand, the observation in **S.M. Gopal Chetty v. Raman** (supra) that unless agreement is signed both by the vendor and purchaser, it is not a valid contract is also not sound. An agreement of sale comes into existence when the vendor agrees to sell and the purchaser agrees to purchase, for an agreed consideration on agreed terms. It can be oral. It can be by exchange of communications which may or may not be signed. It may be by a single document signed by both parties. It can also be by a document in two parts, each party signing one copy and then exchanging the signed copy as a consequence of which the purchaser has the copy signed by the vendor and a vendor has a copy signed by the purchaser. Or it can be by the vendor executing the document and delivering it to the purchaser who accepts it. Section 10 of the Act provides all agreements are contracts if they are made by the free consent by the parties competent to contract, for a lawful Consideration and with a lawful object, and are not expressly declared to be void under the provisions of the Contract Act. The proviso to Section 10 of the Act makes it clear that the section will not apply to contracts which are required to be made in writing or in

the presence of witnesses or any law relating to registration of documents. Our attention has not been drawn to any law applicable in Bihar at the relevant time, which requires an agreement of sale to be made in writing or in the presence of witnesses or to be registered. Therefore, even an oral agreement to sell is valid. If so, a written agreement signed by one of the parties, if it evidences such an oral agreement will also be valid. In any agreement of sale, the terms are always negotiated and thereafter reduced in the form of an agreement of sale and signed by both parties or the vendor alone (unless it is by a series of offers and counter- offers by letters or other modes of recognized communication). In India, an agreement of sale signed by the vendor alone and delivered to the purchaser, and accepted by the purchaser, has always been considered to be a valid contract. In the event of breach by the vendor, it can be specifically enforced by the purchaser. There is, however, no practice of purchaser alone signing an agreement of sale."

18. As such, the learned counsel for the appellant also conceded the above said legal proposition and submitted that such ground of appeal is not pressed for consideration in the appeal. However, in view of the well settled legal position noted above, the ground taken in the appeal is not tenable to oppose the suit.

19. Lastly, learned counsel for the respondent submitted that since the relief of specific performance is a discretionary relief, it is not just the plaintiff who is seeking for specific performance who has to come to Court with clean hands to exercise such discretion in favour of the plaintiff, but the same principle would equally apply to the defendants who come in appeal seeking the Court not to exercise such discretion in favour of the plaintiff to grant specific performance and placed reliance on the decision of the Supreme Court at paragraphs 33 & 34 in **Zarina Siddiqui v. A. Ramallingam @ R.Amarnathan**[5].

> "33. The equitable discretion to grant or not to grant a relief for specific performance also depends upon the conduct of the parties. The necessary ingredient has to be proved and established by the Plaintiff so that discretion would be exercised judiciously in favour of the Plaintiff. At the same time, if the Defendant does not come with clean hands and suppresses material facts and evidence and misled the Court then such discretion should not be exercised by refusing to grant specific performance."
>
> 34. ..... Further, by registered agreement the Defendants agreed to sell the suit premises after receiving advance consideration but they denied the existence of the agreement in their pleading. Such conduct of the Defendants in our opinion, disentitle them to ask the Court for exercising discretion in their favour by refusing to grant a decree for specific performance. Further, if a party to a lis does not disclose

all material facts truly and fairly but states them in distorted manner and mislead the Court, the Court has inherent power to exercise its discretionary jurisdiction in order to prevent abuse of the process of law."

Relying on the same, learned counsel submitted that the conduct of the defendants, as explicit from the evidence on record and the defence taken bluntly denying the suit transaction, would disentitle them to get any relief in the appeal.

20. As rightly submitted by the learned counsel for the respondent, the conduct of the defendants in this case is such that they cannot seek indulgence of the Court not to exercise discretion for granting the relief of specific performance in favour of the plaintiff. For all these reasons, there is no merit in the appeal.

21. In the result, the appeal is dismissed with costs.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

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2022(3) L.S. 94 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Mr.Justice
Cheekati Manavendranath Roy

Bobbireddy Sunil Veera Naveen ..Petitioner

Vs.

The Station House Officer ..Respondent

INDIAN PENAL CODE, Secs.376 and 417 - Criminal Petition to enlarge the Petitioner on bail - Petitioner is the sole accused in Crime - It is the case of the prosecution that both the Petitioner and de facto complainant were in love with each other for the last 19 years and promised to marry her and thereby induced her to have sexual intercourse with her –Thereafter, Petitioner refused to marry de facto complainant.

HELD: Petitioner has now married de facto complainant – Petitioner is entitled to bail - Petitioner is an employee working in Qatar - Petitioner shall not leave the country till the trial of the case is concluded - If at all he leaves the country to pursue his employment, he shall go along with the de facto complainant wherever he secures his employment.

Mr.R Siva Sai Swarup, Advocate for the Petitioner.

Public Prosecutor AP.for the Respondent.

42 Crl.P.No.1425/2022. Date: 08.03.2022.

J U D G M E N T

This criminal petition is filed under SARFAESI Act of the Code of Criminal Procedure, 1973, to enlarge the petitioner on bail.

2. The petitioner is the sole accused in Crime No.21 of 2022 of Dwaraka Police Station, Visakhapatnam City.

3. A case under Sections 376 and 417 of the Indian Penal Code, 1860 was registered against him in the above crime.

4. It is the case of the prosecution that both the petitioner and the de facto complainant are related to each other. The petitioner is brother-in-law of the de facto complainant. They are in love with each other for the last 19 years. The petitioner promised to marry her and thereby induced her to have sexual intercourse with her. Accordingly, he had sexual intercourse with the de facto complainant, thereafter he resiled from the promise and refused to marry her and thereby cheated her. Therefore, a case under Sections 376 and 417 of IPC was registered against the petitioner in the above crime.

5. Heard learned counsel for the petitioner and the learned Additional Public Prosecutor for the State.

6. Learned counsel for the petitioner would submit that interim bail was granted to the petitioner after he was arrested in connection with the above crime. Thereafter he married the de facto complainant on 09.02.2022 and their marriage was also registered. He has also produced copy of the marriage certificate before the Court to show that the marriage between the petitioner and the de facto complainant took place on 09.02.2022. Learned counsel for the petitioner also produced marriage photographs of the petitioner and the de facto complainant in proof of their marriage. So, he prayed for grant of bail to the petitioner.

7. Learned Additional Public Prosecutor on instructions would submit that it is the fact that the petitioner married the de facto complainant as per the aforesaid marriage certificate and photographs. Therefore, as the petitioner has now married the de facto complainant as per the aforesaid evidence produced before the Court which is confirmed by the prosecution, considering it as a mitigating circumstance, this Court is of the considered view that the petitioner is entitled to bail.

8. Resultantly, the Criminal Petition is allowed. The petitioner is ordered to be enlarged on bail on execution of self bond for Rs.50,000/- (Rupees fifty thousand only) with two sureties for a likesum each to the satisfaction of the learned I Additional Chief Metropolitan magistrate, Visakhapatnam. On his release, as it is stated that the petitioner is an employee working in Qatar, the petitioner shall not leave the country till the trial of the case is concluded. If at all he leaves the country to pursue his employment, he shall go along with the de facto complainant who is his wife now wherever he secures his employment. The petitioner shall scrupulously comply with the said conditions and infraction of any of the conditions will be viewed very seriously.

–X–

2022(3) L.S. 96 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Mr.Justice K.Sreenivasa Reddy

M/s.Adani Wilmar Limited ..Petitioner
Vs.
The State of A.P ..Respondent

CRIMINAL PROCEDURE CODE, Sec.482 - PREVENTION OF FOOD ADULTERATION ACT, 1954, Secs.7(i) and 2(ia)(m) punishable under section 16(1)(a)(i) - Criminal Petition to quash the proceedings in C.C - Private complaint has been filed against the Petitioner/A.3 and others, for the offences under Food Adulteration Act.

HELD: Prima facie notice under Section 13 (2) of Act, 1954 was not given to the petitioner so as to enable the Petitioner to avail the opportunity of sending the sample to the Central Food Laboratory - Issuance of the said notice is not an empty formality and it defeats the valuable right conferred on the Petitioner - Continuation of the proceedings in C.C. against the Petitioner is nothing but abuse of process of the Court - Accordingly, the proceedings stand quashed - Criminal Petition stands allowed.

Mr.CH Dhanamjaya, Advocate for the petitioner..
Public Prosecutor AP., for the Respondent.

Crl.P.No.2840/2015. Date: 08.03.2022.

O R D E R

This Criminal Petition is filed to quash the proceedings in C.C.No.514 of 2010 on the file of the IV Additional Judicial Magistrate of First Class, Nellore, SPSR Nellore District.

2. Brief facts of the case are - a private complaint has been filed against the petitioner/A.3 and others, for the offences under Sections 7(i) and 2(ia)(m) punishable under section 16(1)(a)(i) of Prevention of Food Adulteration Act, 1954 (for short, 'the Act, 1954'), consequent on the food Inspector visiting m/s.Venkata Ramana provisions & Fancy shop of the Accused No.1 on 11.03.2010. He found 50 packets of Raaga gold Refined palmolin Oil in stock. As per label declaration, they were packed on 12th January, 2010. He suspected the quality of the said oil and purchased three packets for Rs.99.00 by obtaining cash receipt and intimated A.1 that the said oil would be sent to the public Analyst, State food Laboratory, Hyderabad for analysis by issuing form VII notice to A.1 under the Act and completed all formalities of packing of the oil samples. On 12.03.2010, the complainant sent one sample to the public Analyst, State food Laboratory. The public Analyst in turn furnished report of analysis dated 19.04.2010 with an opinion that the sample does conform to the standard of Acid Value and hence, it is adulterated. The food Inspector sent report of analysis to the Director of Preventive medicine and State food (Health) Authority, Andhra pradesh and he in turn accorded consent for launching prosecution against the petitioner herein and consequently, the above Calendar Case was filed.

3. Learned counsel for the petitioner, Sri Challa Dhanamjaya, contends that for initiation of proceedings, issuance of notice to the petitioner under Section 13(2) of the Act, 1954 is mandatory and it should be given within the shelf life of the product. The shelf life of the oil sample collected is six months and the shelf life, as per the label, expires on 12.07.2010. Even if it is assumed that the petitioner was served notice under Section 13(2) on 06.09.2010, as contended by the respondent, the shelf life of the sample had expired by that date.

4. Learned Special Assistant public Prosecutor Sri Soora Venkata Sainath, opposes the petition.

5. A perusal of the complaint shows that the date of manufacturing of the oil is on 12.01.2010 and the sample was collected on 11.03.2010. Thereafter, the sample was sent to the public Analyst on 12.03.2010. After receiving the report of the Analyst on 17.03.2010, a notice has to be issued to the petitioner herein so as to enable him to send it to the Central Food Laboratory for analysis. However, no such opportunity was given to the petitioner herein. A perusal of the complaint shows that the date of filing of complaint itself is 24.08.2010 and it is only after initiation of the proceedings, a notice has to be issued to the petitioner. When the complaint itself was filed after expiry of the shelf life i.e. after 12.07.2010, admittedly no notice has been issued to the petitioner before expiry of shelf life of the product so as to enable him to send the sample to the Central Food Laboratory for analysis. The petitioner has foregone his valuable right because of non-issuance of notice to the petitioner.

