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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 1642/2010

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Judgment dated 04.03.2014

K.C SETHI

..... Plaintiff

Through: Mr.Raman Duggal, Mr.Sudhir Kumar and
Mr.Anish Shrestha, Advs.

versus

BISHAMBAR NATH BATRA

..... Defendant

Through: Mr.Kamal Mehta, Adv. for Ds=1 & 2
Mr.A.S. Chadha, Sr. Adv. with Mr.Arun Batta,
Advocate for D=3

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Plaintiff has filed the present suit for declaration, cancellation of Sale Deed dated 20.8.2009 executed on the basis of a registered General Power of Attorney dated 16.11.2007; for declaration and cancellation of Sale Deed dated 12.7.2010; for permanent injunction and mandatory injunction to declare the judgment and decree dated 9.7.2010, as rendered in Suit No.2074/2009, as *null and void ab initio*.
2. It is submitted by counsel for the defendants that during the pendency of the suit, the plaintiff entered into a settlement with defendant no.1. The effect of the settlement according to all the defendants is that there is no further cause of action in favour of the plaintiff to continue with the suit. Mr.Raman Duggal, learned counsel for the plaintiff, has submitted to the

contrary.

3. In order to appreciate the rival submissions of counsel for the parties, it would be necessary to notice the relevant facts of this case, which have led to the filing of the present suit. The undisputed facts, which emerge from the pleadings are that the plaintiff is the sole lawful owner of the property bearing no.D-16/A, Hauz Khas, New Delhi, measuring 312.5 sq. yards (hereinafter referred to as 'the suit property'). Desirous of having this property constructed, the plaintiff entered into an Agreement of Building Construction dated 23.10.2007 with defendant no.1. As per the said Agreement, defendant no.1 was to construct the basement, ground floor, first floor and the second floor. Further, as per the said Agreement, builder's allocation was of the first floor. The plaintiff also executed an unregistered General Power of Attorney in favour of defendant no.1 on 23.10.2007. As per Clause 2 of the said Agreement, defendant no.1 paid Rs.35.00 lakhs, as a non-refundable deposit to the plaintiff vide cheque bearing no.665572 dated 23.10.2007, drawn on Punjab National Bank, Rajinder Nagar, New Delhi, which has since been encashed by the plaintiff. Clauses 5 and 6 of the Agreement define the owner's and the builder's share in the property.
4. It is also an admitted position that upon handing over of the property, complete in all respects, the builder was authorised to sell his allocation in the prospective building. Reliance is placed by counsel for the parties on the Collaboration Agreement /Agreement of Building Construction, which is an admitted document, between them.
5. It is the case of the plaintiff that defendant no.1 was in breach of Clauses 10, 19, 25, 29 and 30 of the Collaboration Agreement; defendant no.1 refused and neglected to complete the building in all respects; nor has he handed over vacant and peaceful possession, as contemplated in Clause

39 and therefore, in terms of Clause 30 of the said agreement, defendant no.1 ceases to have any right, title or interest in the building including the first floor.

6. As per Clause 23 of the Agreement, disputes between the parties were to be referred to Arbitration. The plaintiff invoked the arbitration clause and filed his Statement of Claim, a copy of which has been placed on record. On 4.8.2009 plaintiff's application under Section 17 of Arbitration and Conciliation Act was taken up for hearing. Parties were directed to maintain status quo in respect of the entire first floor of the suit property. Defendant no.1 also filed a Counter Claim before the Arbitrator.
7. It is further the case of the plaintiff that he came to know that defendant no.1 had sold the first floor of the suit property on 6.8.2009 by means of a Registered Sale Deed dated 20.8.2009 to defendant no.2. Meanwhile, the Arbitrator disposed of the application filed under Section 17 of Arbitration and Conciliation Act and the interim order granted was vacated on 22.9.2009. The plaintiff preferred an appeal against the order dated 22.9.2009 in the Court of Additional District Judge, Patiala House Courts. In the meantime, by a public notice dated 9.11.2010 published in 'The Statesman' the plaintiff informed the public at large that he was the absolute owner of the entire suit property and defendant no.1 had no right, title or authority in the same. On 22.2.2010 plaintiff received summons from the High Court in a suit titled as **Abhishek Kumar v. Bishamber Nath Batra**, CS(OS)2074/2009, seeking a declaration, declaring the Sale Deed dated 6.8.2009, executed by defendant no.1 in favour of defendant no.2, as null and void. Also a decree of specific performance of Agreement dated 24.10.2007 between defendant no.3 i.e. Abhishek Kumar and defendant no.1 was sought.
8. Initially the plaintiff herein was arrayed as a party in the said suit but

