

**HIGH COURT OF TRIPURA
AGARTALA
Review Petn. 13 of 2024**

The Sub-Divisional Magistrate,

Sadar Sub-Division, Agartala

P.O- Agartala, P.S- West Agartala,

District-West Tripura.

Petitioner(S)

Versus

1. Smt. Babita Saha,

W/o Late Subal Saha.

2. Smt. Pinky Saha,

Daughter of Late Subal Saha.

3. Shri Mithun Saha,

S/o Late Subal Saha.

4. Smt. Simran Saha,

Daughter of Late Subal Saha

All are the residents of Pratapgarh, near Ekta Club,

Agartala, P.O, Agartala, P.S East Agartala, District

West Tripura

5. Waris Finance International Ltd.

Having its local offices at Waris Bhaban, L.N Bari Road, P.O. Agartala, P.S East Agartala, District- West Tripura, represented by its Chairman-cum-Managing Director, Present Address-22 Camac Street, Block-A (1st Floor), Kolkata-700016, West Bengal.

6. North Eastern Development Finance Corporation Ltd. (NEDFi),

NEDFi House, G.S. Road, Dispur, Guwahati-781006, Assam.

Respondent(s)

Along with
Review Petn. 14 of 2024
The State of Tripura,

Through Secretary, Department of Revenue, Government of Tripura,
P.O – Agartala Secretariat, Agartala, West Tripura, Pin-799010.

Petitioner(s)

Versus

1.Hotel Simran Pvt. Ltd,

Represented by its Managing Director, Smt. Babita Saha, W/o Late Subal Saha, L. N Bari Road, Agartala, P.S East Agartala, District- West Tripura.

2. Smt. Babita Saha,

W/o Late Subal Saha.

3.Smt. Pinky Saha,

Daughter of Late Subal Saha.

4.Shri Mithun Saha,

S/o Late Subal Saha

5.Smt. Simran Saha

Daughter of Late Subal Saha

All are residents of Pratapgarh, near Ekta Club, Agartala

P.O- Agartala, P.S East Agartala, District- West Tripura.

6. Waris Finance International Ltd.

Having its local offices at Waris Bhaban, L.N Bari Road, P.O. Agartala, P.S East Agartala, District- West Tripura, represented by its Chairman-cum-Managing Director, Present Address-22 Camac Street, Block-A (1st Floor), Kolkata-700016, West Bengal.

7.North Eastern Development Finance Corporation Ltd. (NEDFi),
NEDFi House, G.S. Road, Dispur, Guwahati-781006, Assam.

Respondent(s)

For the Petitioner(s) : Mr. S.S. Dey, Advocate General.
Mr. R.Datta, Advocate.
Ms. A. Chakraborty, Advocate.

For the Respondent(s) : Mr. S.M. Chakraborty, Sr. Advocate.
Mr. R.R. Datta, Advocate.
Ms. P. Chakraborty, Advocate.

Date of hearing and delivery of
Judgment & Order : 07.08.2024

Whether fit for reporting : YES.

HON'BLE MR. JUSTICE T. AMARNATH GOUD
J U D G M E N T & O R D E R (O R A L)

Heard Mr. S.S Dey, learned Advocate General, assisted by Mr. R. Datta, learned counsel appearing for the review petitioners. Also heard Mr. S.M Chakraborty, learned Sr.Counsel assisted by Mr. R. R. Datta, learned counsel appearing for the respondent Nos. 1 to 4 in Review Petition 13 of 2024 and respondent Nos. 1 to 5 in Review Petition 14 of 2024.

[2] Since both these review petitions have been filed under Article 215 of the Constitution of India read with Order 47 Rule 1 of the Code of Civil Procedure for review of the common Judgment and Order (oral) dated 01.02.2024 passed by this Hon'ble Court in CRP 95 of 2022 and CRP 76 of 2021 respectively, the same are also taken together for disposal in a common Judgment and Order.