6. The learned counsel for the petitioner has relied upon the judgments in ***P. Gopalakrishna v. Food Inspector, (2011) 3 LAWS (APH) 33*** wherein this Court held as follows:

> "3. Even according to the complaint, label declaration is to the effect that the product was manufactured on 1.6.2006 and it is best before 12 months from the date of the manufacture. The shelf life of the product expired on 1.6.2007 and the complaint was filed on 20.8.2007, nearly two months after the shelf life. The Central Food Laboratory examined the sample on 7.1.2008, nearly 7 months after the expiry of shelf life. Because of the delay, there must have been variation in the standards prescribed. Two reports have given different results. As the complaint and notice under Section 13(2) of the Act was given after shelf life of the product, the petitioners could not apply to the Central Food Laboratory within a period of shelf life. Though the public Analyst report is dated 10.11.2006, the complaint was filed only on 20.08.2007. Petitioners, who are said to be manufacturers of the product lifted by the food Inspector, can be proceeded against only if the provisions of the 14 of the Act are complied with. . . . . So, Accused No.1 assuming that all the allegations in the complaint are true, the petitioner cannot be said to have committed an offence under the Act, in view of issuance of notice under Section 13(2) of the Act, which was given after shelf life of the product

was expired. Therefore, the petitioner could not have been applied for Central Food Laboratory within a period of shelf life "

7. The learned counsel for the petitioner has also relied upon the judgments in ***Pydi Prasada Rao v. State of Andhra Pradesh, (2011) 4 LAWS (APH) 16*** wherein this Court held as follows:

"4. However, there is a vital link between the filing of the compliant and the date of the report of the Analyst. The learned counsel for the petitioners pointed out that notice under Section 13(2) of the Act was not issued. Section 13(2) notice is mandatory. Further, Section 13(2) notice is expected to be issued within 10 days from the date of the report of the Analyst. The purpose of notice is to enable the petitioners to seek to send another sample for analysis and report, if necessary from a different Analyst. While so, whereas the Analyst analyzed the sample on 30.5.2005, the complaint was laid on 26.4.2007, so much so the petitioners lost their valuable

right to seek to send another sample for analysis. Where Section 13 (2) of the Act notice is mandatory and where such a notice admittedly was not issued, the prosecution launched against the petitioners becomes illegal and is liable to be quashed. The contention of the learned Counsel for the petitioners that the prosecution violated the provisions of Section 13(2) of the Act and that the complaint consequently is liable to be quashed deserves to be accepted."

8. In view of the judgments, this Court feels that this is a fit case to interfere under Section 482 Cr.P.C. for the reason that prima facie notice under Section 13 (2) of Act, 1954 was not given to the petitioner so as to enable the petitioner to avail the opportunity of sending the sample to the Central Food Laboratory. Issuance of the said notice is not an empty formality and it defeats the valuable right conferred on the petitioner. In view of the same, continuation of the proceedings in C.C.No.514 of 2010 against the petitioner is nothing but abuse of process of the Court. Accordingly, the proceedings are liable to the quashed.

9. In the result, the Criminal Petition is allowed and the proceedings against the petitioner in C.C.No.514 of 2010 on the file of the IV Additional Judicial Magistrate of First Class, Nellore, SPSR Nellore District are quashed.

Miscellaneous Petitions, if any, pending in this Criminal Petition, shall stand closed.

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2022 (3) L.S. 51 (T.S)

IN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Mr.Justice
K. Lakshman

Peddoni Balaiah
& Anr., ..Petitioners

Vs.

The State of Telangana
& Ors., ..Respondents

CRIMINAL PROCEDURE CODE, Sec.482 - Petitioners are arrayed as Accused Nos.1 and 2 in Crime and offences alleged against them are under Sections 341, 447 and 506 read with 34 of IPC.

HELD: In the complaint, prima facie, there are specific allegations against Petitioners that they have obstructed Respondent No.3 and threatened with dire consequences of implicating Respondent No.3 and others in a case for the offences under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act - There are several factual aspects which need to be investigated into by the Investigating Officer during the course of investigation.

Writ Petition stands disposed of directing the Investigating Officer in Crime, to follow the procedure laid under Section - 41A of Cr.P.C. and the guidelines issued by the Hon'ble Supreme Court in *Arnesh Kumar v. State of Bihar (2014) 8 SCC 273.*

Karunakar Reddy, Advocate for the Petitioners.
GP for Home TG.for the Respondents.

O R D E R

Heard Mr. Karunakar Reddy, learned counsel for the petitioners and Mr. S. Rama mohan Rao, learned Assistant Government Pleader for Home appearing on behalf of respondent Nos.1 and 2, and perused the record.

2.The petitioners herein are arraigned as accused Nos.1 and 2 in Crime No.66 of 2022 of Balanagar Police Station of Mahabubnagar District. The offences alleged against them are under Sections - 341, 447 and 506 read with 34 of IPC.

3.Perusal of the record would reveal that there are disputes between the petitioners and respondent No.3 herein with regard to the land situated at Gowthapur Village of Balanagar Mandal, Mahabubmagar District. The petitioners herein claiming that they are the owners of the land in Survey Nos.136/E and 137/3/A, admeasuring Acs.1.29 guntas situated at Gowthapur Village, whereas respondent No.3 herein is claiming that he is the owner of the land in Survey No.117 which is adjacent to the land of the petitioners herein. Respondent No.3 herein had filed a suit vide O.S. No.31 of 2014 pending on the file of Junior Civil Judge, Jadcherla against petitioner No.1 herein for perpetual injunction and the same

was decreed on 06.02.2015.

4.Learned counsel for the petitioners would submit that petitioner No.1 has not preferred any appeal challenging the said judgment and decree and, thus, the same had attained finality. He would further submit that the alleged incident took place on 30.03.2022, whereas respondent No.3 herein had lodged the complaint on 04.04.2022. Thus, there is a delay in lodging the complaint. Further, there was no incident occurred on 03.03.2022. Survey was conducted in the presence of the Villagers, Revenue Officials and neighbour land owners. Even then, respondent No.3 has implicated the petitioners herein in the present case.

5.In the complaint, prima facie, there are specific allegations against the petitioners herein. They have obstructed respondent No.3 and threatened with dire consequences and they would implicate respondent No.3 and others in a case for the offences under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. There is an injunction in favour of respondent No.3 herein. Therefore, whether the land is in survey Nos.136 and 137 or in Survey No.117 as claimed by the parties herein cannot be decided in a petition under Section - 482 of the Cr.P.C. Thus, prima facie, there are several factual aspects which need to be investigated into by the Investigating Officer during the course of investigation. Punishment prescribed for the offences alleged against the petitioners herein is below seven (07) years.

6.The present Writ Petition is accordingly disposed of directing the Investigating Officer in Crime No.66 of 2022 of Balanagar Police Station of Mahabubnagar District, to follow the procedure laid under Section - 41A of Cr.P.C. and the guidelines issued by the Hon'ble Supreme Court in ***Arnesh Kumar v. State of Bihar (2014) 8 SCC 273*** . Further, the petitioners herein shall co-operate with the Investigating Officer by furnishing necessary information and documents as sought by him in concluding investigation.

As a sequel, the miscellaneous petitions, if any, pending in the Writ Petition shall stand closed.

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2022 (3) L.S. 52 (T.S)

IN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Mr.Justice
T.Vinod Kumar

Mechavath Nannu ..Petitioner

Vs.

State of Telangana ..Respondents

A.P. EXCISE ACT, Sec.34(e) and 46(2) - Writ of Mandamus – To declare Respondent No.2 act of not passing orders directing the 3rd respondent to release the Petitioner's vehicle seized in PCR in spite of Petitioner's readiness to furnish third party security, as being illegal.

W.P.No.15730/2022. Date:29.03.2022

HELD: Respondent No.2 was directed to release the motor cycle subject to final orders to be passed under Section 46(2) of the Act and on petitioner furnishing Fixed Deposit of Rs.15,000/- from any Nationalized Bank in favour of the authority and also on production of original RC Book and on further giving an undertaking that he will not transfer or alienate.

Mr.Saggala Srivani, Advocate for the Petitioner.
GP for Prohibition Excise TG. for the Respondents.

O R D E R

This Writ Petition is filed to issue Writ of Mandamus declaring the action of 2nd respondent in not passing orders directing the 3rd respondent to release the petitioner's vehicle motor cycle Splendor+ (13S-Self-Drum-CA) bearing registration No.TS-05-FC- 5043, chasis No.MBLHAW081KHK54345, Engine No.HA10AGKHE2201 seized in PCR No.10 of 2022 dt.09-03-2022 in spite of petitioner's readiness to furnish third party security, as being illegal, arbitrary and unjust.

2. Heard learned counsel for petitioner and learned Government Pleader for Excise appearing for respondent Nos.1 to 3 and perused the record. With their consent, this Writ Petition is taken up for hearing and disposal at the admission stage.

3. Petitioner contends that 3rd respondent had seized his motor cycle bearing Registration No.TS- 05C-5043 on 09-03-2022 alleging that petitioner is carrying alum weighing 1Â½ Kg for preparation of ID liquor; that above said conclusion drawn by respondent-authorities is without any basis inasmuch as the sale and possession of alum is not prohibited under the provisions of A.P. Excise Act, 1968 (for short 'the Act') and unless and until the Authorities bring on record that the same is intended for the purpose of manufacturing of any intoxicant, the same cannot be subjected to seizure.

4. Petitioner further contends that this Court, in similar circumstances in Criminal Petition No.8904 of 2014 by order dt.07-11-2014 had allowed the Criminal Petition by quashing the criminal case booked against the petitioner therein under Section 34(e) of the Act. It is also contended that since mere carrying of the same cannot be considered as an illegal activity and when the respondents have seized the conveyance on which person carrying the said goods was seized, this Court in W.P.No.22638 of 2018 by order dt.04-07-2018 had directed the respondents therein to release the vehicle upon petitioner furnishing the bank guarantee.

5. Petitioner contends that he is similarly placed like the petitioners in the above two cases and

seeks grant of same relief.

6. Learned Government Pleader for Excise, while opposing the Writ Petition, would vehemently contend that as per Section 34 of the Act, transportation of any material would be considered as illegal

transportation and possession of any such material would also have to be considered for the purpose of manufacturing of any intoxicant other than toddy and therefore apart from person carrying such material being liable for prosecution, the conveyances used for transporting the said material would also be liable for seizure. To buttress the above said submission, learned Government Pleader has drawn the attention of this Court to the judgment of this Court in W.P.No.9471 of 2018 dt.12-06-2018.

7. I have taken note of respective submissions.

8. Though the issue relating to applicability of Section 13(f), 34, 53 and 55 of the Act by a person who is merely carrying the material like alum, black jaggery etc would bring them under the purview of Section 34 of the Act implying that carriage by itself would have to be impliedly considered for the purpose of manufacturing of any intoxicant, is a larger issue and need to be gone into in a matter where a challenge is made to such provision.

9. Since the grievance of the petitioner in the present Writ Petition relates to respondent No.2 not passing orders for release of his motor cycle seized in connection with PCR No.10 of 2022 on 09-03- 2022, this Court is of the view that since in similar circumstances in W.P.No.22638 of 2018 this Court by order dt.04-07-2018 directed release of the vehicle involved therein upon furnishing of Fixed Deposit from any Nationalized Bank, petitioner in the present Writ Petition would also be entitled for grant of similar relief.

10. In view of the same and for reasons alike, the Writ Petition is disposed of directing the 2nd respondent to release the motor cycle Splendor + "(13S-Self-Drum-CA) bearing registration No.TS 05- FC- 5043, chasing No.MBLHAW081KHK54345, Engine No.HA10AGKHE2201 subject to final orders to be passed under Section 46(2) of the Act and on petitioner furnishing Fixed Deposit of Rs.15,000/- (Rupees Fifteen Thousand only) from any Nationalized Bank in favour of the authority as may be intimated by the 2nd respondent and also on production of original RC Book and on further giving an undertaking that he will not transfer or alienate the vehicle to any third party in any manner and will maintain the vehicle in good road-worthy condition without changing its major parts and features and would produce the same as and when directed to be produced before the competent authority. No costs.

11. Consequently, miscellaneous petitions, pending if any, shall stand closed.

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2022 (3) L.S. 55 (T.S)

IN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Smt. Justice Lalitha Kanneganti

M/s.Manapuram Finance Ltd ..Petitioner
Vs.
The State of Telangana ,,Respondent

CRIMINAL PROCEDURE CODE, Sec.102 - Writ Petition questioning the action of the 4th respondent in issuing notice to freeze the account transaction of the accused in Crime in order to seize gold ornaments pledged to the petitioner company – Petitioner submitted that he carrying out business after obtaining licenses and that he is ready to provide the bank guarantee and after a full-fledged trial, if the Court below holds that the said property is the stolen property, the same can be seized.