subsequently he was dropped from the array of parties. Parties to the aforesaid suit entered into a settlement in the aforesaid suit. Today defendant no.3 herein is in settled possession of the said floor having purchased the same from defendant no.2 in the sum of Rs.2.05 crores.

9. It is also the case of the plaintiff that defendant no.1 has played a fraud by selling the first floor of the suit property to defendant no.2 on the basis of an allegedly registered Power of Attorney while no such registration was carried out by the plaintiff and, secondly, the sale consideration of Rs.35.00 lakhs, which was shown before the Sub-Registrar as part consideration of sale deed dated 6.8.1009 executed by defendant no.1 in favour of defendant no.2, which amount was in fact paid by defendant no.1 to the plaintiff, as per clause 2 of agreement dated 23.10.2007 between plaintiff and defendant no.1.
10. In the above backdrop, the plaintiff has sought a declaration to the effect that the Sale Deed dated 6.8.2009 that was executed by defendant no.1 in favour of defendant no.2 and the Sale Deed dated 24.10.2007, executed by defendant no.2 in favour of defendant no.3 be declared as null and void. A prayer has also been made for declaring the judgment and decree dated 9.7.2010 passed in CS(OS)No.2074/2009 as invalid (filed by defendant no.3 against defendants no.1 and 2), besides other reliefs.
11. The aforesaid facts have been taken from the plaint, which has been filed by the plaintiff and said facts are not disputed even by the defendants herein except that there is explanation rendered by defendant no.1 with respect to the registration of the Power of Attorney, which will be considered at the appropriate stage by the Court.
12. A criminal complaint was also filed by the plaintiff against defendants no.1 and 2, which resulted in registration of FIR No.48/2007. Admittedly, defendant no.1 was arrested. As at that point of time the parties entered

into negotiations for a settlement, the settlement was arrived at between the plaintiff and defendant no.1.

13. It is the case of the plaintiff that this settlement was purely for the purposes of grant of bail to defendant no.1 while it is the case of the defendants that this was a composite settlement and based on this settlement all disputes and differences between the parties stood resolved and, thus, there is no further cause of action in favour of the plaintiff for pressing the suit any further.
14. Mr.Duggal, learned counsel for the plaintiff, while elaborating his arguments, submits that a bare reading of the settlement recorded by the Special Judge in the order dated 30.7.2013 leaves no room for doubt that there is no mention of the present civil suit, which was pending when the settlement was arrived at. Counsel next submits that a reading of the Settlement Agreement and the statements of the parties recorded would again leave no room for doubt that fraud was played by defendants no.1 and 2 upon the plaintiff and the incomplete work of defendant no.1 was not condoned and thus not part of the settlement. It is further submitted that since defendant no.1 had breached the terms and conditions of the Collaboration Agreement, the result was that the entire property would revert back to the plaintiff in terms of clause 30 of the agreement and the effect of which in turn would be that the status of defendant no.3 would be that of a trespasser and the Sale Deed executed in his favour is liable to be declared null and void.
15. Similar argument is addressed for declaring the Sale Deed as null and void on the ground that the Power of Attorney, which was executed by the plaintiff in favour of defendant no.1 was an unregistered document, the same was got registered in connivance with the Sub-Registrar (Properties) and, thus, the very basis of the Sale Deed is a document in doubt.

