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MCO LEGALS

19th November, 2019

SUPPRESSION OF MATERIAL FACTS

1. T. Arivandandam vs. T.V. Satyapal and Another, 14.10.1977, (1977) 4 SCC 467, Relevant Para 5

- Trail Court's duty, in case of vexatious and meritless suits. Action to be taken under Indian Penal Code, 1860 Chapter XI (Sections 191-229).
- Contempt of Court in case party consistently restoring to frivolous and vexatious litigations to evade the proper process of court.

A Copy of the judgment attached hereto at **page no. 2 to 6.**

2. S.P. Chengalvaraya Naidu (dead) by LR vs. Jagannath (dead) by LRs, 27.10.1993, AIR 1994 SC 853, Relevant Para 1 and 5

- Judgment or decree obtain by fraud to be treated as nullity and can be questioned even in collateral proceedings.
- The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants.

A Copy of the judgment attached hereto at **page no. 7 to 12.**

3. Bhaurao Dagdu Paralkar vs. State of Maharashtra and Ors., 22.08.2005, AIR 2005 SC 3330, Relevant Para 10 to 16

- Suppression of a material document would also amount to fraud on the court.
- "Fraud" is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter.

A Copy of the judgment attached hereto at **page no. 13 to 22.**

4. K.D. Sharma vs. Steel Authority of India, 09.07.2008, (2008) 12 SCC 481, Relevant Para 26 and 28

- Power and duty of writ court where the petitioner makes false statement or conceals material facts or mislead the court, in such case the court may dismiss the petition without considering the merits of the claim.

A Copy of the judgment attached hereto at **page no. 23 to 39.**

5. P.K. Gupta & Anr. vs. Essar Universal Pvt Ltd & Anr., 21.11.2011, 2011 SCC Online Del 4860, Relevant Para 11 and 12

- The fundamental principles, essential to the purpose of a pleading is to place before the Court the case of the party with a warrant of truth to bind the party.
- It is the duty of a party presenting a pleading to place all material facts and make reference to the material documents, relevant for the purpose of fair adjudication, to enable the Court to conveniently adjudicate the matter.

A Copy of the judgment attached hereto at **page no. 40 to 48.**

6. Bhaskar Laxman Jadhav & Ors vs Karamveer Kakasaheb Wagh Education Society and ors., 11.12.2012, (2013) 11 SCC 531, Relevant Para 44 and 47

- It is not for a litigant to decide what fact is material for adjudicating a case and what is not material.
- It is the obligation of a litigant to disclose all the facts of a case and leave the decision making to the Court

A Copy of the judgment attached hereto at **page no. 49 to 63.**

taking cognizance under Sections 190, 200 and 204 and where a Magistrate decides to take cognizance under the provisions of Chapter 14 he is not entitled in law to order any investigation under Section 156(3) though in cases not falling within the proviso to Section 202 he can order an investigation by the police which would be in the nature of an enquiry as contemplated by Section 202 of the Code.

2. Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives :

(a) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightaway issue process to the accused but before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.

(b) The Magistrate can postpone the issue of process and direct an enquiry by himself.

(c) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.

3. In case the Magistrate after considering the statement of the complainant and the witnesses or as a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceeding he can dismiss the complaint.

4. Where a Magistrate orders investigation by the police before taking cognizance under Section 156(3) of the Code and receives the report thereupon he can act on the report and discharge the accused or straightaway issue process against the accused or apply his mind to the complaint filed before him and take action under Section 190 as described above.

16. The present case is clearly covered by proposition No. 4 formulated above.

17. For these reasons, we find no merit in this appeal which is accordingly dismissed.

(1977) 4 Supreme Court Cases 467

(BEFORE V. R. KRISHNA IYER AND JASWANT SINGH, JJ.)

T. ARIVANDANDAM .. Petitioner ;

Versus

T. V. SATYAPAL AND ANOTHER .. Respondents.

Special Leave Petition (Civil) No. 4483 of 1977†,
decided on October 14, 1977

†From the Judgment and Order dated July 19, 1977, of the Karnataka High Court in Civil Misc. Petition 943 of 1977.

Civil Procedure Code, 1908 — Section 35A, Order 7, Rule 11 and Order 10 — Trial Court's duty under, in case of vexatious and meritless suits — Action under Penal Code, 1860, Chapter XI (Sections 191-229) also commended — Practice and Procedure

The petitioner had been indulging in a series of legal proceedings to evade an eviction order passed against him and ultimately filed a suit in the District Munsif's court and tried to obtain an injunction restraining the execution of the eviction order by pursuing the matter to the High Court as well as the Supreme Court.

Held:

The trial Court must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise its power under Order VII, Rule 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, the court must nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men (Ch. XI) and must be triggered against them. (Para 5)

In the present case it is perfectly plain that the suit is a flagrant misuse of the mercies of the law in receiving plaints. The trial Court here will remind itself of Section 35-A, C.P.C. and take deterrent action if it is satisfied that the litigation was inspired by vexatious motives and altogether groundless. The suit has no survival value and should be disposed of forthwith after giving an immediate hearing to the parties concerned. (Para 6)

It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady actions. The Bar Council of India, shall also activate this obligation. (Para 7)

Civil Procedure Code, 1908 — Order 9, Rule 6 — Ex parte orders in meritless cases not justified

Held:

The gullible grant of ex parte orders tempts gamblers in litigation into easy courts. A judge who succumbs to ex parte pressures in unmerited cases helps devalue the judicial process. (Para 7)

Contempt of Court — Party persistently resorting to frivolous and vexatious litigations to evade the proper process of court — Held, contempt power of Court is meant for such persons — Court, however, desisted from taking action because of reasonableness of the party's Counsel (Para 2)

Appeal dismissed SBM/3704/C

Advocate who appeared in this case:

P. R. Ramasesh, Advocate, for the Petitioner.

The Order of the Court was delivered by

KRISHNA IYER, J.—The pathology of litigative addiction ruins the poor of this country and the Bar has a role to cure this deleterious tendency of parties to launch frivolous and vexatious cases.

2. Here is an audacious application by a determined engineer of fake litigations asking for special leave to appeal against an order of the High Court on an interlocutory application for injunction. The sharp practice or legal legerdemain of the petitioner, who is the son of the 2nd respondent, stultifies the court process and makes a decree with judicial seals brutum fulmen. The long arm of the law must throttle such litigative caricatures if the confidence and creditibility of the community in the judicature is to survive. The contempt power of the Court is meant for such persons as the present petitioner. We desist from taking action because of the sweet reasonableness of counsel Sri Ramasesh.

3. What is the horrendous enterprise of the petitioner ? The learned Judge has, with a touch of personal poignancy, judicial sensitivity and anguished anxiety, narrated the sorry story of a long-drawn out series of legal proceedings revealing how the father of the petitioner contested an eviction proceeding, lost it, appealed against it, lost again, moved a revision only to be rebuffed by summary rejection by the High Court. But the Judge, in his clement jurisdiction, gratuitously granted over six months' time to vacate the premises. After having enjoyed the benefit of this indulgence the maladroit party moved for further time to vacate. All these proceedings were being carried on by the 2nd respondent who was the father of the petitioner. Finding that the court's generosity had been exploited to the full, the 2nd respondent and the petitioner, his son, set upon a clever adventure by abuse of the process of the court. The petitioner filed a suit before the Fourth Additional First Munsif, Bangalore, for a declaration that the order of eviction, which had been confirmed right up to the High Court and resisted by the 2nd respondent throughout, was one obtained by 'fraud and collusion'. He sought an injunction against the execution of the eviction order. When this fact was brought to the notice of the High Court, during the hearing of the prayer for further time to vacate, instead of frowning upon the fraudulent stroke, the learned Judge took pity on the tenant and persuaded the landlord to give more time for vacating the premises on the basis that the suit newly and sinisterly filed would be withdrawn by the petitioner. Gaining time by another five months on this score, the father and son belied the hope of the learned Judge who thought that the litigative skirmishes would come to an end, but hope can be dupe when the customer concerned is a crook.

4. The next chapter in the litigative acrobatics of the petitioner and father soon followed since they were determined to dupe and defy the process of the Court to cling on to the shop. The trick they adopted was to institute another suit before another Munsif making a carbon copy as it were of the old plaint and playing upon the likely gullibility of the new Munsif to grant an ex parte injunction. The first respondent entered appearance and exposed the hoax played upon the court by the petitioner and the second respondent. Thereupon the Munsif vacated the order of injunction he had already granted. An appeal was carried without success. Undaunted by all these defeats the petitioner came to the High Court in revision and managed to get an injunction over again. The second res-

pondent promptly applied for vacating the temporary injunction and when the petitioner came up for hearing before Mr. Justice Venkataramayya, counsel for the petitioner submitted that he should not hear the case, the pretext put forward being that the petitioner had cutely mentioned the name of the Judge in the affidavit while describing the prior proceedings. The unhappy Judge, who had done all he could to help the tenant by persuading the landlord, found himself badly betrayed. He adjourned the case to the next day. The torment he underwent is obvious from his own order where he stated :

"I spent a sleepless night yesterday."

Luckily, he stabilised himself the next day and heard arguments without yielding to the bullying tactics of the petitioner and impropriety of his advocate. He went into the merits and dismissed the revision. Of course, these fruitless proceedings in the High Court did not deter the petitioner from daring to move this Court for special leave to appeal.

5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi :

"It is dangerous to be too good."

6. The trial Court in this case will remind itself of Section 35-A, C.P.C. and take deterrent action if it is satisfied that the litigation was inspired by vexatious motives and altogether groundless. In any view, that suit has no survival value and should be disposed of forthwith after giving an immediate hearing to the parties concerned.

7. We regret the infliction of the ordeal upon the learned Judge of the High Court by a callous party. We more than regret the circumstance that the party concerned has been able to prevail upon one lawyer or the other to present to the Court a case which was disingenuous or worse. It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled

by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to colloborate in shady actions. The Bar Council of India, we hope will activate this obligation. We are constrained to make these observations and hope that the co-operation of the Bar will be readily forthcoming to the Bench for spending judicial time on worthwhile disputes and avoiding the distraction of sham litigation such as the one we are disposing of. Another moral of this unrighteous chain litigation is the gullible grant of ex parte orders tempts gamblers in litigation into easy courts. A judge who succumbs to ex parte pressure in unmerited cases helps devalue the judicial process. We must appreciate Shri Ramasesh for his young candour and correct advocacy.

(1977) 4 Supreme Court Cases 471

(BEFORE M. H. BEG, C.J., AND Y. V. CHANDRACHUD, P. N. BHAGWATI, V. R. KRISHNA IYER, N. L. UNTWALIA, JASWANT SINGH AND P. S. KAILASAM, JJ.)

THE STATE OF KARNATAKA AND ANOTHER .. Appellants;

Versus

SHRI RANGANATHA REDDY AND ANOTHER .. Respondents.

Civil Appeal Nos.1085 and 1522-1894 of 1976
decided on October 11, 1977

A. **Constitution of India — Articles 31(2) and 39(b) and (c) — "Public purpose" — Nature and meaning of — Whether a law relating to compulsory acquisition for public purpose or not should be gathered from the statement of objects and reasons, preamble and the provisions of the Act — State may compulsorily acquire rather than purchase in free market — Constitutional directive for nationalising public transport — Karnataka Contract Carriage Acquisition Act, 1976 for nationalisation of contract transport service in the State was for public purpose — Provision deeming the enactment to be for public purpose — Effect — Interpretation of statutes — Determination of legislative intent**

AA. **Words and Phrases — "Deemed" — Meaning of**

By a number of notifications issued under an Ordinance promulgated by the State Government, almost all the contract carriages and permits described in the notifications vested in the State. They were transferred to the State Road Transport Corporation under Clause 20(1) of the Ordinance. The officers of the Corporation seized the vehicles and the relative permits pursuant to the notifications except six vehicles which were operating under inter-State permits. The Ordinance was replaced by the Karnataka Contract Carriage Acquisition Act, 1976. The operation of the Act was made retrospective from the date when the Ordinance had been promulgated and a saving clause was provided in the Act that whatever was done on and from the date when the Ordinance was promulgated either under the Ordinance or under the Act, was all deemed to have been done under the Act. Various contract carriage operators successfully challenged the Act in the High Court. The High Court struck down the Act on the grounds (1) the acquisition was not for a public purpose; (2) the compensation or the amount provided or the principles laid down in the Act for payment in lieu of the various vehicles, permits etc., was wholly illusory and arbitrary and hence violative of Article 31(2) of the Constitution; (3) the acquisition of contract carriages with inter-State permits which was

THE
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(1994) 1 Supreme Court Cases 1

(BEFORE KULDIP SINGH AND P.B. SAWANT, JJ.)

S.P. CHENGALVARAYA NAIDU (DEAD) BY LRS. .. Appellant;

Versus

JAGANNATH (DEAD) BY LRS. AND OTHERS .. Respondents.

Civil Appeal No. 994 of 1972†, decided on October 27, 1993

Civil Procedure Code, 1908 — Ss. 33, 13 and Or. 6 R. 4 — Judgment or decree obtained by fraud — To be treated as nullity and can be questioned even in collateral proceedings — 'Fraud' — Meaning of — Non-disclosure of relevant and material documents with a view to obtain advantage amounts to fraud — Partition suit filed by respondent without disclosing deed of release executed by him relinquishing his rights in the property and preliminary decree obtained — At the time of hearing of application for final decree filed by respondent, appellants-defendants coming to know about want of locus standi of the respondent and as such challenging the application on ground of fraud — Held, decree obtained by non-disclosure of the release deed amounted to fraud on court and hence decree liable to be set aside — Penal Code, 1860, S. 25 — Contract Act, 1872, S. 17 — Words and phrases — 'Fraud' — Constitution of India, Art. 136 — Fraud on court

The respondent was working as a clerk with one *C*, who had obtained a decree against the appellants. In execution of the decree the respondent purchased at court sale the properties belonging to the appellants on behalf of *C*. Later, by a registered deed the respondent relinquished all his rights in the property in favour of *C*. Meanwhile the appellants judgment-debtors paid the total decretal amount to *C*. All the same the respondent without disclosing his execution of the release deed in favour of *C*, filed a suit for partition of the property and obtained a preliminary decree. Thereafter he filed an application for a final decree. It was only at the hearing of this application that the appellants came to know about the release deed and want of locus standi of the respondent. They therefore, challenged the application on the ground that non-disclosure of the vital document by the respondent vitiated the proceedings and as such the preliminary decree was obtained by playing fraud on court and was a nullity. The trial court accepted the

† From the Judgment and Order dated April 18, 1967 of the Madras High Court in Appeal No. 347 of 1962

contention and dismissed the application for final decree. The High Court, however, inter alia taking the view that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence" set aside the order of the trial court. Allowing the appeal

Held :

The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. A person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation. A judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree — by the first court or by the highest court — has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings. (Paras 5 and 1)

A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party. (Para 6)

In this case the respondent, on his own volition, executed the registered release deed in favour of *C*. He knew that the appellants had paid the total decretal amount to his master *C*. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of *C*. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. Therefore, the judgment of the High Court is set aside and that of the trial court is restored. The appellants shall be entitled to costs quantified at Rs 11,000. (Para 6)

R-M/12514/C

Advocates who appeared in this case :
Ms Lily Thomas, Advocate, for the Appellants;
A.T.M. Sampath and Ms Pushpa Rangam, Advocates, for the Respondents.

The Judgment of the Court was delivered by

KULDIP SINGH, J.— "Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree — by the first court or by the highest court — has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

2. Predecessor-in-interest of the respondents-plaintiffs filed application for final decree for partition and separate possession of the plaint-properties and for mesne profits. The appellants-defendants contested the application on the ground that the preliminary decree, which was sought to be made final, was obtained by fraud and, as such, the application was liable to be dismissed. The trial Judge accepted the contention and dismissed the

application for grant of final decree. The respondents-plaintiffs went in appeal before the High Court. A Division Bench of the High Court went through plethora of case-law and finally allowed the appeal and set aside the order of the trial court. This appeal is by way of certificate granted by the High Court.

3. One Jagannath was the predecessor-in-interest of the respondents. He was working as a clerk with one Chunilal Sowcar. Jagannath purchased at court auction the properties in dispute which belonged to the appellants. Chunilal Sowcar had obtained a decree and the court sale was made in execution of the said decree. Jagannath had purchased the property in the court auction on behalf of Chunilal Sowcar, the decree-holder. By a registered deed dated November 25, 1945, Jagannath relinquished all his rights in the property in favour of Chunilal Sowcar. Meanwhile, the appellants who were the judgment-debtors had paid the total decretal amount to Chunilal Sowcar. Thereafter, Chunilal Sowcar, having received the decretal amount, was no longer entitled to the property which he had purchased through Jagannath. Without disclosing that he had executed a release deed in favour of Chunilal Sowcar, Jagannath filed a suit for partition of the property and obtained a preliminary decree. During the pendency of the suit, the appellants did not know that Jagannath had no locus standi to file the suit because he had already executed a registered release deed, relinquishing all his rights in respect of the property in dispute, in favour of Chunilal Sowcar. It was only at the hearing of the application for final decree that the appellants came to know about the release deed and, as such, they challenged the application on the ground that non-disclosure on the part of Jagannath that he was left with no right in the property in dispute, vitiated the proceedings and, as such, the preliminary decree obtained by Jagannath by playing fraud on the court was a nullity. The appellants produced the release deed (Ex. B-15) before the trial court. The relevant part of the release deed is as under:

> "Out of your accretions and out of trust vested in me, purchased the schedule mentioned properties benami in my name through court auction and had the said sale confirmed. The said properties are in your possession and enjoyment and the said properties should henceforth be held and enjoyed with all rights by you as had been done:
>
> So far if any civil or criminal proceedings have to be conducted in respect of the said properties or instituted by others in respect of the said properties you shall conduct the said proceedings without reference to me and shall be held liable for the profits or losses you incur thereby. All the records pertaining the aforesaid properties are already remaining with you."