HELD: Mandamus cannot be preferred before this court when an officer as per the powers vested in him and in accordance with law has issued a notice under Section 102 of Cr.P.C. - Except submitting that they are ready to furnish security for the property which is going to be seized, there are no other legal and tenable grounds urged before this Court - Alternative remedy is available to Petitioner - Writ petition sands dismissed.

W.P.No.14153/2022. Date: 06.06.2022

Mr.Jella Srikanth, Advocate for the Petitioner.
GP For Home for the Respondent.

J U D G M E N T

This writ petition is filed questioning the action of the 4th respondent in issuing notice under Section 102 of Cr.P.C to freeze the account transaction of the accused in Crime No.97 of 2022 in order to seize gold ornaments pledged to the petitioner company.

2. Sri Ravinder Reddy, Learned Senior Counsel representing Sri J. Srikanth, Learned counsel for the petitioner submits that the person who has given the complaint is not owner of the goods and basing on such complaint, registration of complaint itself is bad. He submits that petitioner is not the accused and those gold ornaments are pledged with petitioner and it valued approximately at Rs.4.33Crores. He submits that petitioner is ready to provide the bank guarantee for the said amount, as such there may be a direction to the respondents not to seize the gold ornaments. He submits that investigation is at initial stage and whether the ornaments that are pledged are stolen articles or not are yet to be investigated and will be decided after a full-fledged trial. He submits that the 4th respondent issued notice under Section 91 of Cr.P.C, wherein it stated that the pledged gold ornaments are stolen articles and liable to be seized. He submits that the business being conducted by the petitioner has got number of competitors and the complainant is one of such competitor. He submits that the petitioner is doing the business after obtaining licenses from RBI and other

statutory authorities. He is ready to provide the bank guarantee and after a full-fledged trial, if the Court below holds that the said property is the stolen property, the same can be seized.

3. Learned senior counsel relied on the Judgement of this Court in "***Makkena Subba Naidu v. State of A.P and others" [2002 (1) ALD (Crl.) 624 (AP)***].

7. In his order, inter alia, the learned magistrate was of the view that in view of the recitals in Ex. D-I, the amount belonged to the revision petitioner herein and the said amount was paid at the house of the revision petitioner to the accused; and that the revision petitioner was able to give denominations of the cash paid by him to the accused whereas the wife of the accused failed to give at least denominations of the cash seized by the police; and that, therefore, her claim was only at the instance of her husband-accused. I see no plausible grounds given by the learned Sessions Judge so as to upset the said finding. Anyway, the property disposal order passed under Section 452 of the Code is not a final order inasmuch as it is not within the realm of the Criminal Court to decide the rights of the parties. At that stage, the criminal Court is mainly concerned with right to possession of the property but not right over the property. The rights over the property can only be adjudicated by a competent Civil Court having jurisdiction over the same. It is always open to the parties to assail the said order in a competent civil court or file a suit to claim the right over the property. Therefore, always and in all circumstances while directing the property to be given possession of to a particular person, it shall be the endeavour of the criminal Court to observe that such a right is subject to the result of the decision of a competent Civil Court having jurisdiction over the matter. Any attempt in that view of the matter to decide the rights over the properties marked in a criminal case is, therefore, without jurisdiction and competence of the criminal Court.

4. Learned Assistant Government Pleader for Home submits that when the crime is at investigation stage and when an application is filed and a notice is issued under Section 102 of Cr.P.C, the petitioner cannot have any audience before this court and this application before this Court is not at all maintainable. He submits that when once a property is seized and the same is placed before the Court below, petitioner will get an opportunity to file an application seeking interim custody of the property and he submits that the petitioner cannot maintain an application under Article 226 of the Constitution of India.

5. Learned counsel appearing for complainant submits that gold that was stolen from the complainant was deposited in the petitioner's company and there are almost 41 accused arrayed in crime No.97 of 2022 and so far only five accused were arrested. He submits that writ petition itself is not maintainable and petitioner cannot come before this court questioning the notice issued under Section 102 of Cr.P.C.

6. Having heard the learned counsels on either side perused the entire material on record, the petitioner is before this court

questioning the notice issued under Section 102 of Cr.P.C. This Court in ***W.P.No.13363 of 2020 in AP Product Represented by it's Proprietor v. State of Telangana*** has observed that in case of seizure of property and freezing of bank accounts at the stage of investigation, accused have no right of being heard and of affording prior opportunity before property is seized. When a notice is issued under Section 102 of Cr.P.C, the same is not amenable to the writ jurisdiction and further, the order in Makkena Subba Naidu's case which is relied on by the learned senior counsel has no application to the facts of the case. The said order came to be passed in a criminal revision case where the issue that fell for consideration before the court was about the disposal of the case property. Whether an order is an appealable order or a revisable order, petitioner cannot take shelter under said order. This Court is not able to appreciate how a mandamus lies before this court when an officer as per the powers vested in him and in accordance with law has issued a notice under Section 102 of Cr.P.C. Except submitting that they are ready to furnish security for the property which is going to be seized, there are no other legal and tenable grounds urged before this Court. In view of the above discussions and as the alternative remedy is available to the petitioner, this Court finds no reason to entertain the writ petition.

7. Accordingly, the writ petition is dismissed. No order as to costs.

8. Miscellaneous applications, pending if any, shall stand closed.

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2022 (3) L.S. 57 (T.S)

IN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Smt. Justice Lalitha Kanneganti

Bellamkonda Bramham & Ors., ..Petitioners

Vs.

State of Telangana & Ors. ..Respondents

INVESTIGATION - Writ Petition seeking to declare the illegal action of the 5th and 6th Respondents under the guise and pretext of using police power and involving in civil disputes personally and summoning and calling the Petitioners to the Police Station without there being any valid reasons - It is the specific case of the petitioners that though no crime is registered, without any authority, the respondent police are asking them to come to the police station.

HELD: It appears that, Crime No.41 of 2022 was registered against the Petitioners and for the purpose of investigation, the Petitioners were called to the Police station - In view of the same, Writ Petition stands dismissed.

Mr.Palle Nageswar Rao, Advocate for the Petitioners..
GP for Home TG. for the Respondents .

O R D E R

This writ petition is filed seeking

W.P.No.12894/2022. Date:16.03.2022

to declare the illegal action of the 5th and 6th respondents under the guise and pretext of using police power and involving in civil disputes personally and summoning and calling the petitioners to the 5th respondent Police Station on 21.01.2022, 18.02.2022, 22.02.2022 and 05.03.2022, without there being any valid reasons.

2. Sri Palle Nageswar Rao, learned counsel for the petitioners, submits that the 1st and 2nd petitioners are partners and the 3rd respondent is their friend. The 1st petitioner is having a residential plot, admeasuring 936 square yards, in Sy.Nos.227/U and 227/UU, Block No.1, Anumulagudem, Huzurnagar Mandal, Suryapet district, which was purchased by him by way of registered document in the year 2017. Later, the 1st petitioner has sold the property in favour of the 9th respondent herein through a registered sale deed dated 29.08.2019. Thereafter, certain disputes have taken place between the parties and the 7th and 8th respondents, who have nothing to do with any of the acts, influenced the official respondents and basing on that, without registering any crime and without any basis, the petitioners were called to the police station continuously and also the police are trying to interfere with the civil disputes. It is stated that the police have summoned the 3rd petitioner on 21.01.2022, 18.02.2022 and 22.02.2022 and again they were called on 05.03.2022. The police have also beat the 3rd petitioner. The police also pressurized the petitioners to settle the dispute and to pay an amount of Rs.30.00 lakhs within a week. Learned counsel submits that the police are acting in a high handed manner and interfering with the civil disputes.

3. Sri S.Ramamohan Rao, learned Assistant Government Pleader for Home, basing on the written instructions of Inspector of Police, Miryalguda II Town Police Station, submits that basing on the complaint given by the 7th respondent, Crime No.41 of 2022 was registered for the offence under Section 420 read with 34 IPC on 05.03.2022, and wherein the petitioners are arrayed as accused. It is submitted that the crime is registered recently and as the punishment prescribed for the offence

under Section 420 read with 34 IPC is below seven years, they will follow the procedure as contemplated under Section 41-A Cr.P.C. As per his instructions, investigation is under progress and it is pending for examining some more witnesses and to collect the material evidence to elicit the complicity of the petitioners herein in the alleged crime. It is submitted that when the petitioners came to know about the registration of the crime, have come up before this Court by filing this writ petition making false and baseless allegations against the respondents.

4. It is the specific case of the petitioners that though no crime is registered, without any authority, the respondent police are asking them to come to the police station. It appears that, Crime No.41 of 2022 is registered against the petitioners and for the purpose of investigation, the petitioners are called to the police station. In view of the same, this Court finds no reason to pass any orders in the writ petition.

5. Accordingly, Writ petition is dismissed. No order as to costs. Miscellaneous applications, pending if any, shall stand closed.

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2022 (3) L.S. 59 (T.S)

IN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Mr.Justice
K. Lakshman

M/s.Sri Venkateshwara Developers ..Petitioner

Vs.

Arepally Jeevan Rao ..Respondent

TELANGANA COURT FEES AND SUITS VALUATION ACT, 1956, Sec.39 - Suit for specific performance - Suit for declaration and injunction.

Court fee to be valued only on basis of relief prayed for in plaint - Sect.24(a) of the Act provides for suit for declaration and possession of the property to which the declaration speak-about, It stipulates that the Court fee shall be computed on the market value of the immovable property or Rs.300/-, whichever is higher - Sec.24 (b) provides for suit for declaration and injunction as a consequential relief sought is with reference to any immovable property, fee shall be computed on one-half of the market value of the property or on Rs.300/-, whichever is higher.

Parties and the lower Judiciary will have to carefully scrutinize the pleadings mentioned in the plaint to arrive at a correct conclusion for payment of Court fee aspect - Civil Revision Petition stands allowed.

Mr. Naresh Reddy Chinnolla, Advocate for the Petitioner.

O R D E R

If an error emanate from non-adherence of the procedure (or the rule), the life of the litigation will become complex. While passing orders, lower judiciary should take a note that their application of judicious mind at the right time, in a right way, will ease the load on higher judiciary. The present case is a class example.

Part - 'A'

Proceedings Before This Court:- (a) Factual Background:-

This Civil Revision Petition is filed under Article - 227 of Constitution of India, to set aside the Order passed in C.F.R.No.2540 of 2021 dated 21-12-2021 and C.F.R.No.2490 of 2021 dated 03-01-2022 by the learned District Judge, Adilabad.

2.Heard Sri Naresh Reddy Chinnolla, learned counsel for the petitioner.

i) Suit Instituted:-

3.The petitioner herein had filed a suit for specific performance of contract of sale and for possession. The suit schedule property is land admeasuring Acs.02-16 guntas in Sy.No.114 (after mutation in the name of the defendant, it is separately identified as Sy.No.114/A, in Revenue records and after introduction of Dharani Portal by the Government of Telangana State, the suit land is again identified by separate survey number as Sy.No.114/A7), situated at Kadthal Revenue Village Shivar,

Soan Mandal, Nirmal District.

ii) Plaint Valued At:-

4.It is mentioned in the plaint that the sale consideration of suit land to an extent of Acs.02-16 guntas and market value is Rs.3,24,00,000/- @ Rs.1,35,00,000/- per acre, as per the agreement of sale. Hence, the Court fee of Rs.3,26,426/- is paid under Section - 39 of the Telangana State Court Fee and Suit Valuation Act, 1956, (hereinafter referred to as 'the Act').

In respect of prayer of perpetual injunction, the relief is valued at Rs.10,000/- and paid a Court fee of Rs.786/- which according to the plaintiff is sufficient under Section - 26 (C) of the Act.

Thus, a total Court Fee of Rs.3,27,212/- is paid.

iii)Objection Raised By The Office:-

5.The Office of the learned District Judge, Adilabad, has returned the said plaint with the following objections:-

"1. As per the Agreement the land available will be taken by the Plaintiff.