16. Another argument, which has been raised by learned counsel for the plaintiff is that the prayers made in the suit can only be decided upon recording of evidence in the matter and any decision in the criminal case would have no bearing on the present matter.
17. Learned counsel appearing on behalf of defendants no.1 and 2 submits that during the pendency of the criminal matter, parties had entered into a full and final settlement, defendant no.1 paid an additional sum of Rs.12.00 lakhs to the plaintiff, which he was not under any obligation to pay but as he was arrested in a false complaint filed by the plaintiff, under pressure he paid an additional sum of Rs.12.00 lakhs to the plaintiff and the plaintiff agreed to withdraw the arbitration proceedings and also the appeal, which was filed by him against the order dated 22.9.2009 by which interim order was vacated. Mr.Mehta further submits that as far as the submission with regard to playing a fraud and getting the Power of Attorney registered is concerned, the same cannot be agitated as the plaintiff had agreed to cooperate in the quashing of the FIR No.48/2007, registered at Police Station Anti Corruption Branch, Delhi. Counsel next submits that the order dated 30.7.2013 makes it abundantly clear that the settlement in the form of Rs.12.00 lakhs paid to the plaintiff covered both the civil aspect and the criminal complaint. Counsel also contends that the plaintiff has admitted that the builder's allocation was the first floor, the agreement with respect to which has been placed on record and, thus, defendant no.1 has not exceeded his share to which he was entitled as per the agreement between the plaintiff and defendant no.1, and the Sale Deed executed by defendant no.2 in favour of defendant no.3 cannot be declared as null and void as defendant no.3 is a bona fide purchaser of the first floor of the suit property. It is further submitted by counsel for defendants no.1 and 2 that in terms of the Collaboration Agreement the

plaintiff occupied the suit property on 24.4.2009 and also obtained water and electricity connections without any protest or demur and, thus, it cannot be said that defendant no.1 has breached the terms of the Agreement.

18. Mr.A.S. Chadha, learned senior counsel appearing on behalf of defendant no.3, submits that defendant no.3 is a bonafide purchaser of the first floor; defendant no.3 has paid the entire sale consideration to defendant no.2 and defendant no.3 had entered into an Agreement to Sell even prior to the disputes between the plaintiff and defendant no.1 i.e. on 24.10.2007. Mr.Chadha further submits that the plaint itself discloses that the plaintiff is the owner of the suit property and he entered into a Collaboration Agreement with defendant no.1. It is admitted that on account of disputes and differences the Arbitration clause was invoked, an Arbitrator was appointed, statement of claim was filed, interim order was granted and vacated. Categorical admission has been made by the plaintiff that he signed a General Power of Attorney in favour of defendant no.1 and further that the builder's share was the first floor of the suit property. Senior counsel next submits that the statements made by the parties before the trial court would clinch the entire issue as the statements leave no room for doubt that the parties had entered into an amicable settlement, Rs.12.00 lakhs were paid by the builder to the owner and, thus, there remains no cause of action for continuance of the suit. It is further submitted by the senior counsel that as per the provisions of Order XII Rule 6(i) CPC admissions made not only in the form of pleadings and documents, but all admissions can be considered by the Court and having regard to the subsequent events and the present position in this case the present suit is liable to be dismissed based on admissions and as it lacks cause of action.