4. The High Court reversed the findings of the trial court on the following reasonings:

> "Let us assume for the purpose of argument that this document, Ex. B-15, was of the latter category and the plaintiff, the benamidar, had

completely divested himself of all rights of every description. Even so, it cannot be held that his failure to disclose the execution of Ex. B-15 would amount to collateral or extrinsic fraud. The utmost that can be said in favour of the defendants is that a plaintiff who had no title (at the time when the suit was filed) to the properties, has falsely asserted title and one of the questions that would arise either expressly or by necessary implication is whether the plaintiff had a subsisting title to the properties. It was up to the defendants, to plead and establish by gathering all the necessary materials, oral and documentary, that the plaintiff had no title to the suit properties. It is their duty to obtain an encumbrance certificate and find out whether the plaintiff had still a subsisting title at the time of the suit. The plaintiff did not prevent the defendants, did not use any contrivance, nor any trick nor any deceit by which the defendants were prevented from raising proper pleas and adducing the necessary evidence. The parties were fighting at arm's length and it is the duty of each to traverse or question the allegations made by the other and to adduce all available evidence regarding the basis of the plaintiff's claim or the defence of the defendants and the truth or falsehood concerning the same. A party litigant cannot be indifferent, and negligent in his duty to place the materials in support of his contention and afterwards seek to show that the case of his opponent was false. The position would be entirely different if a party litigant could establish that in a prior litigation his opponent prevented him by an independent, collateral wrongful act such as keeping his witnesses in wrongful or secret confinement, stealing his documents to prevent him from adducing any evidence, conducting his case by tricks and misrepresentation resulting in his misleading of the Court. Here, nothing of the kind had happened and the contesting defendants could have easily produced a certified registration copy of Ex. B-15 and non-suited the plaintiff; and, it is absurd for them to take advantage of or make a point of their own acts of omission or negligence or carelessness in the conduct of their own defence."

The High Court further held as under:

"From this decision it follows that except proceedings for probate and other proceedings where a duty is cast upon a party litigant to disclose all the facts, in all other cases, there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence. It would cut at the root of the fundamental principle of law of finality of litigation enunciated in the maxim 'interest reipublicae ut sit finis litium' if it should be held that a judgment obtained by a plaintiff in a false case, false to his knowledge, could be set aside on the ground of fraud, in a subsequent litigation."

Finally, the High Court held as under:

"The principle of this decision governs the instant case. At the worst the plaintiff is guilty of fraud in having falsely alleged, at the time when

he filed the suit for partition, he had subsisting interest in the property though he had already executed Ex. B-15. Even so, that would not amount to extrinsic fraud because that is a matter which could well have been traversed and established to be false by the appellant by adducing the necessary evidence. The preliminary decree in the partition suit necessarily involves an adjudication though impliedly that the plaintiff has a subsisting interest in the property."

5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.

7. We, therefore, allow the appeal, set aside the impugned judgment of the High Court and restore that of the trial court. The appellants shall be entitled to their costs which we quantify as Rs 11,000.

(1994) 1 Supreme Court Cases 6

(BEFORE KULDIP SINGH AND S.C. AGRAWAL, JJ.)

CENTRAL BOARD OF SECONDARY EDUCATION .. Appellant;

Versus

VINEETA MAHAJAN (Ms) AND ANOTHER .. Respondents.

Civil Appeal No. 5450 of 1993†, decided on October 15, 1993

Education — Examination — Use of unfair means — Possession of written material relevant to the examination in the paper concerned — Held, sufficient to establish use of unfair means in the examination under relevant Rules — Such possession does not raise any presumption which can be rebutted on proof of non user of the material so possessed — R. 36.1(iv) of the Rules for Unfair Means framed by Central Board of Secondary Education must be so construed

Held :

The sine qua non, for the misconduct under the Rule, is the recovery of the incriminating material from the possession of the candidate. Once the candidate is found to be in possession of papers relevant to the examination, the requirement of the Rule is satisfied and there is no escape from the conclusion that the candidate has used unfair means at the examination. The Rule does not make any distinction between bona fide or mala fide possession of the incriminating material. The reasoning, that the candidate having not used the material — in spite of the opportunity available to her — the possession alone would not attract the provisions of the Rule, is not borne out from the plain language of the Rule. It is erroneous to read a rebuttable presumption in the language of the Rule. May be, because of strict vigilance in the examination hall the candidate was not in a position to take out the papers from the pencil box (wherein it was kept in this case) and use the same. The very fact that the candidate took the papers relevant to the examination in the paper concerned and was found to be in possession of the same by the invigilator in the examination hall is sufficient to prove the charge of using unfair means by her in the examination under the Rule. (Para 5)

Appeal allowed R-M/T/12507/C

Advocates who appeared in this case :

P.P. Rao, Senior Advocate (Rajeev Sharma, T.C. Sharma, Ms Rajni K. Prasad and Neelam Sharma, Advocates, with him) for the Appellant;

G. Ramaswamy, Senior Advocate [S.K. Mehta (for M/s K.L. Mehta & Co.), Advocate, with him] for the Respondents.

† From the Judgment and Order dated August 23, 1993 of the Delhi High Court in C.W. No 3714 of 1993

should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

8. In view of the aforesaid legal principle laid down in a catena of decisions of this Court, we are clearly of the view that in this case the prosecution has established the circumstantial evidence against the appellant beyond all reasonable doubt by leading cogent evidence. We are, therefore, of the view that there is no infirmity in the concurrent findings recorded by the trial court and the High Court which would warrant our interference.

9. The facts of this case as already noticed shocked the judicial conscience. The gruesome murder was perpetrated in cold-blooded, premeditated and well-organised manner. It calls for deterrent punishment. Such gruesome and cold-blooded murder with a view to grab the property does not only delict the law but also has a deleterious effect on civil society.

10. At the time of granting leave, this Court did not issue notice for enhancement of punishment. However, considering the nature of the crime and the manner in which it has been perpetrated, the ends of justice would warrant that the appellant should be in jail in terms of Section 57 of the Penal Code. We direct that the appellant shall not get the benefit of any remission either granted by the State or by the Government of India on any auspicious occasion.

11. The appeal is dismissed with the aforesaid directions.

(2005) 7 Supreme Court Cases 605

(BEFORE ARIJIT PASAYAT AND B.N. SRIKRISHNA, JJ.)

BHAURAO DAGDU PARALKAR .. Appellant;

Versus

STATE OF MAHARASHTRA AND OTHERS .. Respondents.

Civil Appeals Nos. 5162-67 of 2005†, decided on August 22, 2005

A. **Freedom Fighters' Pension Scheme — False claim under — Fraud — Pensionary benefits availed by large number of persons by falsely claiming to be freedom fighters on the basis of forged, false and fabricated documents — Challenge made to — Report of enquiry committee (set up by High Court) not in favour of the said claimants — Taking up five sample cases out of 354 suspected cases, High Court holding that the said report was not acceptable and that the foundation of allegations against the said claimants was factually incorrect as the documents produced by them were sufficient to substantiate their claims — Held, the said approach by High Court was not proper — Sampling could not be the method for determining the truth or otherwise of the allegations or claims made — Each case was required to be individually examined — Hence, High Court's judgment set aside — In order to give finality to the controversy, a Commission comprising a retired**

† Arising out of SLPs (Crl.) Nos. 11344-49 of 2004. From the Judgment and Order dated 19-3-2004 of the Bombay High Court at Aurangabad in WPs Nos. 430, 431, 1551 of 2004, 2619 of 2002, 5498 and 5587 of 2003

Judge of High Court appointed in the matter to complete the verification within four months and submit its report to the State Government for necessary action, after giving an opportunity of hearing to the claimants in question (Paras 8 and 17)

Mukund Lal Bhandari v. *Union of India*, 1993 Supp (3) SCC 2 : AIR 1993 SC 2127; *Gurdial Singh* v. *Union of India*, (2001) 8 SCC 8 : 2001 AIR SCW 3843, *followed*

B. **Fraud — Concept and effect of, explained — *T. Suryachandra Rao*, (2005) 6 SCC 149, reiterated — Civil Procedure Code, 1908 — S. 11 — Res judicata — Applicability — Fraud case — Words and phrases — "fraud", "deception" — Contract Act, 1872, S. 17 — Penal Code, 1860, S. 25**

Held :

The expression "fraud" involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. (Para 9)

By "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from ill will towards the other is immaterial. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (Paras 9 and 10)

Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. (Para 11)

Section 17 of the Contract Act, 1872 defines "fraud" as an act committed by a party to a contract with intent to deceive another. From the dictionary meaning or even otherwise fraud arises out of the deliberate active role of the representator about a fact, which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false. (Para 12)

But "fraud" in public law is not the same as "fraud" in private law. Nor can the ingredients, which establish "fraud" in commercial transaction, be of assistance in determining fraud in administrative law. "Fraud" in relation to the statute must be a colourable transaction to evade the provisions of a statute. (Para 12)

Suppression of a material document would also amount to a fraud on the court. Although negligence is not fraud but it can be evidence on fraud.

(Paras 14 and 15)

"Fraud" and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. Fraud and justice never dwell together. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata.

(Paras 12 and 11)

Mukund Lal Bhandari v. *Union of India*, 1993 Supp (3) SCC 2 : AIR 1993 SC 2127; *Gurdial Singh* v. *Union of India*, (2001) 8 SCC 8 : 2001 AIR SCW 3843; *Vimla (Dr.)* v. *Delhi Admn.*, 1963 Supp (2) SCR 585 : AIR 1963 SC 1572; *Indian Bank* v. *Satyam Fibres (India) (P) Ltd.*, (1996) 5 SCC 550; *S.P Chengalvaraya Naidu* v. *Jagannath*, (1994) 1 SCC 1; *Ram Chandra Singh* v. *Savitri Devi*, (2003) 8 SCC 319; *Derry* v. *Peek*, (1886-90) All ER Rep 1: (1889) 14 AC 337 : 61 Lt 265 (HL); *Khawaja* v. *Secy. of State for Home Deptt.*, (1983) 1 All ER 765 : 1984 AC 74 : (1982) 1 WLR 948 (HL); *Shrisht Dhawan* v. *Shaw Bros.*, (1992) 1 SCC 534; *Roshan Deen* v. *Preeti Lal*, (2002) 1 SCC 100 : 2002 SCC (L&S) 97; *Ram Preeti Yadav* v. *U.P Board of High School and Intermediate Education*, (2003) 8 SCC 311; *Ashok Leyland Ltd.* v. *State of T.N.*, (2004) 3 SCC 1; *Gowrishankar* v. *Joshi Amba Shankar Family Trust*, (1996) 3 SCC 310; *Lazarus Estates Ltd.* v. *Beasley*, (1956) 1 QB 702 : (1956) 1 All ER 341 : (1956) 2 WLR 502 (CA); *State of A.P* v. *T Suryachandra Rao*, (2005) 6 SCC 149 : (2005) 5 Scale 621, *relied on*

Webster's Third New International Dictionary; *Black's Law Dictionary*; *Concise Oxford Dictionary*; *Halsbury's Laws of England*, *referred to*

W-M/32810/C

Advocates who appeared in this case :

A.V. Savant, Senior Advocate (Naresh Kumar, Advocate, with him) for the Appellant;

R. Mohan, Additional Solicitor General and U.U. Lalit, Senior Advocate (Sanjay V. Kharde, Ms Chandan Ramamurthi, Hemant Sharma, Manish Sharma, Ms Sushma Suri, Manoj Swarup, S.S. Shinde, V.N. Raghupathy, T. Mahipal, Uday B. Dube and Kuldip Singh, Advocates, with them) for the Respondents.

Chronological list of cases cited ***on page(s)***

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2. (2004) 3 SCC 1, *Ashok Leyland Ltd.* v. *State of T.N.* 613*g*
3. (2003) 8 SCC 319, *Ram Chandra Singh* v. *Savitri Devi* 612*c*, 613*g*
4. (2003) 8 SCC 311, *Ram Preeti Yadav* v. *U.P. Board of High School and Intermediate Education* 613*g*, 614*b*
5. (2002) 1 SCC 100 : 2002 SCC (L&S) 97, *Roshan Deen* v. *Preeti Lal* 613*f-g*
6. (2001) 8 SCC 8 : 2001 AIR SCW 3843, *Gurdial Singh* v. *Union of India* 610*g*, 611*a-b*
7. (1996) 5 SCC 550, *Indian Bank* v. *Satyam Fibres (India) (P) Ltd.* 611*f*
8. (1996) 3 SCC 310, *Gowrishankar* v. *Joshi Amba Shankar Family Trust* 614*a*
9. (1994) 1 SCC 1, *S.P. Chengalvaraya Naidu* v. *Jagannath* 611*g*, 614*a*
10. 1993 Supp (3) SCC 2 : AIR 1993 SC 2127, *Mukund Lal Bhandari* v. *Union of India* 610*d-e*, 611*a-b*
11. (1992) 1 SCC 534, *Shrisht Dhawan* v. *Shaw Bros.* 612*c*, 613*f-g*

12. (1983) 1 All ER 765 : 1984 AC 74 : (1982) 1 WLR 948 (HL), *Khawaja* v. *Secy. of State for Home Deptt.* 613*b*
13. 1963 Supp (2) SCR 585 : AIR 1963 SC 1572, *Vimla (Dr.)* v. *Delhi Admn.* 611*f*
14. (1956) 1 QB 702 : (1956) 1 All ER 341 : (1956) 2 WLR 502 (CA), *Lazarus Estates Ltd.* v. *Beasley* 614*b*
15. (1886-90) All ER Rep 1: (1889) 14 AC 337 : 61 Lt 265 (HL), *Derry* v. *Peek* 613*a*

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J.— Leave granted.

2. When one talks of freedom fighters the normal image that comes to one's mind is a person who suffered physically and mentally for unshackling the chains of foreign rule in our country. The normal reaction when one sees such person is one of reverence, regard and respect. The brave and courageous deeds of these persons are a distinctive part of India's fight for freedom. Many persons lost their lives, many were injured and a large number of such persons had languished in jails for various periods. The common thread which must have passed through the minds of these people is their sole objective to see that their motherland has a government of its own, free from foreign rule. But these images get shattered when one hears that with a view to gain financially, vague documents have been produced, false claims of participation in the freedom movement have been made. It is a sad reflection on the moral values of the citizens of our country that a large number of cases have surfaced where it has been established that people who were not even born when the freedom fight was on or the country got independence or were toddlers when the country got independence have applied for and managed to get "Sammanpatra", pensionary and other allied benefits. The appeals at hand deal with such allegations. This is "*Asamman*" (disrespect) to the whole country and such dishonourable ventures have to be dealt with sternness to send out a message that they are not freedom fighters, but are traitors sullying the name of freedom fight.

3. In these appeals challenge is to the judgment delivered by a Division Bench of the Bombay High Court at Aurangabad Bench by which several writ petitions were disposed of.

4. Writ petitions came to be filed before the High Court challenging the grant of benefits to such phantoms masquerading to be freedom fighters. The basic allegation in the writ petitions was that in Beed district of Maharashtra, there were large number of persons who had been granted pensionary benefits under the Freedom Fighters' Pension Scheme (in short "the Scheme"). Such writ petitions were purported to have been filed by persons in public interest. In one case the petition was filed by a freedom fighter who claimed that he was surprised to see the number of persons falsely claiming to be freedom fighters. The prayer essentially was to hold a detailed enquiry and to cancel the pensionary benefits and for a direction to recover the amounts which had already been paid along with the prayer for initiation of criminal proceedings against the bogus claimants. It was pointed out that as many as 354 bogus claims have been allowed in the district concerned. Such persons were availing pensionary and other benefits which are to be availed

only by genuine freedom fighters. It was highlighted in the petitions that some of the so-called freedom fighters were all of tender age and/or were not born when the freedom struggle was fought. In respect of others it was alleged that they managed to get freedom fighters' pension by submitting forged, false and fabricated documents. A Division Bench of the High Court taking cognizance of the petitions and the serious allegations made therein constituted a three-member Enquiry Committee headed by a retired Judge of the Maharashtra Administrative Tribunal and two other members who were practising advocates from Beed district. They were required to enquire into the claims of the so-called freedom fighters. The Committee was constituted by order dated 3-12-2002. Allegations were made that out of the 3000 applications filed, 354 were ineligible and the High-Power Committee of the State had wrongly recommended payment of pension holding them to be freedom fighters. It is stated that there are two Committees i.e. the District-Level Committee (District Gaurav Committee) and the State-Level High-Power Committee which are required to examine the claims. The High Court after perusing the 3000 applications retained the files of these suspected 354 cases. The order passed prior to the appointment of the Enquiry Committee revealed that the Court prima facie was of the view that in 26 cases the persons were less than 10 years of age when the freedom struggle was fought. The Enquiry Committee submitted its report. After the enquiry report was submitted, the High Court passed orders at various stages. It appears that some of the persons whose names were included in the list of 354 suspected beneficiaries filed writ petitions. While the High Court directed the Collector, Beed district not to release pension to these freedom fighters whose cases were covered by the Enquiry Committee until further orders. The said order of the High Court was also made applicable to the freedom fighters whose civil writ applications were already rejected. Aggrieved by the order, a special leave petition was filed before this Court which was disposed of by the following order:

> "Heard the learned counsel for the petitioners.
>
> We decline to grant permission to file the special leave petitions but give liberty to the petitioners to file independent writ petitions, challenging the order of the Enquiry Committee, if so desired.
>
> At this stage, the learned counsel for the petitioners states that certain observations made in the impugned order will come in their way and/or affect the case of the petitioners on merits. We make it clear that the observations made in the impugned order shall not affect the merits of the case of the petitioners in the writ petitions that may be filed."