2. As per the details of Dharani the land existing is Ac. 3-06 gts., then state under which document the Plaintiff is claiming Ac.2-16 gts.,. It is averred in the plaint that L.A.O. acquired same land for N.H. Therefore, at least the proceedings of L.A.O is to be file to ascertain the extent land actually acquired in the Sy.No.114, to know the original extent of land. Hence, the Court Fee paid is in sufficient and not in accordance with Section 39 of Telangana State Court Fee and Suit Valuation Act, 1956.

Hence, may be returned."

iv)The Explanation By The Petitioner:-

6.The learned counsel for the petitioner resubmitted the plaint on 28.12.2021 with the following explanation:

"This is suit is filed by the plaintiff for Specific Performance of Contract of Sale and possession against the Defendant basing on the Agreement of Sale dated 09-11- 2019 executed by Defendant in favour of Plaintiff.

The Plaintiff paid the Court Fee on the market value of the land to an extent of Ac.2-16 gts., only in Sy.No.114, where as "Dharani" records show the extent of land is Ac.03- 06 gts., in Sy.No.114, which is the subject matter of the suit.

It is to submit that in the Sale Agreement, it is noted that consideration of land is Rs.1,35,00,000/- per acre and the consideration amount will be paid only to the land available after its measuring. But the land was neither measured nor any document showing that the land at present available is Ac.2-16 gts., only. In the above said circumstances, the suit was returned to pay the Court Fee as per Section 39 (a) of Telangana State Court Fee and Suit Valuation Act, 1956, for the extent shown in "Dharani" records.

But today, the case is resubmitted with a request to May be heard on bench".

v) Impugned Order Of The District Judge:-

7.The Court below, by an order dated 03.01.2022 passed the following:-

"Heard the petitioner. The earlier objection taken by the Office holds good. Hence retuned for

compliance."

8.Challenging the said order, the petitioner herein had filed the present Civil Revision Petition under Article - 227 of the Constitution of India.

(b)Court's Analysis:-

i) Judicial Order Without Reasons is Nulity:-

9.It is rather surprising and shocking to realize that a Judicial Officer at the level of District Judge could pass such an order based on the office objection. The learned District Judge passed a judicial order without assigning any reason of whatsoever and without looking into the provisions of law. A judicial order not supported by any reason is a nullity. The Hon'ble Supreme Court in ***Assistant Commissioner, Commercial Tax Department Works Contract and Leasing, Kota v. Shukla & Brothers, (2010) 4 SCC 785*** and the erstwhile High Court of Andhra Pradesh in ***Bolla V.K. Radha Krishna v. Viswanadha Venkata Subbaiah, 2002 (5) ALT 355*** held that reasons are the soul of orders.

ii)Administrative And Judicial Order Difference:-

10.There is yet another infirmity. The learned Judge did not even refer to the facts requiring for adjudication. This Court is constrained to express its unhappiness for the manner in which the learned Judge disposed of the case. It is relevant to note, the Office of District Judiciary, right from the Junior Civil Judges to District Judges are returning plaints based on the office objections on flimsy grounds without even going through the factual aspects and the settled legal position.

11.It is misfortune that some of the Judges are also embark upon the objections raised by the Office. In the present case, shockingly, the learned District Judge had delegated her judicial function to the office of the District Court.

12.It is settled law that judicial function cannot be delegated to the office of the District Court. Numbering a suit is purely on administrative side. The objection taken by the office of the District Court on the aspect of Court fee requires application of judicial mind and by applying appropriate judicial standards. The said view was fortified by the Apex Court in ***P. Surendran v. State by Inspector of police (2019) 9 SCC 154***, wherein it was held that the power of the judicial function cannot be delegated to the Registry.

(c)Resolution To The Present Case:-

i) Chapter - IV of The ACT VII of 1956:-

13.Chapter-IV deals with the computation of Court Fee. Sections - 20 to 47 of the Act deals with the fee in respect of various suits. Clarification is required, hence, in the present case this Court is dealing with legal position on payment of Court fee in some important suits.

ii)Section 39 of the ACT VII of 1956:-

14.First let us examine Section - 39 of the Act.

Section 39:- In a suit for specific performance, with or without possession, fee shall be payable:-

1.In the case of a contract of sale, computed on the amount of the consideration.

(b)xxxxxxxxx

(c)xxxxxxxxxx

(d)xxxxxxxxxx

(e)xxxxxxxxxxx

iii)Interpretation Of Section 39:-

15.It is mentioned in the plaint that as per the agreement of sale, the extent is Acs.02-16 guntas and the sale consideration of suit land is valued at Rs.3,24,00,000/- @ Rs.1,35,00,000/- per acre. Hence, the Court fee of Rs.3,26,426/- paid is sufficient under Section- 39 of the Act.

16.The true interpretation of Sub-section (a) of Section - 39 of the Act VII of 1956:-

a)According to the amount of the consideration.

b)Such consideration is the consideration agreed in the contract for sale of which specific performance is claimed.

c)In other words, the amount of Court fee that is to be paid in a suit for specific performance of contract based on the value of the contract.

17.The plaint must be in respect of which the performance was due to plaintiff from the defendant and in respect of which the plaintiff could claim specific performance and that the suit had to be valued only on the basis of the relief prayed for in the plaint and that the Court fee payable would be on the basis of that valuation.

iv)Relevant Precedents:-

18.The above issue has been directly decided way back in 1961 by the erstwhile High Court of Andhra Pradesh in ***Kadiyala Kasi Viswanadham v. Raghuramayya, Order in C.R.P. No.1084 of 1961, decided on 02.02.1962***. In that case, the question that fell to be determined was:

> "whether the plaintiff had to value the suit on the basis of the original agreement for sale, namely, Rs. 67,875 and pay Court-fee thereon; or, whether it was open to him to value the suit on the basis of the value of 3,500 square yards, which alone was the subject -67,875 and pay Court-fee thereon; or, whether it was open to him to value the suit on the basis of the value of 3,500 square yards, which alone was the subject-matter of the relief in the suit and in respect of which he had asked for specific performance, and pay Court fee on that valuation."

Therein, the learned Judge observed as follows:-

> "The language of section 39 (a)..... must be read as referring to the consideration of the contract of sale in respect of which performance is asked for. It obviously could not be read as implying that even if 1/100th portion of a performance is due under an agreement for sale, the remaining 99/100th having been already performed, the suit should be valued on the basis of the entire contract of sale and that Court-fee should be paid for such a valuation. I am clearly of opinion that this is not the interpretation of section 39 (a)"

The learned Judge held that, in the circumstances, the plaint must be

deemed to relate only to the 3,500 square yards of land in respect of which the performance was due to him from the defendant and in respect of which alone he could claim specific performance and that the suit had to be valued only on the basis of the relief prayed for in the plaint and that the Court-fee payable would be on the basis of that valuation."

19.It is relevant to mention here that the above said judgment was followed by another single Judge of the erstwhile High Court of Andhra Pradesh in ***Athili Appalaswamy v. State, 1963 (1) An.W.R. 118***. In the said judgment, the following two points arose for consideration:-

> "(1)Whether the appellant has to value the appeal at Rs.20,900 being the value of 4-18 acres decreed against him or at Rs.25,000 at which the plaint was originally valued on the basis of five acres?
>
> (2) Whether the appeal has to be valued regarding costs also?" It was held:-
>
> **"Point No.1** - This point has been directly decided by my learned brother, Sanjeeva Row Nayudu, J., in ***Kadiyala Kasi Viswanadham v. Raghuramayya (unreported judgment of this Court, dated 2nd February, 1962 in C.R.P. No.1084 of 1961)***.
> xxxxxxxxxxxxxxxxxxxxxxx
>
> I respectfully follow the above decision and hold that the Court-fee should be paid on the sum of Rs. 20,900 being the value of 4-18 acres decreed, as valued by the appellant himself and not on Rs. 25,000 at which the plaint was originally valued on the basis of value of five acres."

20 (a). The said principle was further followed by another Single Judge of erstwhile High Court of Andhra Pradesh in ***Kanakala Venkata Rao v. Konda Krishnam Raju, 1996 (1) AndhLD 1217***. The question for consideration was:-

> "2. Defendants 3 to 5 have entered into an agreement of sale with defendants 1 and 2 in respect of a total extent of Acres 43-58 cents for a consideration of Rs.4 lakhs by an agreement dated 3-1-89. Defendants 1 and 2 executed sale deeds for an extent of Ac. 30-54 cents. They failed to execute the sale deed in respect of remaining extent of Ac. 13-04cents. The plaintiff filed suit for specific performance of agreement in respect of his share which comes to Ac. 3- 26cents out of Ac. 13- 04 cents. The plaintiff's suit is in respect of 1/4th share out of the remaining extent. The learned subordinate Judge held that there are no recitals in the agreement that the execution of sale deed would be as per shares. Therefore he directed to pay Court fee on the value of the remaining extent of Ac. 13-04 cents. Against this order the present revision is filed."

(b) After following the ratio laid down in the above referred judgments i.e., Athili Appalaswamy (Supra) and ***Hiranand Ramsook Firm v. Province of Madras, AIR 1954 AP 6***, learned Judge in Kanakala Venkatrao (Supra) at paragraph Nos.4 and 5 held as follows:-

4."I entirely agree with the submission made by the learned counsel for the

petitioner. The plaintiff is seeking specific performance in respect of his share only. It is true that there are no recitals in the agreement that the execution of sale deed would be as per shares. When others did not cooperate the plaintiff can try to enforce the agreement in respect of his share only. Relying upon the ratio laid down in the above decisions, I am of the opinion that the plaintiff has to pay the Court-fee only on the value of Ac.3-26 cents in respect of which he seeks specific performance of contract. He need not pay the Court fee on the entire extent of Ac.13-04 cents.

5.In the result the revision petition is allowed "

(d)Court's Verdict:-

21.Coming to the case on hand, it is relevant to note that the agreement of sale dated 09.11.2019 was entered between the defendant and the plaintiff with regard to the land admeasuring Acs.03- 32 guntas in Sy.No.114 of Kadthal Village, Sone Mandal, Nirmal District. The sale consideration agreed was Rs.1,35,00,000/- per acre and an amount of Rs.50,00,000/- was paid. The balance amount of sale consideration agreed to be paid within a period of six months, if the petitioner vendee fails to pay the balance sale consideration within six months period, the said agreement of sale is cancelled automatically.

22.The petitioner - plaintiff had filed the above suit for specific performance of the agreement of sale of the land admeasuring Acs.2.16 guntas only in the said survey number on the ground that after mutation in the name of the defendant, it is separately identified as Sy.No.114/A, situated at Kadthal Village in Revenue Records and after introduction of Dharani Portal by the Government of Telangana State, the suit land is again identified by separate survey number as Sy.No.114/A7 situated at Kadthal Revenue Village Shivar, Soan Mandal, Nirmal District.

23.Thus, the petitioner herein is claiming specific performance of the agreement of sale in respect of land admeasuring Acs.02-16 guntas out of the agreed land of Acs.03-32 guntas. In the plaint, it was mentioned that Land Acquisition Officer has also acquired the same for National Highway, therefore, the plaintiff sought for specific performance of agreement of sale in respect of land admeasuring Acs.2- 16 guntas.

24.In view of the same, the question fell for consideration before this Court is "whether the petitioner - plaintiff has to pay the Court fee on the entire extent of land admeasuring Acs.03-32 guntas as agreed under agreement of sale dated 09.11.2019 or on Acs.02-16 guntas as claimed by the plaintiff.

25.However, the objection raised by the Court below with regard to availability of land as per Dharani portal is unsustainable. 'Dharani' is only a portal which the Government is relying upon. The Court has to consider the pleadings in the plaint and also contents of the agreement of sale.

26.In view of the said legal position, the petitioner has to pay only on the said extent of Acs.02-16 guntas, but not on the entire land mentioned in the agreement of sale dated 09.11.2019 i.e., Acs.03- 32 guntas.