19. I have heard learned counsel for the parties and considered their rival submissions. It has been argued by counsel for the defendants that on account of subsequent events i.e. the settlement between the parties, the present suit is liable to be dismissed, as there is no cause of action in favour of the plaintiff. Secondly, it is submitted that since the settlement is not in dispute, it should be treated as an admission and based on the admission the suit should be dismissed.
20. *Per contra* counsel for the plaintiff submits that the plaintiff discloses a cause of action, the settlement was only for a limited purpose i.e. for grant of bail to the defendant No.1 and the settlement has no bearing to the present suit and further in case the parties had any intention to include the subject matter of the present suit, the parties would have included the same in the settlement.
21. Detailed facts have been narrated are extracted from the plaint, which has been filed by the plaintiff. As per the plaint, the plaintiff is the sole owner of property measuring 312.5 sq. yards; he entered into a building construction agreement with defendant no.1 on 23.10.2007. Defendant no.1 was to construct the basement, ground floor, first floor and the second floor. The defendant no.1 (builder) was to be allotted the first floor. Plaintiff also executed an unregistered Power of Attorney in favour of defendant no.1. Since the defendant no.1 was in breach of various clauses of the agreement, the plaintiff filed the present suit for declaration, cancellation of Sale Deed dated 20.8.2009 entered into on the basis of registered General Power of Attorney dated 16.11.2007; for declaration and cancellation of Sale Deed dated 12.7.2010; for permanent injunction and mandatory injunction; and to declare the judgment and decree dated 9.7.2010, as rendered in Suit No.2074/2009, as *null and void ab initio*.
22. It is also an admitted fact that a criminal complaint was also filed by the

plaintiff against the defendant no.1, which resulted in registration of the FIR No.48/2007. The plaintiff has also placed on record, the statement of claim filed before the Arbitrator. In the said Statement of Claim filed before the Arbitrator, the plaintiff has made a reference to the Agreement of building and construction dated 23.10.2007. The terms of the Agreement as well as breach thereof have been detailed. The averments made in the Statement of Claim are in fact a detailed version of the facts narrated by the plaintiff with respect to the building agreement, as stated in the plaint except that in the Statement of Claim the plaintiff has detailed the works not completed by defendant no.1. The prayers made in this Statement of Claim are reproduced below:

- “a. pass an award declaring that the respondent has no right to transfer, sell, alienate, create any third party rights and for that purpose execute any documents and/or create third party interest with respect to the first floor of the premises prior to handing over the claimant’s *“allocation complete in all respects”* to the claimant;
- b. pass an award directing the respondent to obtain the completion certificate of the said building and provide the same to the claimant;
- c. pass an award directing the respondent to pay a sum of Rs.5,47,000/- towards the expenses which need to be incurred to rectify the defects and damages caused to the building, and complete the incomplete work;
- d. pass an order restraining the respondent from handing over and/or parting with the possession of the first floor of the building till the work of the claimant’s portion is complete in all respects;
- e. pass an award directing the respondent to pay an amount of Rs.40,000/- per month from October, 2008 till such time the work of the said building is completed in all respects, to the claimant;

f. pass an award directing the respondent to pay an amount of Rs.10,00,000/- (Rs.Ten lacs only) as compensation on account of hardship, mental agony, and inconvenience caused to it.

g. Award cost of the instant proceedings.

h. Award interest on the aforesaid amounts @ 18% per annum from their respective due dates till their payment.”

23. It may be noticed that along with the suit the plaintiff has also placed on record a copy of the Power of Attorney executed by him in favour of defendant no.1.

24. The basic issue which comes up for consideration today before the court is the effect of the settlement arrived at between the plaintiff and defendant no.1, on the present suit. While it is the case of the defendant no.1 that in view of the settlement, the present suit has to be dismissed, as due to subsequent events the suit lacks cause of action. Whereas it is the case of the plaintiff that the settlement was only partial with regard to grant of bail to the defendant no.1.

25. Since the basic arguments of learned counsel for the parties revolve around the terms of settlement arrived at in the criminal proceedings, it is deemed appropriate to reproduce the statement of the plaintiff made before the trial Court on 30.7.2013, the statement made by defendant no.1, the order dated 2.8.2013 passed by Special Judge and the order passed by the Court on 30.7.2013.

26. Statement made by plaintiff before the trial Court on 30.7.2013, reads as under:

“30.07.2013

Statement of Sh.K.C. Sethi, S/o Late Sh.Brij Lal Sethi R/o D-16/A, Hauz Khas, New Delhi-16, aged about 82 years.