After hearing the cases, the High Court by the impugned judgment held that the foundation on which the allegations were made was really factually incorrect. The High Court took five sample cases and came to hold that the report of the Enquiry Committee was not to be accepted and accordingly dismissed the writ petitions. It was of the view that the documents produced were sufficient to substantiate the claims. It found that the parameters fixed by this Court for dealing with the applications for freedom fighters' pension

were fulfilled and therefore no interference was called for. It also held that the petitions filed as "public interest litigation" were not really so. It was observed that the enquiries conducted before grant of pension cannot be upset by contrary findings recorded by the Enquiry Committee and, therefore, the petitions challenging the grant of freedom fighters' pension were dismissed while the petitions questioning correctness of the Enquiry Committee appointed by the High Court were allowed.

5. In support of the appeals, Mr A.V. Savant, learned Senior Counsel submitted that the approach of the High Court is clearly erroneous. The fact that it took up five sample cases itself shows that the High Court was not adopting the proper course. Even if it is accepted for the sake of argument that the persons covered by the five sample cases were genuine freedom fighters that does not necessarily lead to an inference that all others were also genuine freedom fighters. After elaborate analysis of the materials the Committee came to hold that the claims were bogus and tainted with fraud. The High Court should not have lightly interfered with the findings on suppositions and presumptions.

6. Per contra, learned counsel for the beneficiaries whose eligibility was questioned submitted that all relevant documents had been submitted, were scrutinised and thereafter pension was granted and, therefore, the Committee appointed by the High Court was not justified in lightly brushing aside the intrinsic value of the documents produced to hold otherwise.

7. The object of the scheme was highlighted by this Court in *Mukund Lal Bhandari* v. *Union of India*[1]: (SCC pp. 7-8, para 9)

> "The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which they plunged in the freedom struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made. The Scheme should retain its high objective with which it was motivated."

8. Again in *Gurdial Singh* v. *Union of India*[2] this Court observed: (SCC p. 14, para 7)

> "It should not be forgotten that the persons intended to be covered by the Scheme had suffered for the country about half-a-century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the

1 1993 Supp (3) SCC 2 : AIR 1993 SC 2127
2 (2001) 8 SCC 8 : 2001 AIR SCW 3843

bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the Scheme."

We are in respectful agreement with the view expressed in *Mukund Lal*[1] and *Gurdial Singh*[2] *cases*. As noted at the threshold, the genuine freedom fighters deserve to be treated with reverence, respect and honour. But at the same time it cannot be lost sight of that people who had no role to play in the freedom struggle should not be permitted to benefit from the liberal approach required to be adopted in the case of freedom fighters, most of whom in the normal course are septuagenarians and octogenarians. It baffles one, beyond comprehension, when claim is made by a person who was not even born during the freedom struggle to be a freedom fighter. Learned counsel for the appellant has submitted a list which makes an interesting reading. Some of the beneficiaries were born in 1951 and some in 1955. Accepting claims of such persons to be freedom fighters would be making a mockery of the Scheme which is intended for genuine freedom fighters. The approach of the High Court is clearly untenable. Sampling cannot be the method for determining the truth or otherwise of the allegations or claims made. Each case was required to be individually examined. On that score alone, the High Court's judgment is vulnerable. Allegations made were to the effect that fraud has been practised.

9. By "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from ill will towards the other is immaterial. The expression "fraud" involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. [See *Vimla (Dr.)* v. *Delhi Admn.*[3] and *Indian Bank* v. *Satyam Fibres (India) (P) Ltd.*[4]]

10. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See *S.P. Chengalvaraya Naidu* v. *Jagannath*[5].)

11. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letters or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letters. It is also

3 1963 Supp (2) SCR 585 : AIR 1963 SC 1572
4 (1996) 5 SCC 550
5 (1994) 1 SCC 1

well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (See *Ram Chandra Singh* v. *Savitri Devi*[6].)

12. In *Shrisht Dhawan* v. *Shaw Bros.*[7], it was observed as follows: (SCC p. 553, para 20)

> "Fraud" and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Camus, who exulted in his ability to, "wing me into the easy-hearted man and trap him into snares". It has been defined as an act of trickery or deceit. In *Webster's Third New International Dictionary* "fraud" in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In *Black's Law Dictionary*, "fraud" is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In *Concise Oxford Dictionary*, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to *Halsbury's Laws of England*, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Contract Act, 1872 defines "fraud" as an act committed by a party to a contract with intent to deceive another. From the dictionary meaning or even otherwise fraud arises out of the deliberate active role of the representator about a fact, which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that

6 (2003) 8 SCC 319
7 (1992) 1 SCC 534

it was false. In a leading English case i.e. *Derry* v. *Peek*[8] what constitutes "fraud" was described thus: (All ER p. 22 B-C)

> "Fraud is proved when it is shown that a false representation has been made (*i*) knowingly, or (*ii*) without belief in its truth, or (*iii*) recklessly, careless whether it be true or false."

But "fraud" in public law is not the same as "fraud" in private law. Nor can the ingredients, which establish "fraud" in commercial transaction, be of assistance in determining fraud in administrative law. It has been aptly observed by Lord Bridge in *Khawaja* v. *Secy. of State for Home Deptt.*[9] that it is dangerous to introduce maxims of common law as to the effect of fraud while determining fraud in relation of statutory law. "Fraud" in relation to the statute must be a colourable transaction to evade the provisions of a statute.

> " 'If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope.' Present day concept of fraud on statute has veered round abuse of power or mala fide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administrative law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. That is misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Even in commercial transactions non-disclosure of every fact does not vitiate the agreement. 'In a contract every person must look for himself and ensure that he acquires the information necessary to avoid bad bargain.' In public law the duty is not to deceive." (See *Shrisht Dhawan* v. *Shaw Bros.*[7], SCC p. 554, para 20.)

13. This aspect of the matter has been considered recently by this Court in *Roshan Deen* v. *Preeti Lal*[10], *Ram Preeti Yadav* v. *U.P. Board of High School and Intermediate Education*[11], *Ram Chandra Singh case*[6] and *Ashok Leyland Ltd.* v. *State of T.N.*[12]

8 (1886-90) All ER Rep 1: (1889) 14 AC 337 : 61 Lt 265 (HL)
9 (1983) 1 All ER 765 : 1984 AC 74 : (1982) 1 WLR 948 (HL)
10 (2002) 1 SCC 100 : 2002 SCC (L&S) 97
11 (2003) 8 SCC 311
12 (2004) 3 SCC 1

14. Suppression of a material document would also amount to a fraud on the court. (See *Gowrishankar* v. *Joshi Amba Shankar Family Trust*[13] and *S.P. Chengalvaraya Naidu case*[5].)

15. "Fraud" is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in *Ram Preeti Yadav case*[11].

16. In *Lazarus Estates Ltd.* v. *Beasley*[14] Lord Denning observed at QB pp. 712 and 713: (All ER p. 345 C)

> "No judgment of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

In the same judgment Lord Parker, L.J. observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. (p. 722) These aspects were recently highlighted in *State of A.P.* v. *T. Suryachandra Rao*[15].

17. To give finality to the controversy, we appoint Mr Justice A.B. Palkar, a retired Judge of the Bombay High Court to examine the 354 cases. The relevant files shall be handed over to the Commission immediately. The Commission is requested to complete the verification within four months and submit its report to the State Government for necessary action. The claimants whose cases are to be examined shall be given opportunity to have their say before the Commission. The records of the Zilla Gaurav Samittee, the High-Power Committee and the Committee appointed by the High Court shall be examined by the Commission before issuing notice to individual applicants to decide the acceptability or otherwise of the claims for freedom fighters' pension. On getting the report of the Commission, the State Government shall take necessary action. We make it clear that we have not expressed any opinion on the acceptability or otherwise of the claims as the Commission appointed by this Court shall examine those aspects.

18. The Commission appointed by this Court shall be paid the same emoluments as are admissible to a sitting Judge of the High Court for the duration of its work, which we expect will be finished within a period of 4 months. The emoluments admissible to the Commission shall be paid by the State Government, apart from other expenses that may be incurred for the functioning of the Commission.

19. The appeals are allowed with no order as to costs.

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13 (1996) 3 SCC 310
14 (1956) 1 QB 702 : (1956) 1 All ER 341 : (1956) 2 WLR 502 (CA)
15 (2005) 6 SCC 149 : (2005) 5 Scale 621

(2008) 12 Supreme Court Cases 481

(BEFORE C.K. THAKKER AND D.K. JAIN, JJ.)

K.D. SHARMA .. Appellant;

Versus

STEEL AUTHORITY OF INDIA LIMITED AND OTHERS .. Respondents.

Civil Appeal No. 4270 of 2008†, decided on July 9, 2008

A. **Constitution of India — Arts. 226, 32 and 136 — Maintainability of writ petition — Abuse of process of court/law/fraud on court — Power and duty of writ court where petitioner makes false statement or conceals material facts or misleads the court — Held, in such a case the court may dismiss the petition at the threshold without considering the merits of the claim — Court would be failing in its duty if it does not reject the petition on the said ground — Petitioner in such a case is also required to be dealt with for contempt of court for abusing the process of the court — In the present case, the appellant did not approach the court with clean hands by disclosing all facts — True facts were just contrary to what was sought to be placed before the Court — Hence on this ground alone the appellant cannot claim equitable relief — Appeal is dismissed with costs — Constitution of India — Arts. 226, 32 and 136 — Pleadings — Contempt of Courts Act, 1971 — S. 2(c) — Civil Procedure Code, 1908 — Or. 6 Rr. 1 and 2, Or. 7 R. 1, Or. 8 R. 6-A and S. 35**

B. **Constitution of India — Arts. 226 and 32 — Writ jurisdiction of High Court and Supreme Court — Nature and purpose of, reiterated**

Respondent 1, Steel Authority of India Ltd. i.e. SAIL issued tenders for certain work. The tender was required to be submitted in two parts: (*i*) Techno-commercial parameters (Part I), and (*ii*) Price bid (Part II). For opening of price bid (Part II), existence of minimum three techno-commercially qualified offers was necessary. The tender process had to be cancelled four times due to lack of bidders qualifying the first part. Fifth time the appellant was found eligible and qualified. Since his bid was the lowest, it was accepted and the work was entrusted to him. Respondent 2 challenged the said decision by filing a writ petition, which was dismissed. Thereafter, Respondent 2 filed a review petition, which was allowed and SAIL was directed to open the fourth tender and consider the case of the appellant and Respondent 2 afresh in accordance with law. Against the said order, special leave petitions were filed before the Supreme Court by the appellant and SAIL. But the said petitions were dismissed.

Thereafter, in accordance with the order passed by the High Court in the review petition, the fourth tender was considered and notices were issued to Respondent 2 as also to the appellant. The appellant was represented through his power of attorney i.e. *R*. A decision was taken to entrust the contract to Respondent 2. Meanwhile, several applications were filed before the High Court seeking implementation, clarification and/or modification/alteration of the order passed in the review petition. All the said applications were disposed of together

† Arising out of SLP (C) No. 17005 of 2006. From the Judgment and Order dated 16-2-2005 of the High Court of Orissa, Cuttack in Misc. Cases Nos. 9 and 10 of 2005 in Review Petition No. 4 of 2002

by an order passed in view of a compromise and settlement arrived at between the parties concerned.

Subsequently, the appellant filed an application for recall of the said order of the High Court alleging inter alia that fraud had been perpetrated by the opposite party on him as well as on the court. The said application was rejected. Hence, the present appeal.

The appellant contended that *R* who was earlier his representative and in whose favour he had issued a power of attorney had joined hands with Respondent 2 and was virtually won over by him. The appellant stated that he had revoked and withdrawn the power of attorney issued in favour of *R*. Therefore, *R* had no authority to represent him and appear before SAIL for negotiations for him or enter into any compromise or settlement on his behalf. The appellant also alleged that at the time of hearing of miscellaneous cases, a new advocate appeared on his behalf who was not engaged by him. He stated that some blank papers on which he might have signed earlier came to be utilised for the purpose of making applications for settlement showing that he was agreeable to such settlement. Thus, the appellant submitted that in these circumstances, the order passed by the High Court deserved to be quashed and set aside by remitting the matter to the High Court so that the recall application filed by him be decided afresh after hearing the parties.

On the other hand, SAIL submitted that bald allegations had been levelled against it without there being any material whatsoever in support thereof. SAIL submitted that no communication was sent at any point of time by the appellant to SAIL that though earlier he had issued the power of attorney in favour of *R*, it was subsequently withdrawn or revoked and that *R* would not represent the appellant in future before SAIL. On the contrary, though notice was issued by SAIL and received by the appellant, the appellant did not remain present and sent a communication to SAIL that *R* would represent him. SAIL also submitted that the appeal filed by the appellant was liable to be dismissed on account of suppression of material facts and deliberate misrepresentation by him.

Dismissing the appeal with costs, the Supreme Court

Held :

The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim. (Para 34)

A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses any material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. (Para 36)

As per settled law, the party who invokes the extraordinary jurisdiction of the Supreme Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in the disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of the writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts". An applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court. (Paras 38 and 39)

State of Haryana v. *Karnal Distillery Co. Ltd.*, (1977) 2 SCC 431; *Vijay Kumar Kathuria* v. *State of Haryana*, (1983) 3 SCC 333; *Welcom Hotel* v. *State of A.P.*, (1983) 4 SCC 575 : 1983 SCC (Cri) 872; *Agricultural & Processed Food Products* v. *Oswal Agro Furane*, (1996) 4 SCC 297; *State of Punjab* v. *Sarav Preet*, (2002) 9 SCC 601 : 2002 SCC (L&S) 1085; *Union of India* v. *Muneesh Suneja*, (2001) 3 SCC 92 : 2001 SCC (Cri) 433; *All India State Bank Officers Federation* v. *Union of India*, 1990 Supp SCC 336 : 1991 SCC (L&S) 429 : (1991) 16 ATC 454; *Vijay Syal* v. *State of Punjab*, (2003) 9 SCC 401 : 2003 SCC (L&S) 1112, *relied on*

R. v. *Kensington Income Tax Commrs.*, (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA), *approved*

The appellant has not approached the Court with clean hands by disclosing all facts. An impression is sought to be created as if no notice was ever given to him nor was he informed about the consideration of cases of eligible and qualified bidders in pursuance of the order passed by the High Court in review and confirmed by the Supreme Court. The true facts, however, were just contrary to what was sought to be placed before the Court. A notice was issued by SAIL to the appellant, he received the notice, intimated in writing to SAIL that he had authorised *R* to appear on his behalf. *R* duly appeared at the time of consideration of bids. Bid of Respondent 2 was found to be lowest and was accepted and the contract was given to him (under Tender Notice 4). The said contract had nothing to do with Tender Notice 5 and the contract thereunder. (Paras 33 and 32)

Thus, it is clear that the appellant had not placed all the facts before the Court clearly, candidly and frankly. He has not come forward with all the facts. He has chosen to state the facts in the manner suited to him by giving an impression to the writ court that an instrumentality of the State (SAIL) has not followed the doctrine of natural justice and the fundamental principles of fair procedure. This is not proper. Hence, on that ground alone, the appellant cannot claim equitable relief. But the merits of the case have also been considered and

even on merits, no case has been made out by him to interfere with the action of SAIL, or the order passed by the High Court. (Para 33, 52 and 53)

C. **Fraud — Fraud on court — Effect of — Reiterated, fraud would vitiate all judicial acts, whether in rem or in personam — In review petition filed by Respondent 2 after dismissal of his writ petition, High Court directing the Company concerned i.e. SAIL to reconsider the tender in question taking into account the cases of Respondent 2 and appellant — On dismissal of SLPs filed against the said order, SAIL deciding to grant contract for work to Respondent 2 after opening the tender in the presence of Respondent 2 and *R*, who was representative of appellant and was holding his power of attorney — While deciding applications seeking implementation, clarification and/or modification/alteration of the order passed in the review petition, High Court disposing of the matter in terms of a compromise and settlement arrived at between the parties concerned wherein appellant was represented through *R* — Appellant subsequently filing an application for recall of the said order of the High Court on the basis of allegation that a fraud had been played upon him and the court as *R* representing him before the High Court and SAIL was not authorised to appear and act on his behalf because the power of attorney issued in favour of *R* was withdrawn by the appellant since he had joined hands with Respondent 2 — Allegation also made that some blank papers on which the appellant might have signed earlier were utilised for the purpose of making applications for settlement showing that the appellant was agreeable to such settlement — Held, at no point of time, had the appellant made any grievance against *R* nor had he informed SAIL regarding the withdrawal of the said power of attorney — Hence, it could not be said that the appellant was deceived or cheated, either by SAIL or by anyone else — In the facts and circumstances of the case, the application filed for recall of the High Court's order on the ground of the alleged fraud was rightly dismissed — Civil Procedure Code, 1908 — S. 33 and Or. 20 — Contract Act, 1872 — S. 17 — Penal Code, 1860 — S. 25 — Evidence Act, 1872 — S. 44 — Words and Phrases — "Fraud"**

Fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. In fraud one gains at the loss and cost of another. Even the most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. (Para 27)

S.P. Chengalvaraya Naidu v. *Jagannath*, (1994) 1 SCC 1; *A.V. Papayya Sastry* v. *Govt. of A.P.*, (2007) 4 SCC 221, *followed*

In the present case, pursuant to the order passed by the High Court in review and after dismissal of special leave petitions by the Supreme Court, SAIL issued notices to the parties including the present appellant. Respondent 2 remained present for negotiation. The appellant received the notice but intimated SAIL that *R* would remain present on his behalf. At no point of time, had the appellant made any grievance against *R* nor had he informed SAIL that he had withdrawn the power of attorney issued earlier in favour of *R*. It, therefore, cannot be said that the appellant was deceived or cheated, either by SAIL or by anyone else. (Para 29)

W-M/38705/S

Advocates who appeared in this case :

Mahendra Anand, Senior Advocate (Kamal Behari Panda, Neeraj Kr. Jain, Sanjay Singh, Sandeep Chaturvedi and Ugra Shankar Prasad, Advocates) for the Appellant;

Jagdeep Dhankar, Senior Advocate (Sunil Kr. Jain, Advocate) for Respondents 1, 3 and 4;

Kailash Vasdev, Senior Advocate (Ms Kumud Lata Das, Advocate) for Respondent 2;

Santosh Mishra and Ms Sharmila Upadhyay, Advocates, for the Intervening Party.