27.As discussed supra, the objection

raised by the Court below in C.F.R. No.2540 of 2021 dated 21.12.2021 and C.F.R. No.2490 of 2021 dated 03.01.2022, is unsustainable. The said orders are not reasoned orders and they were passed contrary to the settled principle of law. Therefore, viewed from any angle, the said orders and the objection raised by the office of the Court below are liable to be set aside. Accordingly the same is set aside.

28.In view of the above, the Court below is directed to number the suit on payment of Court fee on the land admeasuring Acs.02-16 guntas, as mentioned in the schedule annexed to the plaint.

29.Accordingly, this Civil Revision Petition is allowed with above directions.

30.The Registry is directed to return the originals of both C.F.R. No.2540 of 2021, dated 21.12.2021 and C.F.R. No.2490 of 2021, dated 03.02.2022 to the learned counsel for the petitioner under due acknowledgement.

Part - 'B'

More Insights On Issue Of Court Fee:-

31.Given the back drop of the present case, which reveals that lack of clarity about applicable Court fee in a suit for specific performance has resulted in an erroneous judicial order, followed by the present revision, I feel it appropriate to give more insights on the issue of Court fee not only under Section - 39 of the Act, but also under other important sections of the Act.

Computation Of Court Fee:

i) Suits For Declaration:-

32.Let us examine Section 24 of the VII of 1956:- Section - 24 of the Act deals with suits for declaration and Court fee to be paid. Section - 24 (a) (b) is relevant and the same is extracted:

"Section 24: In a suit for a declaration with or without consequential relief, not falling under section 25:-

a.Where the prayer is for a declaration and for possession of the property to which the declaration relates, fee shall be computed on the market value of the movable property or three fourths of the market value of the immovable property or on rupees three hundred, which ever is higher.

b.Where the prayer is for a declaration and for consequential injunction and the relief sought is with reference to any immovable property, fee shall be computed on one-half of the market value of the property or on rupees three hundred, whichever is higher;

c.Xxxxxxxxxx

d.Xxxxxxxxxxxx"

33.Section - 24 (a) of the Act provides for suit for declaration and possession of the property to which the declaration speak-about. It stipulates that the Court fee shall be computed on the market value of the immovable property or Rs.300/-, whichever is higher.

34.In ***Asmal Khan v. Mohd. Abdul Ghani Sahib, 1965 (2) ALT 353*** the question as to whether the Court fee was payable under Section - 27 of the Act, 1956 or Section - 24 (a) was applicable, fell for consideration before the High Court of Andhra Pradesh. It was held that

"if the suit was between the trustees or rival claimants to the Office of trustee, the provisions of Section 27 of the Act, would have been attracted."

On further examination, it was held that

"since first defendant is only in possession of the property and the first plaintiff who is a Mutawallies, is not seeking relief as trustee, it cannot be said to be a suit between trustee, it can be said to be a suit between trustees or rival claimants to the office of the trustees. Mutawallies of Dargahs or Mosques cannot be held to be trustees and as such Section 27 of the Act has no application. The proper Court fee which should be paid is leviable under Section 24

(b)of the Act."

35.Likewise, Section 24 (b) provides for suit for declaration and injunction as a consequential relief sought is with reference to any immovable property, fee shall be computed on one-half of the market value of the property or on Rs.300/-,whichever is higher.

36.In ***Dr. V. Rajeshwar Rao v. N. Yadagiri Reddy, 2000 (5) AndhLD 102*** the question which fell for consideration before the erstwhile High Court of Andhra Pradesh is:-

"Consequent to the addition of prayers of possession and mandatory injunction in a suit for bare injunction, which of the reliefs partakes of the character of the main relief and whether it attracts any payment of additional Court Fee?"

On examination of facts and provisions of the Act, it was held that:

"Thus, the proviso contemplates that the plaint has to be valued on the main relief if the other reliefs are only ancillary to the main relief. Therefore, for applying the said provision, it has to be seen as to which of the reliefs constitute the main and ancillary. The expression "main relief takes in almost every relief for which the suit is solely laid for.

However, the expression "ancillary relief has to be read in conjunction with the main relief i.e., it should be aiding or auxiliary to the main relief. An ancillary relief can in a given circumstance be the main relief but not vice versa.

In a simpliciter suit for injunction, the relief of injunction comprises the main relief but when a relief which is of a substantial nature viz. ,possession or declaration is added to it, the relief of injunction which was hither to the main relief scales down to the position of a consequential relief. There are ample distinctive features in between main and ancillary reliefs. Apart from being essentially paramount and predominant, the main relief is a substantial in nature forging on substantive and vested rights. Possessory relief is the basis and any form of injunction- either mandatory or perpetual- springs from it. To see if a relief is subsidiary or main, the real test is to see whether one relief can be granted without the other.

Here in this case in view of the very facts alleged, either of the reliefs of injunctions cannot be granted unless the petitioner seeks possession. Therefore, the possessory relief becomes dominant and constitutes as the main. Simply because initially the suit is filed for injunction and the other reliefs of declaration or possession have been added in view of changed

circumstances or warranting circumstances on the appearance of the defendant, the relief of injunction does not remain as the main relief making the other reliefs of declaration or possession ancillary thereto. In fact, in any given case, the reliefs of declaration and possession necessarily constitute the main reliefs and these reliefs would always go with the other incidental reliefs of injunction either perpetual or mandatory depending on the facts of each case. Subsequent addition of any such substantial relief would not make it ancillary to the relief already existing merely because such relief was the initial foundation for the suit. The petitioner-plaintiff having filed the suit initially for injunction and in view of the alleged subsequent acts of encroachment and construction, the reliefs of possession and mandatory injunction were added later on. These reliefs, even according to the plaintiff, are in fact based on the subsequent cause of action.

In these circumstances, it has to be held that the relief of possession constitutes the main relief and any other reliefs of injunction either perpetual or mandatory fall behind the same and become ancillary to the same.

Even if the suit is to be treated as a comprehensive one including the reliefs of injunction and

possession, apart from basing upon different causes of action, it only calls for payment of the highest Court fee leviable on the reliefs as per Section 6 (2)of the Act viz., possessory relief.

Accordingly, the lower Court is right in calling upon the plaintiff to pay the Court fee as per Section 24of the Act on the substantiation of the market value by necessary certificates as contemplated." **63**

37. In view of the above discussion, it can be concluded that the Court fee to be paid in a suit for declaration and possession would be calculated on the market value of the movable property or three-fourths of the market value of the immovable property; whereas with respect to suit for declaration with consequential injunction, it should be calculated on half of the market value; with Rs.300/- being the lower limit. Also, the valuation had to be done based on the main relief sought for, but not the ancillary.

ii)Suits For Injunction:-

38.Section 26 of the Act VII of 1956, deals with payment of court fee in Suits for injunction, which is as follows;-

Section 26. Suits For Injunction:-

(a)where the relief sought relates to any immovable property, and where the plaintiff's title to the property is denied, fee shall be computed on one-half of the market value of the property or on rupees two hundred, whichever is higher;

(b)xxxxxxxxxx

(c)in any other case, whether the subject-matter of the suit has a market value or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or at which such relief is valued by the Court, whichever is higher.

39.Clause (a) of Section 26 postulates the following three conditions, which are to be satisfied before the plaint could be registered:-

a)the first is that the suit should be one for an injunction in relation to immovable property, restraining the defendant from disturbing the plaintiff's possession or

enjoyment;

b)the second condition is that, the defendant is seeking to disturb the plaintiff's possession is on foot of a denial of the plaintiff's title;

c)the third condition is that, the Court can at the stage of registering the plaint, determine the fee payable on the plaint by arriving at the market value, of the property in dispute as on the date of presentation of the plaint and by computing the fee in accordance with the averments made in the plaint and the material annexed therewith.

40.Before dissecting the above section, it would be useful to draw the attention to a few authoritative rulings that cropped up for consideration before this Institution.

41.In ***My Palace Mutually Aided Housing Society v. State of A.P., 2003 (5) AndhLD 720*** the erstwhile High Court of Andhra Pradesh had dealt with a case wherein the plaintiff sought for an Injunction, when the defendant is not only interfering with plaintiffs possession of the property but also denying the plaintiffs title. The Court had ruled that the Court fee has to be paid under section 26(a) of Court Fees and Suits Valuation Act 1956. While dealing with the matter the court held in

Paragraph No.9 as follows:

"In the instant case, as can be seen from the averments made in the plaint and the other material annexed thereto, it is obvious that the plaintiff's title to the property has been denied. It is specifically averred in the plaint that respondent No. 4 issued a memo dated 24.04.2003 stating inter alia that the land covered by Sy. No.57 of Shamshiguda Village was a gairan land, and has been proposed to be assigned to third parties. This memo had been issued when the petitioner approached respondent No. 4 seeking mutation of the land in dispute in his name in the revenue records as per the provisions of A.P. Rights in Land and Pattedar Pass Book Act, 1971. It is obvious that not only the request of the petitioner to effect the mutation in revenue records has not been considered, nay the very title of the plaintiff to the property in question has been denied asserting that the property is a gairan land. These facts squarely attract Clause (a) of Section 26 of the CF & SV Act."

42. On a plain reading of the above excerpted provision, particularly Clause (a) thereof, indicate that, if the relief sought for in the plaint relates to any immovable property, and if the plaintiff's title to the same is denied, the Court fee shall be computed on one half of the market value of the property in dispute. Clause (c) is a residuary provision, and it applies to all other cases, which are not covered by Clauses (a) and (b) of Section 26 of the CF & SV Act, 1956.

43. While interpreting the above section the erstwhile High Court of Andhra Pradesh, in ***Krishna Pratapa Rao v. M. Pochaiah, 1983 (1) ALT 147*** had dealt with a case where injunction from fleeing trees standing in a Patta land was sought for and the court has categorically held that the calculation of Court Fee has to be under section 26(c) upon the relief sought i.e., the value of the trees in this case; and not under section 26(a) for the Andhra Pradesh Court Fees and Suits Valuation Act. The Court held in paragraph Nos.4 & 5 as follows:

"In view of this authoritative

pronouncement of the Supreme Court and in view of the evidence placed on record, Gulanohwa trees are only timber fit for being used as building material, therefore, I have no hesitation to hold that the subject-matter of the case is timber. The definition of "immoveable property" excludes standing timber, therefore, it is not an immovable property. If it is not an immovable property, then Section 26 (a) of the Andhra Court Fees and Suits Valuation Act, has no application to the facts of this case".

"A Division Bench of this Court in ***APS Electricity Board v. K. R. Reddy& [AIR 1977 A.P. Page 200]*** has exhaustively considered the scope of the provisions of Section 26 (c) of the Court-Fens Act and held that the advantage which the plaintiffs seen to gain or the loss which they seek to avoid, must be decided with reference to the allegations in the plaint. I have already said the plaintiffs (petitioners,) by virtue of an injunction that is sought for, are entitled to get advantage of retention of the trees standing on their patta lands. If that be the advantage, then they have to value the trees standing on their patta lands and determine the valuation of the suit and pay court fee thereon under section 26 (c) of the Act."

44. It is the settled legal position that, the relief of injunction under Section 26 (c) of the Act has to be valued on the basis of advantage sought to be derived or the loss to be averted by the plaintiff. For better understanding, it is useful to refer some more important decisions rendered by erstwhile High Court of Andhra Pradesh, on the issue of section 26 (c) of the Act. In ***Viraj Constructions v.***

P. Pandu, 1998 (6) ALT 262 = 1998 (6) AndhLD 563, while referring to the principle laid down in ***Jabbar v. State of A.P, 1969 An.W.R. 411*** it was held in Para 4, which is as follows:

"It is the settled position that the relief of injunction under Section 26(c) of the Act has to be valued on the basis of the advantage sought to be derived or the loss to be averted by the plaintiff. Sec: ***Jabbar v. State of A.P., 1969 (1) An.WR 411***, and ***A.P.S. Elec. Board v. K.R. Reddy***. In ***K. Ramamurthy v. E.O., Panchayat Raj***, it is held that in a suit for injunction, the value of the suit for the purpose of jurisdiction and Court-fee are one and the same and that in a suit for mere injunction, the proper method for valuing the suit for the purpose of jurisdiction is to value the suit for the purpose of Court fee first and to treat that value for the purpose of jurisdiction but not vice versa. It is further held that in a suit for injunction the notional value given by the plaintiff at his option for the relief sought is the criterion, which is subject to revision by the Court."