Without Oath

The arbitration petition filed by me pending before the Ld.Arbitrator is, hereby, settled subject to payment of Rs.12,00,000/- paid by Bishamber Nath Batra. All claims made in the arbitration petition shall be satisfied when I am paid the aforesaid amount by him.

On receipt of the entire settlement amount, I shall withdraw the arbitration petition & consequential appeal and co-operate in any quashing petition, which may be filed before the Hon'ble High Court in FIR No.-48/07, PS-ACB, Delhi.

I undertake that I shall be bound by the present settlement and my statement recorded above.

The settlement is without any coercion from any side and is made on my free will & volition.

RO & AC

SPECIAL JUDGE (PCT ACT)-05
(ACB), TIS HAZARI COURTS
30.07.2013"

27. Further, the statement made by defendant no.1 reads as under:

"30.07.2013

Statement of Sh.Bishamber Nath Batra, S/o Late Sh.Mohan Lal Batra R/o 36/18, Patel Nagar, New Delhi-16, aged about 63 years.

Without Oath

I have read the statement of Sh.K.C. Sethi and I am satisfied by the same. I agree to pay an amount of Rs.12,00,000/- to Sh.K.C. Sethi towards settlement of the arbitration petition titled as K.C. Sethi Vs. Bishamber Nath Batra, which was filed before Sh.Sudhir Nandrajog, Sr. Adv.

I shall pay an amount of Rs.5,00,000/- on or before 02.08.2013. Another amount of Rs.2,00,000/- shall be paid on or before 20.08.2013. Balance amount of Rs.5,00,000/- shall be paid in five equal monthly instalments commencing from 15.09.2013 and the last instalment of Rs.1,00,000/- shall be payable on or before 15.01.2014. Each instalment shall be paid by way of Demand Drafts in the name of Sh.K.C. Sethi.

On withdrawal of the arbitration petition & the consequential appeal pending before Sh.Inderjeet Singh, Ld.Additional District Judge (South) or his Successor Court; I shall withdraw my counter claim pending before the Ld.Arbitrator.

I undertake that I shall be bound by the present settlement and my statement recorded above.

The settlement is without any coercion from any side and is made on my free will & volition.

RO & AC

SPECIAL JUDGE (PCT ACT)-05
(ACB), TIS HAZARI COURTS
30.07.2013”

28. The order dated 2.8.2013 passed by Special Judge reads as under:

“02.08.2013 (10;15 AM)

Present:- Sh.Rakesh Mehta, Ld. Addl.P.P. for the State with
IO/Inspector Vinay Malik, PS-ACB

Applicant on interim bail with Sh.Vineet Chaddha,
Adv.

Sh. Chaddha submits that the applicant is ready with the demand draft bearing no.-336859, in the name of K.C. Sethi, dated 01.08.2013 drawn on Deutsche Bank, 28, Kasturba Gandhi Marg, New Delhi for an amount of Rs.5,00,000/-.

It is noticed that neither the complainant or his counsel is present.

Passed over. To be taken at 11:30 AM.

(NAROTTAM KAUSHAL)
SPECIAL JUDGE (PC ACT)-05
(ACB), TIS HAZARI COURTS
02.08.2013

02.08.2013 (11:30 AM)

Present :- As above.

Sh.Chaddha submits that he tried to contact to Sh.Amandeep Singh, Adv. but he did not take the call. Sh.Ravi Batra, son of the applicant, submits that he has spoken to Sh.K.C. Sethi, complainant on phone and he has expressed his inability to appear in the court to collect the demand draft. Complainant has further advised to the applicant's son to leave the demand draft in the court or to deliver the same to his residence of complainant. Applicant's son has reservation in handing over the demand draft at the residence. The demand draft is, therefore, deposited in the court to be delivered to the complainant as and when he comes to collect the same.