Chronological list of cases cited ***on page(s)***

1. (2007) 4 SCC 221, *A.V. Papayya Sastry* v. *Govt. of A.P.* 490*c-d*
2. (2003) 9 SCC 401 : 2003 SCC (L&S) 1112, *Vijay Syal* v. *State of Punjab* 497*c*
3. (2002) 9 SCC 601 : 2002 SCC (L&S) 1085, *State of Punjab* v. *Sarav Preet* 495*c-d*
4. (2001) 3 SCC 92 : 2001 SCC (Cri) 433, *Union of India* v. *Muneesh Suneja* 495*d-e*
5. (1996) 4 SCC 297, *Agricultural & Processed Food Products* v. *Oswal Agro Furane* 495*b-c*
6. (1994) 1 SCC 1, *S.P. Chengalvaraya Naidu* v. *Jagannath* 490*c*
7. 1990 Supp SCC 336 : 1991 SCC (L&S) 429 : (1991) 16 ATC 454, *All India State Bank Officers Federation* v. *Union of India* 495*f*, 496*d*, 496*h*
8. (1983) 4 SCC 575 : 1983 SCC (Cri) 872, *Welcom Hotel* v. *State of A.P.* 495*a*
9. (1983) 3 SCC 333, *Vijay Kumar Kathuria* v. *State of Haryana* 494*b*, 494*e*
10. (1977) 2 SCC 431, *State of Haryana* v. *Karnal Distillery Co. Ltd.* 493*h*
11. (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA), *R.* v. *Kensington Income Tax Commrs.* 492*d*, 492*g-h*, 493*e-f*

The Judgment of the Court was delivered by

C.K. THAKKER, J.— Leave granted.

2. The present appeal arises out of the judgment and order dated 16-2-2005 in Miscellaneous Cases Nos. 9 and 10 of 2005 and Miscellaneous Case No. 57 of 2004 in Review Petition No. 4 of 2002 passed by the High Court of Orissa.

3. Shortly stated, the facts of the case are that Respondent 1, Steel Authority of India Ltd. ("SAIL", for short) issued tenders for raising, transporting and loading of iron ore lumps and fines into railway wagons at Kalta Iron Mine. The tender was required to be submitted in two parts: (*i*) Techno-commercial parameters (Part I), and (*ii*) Price bid (Part II). Price bid of the tender was to be opened only after opening of the techno-commercial parameters and if the bidder was found qualified.

4. In response to the first notice dated 5-6-2000, 19 tender papers were sold. The authorities, however, received response only from 10 persons. Techno-commercial parameters (Part I) was opened and it was found that only one bidder, namely, M/s Ores India Pvt. Ltd. (Respondent 2 herein) was qualified. The process, therefore, had to be cancelled because for opening of price bid (Part II), minimum three techno-commercially qualified offers ought to have been there as per Clause 7.7 of the Purchase/Contract Procedure, 2000. Re-tender was, therefore, issued on 8-9-2000, but it was also required to be cancelled owing to "no perceptible improvement" in the situation. The tender was floated for the third time, which was unsuccessful.

5. The fourth notice inviting tenders was issued on 22-1-2001. It met with the same fate. Then the fifth time, tenders were invited on 7-5-2001 wherein the appellant was found eligible and qualified. His bid was the lowest. The said bid was accepted and the work was entrusted to him.

6. The decision taken by the first respondent (SAIL) came to be challenged by Respondent 2 in the High Court of Orissa by filing a writ petition being OJC No. 3508 of 2002. The main allegation of the petitioner before the High Court (Respondent 2 herein) was that the first respondent (SAIL) cancelled previous four notices inviting tenders only with a view to oblige the appellant and to entrust work to him who could not qualify himself earlier for want of requisite eligible criteria in tender process. Ultimately, the standard as prescribed earlier was relaxed and lowered down in the fifth tender notice. When the present appellant became eligible and qualified, the tenders were opened and his bid was illegally accepted by SAIL. The petition was heard on merits and the High Court vide its judgment and order dated 30-5-2002 dismissed the petition.

7. Respondent 2, however, came to know that he was eligible and yet his case was not considered. He, therefore, filed a review in the High Court which was registered as Review Petition No. 4 of 2002. By a judgment and order dated 3-2-2003, the Division Bench allowed the review petition and directed the authorities (SAIL) to open the fourth tender and consider the case of the petitioner (Respondent 2) and Respondent 3 (the appellant) afresh in accordance with law within a period of one month from the receipt of the writ. The above order was challenged by the appellant by filing special leave petition in this Court. Special leave petition was also filed by SAIL. Both the special leave petitions, however, were dismissed by this Court on 28-11-2003.

8. It is alleged by the appellant that after dismissal of special leave petitions by this Court, SAIL opened the tender in the presence of the second respondent only without intimating the appellant and in his absence. SAIL also negotiated the rates with the second respondent and decided to entrust the work to him. Meanwhile, several applications were filed before the High Court for clarification and/or modification/alteration of the order passed in the review petition. Miscellaneous Case No. 46 of 2004 was filed by Respondent 2 seeking implementation of the order of the High Court dated 3-2-2003. Miscellaneous Case No. 48 of 2004 was filed by SAIL for clarification while Miscellaneous Case No. 57 of 2004 was filed by the appellant to decide disqualification of Respondent 2. Miscellaneous Cases Nos. 9 and 10 of 2005 were also said to have been filed requesting the High Court to dispose of the matters in view of compromise and settlement arrived at between the parties.

9. The High Court by the impugned order dated 16-2-2005, disposed of all the applications on the basis of the settlement said to have been arrived at between the parties which was duly recorded in the order wherein the present appellant was also a party-respondent. The appellant came to know that fraud

had been committed by the respondents upon him as well as upon the Court. He, therefore, filed Miscellaneous Case No. 63 of 2005 on 28-6-2005 to recall the order dated 16-2-2005 alleging inter alia that fraud had been perpetrated by the opposite party on him as well as on the Hon'ble Court. A prayer was also made to investigate the matter by the Central Bureau of Investigation (CBI) or Vigilance Authorities.

10. Since nothing was done by the High Court, he again approached this Court by filing special leave petition which was registered as Special Leave Petition (Civil) No. ... of 2006 (CC No. 2486 of 2006). The said petition came up for hearing before this Court and was dismissed on 12-5-2006 as "not pressed at this stage". It was observed that if the petitioner would make a prayer before the High Court for expeditious disposal of the application to recall the order, the said prayer would be considered appropriately and application would be disposed of accordingly. It is the case of the applicant that even thereafter the recall application had not been placed before the Court and was not decided as directed by this Court. In the circumstances, the appellant approached this Court by filing a special leave petition on 6-9-2006.

11. On 9-10-2006, the matter was placed before this Court for admission hearing. Notice was issued to the respondents. When the matter was placed for further hearing on 8-3-2007, the following order was passed:

> "Service is complete.
>
> Though served, nobody appears on behalf of Respondent 2 (the original petitioner). With a view to give one more opportunity, list the matter after two weeks."

12. According to the appellant, it is only after the above order that the wheels moved very fast. The respondents made all attempts to get the matter on board before the High Court. The Court finally rejected the prayer of the appellant for recalling of the order and dismissed the application. According to the appellant, all those actions were illegal, contrary to law and deserve interference by this Court.

13. We have heard the learned counsel for the parties.

14. Learned counsel for the appellant contended that fraud has been played upon the Court as well as upon the appellant and all orders passed by the High Court deserve to be quashed and set aside only on that ground. According to the appellant, when the miscellaneous petitions were placed before the High Court, the Court was bound to decide them in accordance with law after hearing the parties. Instead, the High Court disposed of all the petitions on the basis of "so-called" settlement said to have been arrived at between the parties. So far as the appellant is concerned, he had never entered into any settlement or compromise.

15. Mr C.M. Ramesh, Chairman and Managing Director of Rithwik Projects who was earlier representative of the appellant and in whose favour the appellant had issued a power of attorney had joined hands with Respondent 2 and was virtually won over by him. The appellant had also

revoked and withdrawn the power of attorney issued in favour of Ramesh and obviously, therefore, he had no authority to represent the appellant and could not have appeared either before SAIL for negotiations for him or entered into any compromise or settlement on behalf of the appellant.

16. It was also contended that though for a substantially long period, application for recalling of order instituted by the appellant had not come on board and he had to approach this Court making grievance about non-hearing of the matter, there was no progress whatsoever. It was only after the order passed by this Court and affording an opportunity to the respondent stating that if he would not appear, an appropriate order would be passed, that Respondent 2 got the matter hurriedly disposed of in the High Court.

17. It was also the allegation of the appellant that at the time of hearing of miscellaneous cases, a new advocate appeared on his behalf who was not engaged by the appellant. Some blank papers on which the appellant might have signed earlier came to be utilised for the purpose of making applications for settlement showing that the appellant was agreeable to such settlement; the settlement was produced before the Court and on that basis, the matter was finally disposed of on the assumption that all the parties had compromised and amicably settled the matter and nothing was required to be done. Accordingly all the three Miscellaneous Petitions Nos. 46, 48 and 57 of 2004 were disposed of. It was submitted that in these circumstances, the order passed by the High Court deserves to be quashed and set aside by remitting the matter to the High Court so that the recall application filed by the appellant be decided afresh after hearing the parties.

18. The learned counsel for Respondent 1 SAIL strongly refuted the allegations levelled by the appellant. An affidavit-in-reply is filed denying all the averments and allegations against SAIL. It was stated that the order passed by the High Court in the review petition was challenged by SAIL, but the special leave petition was dismissed. Thereafter obviously, SAIL was required to act in accordance with the order passed by the High Court in the review petition and confirmed by this Court.

19. It was also submitted by learned counsel for SAIL that bald allegations have been levelled against SAIL by the appellant without there being any material whatsoever in support of such allegations. On the contrary, all throughout SAIL has acted strictly in consonance with law.

20. The counsel stated that in accordance with the order passed by the High Court in the review petition, the fourth tender was considered and notices were issued to Respondent 2 as also to the appellant herein. The appellant received the notice. He addressed a letter to SAIL stating therein that he would remain present in pursuance of the notice issued by SAIL through his power of attorney and representative Ramesh of Rithwik Projects. Accordingly, Rithwik Projects through its Chairman and Managing Director Ramesh appeared and a decision was taken to entrust the contract to Respondent 2. In the circumstances, it cannot be said that any fraud has been committed by SAIL either on the appellant or on the Court.

21. The counsel for SAIL further stated that the appellant has not been affected at all. It was stated that work entrusted to the appellant was under Tender Notice 5 and not under Tender Notice 4. Period of Tender Notice 5 was for three years. The said period of three years was over and the appellant had completed the said work. Thereafter there was no right in favour of the appellant nor could he insist continuance of the contract. The counsel, therefore, submitted that the appeal should be dismissed by this Court.

22. Even otherwise, according to the counsel, no communication was sent at any point of time by the appellant to SAIL that though earlier he had issued power of attorney in favour of Ramesh of Rithwik Projects, it was subsequently withdrawn or revoked and that he would not represent the appellant in future before SAIL. On the contrary, though notice was issued by SAIL and received by the appellant, he did not remain present and sent a communication to SAIL that Ramesh of Rithwik Projects would represent him. It was, therefore, not open to the appellant thereafter to turn round and make wild allegations against SAIL nor is he entitled to any relief.

23. On behalf of Respondent 2, M/s Ores India Pvt. Ltd., the counsel contended that no case whatsoever has been made out by the appellant so as to interfere with the order passed by the High Court. According to the counsel, in fact SAIL had obliged the appellant which was clear from the facts and proved from the decision in the review petition by the High Court. When the fourth tender notice was cancelled, Respondent 2 instituted a writ petition challenging the said action of SAIL. Meanwhile, the fifth tender notice was issued and the bid of the present appellant was accepted by SAIL. The petition filed by Respondent 2 in relation to the fourth tender notice came to be dismissed. Subsequently, however, Respondent 2 came to know that though Respondent 2 was eligible and qualified, SAIL had obliged the present appellant by cancelling the process of the fourth tender notice considering other bidders ineligible and unqualified. He, hence, filed a review petition. In the review petition, the Court was convinced that the grievance voiced by Respondent 2 was correct and the action of SAIL was wholly illegal and improper. The review petition was, therefore, allowed and SAIL was directed to reconsider the tender notice by treating Respondent 2 as eligible and qualified. Even observations were made by the High Court against the conduct of officers of SAIL. The said order was challenged by SAIL as also by the appellant but this Court did not interfere. The fourth tender was thereafter considered. Notices were given to all bidders including the appellant. The bid of Respondent 2 was accepted and the work was entrusted to him. It is, therefore, submitted that the appellant has no reason or ground to make grievance against that action and the appeal filed by him is liable to be dismissed.

24. We have considered the rival contentions of the parties.

25. The learned counsel for the appellant alleged that fraud had been committed by the respondents on the appellant as well as on the Court. Only on that ground, the impugned action of SAIL granting contract in favour of

Respondent 2 deserves to be set aside. According to the counsel, Ramesh, Chairman and Managing Director of Rithwik Projects, in whose favour the appellant had issued power of attorney, had taken side of Respondent 2. The power of attorney was, therefore, later on withdrawn by the appellant and yet he was allowed to be represented for the appellant before SAIL as also before the High Court and the "so-called" compromise and settlement was arrived at. He was not authorised to do so against the interest of the appellant and on his representation, the High Court could not have disposed of the miscellaneous cases.

26. It is well settled that "fraud avoids all judicial acts, ecclesiastical or temporal" proclaimed Chief Justice Edward Coke of England about three centuries before. Reference was made by the counsel to a leading decision of this Court in *S.P. Chengalvaraya Naidu* v. *Jagannath*[1] wherein quoting the above observations, this Court held that a judgment/decree obtained by fraud has to be treated as a nullity by every court.

27. Reference was also made to a recent decision of this Court in *A.V. Papayya Sastry* v. *Govt. of A.P.*[2] Considering English and Indian cases, one of us (C.K. Thakker, J.) stated: (SCC p. 231, para 22)

> "*22.* It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order—by the first court or by the final court—has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings."

The Court defined "fraud" as an act of deliberate deception with the design of securing something by taking unfair advantage of another. In fraud one gains at the loss and cost of another. Even the most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam.

28. So far as the proposition of law is concerned, there can be no two opinions. The learned counsel for the respondents also did not dispute the principles laid down in the above decisions as also in several other judgments. They, however, stated that on the facts and in the circumstances of the case, the ratio laid down in the above cases has no application.

29. As already adverted to earlier, according to SAIL, pursuant to the order passed by the High Court in review and after dismissal of special leave petitions by this Court, it issued notices to the parties including the present appellant. Respondent 2 remained present for negotiation. The appellant received the notice but intimated SAIL that Ramesh of Rithwik Projects would remain present on his behalf. At no point of time, had the appellant made any grievance against Ramesh nor had he informed SAIL that he had withdrawn the power of attorney issued earlier in favour of Ramesh. It,

1 (1994) 1 SCC 1
2 (2007) 4 SCC 221

therefore, cannot be said that the appellant was deceived or cheated, either by SAIL or by anyone else.

30. The argument of the learned counsel for the appellant of violation of principles of natural justice and fair play also has no force. When notice was issued by SAIL to the appellant and he had informed SAIL by a written communication that Ramesh would remain present as his representative, it does not lie in the mouth of the appellant that SAIL had acted in breach of natural justice.

31. SAIL in its written submissions contended that the appeal filed by the appellant is liable to be dismissed on account of suppression of material facts and deliberate misrepresentation by him. An impression was sought to be created by the appellant, submitted the counsel, that the appellant could not complete the work given to him and it was assigned to Respondent 2. It is clear that after Tender Notice 4 was cancelled, albeit illegally as held by the High Court and by this Court, Tender Notice 5 was issued. The bid of the appellant was accepted and the contract was given to him. It was for 2002-2005 i.e. for three years. The appellant was allowed to complete the said period and the contract had not been terminated or abruptly discontinued during the said period. It was over in 2005 by efflux of time. What was done by SAIL was to implement the order of the High Court in connection with Tender Notice 4 which was not acted upon. In that process, parties were called for negotiations, offer of Respondent 2 was accepted and work was given to him. It is, therefore, not correct to say that the appellant had suffered. The appellant wanted to continue the work even though the period of Tender Notice 5 was over and he had taken the benefit thereunder. The appellant had no right or reason to make grievance so far as Tender Notice 4 was concerned. Hence, the appellant is not entitled to any relief.