45. Considering the same, it was held that, in suits for injunction, the notional value given by the plaintiff at his option for the relief sought is the criterion, which is subject to revision by the Court.

46. It further held that, in a suit for mere injunction the market value of the suit land as such is not the criterion for valuing the relief, as the relief has to be valued on the basis of the advantage which is sought to be derived or the loss which is sought to be averted.

47.Above discussion concludes that, the court fee in a suit for injunction had to be calculated based on the value of the relief sought, but not on the market value of the property.

iii)Dissolution Of Partnership Firm:-

48.Section - 33 of the Act deals with suits for dissolution of partnership. Section - 33 (1), which is relevant of the Act, is extracted hereunder:-

"Section 33 (1). In a suit for dissolution of partnership and accounts or for accounts of dissolved partnership, fee shall be computed on the value of the plaintiff's share in the partnership as estimated by the plaintiff.

(1) xxxxxxxxxx

(2) xxxxxxxxxx

(3) xxxxxxxxxx"

Clause (1) provides that the Court fee should be paid on the value estimated by the party in his plaint, in respect of his share but not on the total value of the property

49.It is relevant to note that the issue of "what is the Court fee that has to be paid for suit for dissolution of partnership" fell for consideration before the erstwhile High Court of Andhra Pradesh in ***Y. Audisesha Reddy v. Dasaradha Rami Reddy, 1960 ALT 1087***. On examination of the facts, the Court held as follows:-

"Under section 33 (1), the plaintiff is entitled to estimate the value of his share in the partnership. 'Such an estimate may be right or wrong and may be excessive or inadequate. But the statute enables him to pay Court-fee on the value as estimated by him. The old provision by which such suits were governed was section 7, clause (iv), sub-clause (f) of the Madras. Court-fees Act, where under in a suit of: accounts the plaintiff could state the amount at which he valued the relief sought and pay Court-fee thereon. In applying this provision, it was always held that the plaintiff was at liberty to value the relief at any amount, however unreasonable. It seems to me that the same reasoning applies to the construction of the

language in section 33 of the Andhra Court-fees Act: Just as formerly the plaintiff in such a suit was entitled to state the amount, he is not entitled to give his own estimate. It is not open to the Court to consider whether that estimate is bona fide or motet fide, just as it was not open to the Court to consider whether the statement of the value under section 7 (iv) (f) at which relief was sought, was not bona fide.

The petition is allowed and the plaint will be received and registered. The petitioner is entitled to his costs of this petition."

50.The above discussion indicates that the Court Fee in a suit for dissolution of partnership has to be calculated solely upon the plaintiff's estimate of his share in the partnership; irrespective of whether the calculation is bona fide or otherwise.

iv)Cancellation Of Decrees:-

51.Likewise Section - 37 of the Act deals with cancellation of Decrees etc., and collection of Court Fee.

"37. Suits for cancellation of decrees;-

(1)In a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property,

fee shall be computed on the value of the subject-matter of the suit, and such value shall be deemed to be-

a)If the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed;

b)if a part of the decree or other document is sought to be cancelled, such part of the amount or of the value of the property.

(2)If the decree or other document is such that the liability under it cannot be split up and the relief claimed relates only to a particular item of property belonging to the plaintiff or to the plaintiffs share in any such property, fee shall be computed on the value of such property or share or on the amount of the decree, whichever is less.

Explanation :- A suit to set aside an Award shall be deemed to be a suit for cancellation of a decree within the meaning of this section."

52. It is relevant to note that the issue, "what is the Court fee that has to be paid for suit for declaration and cancellation of an instrument by executants and also non-executants, fell for consideration before the Hon'ble Supreme Court of India in ***Suhrid Singh @ Sardool Singh v. Randhir Singh, (2010) 12 SCC 112***.

On consideration of provisions of Act and on examination of the facts of the said case, the Apex Court held as follows:-

"The sum and substance of the Judgment is as follows:

If' 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem Court fee on the consideration stated in the sale deed.

If 'B', who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed Court fee of Rs.19.50 under Article17(iii)of Second Schedule of the Act.

But if 'B', a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad- valorem Court fee as provided under Section 7 (iv)(c)of the Act."

53. The above discussion concludes that a non-executant, who is in possession of the property, seeking just the cancellation of the decree, would pay a fixed Court Fee while an executant seeking cancellation or non-executant seeking possession along with cancellation will pay ad-valorem Court fee.

Part - 'C'

With Regard To Commercial Courts:-

54. The Commercial Courts are getting busy due to the increase in value of transactions over a period of time, so I would like to touch up on the payment of Court fee to be paid in cases filed before the Commercial Courts. The Commercial Courts Act, 2015 was enacted to establish procedural frame work distinct from the regular civil procedure with an objective of

time bound adjudication and speedy disposal of commercial disputes. The distinction is only in the procedure, but not in the Court fee.

High Court of Delhi in ***Mrs. Soni Dave v. M/s. Trans Asian Industries, AIR 2016 (Del.) 186*** has dealt in detail about the valuation and Court fee under Commercial Courts Act and held that:-

"25. In my view Section 12 of the Commercial Courts Act providing for determination of specified value as defined in Section 2 (i) thereof is not intended to provide for a new mode of determining the valuation of the suit for the purpose of jurisdiction and Court fees. It would be incongruous to hold that while for the purpose of payment of Court fees the deemed fiction provided in the Court Fees Act for determining the value of the property is to apply but not for determining the specified value under the Commercial Courts Act.

26. In my opinion Section 12 of the Commercial Courts Act has to be read harmoniously with the Court Fees Act and the Suits Valuation Act and reading so, the specified value of a suit where the relief sought relates to immovable property or to a right thereunder has to be according to the market value of the immovable property only in such suits where the suit as per the Court Fees Act and / or the Suits Valuation Act has to be valued on the market value of the property and not where as per the Court Fees Act and the Suits Valuation Act the valuation of a suit even if for the relief of recovery of immovable property or a right therein is required to be anything other than market value as is the case in a suit by a landlord for recovery of possession of immovable property from a tenant."

55. Only the disputes with value beyond a certain threshold are adjudicated by Commercial Courts; and naturally the absolute amount of Court fee are also on the higher side. There are several instances of cases being filed before the Commercial Courts, with deficit Court fee and the parties to such cases have to file a separate application for condonation of delay in paying deficit Court fee. Such applications being increased load in the Judiciary, hence, the Advocates and Courts have to be vigilant in calculating the correct Court fee before presenting the plaint.

Part - 'D'

Conclusion:-

56. The above instances are only illustrative and not exhaustive. There may be many more situations where the Court fee has to be calculated under the provisions of the Court Fee Act, which are not discussed above. The parties and the lower Judiciary will have to carefully scrutinize the pleadings mentioned in the plaint to arrive at a correct conclusion for payment of Court fee aspect. The conclusion has to be in accordance with the settled legal principles discussed above and also in various other judgments rendered by the Constitutional Courts, which are holding the field.

Result:

57.The present Civil Revision Petition is allowed. However, there shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in the revision shall stand closed.

–X–

2022 (3) L.S. 1 (S.C)

IIN THE SUPREME COURT
OF INDIA

Present:
The Hon'ble Dr.Justice
Dhananjaya Y Chandrachud,
The Hon'ble Mr.Justice
Hima Kohli

Dashrathbhai Trikambhai
Patel ..Appellant

Vs.

Hitesh Mahendrabhai
Patel & Anr. …Respondents

NEGOTIABLE INSTRUMENTS ACT - Whether the offence under Section 138 of the Act would deem to be committed if the cheque that is dishonoured does not represent the enforceable debt at the time of encashment.

HELD: Petition stands dismissed with the following findings:

1. For the commission of an offence under Section 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation;

2. If the drawer of the cheque pays a part or whole of the sum between the period when the cheque is drawn and when it is encashed upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque;

3. When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in Section 56 of the Act. The cheque endorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encashed upon maturity, then the offence under Section 138 will stand attracted;

4. The first respondent has made part-payments after the debt was incurred and before the cheque was encashed upon maturity. The sum of rupees twenty lakhs represented on the cheque was not the 'legally enforceable debt' on the date of maturity. Thus, the first respondent cannot be deemed to have committed an offence under Section 138 of the Act when the cheque was dishonoured for insufficient funds;

Crl.A.No.1497/2022 Date:11-10-2022

and

5. The notice demanding the payment of the 'said amount of money' has been interpreted by judgments of this Court to mean the cheque amount. The conditions stipulated in the provisos to Section 138 need to be fulfilled in addition to the ingredients in the substantive part of Section 138. Since in this case, the first respondent has not committed an offence under Section 138, the validity of the form of the notice need not be decided.For the commission of an offence under Section 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation.

J U D G M E N T

(per the Hon'ble Dr.Justice Dhananjaya Y Chandrachud,

This appeal arises from a judgment dated 12 January 2022 of the High Court of Gujarat. The High Court dismissed an appeal against the judgment of the Additional Chief Judicial Magistrate dated 30 August 2016 by which the first respondent was acquitted of the offence under Section 138 of the Negotiable Instruments Act 1881(The Act The Facts). At the core, the issue is whether the offence under Section 138 of the Act would deem to be committed if the cheque that is dishonoured does not represent the enforceable debt at the time of encashment.

The Facts:

2.On 10 April 2014, the appellant issued a statutory notice under Section 138 of the Act to the first respondent-accused. It was alleged that the first respondent borrowed a sum of rupees twenty lakhs from the appellant on 16 January 2012 and to discharge the liability, issued a cheque dated 17 March 2014 bearing cheque No. 877828 for the said sum. It was further alleged that the cheque when presented on 2 April 2014 was dishonoured due to insufficient funds. The appellant issued the notice calling the first respondent to pay the legally enforceable debt of Rs. 20,00,000:

> "Therefore, my client hereby calls upon you to make payment of Rs. 20,00,000/- towards the legally enforceable debt due and payable by you within a period of 15 days from the date of receipt of this particular notice, […]"

3. On 25 April 2014, the first respondent addressed a response to the statutory notice where he alleged the following:

> (i)The first respondent and the appellant are related to each other. The appellant's son married the first respondent's sister;
>
> (ii)The appellant lent the first respondent a loan of rupees forty lakhs. There was an oral agreement between the parties that the first respondent would pay rupees one lakh every three months by cheque

and rupees eighty thousand in cash to the appellant. Two cheques were given to the appellant for security. It was agreed that the appellant would return both the cheques when the sum lent was paid in full;

(iii)The appellant's son-initiated divorce proceedings against the respondent's sister. However, the dowry that was given at the time of marriage is still in the possession of the appellant; and

(iv)The cheques that were issued for security have been misused by the appellant.

4. On 12 May 2014, the appellant filed a criminal complaint against the first respondent for the offence under Section 138 of the Act. On 19 May 2014, the first respondent issued another reply to the legal notice. By the said reply, the earlier reply to the legal notice was sought to be amended by replacing the acknowledgment of having received a loan of rupees forty lakhs to rupees twenty lakhs.

5. By a judgment dated 30 August 2016, the Trial Court acquitted the first respondent of the offence under Section 138 on the ground that the first respondent paid the appellant a sum of rupees 4,09,3015 between 8 April 2012 and 30 December 2013 partly discharging his liability in respect of the debt of rupees twenty lakhs. The split up of the payments is set out below:

Date	Amount
18.04.2012	Rs. 49,315/-
05.10.2012	Rs. 1,20,000/-
15.01.2013	Rs. 60,000/-
10.07.2013	Rs. 1,20,000/-
30.12.2013	Rs. 60,000/-
Total	Rs. 4,09,315/-

The Trial Court observed that the appellant has failed to prove that he was owed a legally enforceable debt of rupees twenty lakhs:

> "Therefore, the plaintiff's complaint proved that the accused has paid Rs, 4,09,315 out of the amount due as per fact. So that on the day the plaintiff deposited in the bank to recover a legal amount of Rs, 20,00,000/- The court believes that the prosecution has failed to prove that fact."