In the aforesaid facts and circumstances, when the applicant has complied with the terms of the settlement and has deposited the demand draft in the name of the complainant for the agreed amount towards the first instalment. The interim bail is confirmed on the same terms and conditions.

Reader of the court is directed to retain the above said demand draft and hand over the same to the complainant as and when he appear in the court. Applicant's son shall inform the complainant by way of telephone call or by way of SMS that the demand draft stands deposited in the court.

IO is directed to collect the bank account details of the complainant and furnish the same to the applicant so that the further instalment can be deposited by way of RTGS or by way of demand drafts.

(NAROTTAM KAUSHAL)
SPECIAL JUDGE (PC ACT)-05
(ACB), TIS HAZARI COURTS
02.08.2013

02.08.2013 (01:15 PM)

At this stage, complainant has appeared and collected the demand draft bearing No.336859, dated 01.08.2013 of Rs.5,00,000/-. In token of the receipt of the DD, he has signed the margin of the order sheet. He has also undertaken to furnish the bank account details to the applicant and to the IO, so that further instalment can be paid through RTGS to the suitability of the applicant.

(NAROTTAM KAUSHAL)
SPECIAL JUDGE (PC ACT)-05
(ACB), TIS HAZARI COURTS
02.08.2013"

29. The order passed by the Special Judge on 30.7.2013 reads as under:

"FIR No.48/07
State Vs. Bishamber Nath Batra

30.07.2013

Present:- Sh.Rakesh Mehta, Ld. Addl.P.P. for the State with
IO/Inspector Vinay Malik, PS-ACB, Delhi

Complainant in person with Sh.Raman Duggal, and
Sh.Amandeep Singh, Ld. Counsels
for the complainant
Accused produced from J.C. with Sh.Kamal Mehta &
Sh.Vineet Chadha, Ld. Counsels for the accused.

With the good offices of ld. counsels a settlement has been
arrived at between the parties. Statements of both the parties have
been recorded.

In terms of the settlement, the applicant/ accused is admitted
to bail subject to furnishing the PB & SB in the sum of Rs.50,000/-
with one surety in the like amount, till 02.8.2013.

Now, to come up before this Court on 02.08.2013.

Copy of this order as well as the copies of the statements be
given to both the parties.

(NAROTTAM KAUSHAL)
SPECIAL JUDGE (PC ACT)-05
(ACB), TIS HAZARI COURTS
30.07.2013”

30. A careful reading of the statement made by the plaintiff before the trial
Court would show that the plaintiff has stated that the arbitration petition
filed by him pending before the learned Arbitrator stood settled subject to
payment of Rs.12.00 lakhs by defendant no.1 and also all claims made in
the arbitration petition would stand satisfied when the plaintiff receives
the payment. Thus, the submission made by learned counsel for the
plaintiff that Rs.12.00 lakhs were simply paid by defendant no.1 to the
plaintiff for not opposing the bail application is incorrect as it is not borne
out from the record. Further the statement made by the petitioner before
the trial court reflects that the plaintiff had even agreed to withdraw the

arbitration petition and the appeal and, thirdly, he had agreed that he would cooperate in the quashing of FIR No.48/2007 registered on the basis of a complaint made by him. It is not in dispute that the complaint made by the plaintiff against defendant no.1 was primarily with respect to the fraud played by him arising out of the registration of Power of Attorney and the issues arising out of the Collaboration Agreement. The statement of the plaintiff would show that all disputes between the parties stood settled including the proceedings before the Arbitrator that arose only out of the Collaboration Agreement, which contains an arbitration clause. In case, the settlement was only with respect to the criminal matter then there was no occasion for the plaintiff to withdraw the arbitration petition or the appeal, which was pending and in case it did not cover the civil dispute there was no occasion for him to agree and cooperate in quashing of FIR. Rs.12.00 lakhs stand paid by defendant no.1 to the plaintiff, which has been duly acknowledged by him, without protest or reservation.