32. We find considerable force in the argument of the learned counsel. From the record, it is clear that Tender Notice 4 was wrongly ignored and no process thereunder was undertaken by SAIL. What was granted to the appellant was a contract under Tender Notice 5. The appellant was working under Tender Notice 5. Meanwhile, the review of Respondent 2 against Tender Notice 4 was allowed and after the order passed by this Court dismissing special leave petitions, SAIL implemented the said order, bid of Respondent 2 was accepted and the contract was given to him. To us, SAIL is right in urging that the appellant cannot insist that even under the contract under Tender Notice 5, he should be allowed to continue the work. We, therefore, see no substance in the argument of the learned counsel for the appellant and the contention is rejected.

33. The learned counsel for SAIL is also right in urging that the appellant has not approached the Court with clean hands by disclosing all facts. An impression is sought to be created as if no notice was ever given to him nor was he informed about the consideration of cases of eligible and qualified bidders in pursuance of the order passed by the High Court in review and confirmed by this Court. The true facts, however, were just contrary to what

was sought to be placed before the Court. A notice was issued by SAIL to the appellant, he received the notice, intimated in writing to SAIL that he had authorised Ramesh of Rithwik Projects to appear on his behalf. Ramesh duly appeared at the time of consideration of bids. Bid of Respondent 2 was found to be lowest and was accepted and the contract was given to him (under Tender Notice 4). The said contract had nothing to do with Tender Notice 5 and the contract thereunder had been given to the appellant herein and he had completed the work. Thus, it is clear that the appellant had not placed all the facts before the Court clearly, candidly and frankly.

34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of *R.* v. *Kensington Income Tax Commrs.*[3] in the following words: (KB p. 514)

> "... it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—it says facts, not law. He must not misstate the law if he can help it—*the court is supposed to know the law. But it knows nothing about the facts*, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement." (emphasis supplied)

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

37. In *Kensington Income Tax Commrs.*[3] Viscount Reading, C.J. observed: (KB pp. 495-96)

> "... Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the

3 (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)

affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. *But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit.*"

(emphasis supplied)

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".

39. If the primary object as highlighted in *Kensington Income Tax Commrs.*[3] is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.

40. Let us consider some important decisions on the point.

41. In *State of Haryana* v. *Karnal Distillery Co. Ltd.*[4] almost an agreed order was passed by the Court that on expiry of the licence for manufacturing

4 (1977) 2 SCC 431

of liquor on 6-9-1976, the distillery would cease to manufacture liquor under the licence issued in its favour. Then, the Company filed a petition in the High Court for renewal of licence for manufacture of liquor for 1976-1977, and the Court granted stay of dispossession. In appeal, the Supreme Court set aside the order granting stay of dispossession on the ground that the petitioner Company in filing the petition in the High Court had misled it and started the proceedings for oblique and ulterior motive.

42. In *Vijay Kumar Kathuria* v. *State of Haryana*[5] it was the case of the petitioners that the provisional admissions granted to them were not cancelled and they were continuing their studies as postgraduate students in Medical College on the relevant date. On the basis of that statement, they obtained an order of status quo. The Supreme Court ordered inquiry and the District Judge was asked to submit his report whether the provisional admissions granted to the petitioners were continued till 1-10-1982 or were cancelled. The report revealed that to the knowledge of the petitioners their provisional admissions were cancelled long before 1-10-1982 and thus, the petitioners had made false representation to the Court and obtained a favourable order. Dismissing the petition, this Court observed: (SCC p. 334, para 1)

> "*1.* ... But for the misrepresentation this Court would never have passed the said order. By reason of such conduct they have disentitled themselves from getting any relief or assistance from this Court and the special leave petitions are liable to be dismissed."

43. Deprecating the reprehensible conduct of the petitioners as well as of their counsel, the Court stated: (*Vijay Kumar Kathuria case*[5], SCC pp. 334-35, para 3)

> "*3.* Before parting with the case, however, we cannot help observing that the conduct or behaviour of the two petitioners as well as their counsel (Dr. A.K. Kapoor who happens to be a medico-legal consultant practising in courts) is most reprehensible and deserves to be deprecated. The District Judge's report in that behalf is eloquent and most revealing as it points out how the two petitioners and their counsel (who also gave evidence in support of the petitioner's case before the District Judge) have indulged in telling lies and making reckless allegations of fabrication and manipulation of records against the college authorities and how in fact the boot is on their leg. It is a sad commentary on the scruples of these three young gentlemen who are on the threshold of their careers. In fact, at one stage we were inclined to refer the District Judge's report both to the Medical Council as well as the Bar Council for appropriate action but we refrained from doing so as the petitioners' counsel both on behalf of his clients as well as on his own behalf tendered unqualified apology and sought mercy from the court. *We, however, part with the case with a heavy heart expressing our strong disapproval of their conduct and behaviour....*" (emphasis supplied)

5 (1983) 3 SCC 333

44. In *Welcom Hotel* v. *State of A.P.*[6] certain hoteliers filed a petition in this Court under Article 32 of the Constitution challenging the maximum price of foodstuffs fixed by the Government contending that it was uneconomical and obtained ex parte stay order. The price, however, was fixed as per the agreement between the petitioners and the Government but the said fact was suppressed. Describing the fact as material, the Court said: (SCC pp. 580-81, para 7)

> "7. ... Petitioners who have behaved in this manner are not entitled to any consideration at the hands of the Court."

45. In *Agricultural & Processed Food Products* v. *Oswal Agro Furane*[7] the petitioner filed a petition in the High Court of Punjab and Haryana which was pending. Suppressing that fact, it filed another petition in the High Court of Delhi and obtained an order in its favour. Observing that the petitioner was guilty of suppression of "very important fact", this Court set aside the order of the High Court.

46. In *State of Punjab* v. *Sarav Preet*[8] *A* obtained relief from the High Court on her assertion that a test in a particular subject was not conducted by the State. In an appeal by the State, it was stated that not only the requisite test was conducted but the petitioner appeared in the said test and failed. Observing that the petitioner was under an obligation to disclose the said fact before the High Court, this Court dismissed the petition.

47. In *Union of India* v. *Muneesh Suneja*[9] the detenu challenged an order of detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) by filing a petition in the High Court of Delhi which was withdrawn. Then he filed a similar petition in the High Court of Punjab and Haryana wherein he did not disclose the fact as to filing of the earlier petition and withdrawal thereof and obtained relief. In an appeal by the Union of India against the order of the High Court, this Court observed that non-disclosure of the fact of filing a similar petition and withdrawal thereof was indeed fatal to the subsequent petition.

48. A special reference may be made to a decision of this Court in *All India State Bank Officers Federation* v. *Union of India*[10]. In that case, promotion policy of the Bank was challenged by the Federation by filing a petition in this Court under Article 32 of the Constitution. It was supported by an affidavit and the contents were affirmed by the President of the Federation to be true to his "personal knowledge". It was stated: (SCC p. 337, para 2)

> "2. ... [T]he petitioners have not filed any other similar writ petition in this Honourable Court or any other High Court."

6 (1983) 4 SCC 575 : 1983 SCC (Cri) 872
7 (1996) 4 SCC 297
8 (2002) 9 SCC 601 : 2002 SCC (L&S) 1085
9 (2001) 3 SCC 92 : 2001 SCC (Cri) 433
10 1990 Supp SCC 336 : 1991 SCC (L&S) 429 : (1991) 16 ATC 454

In the counter-affidavit filed on behalf of the Bank, however, it was asserted that the statement was "false". The Federation had filed a writ petition in the High Court of Andhra Pradesh which was admitted but interim stay was refused. Another petition was also filed in the High Court of Karnataka. It was further pointed out that the promotion policy was implemented and 58 officers were promoted who were not made parties to the petition. In the affidavit-in-rejoinder, once again, the stand taken by the petitioner was sought to be justified. It was stated: "The deponent had no knowledge of the writ petition filed before the High Court of Andhra Pradesh, hence as soon as it came to his knowledge the same has been withdrawn. Secondly, the petitioners even today do not know the names of all such 58 candidates who have been promoted/favoured." It was contended on behalf of the Bank that even that statement was false. Not only the petitioner Federation was aware of the names of all the 58 officers who had been promoted to the higher post, but they had been joined as party-respondents in the writ petition filed in the Karnataka High Court, seeking stay of promotion of those respondents. It was, therefore, submitted that the petitioner had not come with clean hands and the petition should be dismissed on that ground alone.

49. "Strongly disapproving" the explanation put forth by the petitioner and describing the tactics adopted by the Federation as "abuse of process of court", this Court observed: (*All India State Bank Officers Federation case*[10], SCC pp. 340-41, paras 9 & 11)

> "*9.* ... There is no doubt left in our minds that the petitioner has not only suppressed material facts in the petition but has also tried to abuse judicial process. ...
>
> * * *
>
> *11.* Apart from misstatements in the affidavits filed before this Court, the petitioner Federation has clearly resorted to tactics which can only be described as abuse of the process of court. The simultaneous filing of writ petitions in various High Courts on the same issue though purportedly on behalf of different associations of the officers of the Bank, is a practice which has to be discouraged. Sri Sachar and Sri Ramamurthi wished to pinpoint the necessity and importance of petitions being filed by different associations in order to discharge satisfactorily their responsibilities towards their respective members. We are not quite able to appreciate such necessity where there is no diversity but only a commonness of interest. All that they had to do was to join forces and demonstrate their unity by filing a petition in a single court. *It seems the object here in filing different petitions in different courts was a totally different and not very laudable one.*" (emphasis supplied)

50. "Deeply grieved" by the situation and adversely commenting on the conduct and behaviour of the responsible officers of a premier bank of the country, the Court observed: (*All India State Bank Officers Federation case*[10], SCC p. 342, para 12)

"*12.* We have set out the facts in this case at some length and passed a detailed order because we are deeply grieved to come across such conduct on the part of an association, which claims to represent high placed officers of a premier bank of this country. One expects such officers to fight their battles fairly and squarely and not to stoop low to gain, what can only be, temporary victories by keeping away material facts from the court. It is common knowledge that, of late, statements are being made in petitions and affidavits recklessly and without proper verification not to speak of dishonest and deliberate misstatements. *We, therefore, take this opportunity to record our strong and emphatic disapproval of the conduct of the petitioners in this case and hope that this will be a lesson to the present petitioner as well as to other litigants and that at least in future people will act more truthfully and with a greater sense of responsibility.*" (emphasis supplied)

51. Yet in another case in *Vijay Syal* v. *State of Punjab*[11] this Court stated: (SCC p. 420, para 24)

"*24.* In order to sustain and maintain the sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost. Such party must be ready to take the consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters is either mistaken or lightly taken instead of learning a proper lesson. Hence there is a compelling need to take a serious view in such matters to ensure expected purity and grace in the administration of justice."

52. In the case on hand, the appellant has not come forward with all the facts. He has chosen to state the facts in the manner suited to him by giving an impression to the writ court that an instrumentality of State (SAIL) has not followed doctrine of natural justice and fundamental principles of fair procedure. This is not proper. Hence, on that ground alone, the appellant cannot claim equitable relief. But we have also considered the merits of the case and even on merits, we are convinced that no case has been made out by him to interfere with the action of SAIL, or the order passed by the High Court.

53. For the foregoing reasons, the appeal deserves to be dismissed and is accordingly dismissed with costs.

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11 (2003) 9 SCC 401 : 2003 SCC (L&S) 1112

RFA (OS) 78/2011

P.K. Gupta v. Essaar Universal Pvt. Ltd.

2011 SCC OnLine Del 4860

(BEFORE PRADEEP NANDRAJOG AND S.P. GARG, JJ.)

P.K. Gupta & Anr. ..... Appellants

Mr. S.K. Chachra, Advocate with Mr. Gaganpreet Chawla, Advocate.

v.

Essaar Universal Pvt. Ltd. & Anr. ..... Respondents

Mr. P.R. Agarwal, Advocate with Mrs. Anju Bhushan and Mr. Y.R. Sharma, Advocates.

RFA (OS) 78/2011
Decided on November 21, 2011

PRADEEP NANDRAJOG, J.

1. A suit, under Order XXXVII of the Code of Civil Procedure, was filed by the respondent against M/s. Prestige H.M. Poly Containers Ltd. (respondent No. 2) and its Managing Director and Director respectively i.e. appellants No. 1 and 2. Decree prayed for was in sum of Rs. 20,40,023/- (Rupees Twenty Lakhs Forty Thousand and Twenty Three only). It had four elements:- (i) Principal Amount covered by 5 cheques exhibits P-5 to P-9 each in the sum of Rs. 2,90,495/- i.e. Rs. 14,52,475/-; (ii) service charges as per lease agreement Ex.P-1: Rs. 5,79,048/- (Rupees Five Lakhs Seventy Nine Thousand and Forty Eight only); (iii) expenses towards legal notice: Rs. 7,700/- (Rupees Seven Thousand and Seven Hundred only); and (iv) bank charges: Rs. 800/- (Rupees Eight Hundred only). Liability sought to be enforced was stated to be joint and several.

2. The suit was instituted on 28th June 1997 and after a protracted battle, leave to defend was granted to the appellants and respondent No. 2 upon the condition that the appellants and respondent No. 2 would deposit Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) towards not only the sum claimed in the suit but even to secure the interest which may accrue if claim was decreed.

3. The sum of Rs. 25,00,000/- was deposited with the Registry of this Court on 21.11.2002. The amount was invested in a fixed deposit and ultimately the respondent No. 1 withdrew the amount deposited along with accrued interest thereon on 12.3.2004 after furnishing security.

4. 6 issues were settled between the parties on the basis of the pleadings as under:-

"1. Whether the plaintiff is incorporated under Companies Act, 1956 and the plaint has been signed verified and filed by a duly authorized person? OPP.

2. Whether the agreement dated 10.9.1993 and the personal guarantees are not duly stamped and executed documents? If so, its effect. OPD.

3. Whether the plaintiff is entitled to recover any amount? If so, what amount and from which of the defendants. OPP.

4. Whether the defendant is entitled to claim adjustment of Rs. 30,31,250/- on account of margin money? OPD.

5. Whether the plaintiff is entitled to claim any service charges from the defendants? If so, at what rate, what amount and from which date? OPP.

6. Relief."

5. Reason why aforesaid issues were settled was that in the plaint it was asserted by the plaintiff that it was a company registered under the Companies Act 1956 and had taken over the company M/s. Rustagi Engineering Udyog Pvt. Ltd. as per a scheme sanctioned, which company had executed a lease agreement dated 10.09.1993 with respondent No. 2 and had leased out 1250 sets of M.S. Moulds on the covenants contained in the agreement, obliging respondent No. 2 to pay lease rental in sum of Rs. 2,90,495/- for each quarter of the year, and since the lease was for three years, for the twelve quarters, twelve cheques, each in sum of Rs. 2,90,495/- were issued by respondent No. 2 and appellant No. 1 and appellant No. 2 executed personal guarantee(s) to secure any outstanding due and payable to the plaintiff by respondent No. 2. The company, M/s. Rustagi Engineering Udyog Pvt. Ltd. had received Rs. 30,31,250/- (Rupees Thirty Lakhs Thirty One Thousand Two Hundred and Fifty only) towards margin money as per the agreement. It was pleaded that service charges, in case lease rentals went into arrears, were payable at 3% compounded quarterly as per the agreement. It was alleged that whereas seven cheques pertaining to seven quarters of the lease period were duly honoured, the respondent No. 2 company defaulted qua two quarters as the cheques relatable thereto were returned dishonoured by the banker on whom the cheques were drawn. The three other cheques were not presented for encashment but the moulds were retained by the respondent No. 2 for another one year and thus on expiry of three years after commencement of the lease, entire lease rental for the twelve quarters had to be paid and since it was paid only for seven quarters, amount due for the remaining five quarters was liable to be paid to the plaintiff.

6. In the written statement filed, the signing of the agreement was not denied. It was not denied that the moulds were received by respondent No. 2 and that the said respondent paid margin money in sum of Rs. 30,31,250/-. But it was pleaded, in para 3 of the preliminary objections as under:-

"That the suit is liable to be dismissed inasmuch as the lease agreement and the personal guarantees annexed with the plaint are neither duly executed in accordance with law nor properly stamped and, therefore, the same cannot become the basis for the claim made by the plaintiff in the case."

7. It was not denied that lease rental in sum of Rs. 2,90,495/- per quarter was payable. It was not denied that lease rental pertaining to five quarters was not paid. It was pleaded that the margin money paid by appellant No. 1 in sum of Rs. 30,31,250/- was retained by the plaintiff which came to much more than the unpaid lease rental. Admitting the default clause liability to pay service charges @3% compounded quarterly if lease rentals went into arrears, it was pleaded that the amount was by way of penalty and being excessive was unconscionable and hence not enforceable.

8. We would like to speak a word here with respect to issue No. 2.

9. It is apparent that issue No. 2 was settled in view of preliminary objection No. 3 i.e. that the agreement and the personal guarantee(s) were not duly stamped and

executed documents. On what plea was it alleged that they were not duly stamped? And why were they not duly executed? Nothing was pleaded. As would be evident hereinafter the only argument predicated qua them was that the stamp paper(s) on which they were scribed were purchased from a stamp vendor in the State of Uttar Pradesh but the documents were executed at Delhi and hence it was urged that the stamp duty exigible had to be paid at Delhi i.e. the stamp papers had to be purchased from a stamp vendor at Delhi.

10. Now, the plea as laid in paragraph 3 of the preliminary objection (contents noted in para 6 above) would show that pertaining to the documents not being properly stamped, any prudent person of even ordinary intelligence would think that the challenge is on the inadequacy of the stamp duty paid and not that it was paid in a wrong State.