6.The appellant filed an appeal against the judgment of the Trial Court before the High Court of Gujarat. On 10 October 2019, the first respondent moved an application before the High Court of Gujarat seeking to place on record the amended reply dated 19 May 2014. By an order dated 11 October 2018, the High Court allowed the application for placing the additional evidence on record. The High Court by its judgment dated 12 January 2022 dismissed the appeal, thereby upholding the judgment of the Trial Court acquitting the first respondent. The High Court affirmed the finding of fact by the Trial Court that a part of the debt owed by the first respondent to the appellant was discharged and thus the notice of demand issued under Section 138 of the Act is not valid. In the course of the analysis, the

following findings were entered:

(i)The appellant has in the course of his cross-examination accepted that the first respondent had deposited rupees 4,09,315 in his account;

(ii)There is a statutory presumption that the sum drawn in the cheque is a debt or liability that is owed by the drawer of the cheque to the drawee. The part -payment made by the first respondent ought to have been reflected in the statutory notice issued by the appellant. The sum in the cheque is higher than the amount that was due to the appellant. Thus, the statutory notice issued under Section 138 is not valid. It is an omnibus notice since it did not recognise the part-payment that was made; and

(iii)The cheque was a security for the money lent by the appellant. The undated cheque was presented to the bank without recognising the part-payment that was already made.

The Submissions

7.Mr Mehmood Umar Faruqui, counsel appearing on behalf of the appellant submitted that:

(i)There is nothing on record to show that the payment of rupees 4,09,315 was made towards the discharge of the debt of rupees twenty lakhs;

(ii)The payment of rupees 4,09,315 was before the issuance of the cheque; and

(iii)The first respondent did not make any payment of the sum that was due since the statutory notice that was served upon him on 15 April 2014.

8.Mr Nakul Dewan, senior counsel appearing on behalf of the first respondent submitted that:

(i)The term 'debt or other liability' used in Section 138 of the Act has been defined in the Explanation clause to mean a 'legally enforceable debt or other liability'. Thus, the demand made in the statutory notice must be for a sum that is legally enforceable;

(ii)If the debtor has paid a part of the debt, a statutory notice seeking the payment of the entire sum in the cheque without any endorsement under Section 56 of the part-payment made would not be legally sustainable; and

(iii)Since the first respondent has paid off a part of the debt, the appellant cannot initiate action if the cheque which represented the principal amount without deducting or endorsing a part payment has been dishonoured.

The Analysis

9.The rival submissions fall for our consideration. Section 138 of the Act reads as follows:

"138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, **in whole or in part, of any debt or other liability**, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for 8 [a term which may be extended to two years'], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a)the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b)the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the **said amount of money by giving a notice**; in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c)the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, "**debt of other liability" means a legally enforceable debt or other liability.**

(emphasis supplied)

10.Section 138 of the Act provides that a drawer of a cheque is deemed to have committed the offence if the following ingredients are fulfilled:

(i)A cheque drawn for the payment of any amount of money to another person;

(ii)The cheque is drawn for the discharge of the 'whole or part' of any debt or other liability. 'Debt or other liability' means legally enforceable debt or other liability; and

(iii)The cheque is returned by the bank unpaid because of insufficient funds.

However, unless the stipulations in the proviso are fulfilled the offence is not deemed to be committed. The conditions in the proviso are as follows:

(i)The cheque must be presented in the bank within six months from the date on which it was drawn or within the period of its validity;

(ii)The holder of the cheque must make a demand for the payment of the 'said amount of money' by giving a notice in writing to the drawer of the cheque within thirty days from the receipt of the notice from the bank that the cheque was returned dishonoured; and

(iii)The holder of the cheque fails to make the payment of the 'said amount of money' within fifteen days from the receipt of the notice.

11.The primary contention of the first respondent is that the offence under Section 138 was not committed since the amount that was payable to the appellant, as on the date the cheque was presented for encashment, was less than the amount that was represented in the cheque. The question before this Court is whether Section 138 of the Act would still be attracted when the drawer of the cheque makes a part payment towards the debt or liability after the cheque is drawn but before the cheque is encashed, for the dishonour of the cheque which represents the full sum.

12.It must be noted that when a part-payment is made after the issuance of a post-dated cheque, the legally enforceable debt at the time of encashment is less than the sum represented in the cheque. A part-payment or a full payment may have been made between the date when the debt has accrued to the date when the cheque is sought to be encashed. Thus, it is crucial that we refer to the law laid down by this Court on the issuance of post-dated cheques and cheques issued for the purpose of security. In **Indus Airways Private Limited** v. **Magnum Aviation Private Limited** (2014) 12 SCC 539, the issue before a two-Judge Bench of this Court was whether dishonour of post-dated cheques which were issued by the purchasers towards 'advance payment' would be covered by Section 138 of the Act if the purchase order was cancelled subsequently. It was held that Section 138 would only be applicable where there is a legally enforceable debt subsisting on the date when the cheque is drawn. In **Sampelly Satyanarayana Rao** v. **Indian Renewable Energy Development Agency Limited**(2016) 10 SCC 458, the respondent advanced a loan for setting up a power project and post-dated cheques were given for security. The cheques were dishonoured and a complaint was instituted under Section 138. Distinguishing **Indus Airways** (supra), it was held that the test for the application of Section 138 is whether there was a legally enforceable debt on the date mentioned in the cheque. It was held that if the answer is in the affirmative, then the provisions of Section 138 would be attracted. In **Sripati Singh** v. **State of Jharkand**2021 SCC On Line SC 1002, this Court observed that if a cheque is issued as security and if the debt is not repaid in any other form before the due date or if there is no understanding or agreement between the parties to defer the repayment, the cheque would mature for presentation:

"17. A cheque issued as security pursuant to a financial transaction

cannot be considered as a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. **If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same**. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act would flow.

18. When a cheque is issued and is treated as 'security' towards repayment of an amount with a time period being stipulated for repayment, **all that it ensures is that such cheque which is issued as 'security' cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security**. **Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form and in that manner if the amount of loan due and payable has been discharged within the agreed period**, **the cheque issued as security cannot thereafter be presented. Therefore, the prior discharge of the loan or there being an altered situation due to which there would be understanding between the parties is a sine qua non to not present the cheque which was issued as security.** These are only the defences that would be available to the drawer of the cheque in a proceedings initiated under Section 138 of the N.I. Act. Therefore, there cannot be a hard and fast rule that a cheque which is issued as security can never be presented by the drawee of the cheque. If such is the understanding a cheque would also be reduced to an 'on demand promissory note' and in all circumstances, it would only be a civil litigation to recover the amount, which is not the intention of the statute. When a cheque is issued even though as 'security' the consequence flowing therefrom is also known to the drawer of the cheque and in the circumstance stated above if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil

proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation."(emphasis supplied)

Based on the above analysis of precedent, the following principles emerge:

(i)Where the borrower agrees to repay the loan within a specified timeline and issues a cheque for security but defaults in repaying the loan within the timeline, the cheque matures for presentation. When the cheque is sought to be encashed by the debtor and is dishonoured, Section 138 of the Act will be attracted;

(ii)However, the cardinal rule when a cheque is issued for security is that between the date on which the cheque is drawn to the date on which the cheque matures, the loan could be repaid through any other mode. It is only where the loan is not repaid through any other mode within the due date that the cheque would mature for presentation; and

(iii) If the loan has been discharged before the due date or if there is an 'altered situation', then the cheque shall not be presented for encashment.

13.In **Sunil Todi** v. **State of Gujarat** Criminal Appeal No. 1446 of 2021, a two judge Bench of this Court expounded the meaning of the phrase 'debt or other liability'. It was observed that the phrase takes within its meaning a 'sum of money promised to be paid on a future day by reason of a present obligation'. The court observed that a post-dated cheque issued after the debt was incurred would be covered within the meaning of 'debt'. The court held that Section 138 would also include cases where the debt is incurred *after* the cheque is drawn but before it is presented for encashment. In this context, it was observed:

"26. The object of the NI Act is to enhance the acceptability of cheques and inculcate faith in the efficiency of negotiable instruments for transaction of business. The purpose of the provision would become otiose if the provision is interpreted to exclude cases where debt is incurred after the drawing of the cheque but before its encashment. In Indus Airways, advance payments were made but since the purchase agreement was cancelled, there was no occasion of incurring any debt. The true purpose of Section 138 would not be fulfilled, if 'debt or other liability' is interpreted to include only a debt that exists as on the date of drawing of the cheque. Moreover, Parliament has used the expression 'debt or other liability'. The expression "or other liability' must have a meaning of its own, the legislature having used two distinct phrases. The expression 'or other liability' has a content which is broader than 'a debt' and cannot be equated with the latter. In the present case, the cheque was issued in close proximity with the commencement of power supply. The issuance of the cheque in the context of a commercial transaction must be understood in the context of the

business dealings. The issuance of the cheque was followed close on its heels by the supply of power. To hold that the cheque was not issued in the context of a liability which was being assumed by the company to pay for the dues towards power supplied would be to produce an outcome at odds with the business dealings. If the company were to fail to provide a satisfactory LC and yet consume power, the cheques were capable of being presented for the purpose of meeting the outstanding dues."

14.The judgments from **Indus Airways** (supra) to **Sunil Todi** (supra) indicate that much of the analysis on whether post-dated cheques issued as security would fall within the purview of Section 138 of the Act hinges on the relevance of time. In **Indus** Airways (supra), this Court held that for the commission of the offence under Section 138, there must have been a debt on the date of issuance of the cheque. However, later judgments adopt a more nuanced position while discussing the validity of proceedings under Section 138 on the dishonour of post-dated cheques. This Court since **Sampelly Satyanarayana Rao** (supra) has consistently held that there must be a legally enforceable debt on the date mentioned in the cheque, which is the date of maturity.

15.This Court in **NEPC Micon Ltd.** v. **Magna Leasing Ltd.**AIR 1995 SC 1952 held that the Courts must interpret Section 138 with reference to the legislative intent to supress the mischief and advance the remedy. The objective of the Act in general and Section 138 specifically is to enhance the acceptability of cheques and to inculcate faith in the efficacy of negotiable instruments for the transaction of business.Sunil Sodhi v. State of Gujarat, Criminal Appeal No. 1446 of 2021 Section 138 criminalises the dishonour of cheques. This is in addition to the civil remedy that is available. Through the criminalisation of the dishonour of cheques, the legislature intended to prevent dishonesty on the part of the drawer of a negotiable instrument.M/s Electronics Trade and Technology Development Corporation Ltd., 1996(3) Crimes 82 (SC) The interpretation of Section 138 must not permit dishonesty of the drawee of the cheque as well. A cheque is issued as security to provide the drawee of the cheque with a leverage of using the cheque in case the drawer fails to pay the debt in the future. Therefore, cheques are issued and received as security with the contemplation that a part or the full sum that is addressed in the cheque may be paid before the cheque is encashed.

16.The judgments of this Court on post-dated cheques when read with the purpose of Section 138 indicate that an offence under the provision arises if the cheque represents a legally enforceable debt on the date of maturity. The offence under Section 138 is tipped by the dishonour of the cheque when it is sought to be encashed. Though a post- dated cheque might be drawn to represent a legally enforceable debt at the time of its drawing, for the offence to be attracted, the cheque must represent a legally enforceable debt at the time of encashment. If there has been a material change in the circumstance such that the sum in the cheque does not represent a legally enforceable debt at the time of maturity or encashment, then the offence under Section 138 is not made out.