31. The arguments of learned counsel for the plaintiff that this settlement does not refer to the pendency of the civil suit and, thus, the same does not cover it, is an attractive argument but the same is without any force, as a careful reading of the Statement of Claim and the prayer made in the claim petition and the suit are primarily similar. The other question, which would arise for consideration is that in case there was no settlement with respect to the civil disputes then there is no explanation as to why the plaintiff is not pursuing his arbitration before the Arbitrator. Undoubtedly, the plaintiff has been paid a sum of Rs.35.00 lakhs by the builder, as a non-refundable security at the time of signing the Collaboration Agreement. The builder has built a basement, ground floor, first floor, second floor and the above for the owner and the only consideration is his

allocation of the first floor.

32. Having regard to the settlement arrived at between the parties and a bare reading of the same categorically shows that the plaintiff had agreed to withdraw all claims before the Arbitrator and also cooperate in any quashing petition, and all disputes between the parties stand settled. The present case is a perfect example where during the pendency of the matter on account of the settlement the present proceedings have become infructuous, as the cause of action has disappeared. In the case of *Shipping Corporation of India Ltd. Vs. Machado Brothers & Ors.* reported at (2004) 11 SCC 168, the Apex Court has held that during the pendency of the suit, if certain events takes place which makes the suit infructuous then the suit cannot be kept pending. Relevant paragraphs of the judgment read as under:

“25. Thus it is clear that by the subsequent event if the original proceeding has become infructuous, ex debito justitiae, it will be the duty of the court to take such action as is necessary in the interest of justice which includes disposing of infructuous litigation. For the said purpose it will be open to the parties concerned to make an application under Section 151 of CPC to bring to the notice of the court the facts and circumstances which have made the pending litigation infructuous. Of course, when such an application is made, the court will enquire into the alleged facts and circumstances to find out whether the pending litigation has in fact become infructuous or not.

31. For the reasons stated above, we are of the opinion that continuation of a suit which has become infructuous by disappearance of the cause of action would amount to an abuse of the process of the court and interest of justice requires such suit should be disposed of as having become infructuous. The application under Section 151 of CPC in this regard is maintainable.”

33. Once the settlement had been arrived at, in my view it was the duty of the plaintiff to withdraw the present suit. Even prior to the hearing today, Mr.Raman Duggal, counsel for the plaintiff had taken instructions from his client, who was adamant that the settlement was not a composite settlement.
34. In the case of *T. Arivandandam v. T.V. Satyapal and Anr.* reported at (1977) 4 SCC 467 the Apex Court has very strongly condemned entertaining vexatious and meritless complaints and observed that “An activist Judge is the answer to irresponsible law suits” and also observed that such litigation should be nipped in the bud at the earliest. In my view once the settlement was arrived at between the parties there was no reason for the plaintiff to continue with the suit. Paragraph 5 of the judgment reads as under:

“We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly 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 complaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the complaint 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 bearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, 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."

35. Courts cannot afford the luxury of keeping such matters pending where during the pendency of the proceedings the cause of action disappears.

36. On careful examination of the submissions of the counsel on merits, coupled with the terms of the settlement extracted above and also taking into consideration the claim made by the plaintiff in the present suit and before the Arbitrator, which arises out of a collaboration agreement between the parties, and also taking into consideration receipt of Rs.12.0 lacs by the plaintiff and agreeing to cooperate in the quashing of the FIR against the defendant no.1 and agreeing to withdraw the arbitration agreement, leaves no room for doubt that the plaintiff had settled all his disputes with the defendant no.1, who was the main contesting defendant and in view of the settlement which is an admission, the present suit is liable to be dismissed, as the cause of action for instituting the present suit has disappeared during the pendency.

37. For the reasons aforestated, the present suit is dismissed.

I.A. 10618/2010 & I.A. 1575/2011 & I.A. 4861, 22325/2012 & I.A.3956/2013

38. Applications stand dismissed in view of the order passed in the suit.

G.S.SISTANI, J

MARCH 04, 2014

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