11. We need to highlight that the fundamental principles, essential to the purpose of a pleading is to place before a Court the case of a party with a warranty of truth to bind the party and inform the other party of the case it has to meet. It means that the necessary facts to support a particular cause of action or a defence should be clearly delineated with a clear articulation of the relief sought. It is the duty of a party presenting a pleading to place all material facts and make reference to the material documents, relevant for purposes of fair adjudication, to enable the Court to conveniently adjudicate the matter. The duty of candour approximates '*uberrima fides*' when a pleading, duly verified, is presented to a Court. In this context it may be highlighted that deception may arise equally from silence as to a material fact, akin to a direct lies. Placing all relevant facts in a civil litigation cannot be reduced to a game of hide and seek. In the decision reported as 2011 (6) SCALE 677 *Rameshwari Devi* v. *Nirmala Devi* the Supreme Court highlighted that pleadings are the foundation of a claim of the parties and where the civil litigation is largely based on documents, it is the bounden duty and obligation of the Trial Judge to carefully scrutinize, check and verify the pleadings and the documents filed by the parties.

12. Highlighting that pleadings must be sufficient and consequence of laconic pleadings, which cannot be permitted, and the failure to plead sufficient details amounting to an insufficient plea, in the decision reported as AIR 1999 SC 1464 *D.M. Deshpande* v. *Janardhan Kashinath Kadam*, the Supreme Court observed qua a claim for tenancy that in the absence of a concise statement of material facts relating to the tenancy, the mere raising of a plea of tenancy is not enough for the purpose of raising an issue on the question. The Court cautioned against a pedantic approach to the problem and directed that the Courts must ascertain the substance of the pleading and not the form, in order to determine the same. It was observed that pertaining to a claim of tenancy, the exact nature of the right which is claimed has to be set-forth and no issue pertaining to existence of tenancy could be framed on a vague plea.

13. Thus, we are of the opinion that issue No. 2 ought not to have been even settled, inasmuch as it was not pleaded as to in what manner the documents were not properly stamped and that in what manner they were not properly executed.

14. On the issue of execution qua the three documents, we simply note that as regards the two personal bonds, they bear on their face the signature(s) of the executant thereof, and as regards the agreement, we find that it bears the signatures of the authorized signatory of the respondent No. 2, with the stamp of the company embossed thereunder. If signature(s) of an executant appears on a document, in what manner it is alleged that the document has not been properly executed needs to be pleaded.

15. Holding that on the existing pleadings, issue No. 2 ought not to have even been settled, we shall be discussing on the subject as was debated before the learned Single Judge while dealing with the submissions urged during hearing of the appeal.

16. Issue No. 1 decided against the appellants and respondent No. 2 was not pressed before us. Only submissions urged were to the admissibility of the lease agreement and the personal guarantee(s) and qua the sum decreed, we shall be noting hereinafter such facts as are relevant to deal with the same.

17. Before issues were settled, admission/denial was completed and it needs to be highlighted that during admission/denial, the agreement was admitted as Ex.P-1 and the personal guarantee bond(s) were admitted as Ex.P-3 and Ex.P-4. The five cheques were admitted as Ex.P-5 to Ex.P-9.

18. One witness each was examined by the parties and Mr. Sudhir Rustagi PW-1 tendered by way of affidavit his examination-in-chief and once again referred to the aforenoted documents as having been duly executed and suffice would it be to highlight that at no stage was the admissibility of the documents questioned.

19. On the issue of admissibility, with reference to Sections 33 and 35 of the Stamp Act and Section 36 thereof, the learned Single Judge has held that the rigors of Sections 33 and 35 of the Stamp Act were whittled down by Section 36 thereof which prohibited the questioning of any instrument which was admitted in evidence, except to the extent provided in Section 61 thereof. The learned Single Judge has held that when the documents were tendered in evidence and proved, no contemporaneous objection qua their admissibility being raised, it was too late in the day for the appellants to have argued with reference to the admissibility thereof.

20. We find sufficient force in the contention urged by learned counsel for the appellants that they had raised an issue pertaining to the admissibility of the said documents in the written statement filed and it was not a case where question of admissibility was not predicated at the earliest. Counsel urged that the mere formality of not repeating the objection qua admissibility, when evidence was led would not mean that no objection qua admissibility with reference to stamp duty was not raised.

21. But, we hold against the appellants for the reason, we have already held, that on the vague pleading no issue was required to be settled qua the adequacy or inadequacy of the three documents inasmuch as we find that adequate stamp duty was paid and the objection being raised was, as finally argued, that the stamp duty was paid in the State of Uttar Pradesh. If this was the precise objection raised, the opposite party could have taken recourse to corrective measure as per Section 31 of the Stamp Act.

22. Besides, we find that there is no evidence that the documents were not executed in the State of Uttar Pradesh, but were executed at Delhi.

23. In the teeth of the agreement Ex.P-1 and admission of the fact that five cheques in sum of Rs. 2,90,495/- pertaining to five quarters remained unpaid, the learned Single Judge has held that the sum of Rs. 14,52,475/- was payable, for the reason it was not disputed by the appellants and respondent No. 2 that the leased moulds had not only been retained by respondent No. 2 but even used all throughout.

24. The argument advanced before us by learned counsel for the appellants was that once the cheque for the eighth lease quarter was dishonoured, the plaintiff ought to

have returned the margin money and taken back the moulds.

25. The argument has no legs to stand on, for the reason, a perusal of the lease agreement Ex.P-1 would reveal that the value of the leased moulds, called the asset, as per the Annexure to the lease was Rs. 60,62,500/- (Rupees Sixty Lakhs Sixty Two Thousand and Five Hundred only) and half of which i.e Rs. 30,31,250/- was the margin money. The term of the lease was 36 months and vide serial number eight of the Schedule to the Agreement, after 36 months the lease could be renewed at a lease rental of only 1%. We now note a few important clauses of the lease. They are as under:-

"**2.3** Without affecting the Lessor's right or the Lessee's obligations to pay the lease rentals of the fixed period specified herein, in the event of Lessee being in arrears of such rentals, such arrears of lease rentals shall carry service charges at the rate of three percent (3%) per month compounded quarterly of each instalment of lease rent or part thereof that remain unpaid. The Lessor will be entitled to Bank charges, collection charges or any other expenses borne by the Lessor. The Lessor will immediately claim a service charge @ Rs. 150.00 for every dishonoured cheque, plus legal expenses for trial, if any, under the Negotiable Instrument Act which the Lessee shall pay to the Lessor on demand.

2.4 Upon termination of this lease by efflux of time or otherwise the Lessee shall, at its own cost and expenses forthwith deliver or cause to be delivered to the Lessor the Assets, at such time and place as may be directed by the Lessor, in good repair, order and condition (subject to normal and tear).

xxxxxx

4.16 On demand pay to the lessor all costs, charges and expenses incurred by the lessor in connection with the Assets (including inspection thereof as mentioned in Clause 4.10 above) or for the preservation, protection or enforcement of the lessor's right or for retaking or repossession of the Assets with service charges thereon at the rate of three per cent (3%) per month, from the date of the incurring such costs, charges and expenses by the lessor, till payment.

xxxxxx

7.3 If the lessee fails to pay the moneys referred to in 7.1 and 7.2 above, the lessor may pay the same and the lessee shall reimburse all sums so paid together with service charges thereon at the rate of three per cent (3%) per month from the date of payment till such reimbursement.

xxxxxx

9.2.2 Without prejudice to and in addition to the lessor's rights provided in Clause 9.2.1 hereinabove, the lessor shall also be entitled to recover from the lessee and the lessee shall be bound to pay to the lessor the following amounts, viz.:

a) the entire amount of the rentals for the Fixed Period of the lease computed in the manner set out in the Schedule attached as if the lease had not been terminated to the end and intend that the lessee shall pay to the lessor not only arrears of rentals upto the date of termination of the lease but also such further amount for the then unexpired residue of the term which the lessee would have been bound to pay to the lessor had the lease continued, and

b) the cost of all repairs and maintenance of the Assets to render and maintain it on good working order and condition and all costs, charges and expenses incurred by the lessor in repossessing the Assets and in enforcing its remedies howsoever occasioned. The parties hereto agree and record that the amounts to be paid by the lessee to the lessor or aforesaid have been bonafide and satisfactorily estimated to be the proper and reasonable amount that may be suffered by the lessor as and by way of liquidated damages.

25. The annexure to the lease reads as under:-

ANNEXURE/SCHEDULE TO LEASE AGREEMENT FORMING PART OF THE LEASE AGREEMENT DATED 10/09/1994

0.1.

LESSOR

RUSTAGI ENGINEERING UDYOG (P) LIMITED 201/3, PANKAJ CHAMBERS COMMERCIAL COMPLEX PREET VIHAR, DELHI-110 092

0.2.

LESSEE

PRESTIGE HM - POLYCONTAINERS LIMITED 8, SHREYAS OPP. AIR INDIA, NARIMAN POINT BOMBAY-400 020 & DELHI OFFICE AT A-7, MAHARANI BAGH, NEW DELHI-110 065

0.3.

DESCRIPTION OF ASSETS

1250 SETS OF M.S. MOULDS @ Rs. 4850/- EACH (AS PER DRAWING ATTACHED AND FORMING PART OF THE LEASE AGREEMENT)

0.4.

SUPPLIER

M/S. SHASHANK POLY-PLAST LIMITED B-90 & B-107, SECTOR 6, NOIDA, DISTT. GHAZIABAD, U.P. - 201 301.

0.5.

VALUE OF ASSETS

Rs. 60,62,500/-

0.6.

LEASE TENOR

36 Months

0.7.

LEASE RENTAL STRUCTURE

Rs. 2,90,495/- per quarter continuously for 12 quarters payable in advance, at par at Deli commencing from the date of disbursal.

0.8.

RENEWAL OPTION

@ 1%

0.9.

REPAIR, MAINTENANCE & INSURANCE

To be undertaken by the lessee at the lessee's cost. The lessee providing the appropriate insurance of the leased asset throughout the period of lease designating the lessor and/or its nominees as loss payees.

0.10.

MARGIN MONEY

Rs. 30,31,250.00/-

0.11

DEPRECIATION ELIGIBILITY

The moulds will be eligible for 100% write off in the financial year ending 31.3.1994 under First Proviso to Sub Clause (ii) of Clause (1) of Section 32 of the Income Tax Act, 1961

The lease rental structure as detailed above has been arrived at on the express assumption that the asset on lease as detailed above will be subject to depreciation at a rate of 100% i.e. in the accounting year ended 31.03.1994. It is also hereby agreed that all mention of assets as detailed above in the new singular shall mean to include the plural and vice versa."

26. Suffice would it be to note that vide clause 9.1 and its various sub-clauses, upon default by the lessee, the lease could be determined and vide clause 9.2.2, contents whereof have been noted hereinabove, notwithstanding the lease being determined, the entire lease rentals were payable. Thus, it is apparent that the plaintiff was entitled to a lease rental for the full twelve quarters.

27. It is not the case of the appellants that they ever returned or even offered to return the moulds. They continued to use the same.

28. The lease in question has to be understood with business efficacy. Moulds are perishable industrial tools and with passage of time a mould becomes scrap. The lease agreement recognizes this fact by reducing its value to virtually nil after three years, evidenced by the fact that after three years the lease rental agreed to was only 1%. The last part of the schedule reads: *The lease rental structure as detailed above has been arrived at on the express assumption that the asset on lease as detailed above will be subject to depreciation at a rate of 100% i.e. in the accounting year ended 31.03.1994. It is also hereby agreed that all mention of assets as detailed above in the new singular shall mean to include the plural and vice versa*. It is apparent that the

moulds were subject to depreciation as recognized under the tax laws and after three years full depreciation of 100% was claimed. So understood, it is apparent that the so-called margin money was half the price of the moulds and the remainder half was agreed to be paid as a lease rental and in this connection we simply highlight that the twelve quarterly lease rentals @ Rs. 2,90,495/- per quarter multiplied by 12 comes to Rs. 34,85,940/- and this explains that on the remainder half investment, in sum of Rs. 30,31,250/-, an inbuilt interest element had been factored; being Rs. 4,54,690/-.

29. Thus we agree with the learned Single Judge that the plaintiff was entitled to receive Rs. 14,52,475/- from respondent No. 2 and since its Managing Director and Director i.e. the appellants had stood personal guarantee(s), the two were jointly and severally liable to the plaintiff.

30. An argument was advanced that the plaintiff was obliged in law to mitigate the loss as per the explanation to Section 73 of the Contract Act. It was urged that upon default being committed by the respondent No. 2 the plaintiff was obliged to seize the moulds and sell them in the market at the best price and adjust the same from the balance outstanding.

31. The learned Single Judge has correctly held that the margin money, reflecting 50% of the value of the moulds, was to secure the moulds and there was thus no question of adjusting the margin money towards lease rentals.

32. Pot calling a kettle black! The appellants retained the moulds and never offered to return the same. Till the moulds came into possession of the plaintiff it could not sell the same. Having not offered to return the moulds, which the plaintiff could not seize forcefully as law did not permit it to do so, it does not lie in the mouth of the appellants to so urge.

33. The claim for Rs. 5,79,048/-, being 3% of the outstanding lease rental compounded quarterly, payable as per clause 2.3 and 4.16 of the lease agreement has rightfully being denied by the learned Single Judge holding the same to be penal interest under the garb of service charges. The learned Single Judge has rightly observed that the plaintiff was not to provide any service under the agreement. The learned Single Judge has rightly opined the same to be a penal provision akin to a penal clause pertaining to damages and has rightly held that for money outstanding a reasonable rate of interest is to be paid to recompense the plaintiff.

34. Thus, the learned Single Judge has passed a decree in sum of Rs. 14,52,475/- (Rupees Fourteen Lakhs Fifty Two Thousand Four Hundred and Seventy Five only) with interest @10% compounded annually till date of payment. Costs and lawyer's fee quantified at Rs. 55,000/- has also been decreed.

35. On the interest being compounded per annum, suffice would it be to state that as held in the decision reported as 2010 SC 1511 *State of Haryana* v. *S.L. Arora & Co.*, unless a statute or a contract so specifies, Courts do not generally, award interest by compounding the same.

36. As noted hereinabove, the plaintiff incurred a capital expenditure of Rs. 60,62,500/- to purchase the moulds and leased the same to respondent No. 2. Receiving Rs. 30,31,250/- i.e half the capital towards margin money, balance capital expenditure incurred in sum of Rs. 30,31,250/- was to be recovered by way of lease rentals in sum of Rs. 2,90,495/- per quarter. As noted above, the lease being for a period of three years, having twelve quarters, the lease rental recoverable was Rs.

34,85,940/-. The difference between the balance capital expenditure incurred and what was recoverable was Rs. 4,54,690/- (Rs. 34,85,940/- - Rs. 30,31,250/-). In other words, the plaintiff was to get a return of Rs. 4,54,690/- on the balance capital of Rs. 30,31,250/- which gives a return of about 5% per annum on the balance investment of Rs. 30,31,250/-. Under the circumstances, a reasonable rate of interest on the sum of Rs. 14,52,475/- (which already has an inbuilt element of about 5% interest per annum) would be 8% simple interest per annum.

37. The appeal is partially allowed. Suit filed by the plaintiff is decreed against the defendants i.e. the appellants and respondent No. 2, whose liability shall be joint and several, in sum of Rs. 14,52,475/- with interest @8% per annum from date of suit till realization. We maintain the cost imposed by the learned Single Judge, and as regards the appeal, would leave the parties to bear their own costs.

38. Noting that the appellants and respondent No. 2 had jointly deposited Rs. 25,00,000/- vide demand draft dated 18.11.2002 with the Registry of this Court which was invested in a fixed deposit and along with the accrued interest was paid to the plaintiff on 12.3.2004, we clarify that the interest awarded by us on sum of Rs. 14,52,475/- @8% per annum would reckon from the date when suit was filed till 12.3.2004 and the benefit of the interest which accrued on the FDR on the deposit of Rs. 25,00,000/- would be to the credit of the appellants and respondent No. 2. We note that as per decree passed by us, money would be refundable to the appellants and respondent No. 2 and for which the appellants would be entitled to seek restitution by filing an appropriate application before the learned Single Judge. Till restitution is effected, security furnished by the plaintiff when it withdrew the sum of Rs. 25,00,000/- deposited by the appellants and respondent No. 2 together with accrued interest thereon shall be retained and upon restitution effected, the learned Single Judge would pass necessary directions.

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11. It is expected that an interim report from the Chairman of the monitoring authority would come to this Court within three months from today. Put up on receipt of the report.

Court Masters

(2013) 11 Supreme Court Cases 531

(BEFORE SWATANTER KUMAR AND MADAN B. LOKUR, JJ.)

BHASKAR LAXMAN JADHAV AND OTHERS .. Petitioners;

Versus

KARAMVEER KAKASAHEB WAGH EDUCATION SOCIETY AND OTHERS .. Respondents.