17.The appellant contended that the

cheque was issued by the first respondent on 17 March 2014. However, the payment of rupees 4,09,3015 received from the first respondent was between 8 April 2012 and 30 December 2013. It was contended that since the payments were made before the issuance of cheque, it cannot be considered as part-payment for the discharge of liability.

18.The appellant in his cross-examination conducted on 17 March 2016 has categorically mentioned that he did not take any receipt on lending rupees twenty lakhs to the first respondent. The appellant stated that a 'cheque against the cheque' was given. The relevant portion of the cross-examination is extracted below:

> "[…] I have paid the Income Tax Return for the accounting year 2012-13. It is true that I have shown the transaction of Rupees Twenty Lakhs in the said return. I am ready to present the Income Tax Return for the Accounting Year of Rupees Twenty Lakhs to the Accused; **I have not acknowledged the receipt. It is true that I have given the cheque against the said cheque and not taken the receipt."** (emphasis supplied)

19.In the testimony recorded under Section 145 of the Act, the appellant stated that he lent the first respondent a sum of rupees twenty lakhs on 16 January 2012 and that the respondent gave a cheque of rupees twenty lakhs stating that it may be deposited on the date specified in it:

> "The plaintiff and the Defendant of this case being a Vevai and has a house- like relationship, he has given the amount to the plaintiff as per his requirement on dtd. 16/01/2012 and for the payment of the amount paid by the Plaintiff to the in this case, his bank State Bank of India, AUDa Garden, Prahladnagar Branch, Ahmedabad Cheque Number: 8877828 of Rs. 20,00,000/- (Rupees Twenty Lakhs Only) **and stated that the above cheque was deposited by the plaintiff on the date specified in it giving the plaintiff the firm confidence and assurance that the plaintiff would definitely get the amount due from us**." (emphasis supplied)
>
> Further, in the cross-examination, the appellant stated that the amount that was paid by the first respondent was not paid as a reward or gift:
>
> "I cannot say whether the accused has also paid me this amount in the count of Rupees Twenty Lakhs. The accused did not even give me that amount as a reward/gift."

20. It was the contention of the first respondent that the cheque was not dated. On the other hand, it was the contention of the appellant that the cheque was dated 17 March 2014. The Courts below did not record a finding on whether the cheque was un-dated or was dated 17 March 2014. However, it was conclusively held that the cheque was issued by the first respondent for security on the date when the loan was borrowed. It was also categorically recorded by the Courts below that a sum of rupees 4,09,315 that was paid by the first respondent was paid to partly fulfil the debt of rupees twenty lakhs. The appellant in

his cross-examination has stated that a 'cheque against a cheque' was given when he loaned the sum of rupees twenty lakhs. Thus, it can be concluded that the cheque was given as a security to discharge the loan, either undated or dated as 17 March 2014. Merely because the sum of rupees 4,09,315 was paid between 8 April 2012 and 30 December 2013, which was after 17 March 2014, it cannot be concluded that the sum was not paid in discharge of the loan of rupees twenty lakh. The sum of rupees 4,09,315 was paid *after* the loan was lent to the first respondent. The appellant in his cross- examination has not denied the receipt of the payments. He has also stated it was not received as a 'gift or reward'. In view of the above discussion, at the time of the encashment of the cheque, the first respondent did not owe a sum of rupees twenty lakhs as represented in the cheque at the time of encashment of the cheque that was issued for security.

21.The High Court while dismissing the appeal against acquittal held that the notice issued by the appellant is an omnibus notice since it does not represent a legally enforceable debt. Relying on the judgment of this Court in **Rahul Builders** v. **Arihant Fertilizers & Chemicals** (2008) 2 SCC 321, it was held that the legal notice was not issued in accordance with proviso (b) to Section 138 since it did not represent the 'correct amount'. The appellant has contended that the requirement under Section 138 is to send a notice demanding the '*cheque amount'*. It was contended that the offence under Section 138 was made out since the appellant in the statutory notice demanded the payment of rupees twenty lakhs which was the '*cheque amount'*.

22.Section 138 of the Act stipulates that if the cheque is returned unpaid by the bank for the lack of funds, then the drawee shall be deemed to have committed an offence under Section 138 of the Act. However, the offence under Section 138 of the Act is attracted only when the conditions in the provisos have been fulfilled. Proviso (b) to Section 138 states that a notice demanding the payment of the 'said amount of money' shall be made by the drawee of the cheque.

23.This Court has interpreted the phrase 'the said amount of money' as it finds place in proviso (b) to Section 138. In **Suman Sethi** v. **Ajay K Churiwal**(2000) 2 SCC 38 , the appellant issued a cheque for rupees twenty lakhs in favour of the first respondent. The cheque was dishonoured. A demand notice for an amount higher than the cheque amount was issued. A two-Judge Bench of this Court held that the demand has to be made for the 'said amount', which is the cheque amount. It was also observed that the question of whether the notice demanding an amount higher than the cheque amount is valid would depend on the language of the notice:

> "8. It is a well-settled principle of law that the notice has to be read as a whole. In the notice, demand has to be made for the "said amount" i.e. the cheque amount. If no such demand is made the notice no doubt would fall short of its legal requirement. Where in addition to the "said amount" there is also a claim by way of interest, cost etc. whether the notice is bad would depend on the language of the notice. If in a notice while giving the break-

up of the claim the cheque amount, interest, damages etc. are separately specified, other such claims for interest, cost etc. would be superfluous and these additional claims would be severable and will not invalidate the notice. If, however, in the notice an omnibus demand is made without specifying what was due under the dishonoured cheque, the notice might well fail to meet the legal requirement and may be regarded as bad."

24.In **KR Indira** v. **G. Adinarayana**(2003) 8 SCC 300, it was held that the notice did not demand the payment of the cheque amount but the loan amount. It was observed that for the purposes of proviso (b), the amount covered in the dishonoured cheque must be demanded. In **Rahul Builders** (supra), the drawee demanded the payment of rupees 8,72,409 which was higher than the sum of rupees 1,00,000 represented in the cheque. It was reiterated that the phrase 'payment of the said amount' in proviso (b) would mean the cheque amount. Since the demand in the notice was not severable as the cheque amount could not be severed from the demand for the additional amount, it was held that it was an omnibus notice. Justice SB Sinha writing for a two-Judge Bench of this Court observed:

"10. […] One of the conditions was service of a notice making demand of the payment of the amount of cheque as is evident from the use of the phraseology "payment of the said amount of money". […] It is one thing to say that the demand may not only represent the unpaid amount under cheque but also other incidental expenses like costs and interests, but the same would not mean that the notice would be vague and capable of two interpretations. An omnibus notice without specifying as to what was the amount due under the dishonoured cheque would not subserve the requirement of law. Respondent 1 was not called upon to pay the amount which was payable under the cheque issued by it. The amount which it was called upon to pay was the outstanding amounts of bills i.e. Rs 8,72,409. The noticee was to respond to the said demand. Pursuant thereto, it was to offer the entire sum of Rs 8,72,409. No demand was made upon it to pay the said sum of Rs 1,00,000 which was tendered to the complainant by cheque dated 30-4-2000. What was, therefore, demanded was the entire sum and not a part of it."

25.Section 138 creates a deeming offence. The provisos prescribe stipulations to safeguard the drawer of the cheque by providing them the opportunity of responding to the notice and an opportunity to repay the cheque amount. The conditions stipulated in the provisos need to be fulfilled in addition to the ingredients in the main provision of Section 138. It has already been concluded above that the offence under Section 138 arises only when a cheque that represents a part or whole of the legally enforceable debt at the time of encashment is returned by the bank unpaid. Since the cheque did not represent the legally enforceable debt at the time of encashment, the offence under Section 138 is not made out.

2022 (3) S.R.C. 19 (Supreme Court)

Uday Umesh Lalit,CJI. Muni Krishna @
S.Ravindra Bhat. J. Krishna
Sudhanshu Dhulia. J. Vs.
Crl.A.Nos.1597-1600/22 State by Ulsoor PS
Dt:30-9-2022

CRIMINAL PROCEDURECODE, Sec.161 - Videography containing confession made before police is inadmissible as evidence.

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2022 (3) S.R.C. 20 (Supreme Court)

Uday Umesh Lalit,CJI. Sushanta Kumar
S.Ravindra Bhat. J. Banik
J.B.Pardiwala. J. Vs.
Crl.A.No.1708/22 State of Tripura & Ors.,
Dt:30-9-2022

PREVENTION OF ILLICIT IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCR ACT, 1988 - Un-reasonable and un-explained delay in passing the order of detention from the date of the proposal can vitiate the detention order.

--X--

2022 (3) S.R.C. 21 (Supreme Court)

Ajay Rastogi,J. Sukhbiri Devi & Ors,
C.T.Ravi Kumar J. Vs.
Civil A.No.10834/10 Union of India & Ors.,
Dt:29-9-2022

CIVIL PROCEDURE CODE, Or.XIV, Rl.2(2)(b) - Issue of limitation can be framed and determined as a preliminary issue under Order XIV Rule 2(2)(b) CPC in a case where it can be decided on admitted facts.

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2022 (3) S.R.C. 22 (Supreme Court)

Dinesh Maheshwari,J. Udho Thakur & Anr.,
Bela M.Trivedii J. Vs.
Crl. A.No.1703-04/22 The State of
Dt:29-9-2022 Jharkhand & Anr.,

CRIMINAL PROCEDURE CODE - PRE ARREST BAIL - Pre arrest bail shall not be granted by imposing condition of deposit.

--X--

2022 (3) S.R.C. 23 (Supreme Court)

Dinesh Maheshwari,J. Anu Gard & Anr.,
Bela M.Trivedii J. Vs.
Crl. A.No.1703-04/22 Deepak Kumar
Dt:28-9-2022 Garg

CRIMINAL PROCEDURE CODE, Sec.125 – MAINTENANCE - An able-bodied husband is obliged to earn by legitimate means and maintain his wife and the minor child.

--X--

2022 (3) S.R.C. 24 (Supreme Court)

B.R.Gavai. J. Ravi Kumar
C.T.Ravi Kumar J. Vs
Civil.A.No.4258/22 State of U.P. & Ors.,
Dt:28-9-2022

CIVIL PROCEDURE CODE -

Judgment or Decree obtained by fraud is to be treated as a nullity.

–X–

2022 (3) S.R.C. 25 (Supreme Court)

B.R.Gavai. J. Moreshar Yadaorao
C.T.Ravi Kumar J. Mahajan
C.A.No.5755-5756/11 Vs.
Dt:27-9-2022 Vyankatesh Sitaram Bhedi(D) Thr.LRs.

CIVIL PROCEDURE CODE - "NECESSARY PARTY" - Suit is liable to be dismissed if a "necessary party" is not impleaded.

–X–

2022 (3) S.R.C. 26 (Supreme Court)

B.R.Gavai. J. Kolli Satyanarayana
C.T.Ravi Kumar J. (D) by Lrs.
Civil.A.No.1013/14 Vs.
Dt:27-9-2022 Yeluripalli Kesava Rao Chowdary(D) Thr.LRs.

SPECIFIC PERFORMANCE OF AGREMENT - Time limit(s) specified in the agreement cannot be ignored altogether by the Court while excercising its discretition to grant specific performance.

–X–

2022 (3) S.R.C. 27 (Supreme Court)

M.R.Shah,J. Balaram Singh
Krishna Murari.J. Vs.
Civil A.No.6733/22 Kelo Devi
Dt:23-9-2022

CIVIL PROCEDURE CODE - PERMANENT INJUNCTION - A relief of permanent injunction cannot be sought on the basis of such an unregistered document/ agreement to sell.

–X–

2022 (3) S.R.C. 28 (Supreme Court)

Ajay Rastogi,J. B.S.N.L.Ltd.,&Ors.,
B.V.Nagarathna J. Vs.
C.A.No.1699-1723/22 M/s.Tata
Dt:22-9-2022 Communications Ltd.

RETROSPECTIVE EFFECT - Administrative/executive orders or circular cannot be made applicable with retrospective effect in the absence of any legislative competence.

–X–

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