SLP (C) No. 30469 of 2009†, decided on December 11, 2012

A. **Constitution of India — Art. 136 — Grant/refusal of special leave — Suppression of material facts — Special leave refused — Failure of petitioners to disclose earlier order dt. 2-5-2003 passed by Joint Commissioner of Charities and which had attained finality — Held, as petitioners did not disclose order dt. 2-5-2003, it amounted to suppression of material facts — Consequently, special leave to appeal denied — Trusts and Trustees — Bombay Public Trusts Act, 1950 (29 of 1950), S. 36**

B. **Practice and Procedure — Pleading and Particulars — Drafting/Pleading — Material facts — Duty of litigant to disclose all material facts — Reiterated — Held, litigant cannot decide which facts are material and which are not — He must come to court with clean hands and disclose all material facts relating to his case — Civil Procedure Code, 1908, Or. 6 R. 2**

C. **Practice and Procedure — Pleading and Particulars — Drafting/Pleading — Material facts — In passing reference thereof — Does not amount to its disclosure — Held, such in passing reference would not amount to disclosure**

Disposing of the petition, the Supreme Court

Held :

It is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of a case and leave the decision making to the court. True, there is a mention of the order dated 2-5-2003 in the order dated 24-7-2006 passed by the Joint Commissioner of Charities, but that is not enough disclosure. The petitioners have not clearly disclosed the facts and circumstances in which the order dated 2-5-2003 was passed or that it has attained finality. (Para 44)

A mere reference to the order dated 2-5-2003, en passant, in the order dated 24-7-2006 does not serve the requirement of disclosure. It is not for the court to

† From the Judgment and Order dated 24-4-2009 of the High Court of Judicature of Bombay in WP No. 7863 of 2008

look into every word of the pleadings, documents and annexures to fish out a fact. It is for the litigant to come up-front and clean with all material facts and then, on the basis of the submissions made by the learned counsel, leave it to the court to determine whether or not a particular fact is relevant for arriving at a decision. Unfortunately, the petitioners have not done this and must suffer the consequence thereof. Hence the grant of special leave to appeal to the petitioners is denied on ground of for suppression of a material fact and the Charity Commissioner is directed to have a fresh look at the sale of the trust land, in accordance with the directions of the High Court. (Paras 47, 4 and 57)

Hari Narain v. *Badri Das*, AIR 1963 SC 1558; *Ramjas Foundation* v. *Union of India*, (2010) 14 SCC 38 : (2011) 4 SCC (Civ) 889, *relied on*

Karamveer Kakasaheb Wagh Education Society v. *Bhaskar Laxman Jadhav*, WP No. 7863 of 2008, decided on 24-4-2009 (Bom), *approved*

D. **Trusts and Trustees — Bombay Public Trusts Act, 1950 (29 of 1950) — S. 36 — Alienation of immovable properties of public trust — Permission to alienate properties of public trust — Non-completion of sale formalities within permitted time — Continuation of negotiations and re-negotiations between trustees of public trust and prospective purchasers — Submission of successive applications seeking permission to alienate properties after each negotiation — Implication of — Held, it amounts to abuse of process of law — Such conduct of parties indicate that they took advantage of absence of any clear cut provisions under the Act to prevent abuse — Civil Procedure Code, 1908, S. 92**

E. **Constitution of India — Art. 226 — Moulding of relief — Power of — High Court issuing directions to Charity Commissioner to relook at all the bids and proceed with sale of lands in interest of public trust even though that was not the issue before it — Tenability of — Held, though High Court clearly overstepped its jurisdiction and issued directions but in the light of circumstances of the case, it had no other option — It was open for High Court to mould relief considering conduct of parties — Hence such directions are tenable and do not call for interference — Bombay Public Trusts Act, 1950 (29 of 1950) — S. 36 — Civil Procedure Code, 1908, S. 92 and Or. 7 R. 7**

Held :

The facts of the case show that the trustees and the petitioners have been indulging in a flip-flop and in a sense taking advantage of the absence of any clear-cut statutory measures to prevent abuse of process of law. Given this flip-flop, the Joint Commissioner of Charities rightly rejected the first application for extension of time on 2-5-2003. He gave two significant reasons for doing so, namely, that the trustees were not voluntarily selling the trust land and secondly, given the circumstances, the sale transaction was not for the benefit and in the interest of the Trust. This order has attained finality, not having been challenged by anybody. (Paras 33 and 35)

The Joint Commissioner of Charities doubted the bona fides of the trustees and in fact observed that there is obviously something fishy and suspicious in the matter. Accordingly, the Joint Commissioner of Charities rejected their second application for extension of time. After the second application for extension of

time was rejected, the trustees issued a public notice on 19-2-2007 for sale of the trust land. (Paras 36 and 37)

Soon after the trustees received offers including the highest bid by Respondent 1 the petitioners filed a writ petition in the High Court challenging the order rejecting the second application for extension of time. It seems rather odd that Respondent 1 was not impleaded in the writ petition either by the petitioners or at the instance of the trustees. The fact that third-party interests were in existence was definitely known to the trustees, if not to the petitioners, and this should have been brought to the notice of the High Court. (Para 38)

In this background, the compromise effected between the trustees and the petitioners in the High Court on 28-8-2008 appears rather suspicious. While it may be that no time-limit is prescribed for seeking extension of time to complete the transaction for sale of the trust land, yet the conduct of the parties certainly requires consideration. While so considering, the petitioners and the trustees were trying to take advantage of, if not exploit, the situation and the absence of any adverse consequences under the Bombay Public Trusts Act, 1950 for not complying with the terms of the sanction originally granted. (Paras 39 and 41)

Bhaskar Laxman Jadhav v. *Swami Krishnacharya Guru*, WP No. 1502 of 2007, order dated 28-8-2008 (Bom), *cited*

On an overall consideration of the facts and circumstances of the case, the High Court was perhaps left with no option but to pass the order that it did and accept the alternative prayer of Respondent 1. The trustees and the petitioners were colluding and it was not possible to entirely rule out the possibility that they would enter into yet another mutual arrangement to wipe out whatever interest Respondent 1 had in the trust land. Therefore, impleading Respondent 1 before the Joint Commissioner for Charities could have been rendered into a mere formality. Additionally, the lack of bona fides of the trustees and the petitioners could not be overlooked by the High Court. Therefore, the safest course of action for the High Court was to require sale of the trust land through auction. (Para 48)

It appears that another factor that weighed with the High Court in this regard was the submission of the learned Assistant Government Pleader that the Charity Commissioner had received an offer higher than that given by Respondent 1. Therefore, it is quite clear that due to the passage of time, mainly because of the flip-flop of the trustees and the petitioners, the value of the trust land had increased considerably. In these circumstances, it would be in the best interest of the Trust if the maximum price is available for the trust land from the open market. While this may or may not have been a consideration before the High Court, it is certainly is one of the considerations for not interfering with the order passed by the High Court, even though it may have, in a loose sense, overstepped its jurisdiction. (Para 49)

Section 36 of the Bombay Public Trusts Act, 1950 clearly provides that the trustees may be allowed by the Charity Commissioner to dispose of immovable property of the trust regard being had to the "interest, benefit or protection" of the Trust. It cannot be doubted that the interest of the Trust would be in getting the maximum for its immovable property. (Para 50)

Following the consistent view taken by the Supreme Court as well as the language of Section 36 of the Bombay Public Trusts Act, 1950, there is no hesitation in concluding that the only course available to the High Court was to mould the relief and direct the Charity Commissioner to have a relook at all bids received pursuant to the public notice dated 10-2-2007. (Paras 3 and 54)

Chenchu Rami Reddy v. *Govt. of A.P.*. (1986) 3 SCC 391; *R. Venugopala Naidu* v. *Venkatarayulu Naidu Charities*, 1989 Supp (2) SCC 356; *Mehrwan Homi Irani* v. *Charity Commr.*, (2001) 5 SCC 305, *relied on*

Karamveer Kakasaheb Wagh Education Society v. *Bhaskar Laxman Jadhav*, WP No. 7863 of 2008, decided on 24-4-2009 (Bom), *approved*

F. **Precedents — Co-ordinate Benches — High Court — Sale of properties of Public Trust — Earlier Bench directing Charity Commissioner to consider bid of petitioners — Latter Bench issuing directions to Charity Commissioner to consider all bids for sale of public trust properties — Contention that latter Bench passed orders contrary to orders passed by earlier Bench — Untenability of — Held, circumstances before earlier Bench and latter Bench were different — Hence order passed by latter Bench justified — Precedents — Ratio decidendi — When binding — Need for material facts to match (Para 56)**

Bhaskar Laxman Jadhav v. *Swami Krishnacharya Guru*, WP No. 1502 of 2007, order dated 28-8-2008 (Bom), *cited*

G. **Constitution of India — Arts. 136, 226 and 32 — Costs — Suppression of material facts in special leave petition — Costs of Rs 15,000 imposed while denying special leave — Supreme Court Rules, 1966 — Or. 41 Rr. 1 & 3 — Civil Procedure Code, 1908, S. 35 (Para 58)**

G-M/51167/S

Advocates who appeared in this case :

C.A. Sundaram and Jayant Bhushan, Senior Advocate (Anish R. Shah, Rishi Jain, Brij Kihor Sah and Shivaji M. Jadhav, Advocates) for the Petitioners;

V.A. Mohta, Senior Advocate (R.K. Odhekar, Aniruddha P. Mayee, Nilkanth, Charudatta, Sanjay V. Kharde, Ms Asha Gopalan Nair, Kumar Parimal and Ms Praveena Gautam, Advocates) for the Respondents.

Chronological list of cases cited ***on page(s)***

1. (2010) 14 SCC 38 : (2011) 4 SCC (Civ) 889, *Ramjas Foundation* v. *Union of India* 542*b-c*
2. WP No. 7863 of 2008, decided on 24-4-2009 (Bom), *Karamveer Kakasaheb Wagh Education Society* v. *Bhaskar Laxman Jadhav* 535*b-c*, 538*e-f*, 539*a-b*, 539*d*, 540*a-b*, 545*d-e*
3. WP No. 1502 of 2007, order dated 28-8-2008 (Bom), *Bhaskar Laxman Jadhav* v. *Swami Krishnacharya Guru* 538*b*, 538*b-c*, 539*c-d*, 541*a*, 541*a-b*, 545*d-e*
4. (2001) 5 SCC 305, *Mehrwan Homi Irani* v. *Charity Commr.* 539*g*, 544*d-e*
5. 1989 Supp (2) SCC 356, *R. Venugopala Naidu* v. *Venkatarayulu Naidu Charities* 539*g*, 544*b*, 544*b-c*
6. (1986) 3 SCC 391, *Chenchu Rami Reddy* v. *Govt. of A.P.* 539*g*, 543*e*, 544*b*
7. AIR 1963 SC 1558, *Hari Narain* v. *Badri Das* 541*g*

The Judgment of the Court was delivered by

a **MADAN B. LOKUR, J.**— The facts of this case are a little elaborate, spanning as they do more than a decade-and-a-half. However, the issue raised is somewhat narrow and is, in a sense, limited to the question whether the High Court overstepped its jurisdiction in issuing the directions that it did.

2. The issue before the High Court was whether Respondent 1 should be
b impleaded as a party in the proceedings before the Charity Commissioner in an application filed by a trust for sanction to sell off some land belonging to it. The High Court obliquely decided[1] the issue by directing the Charity Commissioner to go ahead with the advertised auction of the trust land in which Respondent 1 was the highest bidder.

3. While upholding the decision of the High Court, we feel that it may
c have overstepped in giving the direction that it did. But, we are of the opinion that the learned Judges had no option but to mould the relief and give the direction that it did in the best interest of the Trust, in keeping with the provisions of Section 36 of the Bombay Public Trusts Act, 1950. Consequently, there is no reason to interfere with the direction of the High Court.

d **4.** We are also of the opinion that the petitioners have suppressed a material fact from us and, therefore, special leave to appeal ought not to be granted to the petitioners.

Facts

5. On 29-11-1994 the trustees of the Shri Vyankatesh Mandir Trust at
e Panchavati, Nasik resolved to sell 9 (nine) acres of agricultural land belonging to the Trust in Survey No. 275 situated at Aurangabad Road, Panchavati, Nasik by calling tenders from the public at large. For convenience the land resolved to be sold is hereinafter referred to as "the trust land".

6. Pursuant to the resolution, the trustees issued a public notice in the
f newspaper *Rambhoomi* inviting offers for purchase of the trust land. In response, they received four offers, the highest being that of the petitioners for Rs 2.5 lakhs per acre totalling Rs 22.5 lakhs. The petitioners' offer was accepted by the trustees and on 18-2-1995 they entered into an agreement for the sale/purchase of the trust land for a total consideration of Rs 22.5 lakhs.

7. As required by Section 36 of the Bombay Public Trusts Act, 1950 (for
g short "the Act") the trustees moved an application on 5-2-1996 before the Charity Commissioner for sanction to sell the trust land in terms of the agreement dated 18-2-1995. Section 36 of the Act reads as follows:

h

1 *Karamveer Kakasaheb Wagh Education Society* v. *Bhaskar Laxman Jadhav*, WP No. 7863 of 2008, decided on 24-4-2009 (Bom)

"**36.** ***Alienation of immovable property of public trust.***—(1) Notwithstanding anything contained in the instrument of trust—

(*a*) no sale, exchange or gift of any immovable property; and

(*b*) no lease for a period exceeding ten years in the case of agricultural land or for a period exceeding three years in the case of non-agricultural land or a building,

belonging to a public trust, shall be valid without the previous sanction of the Charity Commissioner. Sanction may be accorded subject to such condition as the Charity Commissioner may think fit to impose, regard being had to the interest, benefit or protection of the trust;

(*c*) if the Charity Commissioner is satisfied that in the interest of any public trust any immovable property thereof should be disposed of, he may, on application, authorise any trustee to dispose of such property subject to such conditions as he may think fit to impose, regard being had to the interest or benefit or protection of the trust.

(2) The Charity Commissioner may revoke the sanction given under clause (*a*) or clause (*b*) of sub-section (1) on the ground that such sanction was obtained by fraud or misrepresentation made to him or by concealing from the Charity Commissioner, facts material for the purpose of giving sanction; and direct the trustee to take such steps within a period of one hundred and eighty days from the date of revocation (or such further period not exceeding in the aggregate one year as the Charity Commissioner may from time to time determine) as may be specified in the direction for the recovery of the property.

(3) No sanction shall be revoked under this section unless the person in whose favour such sanction has been made has been given a reasonable opportunity to show cause why the sanction should not be revoked.

(4) If, in the opinion of the Charity Commissioner, the trustee has failed to take effective steps within the period specified in sub-section (2), or it is not possible to recover the property with reasonable effort or expense, the Charity Commissioner may assess any advantage received by the trustee and direct him to pay compensation to the trust equivalent to the advantage so assessed."

8. On 6-2-1998 the Joint Charity Commissioner (for short "the JCC"), Mumbai granted the sanction prayed for by the trustees, subject to all laws applicable to the transaction and on terms and conditions that were to follow.

9. On 19-6-1998 the sanction granted by the JCC was partially modified and a condition imposed that the sale shall be executed within a period of one year from the date of the order, that is, 19-6-1998. However, for one reason or another, the petitioners and the trustees were unable to complete the sale transaction within this time.

10. Much later, on 30-6-2001 the trustees and the petitioners mutually agreed to extend the time for completing formalities for execution of the transaction. They also agreed that the sale price of the trust land would now be increased to Rs 75 lakhs. This was the second agreement between the parties. Consequent upon this, the trustees moved an application before the JCC on 13-9-2001 to extend the time for completing the transaction.

11. Although it is not very clear, but it appears that thereafter something seems to have gone wrong between the parties because in January 2002 the trustees moved an application before the JCC for revised permission since the petitioners had not complied with the terms of the agreement. The trustees therefore planned to sell the trust land as per the sanction but apparently to persons other than the petitioners. This application was contested by the petitioners.

12. During the pendency of the application for extension of time moved by the trustees on 13-9-2001 and the application for revised permission moved by the trustees in January 2002 the differences between the trustees and the petitioners could not to be resolved with the result that on 16-4-2002 the trustees sought to withdraw the application dated 13-9-2001 for extension of time since the petitioners had not complied with the terms and conditions of the agreement entered into between the parties.

13. Eventually, both the applications (for extension of time and for revised sanction) were heard by the JCC who passed an order on 2-5-2003 rejecting them. This order was not challenged by any of the parties and it has attained finality.

14. At this stage, it may be noted that according to Respondent 1 the order dated 2-5-2003 is an important order and it has been suppressed by the petitioners in this petition.

15. Even after the order dated 2-5-2003 it seems that the trustees and the petitioners continued to have discussions and eventually on 15-8-2004 they entered into a third agreement. By the third agreement, they agreed to extend the time for completing formalities for executing the transaction originally entered into between them. They also mutually agreed to increase the sale price of the trust land to Rs 125 lakhs.

16. Pursuant to the third agreement the trustees once again decided to seek extension of time from the JCC for executing the transaction with the petitioners. Accordingly, they moved an application on 20-7-2005 for extension of time. This was the second application for extension of time. The petitioners were not parties before the JCC in this application nor were they heard on this application.

17. By an order dated 24-7-2006 the JCC rejected the second application filed by the trustees for extension of time. Pursuant to the rejection, the trustees issued a public notice in *Day View* on 19-2-2007 for sale of the trust land. In response to the public notice, Respondent 1 gave the highest bid on 23-2-2007 at Rs 43 lakhs per acre.

18. Significantly, on 26-2-2007 the petitioners filed WP No. 1502 of 2007 in the High Court challenging the order dated 24-7-2006 passed by the JCC rejecting the second application for extension of time. In this writ petition, Respondent 1 was not made a party by the petitioners nor did the trustees bring it to the notice of the High Court that Respondent 1 had given the highest bid for purchase of the trust land pursuant to the public notice issued in *Day View*.

19. On 28-8-2008 the petitioners and the trustees entered into a compromise as a result of which it was agreed that the order dated 24-7-2006 be set aside and the second application for extension of time be remanded to the JCC for a fresh hearing on merits. It was also agreed that the petitioners would be joined as parties in the proceedings before the JCC and that the application be decided as expeditiously as possible but not later than three months beyond the date of presentation of the order of the High Court. On the basis of this compromise between the parties (and without the knowledge of Respondent 1), minutes of order were drawn up and the High Court passed an order[2] taking the minutes on record. An order was then passed by the High Court in terms of the minutes.

20. Pursuant to the compromise order dated 28-8-2008[2] the JCC impleaded the petitioners as parties to the second application for extension of time.

21. When Respondent 1 learnt of the pendency of the proceedings before the JCC, it moved an application before the JCC for impleadment. In fact, other interested purchasers also moved applications for impleadment. The JCC heard all the applications and by an order dated 29-11-2008 rejected them.

22. Feeling aggrieved by the rejection of its impleadment application, Respondent 1 preferred WP No. 7863 of 2008 on 2-12-2008 in the High Court challenging the order passed by the JCC. The trustees as well as the petitioners were arrayed as respondents. It was prayed that the order dated 29-11-2008 passed by the JCC be quashed and Respondent 1 be impleaded as a necessary party in the proceedings before the JCC. The alternative prayer was that the JCC be directed to consider the bid of Respondent 1 for sale of the trust land.

23. After hearing all the parties, the High Court passed the impugned order on 24-4-2009[1] in which it was noted, inter alia, that the Charity Commissioner had received another offer for the trust land higher than the offer of Respondent 1. The Assistant Government Pleader accordingly submitted that the matter be remanded to the Charity Commissioner to decide in whose favour the trust land should be sold, depending on the highest bid.

24. On deliberations of the submissions made by the parties, the High Court remanded the entire matter for consideration by the Charity Commissioner to decide who should be the purchaser for the trust land. The Charity Commissioner was directed to consider all bids received pursuant to the public notice dated 19-2-2007 including the bids given by the petitioners and Respondent 1.

25. It is under these circumstances that the petitioners are now before us.

2 *Bhaskar Laxman Jadhav* v. *Swami Krishnacharya Guru*, WP No. 1502 of 2007, order dated 28-8-2008 (Bom)

1 *Karamveer Kakasaheb Wagh Education Society* v. *Bhaskar Laxman Jadhav*, WP No. 7863 of 2008, decided on 24-4-2009 (Bom)

Submissions

26. The broad submission of the learned counsel for the petitioners was that the High Court had effectively overstepped its jurisdiction while deciding *Karamveer Kakasaheb Wagh Education Society* v. *Bhaskar Laxman Jadhav*[1]. It was submitted that the issue before the High Court was rather limited, namely, whether Respondent 1 should be impleaded before the JCC in the second application for extension of time. Apart from adjudicating on the correctness or otherwise of the decision rendered by the JCC rejecting the impleadment application, the High Court effectively rejected the second application for extension of time.

27. It was submitted that the High Court went much further than necessary in requiring the JCC to consider all bids received by the trustees pursuant to the public notice dated 19-2-2007. The right of the petitioners to seek specific performance of the third agreement entered into between them and the trustees on 15-8-2004 was thereby scuttled. To make matters worse, the High Court virtually set aside an order passed by the coordinate Bench in *Bhaskar Laxman Jadhav* v. *Swami Krishnacharya Guru*[2] directing the JCC to hear the second application for extension of time. It was submitted that this was clearly impermissible.

28. It was finally submitted that under these circumstances the impugned order[1] could not be sustained and the only relief that could have been granted by the High Court to Respondent 1 was to implead it in the second application for extension of time and to direct the JCC to decide the application at the earliest.

29. Contesting these submissions, the learned counsel for Respondent 1 submitted that the petitioners were guilty of suppression of material facts inasmuch as it was not brought to the notice of this Court that the JCC had earlier rejected the first application for extension of time on 2-5-2003 which had attained finality. Since this fact is not disclosed, this Court will not grant special leave to appeal.

30. It was also submitted that since Shri Vyankatesh Mandir Trust is a charitable trust, it was expected of the High Court (as also this Court) to subserve the larger interest of the charitable trust. In achieving this, necessary and appropriate orders can be passed for the ultimate benefit of the Trust. In support of this submission the learned counsel for Respondent 1 relied on *Chenchu Rami Reddy* v. *Govt. of A.P.*[3], *R. Venugopala Naidu* v. *Venkatarayulu Naidu Charities*[4] and *Mehrwan Homi Irani* v. *Charity Commr.*[5]

31. Finally it was submitted by the learned counsel for Respondent 1 that the Charity Commissioner had received an offer higher than given by

1 WP No. 7863 of 2008, decided on 24-4-2009 (Bom)
2 WP No. 1502 of 2007, order dated 28-8-2008 (Bom)
3 (1986) 3 SCC 391
4 1989 Supp (2) SCC 356
5 (2001) 5 SCC 305

Respondent 1 and therefore the High Court was right in directing that appropriate steps be taken to receive the highest amount possible by sale of the trust land. In this regard, the High Court had acted in the best interest of the charitable trust (and that is how it should be) and therefore we should not interfere with the impugned order[1].

32. The learned counsel for the trustees only submitted that the trust expects the highest amount possible for the sale of its land and that appropriate orders may be passed in this regard.

Conduct of the petitioners and trustees

33. The facts of the case show that the trustees and the petitioners have been indulging in a flip-flop and in a sense taking advantage of the absence of any clear-cut statutory measures to prevent an abuse of process of law.

34. The trustees and the petitioners entered into a total of three agreements from time to time. The trustees moved two applications for extension of time to complete the sale transaction with the petitioners. The trustees even sought to withdraw their first application for extension of time and to seek a revised sanction from the JCC to sell the trust land to a third party apparently because they fell out with the petitioners.

35. Given this flip-flop, the JCC rightly rejected the first application for extension of time on 2-5-2003. He gave two significant reasons for doing so, namely, that the trustees were not voluntarily selling the trust land and secondly, given the circumstances, the sale transaction was not for the benefit and in the interest of the Trust. This order has attained finality, not having been challenged by anybody. It is this order that has been suppressed by the petitioners from this Court. We propose to refer to this a little later.

36. While considering the second application for extension of time on 24-7-2006 the JCC observed that the trustees are "changing track from time to time and for the reasons best known to them are bowing before the proposed purchasers". The JCC doubted the bona fides of the trustees and in fact observed that there is obviously something fishy and suspicious in the matter. Accordingly, the JCC rejected their second application for extension of time.

37. After the second application for extension of time was rejected, the trustees issued a public notice on 19-2-2007 for sale of the trust land.

38. Soon after the trustees received offers including the highest bid by Respondent 1 the petitioners filed a writ petition in the High Court challenging the order rejecting the second application for extension of time. It seems rather odd that Respondent 1 was not impleaded in the writ petition either by the petitioners or at the instance of the trustees. The fact that third-party interests were in existence was definitely known to the trustees, if not to the petitioners, and this should have been brought to the notice of the High Court.

1 *Karamveer Kakasaheb Wagh Education Society* v. *Bhaskar Laxman Jadhav*, WP No. 7863 of 2008, decided on 24-4-2009 (Bom)

39. In this background, the compromise effected between the trustees and the petitioners in the High Court on 28-8-2008[2] appears rather suspicious. To this extent, the learned counsel for Respondent 1 may be correct in his submission that the order dated 28-8-2008[2] passed by the High Court was collusively obtained by the parties.

40. These facts clearly indicate to us that all through, the conduct of the trustees and the petitioners leaves much to be desired.

41. While it may be that no time-limit is prescribed for seeking extension of time to complete the transaction for sale of the trust land, yet the conduct of the parties certainly requires consideration. While so considering, we are of the view that the petitioners and the trustees were trying to take advantage of, if not exploit, the situation and the absence of any adverse consequences under the Act for not complying with the terms of the sanction originally granted.

Suppression of fact

42. While dealing with the conduct of the parties, we may also notice the submission of the learned counsel for Respondent 1 to the effect that the petitioners are guilty of suppression of a material fact from this Court, namely, the rejection on 2-5-2003 of the first application for extension of time filed by the trustees and the finality attached to it. These facts have not been clearly disclosed to this Court by the petitioners. It was submitted that in view of the suppression, special leave to appeal should not be granted to the petitioners.

43. The learned counsel for the petitioners submitted that no material facts have been withheld from this Court. It was submitted that while the order dated 2-5-2003 was undoubtedly not filed, its existence was not material in view of subsequent developments that had taken place. We cannot agree.

44. It is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of a case and leave the decision-making to the court. True, there is a mention of the order dated 2-5-2003 in the order dated 24-7-2006 passed by the JCC, but that is not enough disclosure. The petitioners have not clearly disclosed the facts and circumstances in which the order dated 2-5-2003 was passed or that it has attained finality.

45. We may only refer to two cases on this subject. In *Hari Narain* v. *Badri Das*[6] stress was laid on litigants eschewing inaccurate, untrue or misleading statements, otherwise leave granted to an appellant may be revoked. It was observed as follows: (AIR p. 1560, para 9)

2 *Bhaskar Laxman Jadhav* v. *Swami Krishnacharya Guru*, WP No. 1502 of 2007, order dated 28-8-2008 (Bom)

6 AIR 1963 SC 1558

"*9.* … It is of utmost importance that in making material statements and setting forth grounds in applications for special leave care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. That is why we have come to the conclusion that in the present case, special leave granted to the appellant ought to be revoked. Accordingly, special leave is revoked and the appeal is dismissed. The appellant will pay the costs of the respondent."

46. More recently, in *Ramjas Foundation* v. *Union of India*[7] the case law on the subject was discussed. It was held that if a litigant does not come to the court with clean hands, he is not entitled to be heard and indeed, such a person is not entitled to any relief from any judicial forum. It was said: (SCC p. 51, para 21)

"*21.* The principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every court is not only entitled but is duty-bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have a bearing on adjudication of the issue(s) arising in the case."

47. A mere reference to the order dated 2-5-2003, en passant, in the order dated 24-7-2006 does not serve the requirement of disclosure. It is not for the court to look into every word of the pleadings, documents and annexures to fish out a fact. It is for the litigant to come upfront and clean with all material facts and then, on the basis of the submissions made by the learned counsel, leave it to the court to determine whether or not a particular fact is relevant for arriving at a decision. Unfortunately, the petitioners have not done this and must suffer the consequence thereof.

Validity of the High Court order

48. The next submission of the learned counsel for the petitioners was that the High Court had overstepped its jurisdiction in requiring the JCC to virtually go in for a fresh auction. While we agree that the question before the High Court was very limited, namely, whether Respondent 1 ought to have been impleaded by the JCC in the second application for extension of time, we are of the view that on an overall consideration of the facts and circumstances of the case, the High Court was perhaps left with no option but to pass the order that it did and accept the alternative prayer of Respondent 1. We say this because, as noticed above, the trustees and the petitioners were

7 (2010) 14 SCC 38 : (2011) 4 SCC (Civ) 889

colluding and it was not possible to entirely rule out the possibility that they would enter into yet another mutual arrangement to wipe out whatever interest Respondent 1 had in the trust land. Therefore, impleading Respondent 1 before the JCC could have been rendered into a mere formality. Additionally, the lack of bona fides of the trustees and the petitioners could not be overlooked by the High Court. Therefore, the safest course of action for the High Court was to require sale of the trust land through auction.

49. It appears to us that another factor that weighed with the High Court in this regard was the submission of the learned Assistant Government Pleader that the Charity Commissioner had received an offer higher than that given by Respondent 1. Therefore, it is quite clear that due to the passage of time, mainly because of the flip-flop of the trustees and the petitioners, the value of the trust land had increased considerably. In these circumstances, it would be in the best interest of the Trust if the maximum price is available for the trust land from the open market. While this may or may not have been a consideration before the High Court, it is certainly one of the considerations before us for not interfering with the order passed by the High Court, even though it may have, in a loose sense, overstepped its jurisdiction.

50. Section 36 of the Act clearly provides that the trustees may be allowed by the Charity Commissioner to dispose of immovable property of the trust regard being had to the "interest, benefit or protection" of the Trust. It cannot be doubted that the interest of the Trust would be in getting the maximum for its immovable property.

51. In *Chenchu Rami Reddy*[3] this Court frowned upon private negotiations for the alienation of the trust property and encouraged public auction in such a case. It was held as follows: (SCC pp. 397-98, para 10)

> "*10.* We cannot conclude without observing that property of such institutions [religious or charitable institutions] or endowments must be jealously protected. It must be protected, for, a large segment of the community has beneficial interest in it [that is the raison d'être of the (Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments) Act itself]. The authorities exercising the powers under the Act must not only be most alert and vigilant in such matters but also show awareness of the ways of the present day world as also the ugly realities of the world of today. They cannot afford to take things at their face value or make a less than the closest-and-best-attention approach to guard against all pitfalls. The approving authority must be aware that in such matters the trustees, or persons authorised to sell by private negotiations, can, in a given case, enter into a secret or invisible underhand deal or understanding with the purchasers at the cost of the institution concerned. Those who are willing to purchase by private negotiations can also bid at a public auction. Why would they feel shy or be deterred from bidding at a public auction? Why then permit sale by private negotiations which will not be visible to the public eye and may

3 *Chenchu Rami Reddy* v. *Govt. of A.P.*, (1986) 3 SCC 391

even give rise to public suspicion unless there are special reasons to justify doing so? And care must be taken to fix a reserve price after ascertaining the market value for the sake of safeguarding the interest of the endowment."

52. Similarly, in *R. Venugopala Naidu*[4] this Court followed the law laid down in *Chenchu Rami Reddy*[3] and actually went a bit further and gave a direction for sale of the trust property by public auction. It was held as follows: (*R. Venugopala Naidu case*[4], SCC p. 361, paras 13-14)

"*13*. The subordinate court and the High Court did not go into the merits of the case as the petitioners were non-suited on the ground of locus standi. We would have normally remanded the case for decision on merits but in the facts and circumstances of this case we are satisfied that the value of the property which the trust got was not the market value. …

14. … We direct that the properties in question may be sold by public auction by giving wide publicity regarding the date, time and place of public auction. The offer of Rs 10 lakhs made in this Court will be treated as minimum bid of the person who has given the offer and deposited 10% of the amount in this Court. It will also be open to the respondents/purchasers to participate in the auction and compete with others for purchasing the properties."

53. In *Mehrwan Homi Irani*[5] it was categorically held that the Charity Commissioner, while granting sanction under Section 36 of the Act, must explore the possibility of getting the best price for the trust properties. In keeping with this, the Charity Commissioner was directed to issue a fresh advertisement for leasing out the trust property and "formulate and impose just and proper conditions so that it may serve the best interests of the Trust". The observations of this Court and directions given are as follows: (SCC p. 309, para 9)

"*9*. … In the best interests of the Trust and its objects, we feel it appropriate that Respondents 2 to 4 should explore the further possibility of having agreements with better terms. The objects of the Trust should be accomplished in the best of its interests. Leasing out of a major portion of the land for other purposes may not be in the best interests of the Trust. The Charity Commissioner while granting permission under Section 36 of the Bombay Public Trusts Act could have explored these possibilities. Therefore, we are constrained to remit the matter to the Charity Commissioner to take a fresh decision in the matter. There could be fresh advertisements inviting fresh proposals and the proposal of the 5th respondent could also be considered. The Charity Commissioner may himself formulate and impose just and proper conditions so that it may serve the best interests of the Trust. We direct that the Charity Commissioner shall take a decision at the earliest."

4 *R. Venugopala Naidu* v. *Venkatarayulu Naidu Charities*, 1989 Supp (2) SCC 356

3 *Chenchu Rami Reddy* v. *Govt. of A.P.*, (1986) 3 SCC 391

5 *Mehrwan Homi Irani* v. *Charity Commr.*, (2001) 5 SCC 305

54. Following the consistent view taken by this Court as well as the language of Section 36 of the Act, we have no hesitation in concluding that the only course available to the High Court was to mould the relief and direct the Charity Commissioner to have a relook at all bids received pursuant to the public notice dated 19-2-2007.

Remaining contentions

55. We are not impressed with the submission of the learned counsel for the petitioners that the right of the petitioners to obtain specific performance of the agreements with the trustees has now been obliterated. As far as the first agreement is concerned, the permission was granted to the petitioners to purchase the trust land subject to certain conditions and within a certain time-frame. Those conditions were not met. As far as the other two agreements are concerned, the JCC did not grant sanction to the trustees to act on them. It seems to us, prima facie, that the petitioners could not have sought specific performance of any of these agreements, but we do not express any final opinion on this since the issue is not directly before us.

56. We are also not impressed by the contention of the learned counsel for the petitioners that by the impugned order[1], the High Court has effectively set aside its earlier order dated 28-8-2008[2] passed by a coordinate Bench. The circumstances under which the earlier order was passed and the significant developments that took place thereafter changed the circumstances and made it necessary for the High Court to pass a different order. It is not as if both orders were passed by the High Court under similar circumstances. The circumstances had changed and the view of the High Court in the changed circumstances could also be different.

Conclusion

57. For the reasons mentioned above, we decline to grant special leave to appeal to the petitioners for suppression of a material fact and direct the Charity Commissioner to have a fresh look at the sale of the trust land, subject-matter of this petition, in accordance with the directions of the High Court. However, we leave it open to the Charity Commissioner to permit all the parties before it to submit fresh offers for the trust land and if deemed necessary, a fresh public notice for sale of the trust land may be issued. On the basis of the bid given by Respondent 1 as disclosed to us in Court, we make it clear that the price for the sale of the trust land shall not be less than Rs 3.87 crores.

58. The petitioners will pay costs of Rs 15,000 to the Charity Commissioner within six weeks from today. The petition is disposed of accordingly.

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1 *Karamveer Kakasaheb Wagh Education Society* v. *Bhaskar Laxman Jadhav*, WP No. 7863 of 2008, decided on 24-4-2009 (Bom)

2 *Bhaskar Laxman Jadhav* v. *Swami Krishnacharya Guru*, WP No. 1502 of 2007, order dated 28-8-2008 (Bom)