[3] The review petition 13 of 2024 is filed for reviewing the impugned order passed in CRP 95 of 2022 wherein this Court has allowed the said CRP. The brief facts of the case in CRP 95 of 2022 were that the predecessor-in- interest of the respondent Nos. 1 to 4 in Review Petition 13 of 2024 took loan from NEDFi, a financial institution, but he could not

repay the loan and ultimately NEDFi initiated a proceeding in Debt Recovery Tribunal (DRT for short) against him and after his demise, it continued against his legal heirs. The matter was settled between the legal heirs and NEDFi and the amounts so settled was deposited by them and consequent upon NEDFi issued a clearance certificate dated 06.04.2011 in favour of them. It is contended by them that the auction process initiated by DRT also closed following the clearance of dues but respondent No.5 i.e. Waris Finance International Ltd. managed to get mutation for the said property by showing a purported sale certificate for the immovable property, namely Hotel Simran Pvt. Ltd. The Revenue Authority granted mutation in favour of them without serving any notice upon the respondent Nos. 1 to 4 herein. When they came to know about the said mutation, they filed a Review petition before the Collector to review the order of mutation, but the authority concerned rejected the prayer.

[4] Thereafter, a Revision was filed before the Revisional Authority and that revision was also dismissed by taking into consideration the purported sale certificate, issued in the name of respondent No.5 herein. Challenging that order of Revisional Authority (Revenue Secretary), the respondent Nos. 1 to 4 herein filed a CRP before this Court numbered as CRP 76 of 2021 which was taken for disposal along with this CRP 95 of 2022.

[5] The State Government, at one point of time closed the Chit Fund Depositors, finance business in Tripura and started taking action against them, including the respondent No.5 herein and to refund the deposit to the depositors, the properties of the Chit Funds were attached in which the property of the respondent Nos.1 to 4 herein namely, Hotel

Simran Pvt. Ltd. was also attached, as the mutation was in the name of respondent No.5 that too without any notice to the respondent Nos. 1 to 4 herein.

[6] The Petitioner herein, Sub-Divisional Magistrate, Sub-Division- Sadar, Agartala filed a petition in the Court of learned District Judge, West Tripura, Agartala seeking permission to sell the property in auction, which was registered as Civil Misc (TPID) 09 of 2016, but in the said proceedings, the respondent Nos. 1 to 4 were not made parties. When they came to know about that judgment, they filed a Review Petition in that Court, but the said learned Court rejected the Review petition by taking into consideration the sale certificate ignoring the final order of the DRT dated 25.11.2011 and the clearance certificate dated 06.04.2011 issued by NEDFi in favour of them. This Court upon hearing the submission of the learned counsel appearing for both the parties and on perusal of record allowed the said CRP 95 of 2022 along with CRP 76 of 2021 in a common judgment and order dated 01.02.2024.

[7] Challenging the aforesaid order passed in CRP 95 of 2022 the review petitioner has preferred the present review petition being numbered as 13 of 2024. According to the review petitioner the respondent Nos. 1 to 4 with mala fide intention filed the Revision Petition CRP 95 of 2022 before this Court and suppressed the material fact that the attached property i.e. Hotel Simran was sold by the creditors with the permission of Debt Recovery Tribunal, Guwahati to the Waris Finance International Pvt. Limited and accordingly, a sale certificate was issued in their favour on the basis of which, record of right was created in favour of Waris Finance International Pvt. Limited. Subsequently, when the properties of Waris Finance International Pvt. Limited were attached by

the Government of Tripura, the property situated at LN Bari Road, Agartala i.e. Hotel Simran was rightly attached by the State which was made absolute by the Learned Designated Court, West Tripura.

[8] The review petition 14 of 2024 is filed for reviewing the impugned order passed in CRP 76 of 2021 wherein this Court allowed the said CRP. The case in brief is that the respondent No.1 is a private limited company and the respondent no.2 is the Managing Director of the said company. The predecessor-in-interest of the respondent Nos. 1 to 5 took a loan from the respondent No.7 herein, but could not liquidate it during his lifetime. Ultimately, one proceeding was initiated by the DRT, in which a One Time Settlement (OTS) was made and the entire settled amount was paid by them and thereafter, the recovery proceeding was withdrawn and a Loan Liquidation Certificate (LLC) was issued by the respondent No.7 herein in favour of them. It was contended by the respondent Nos. 1 to 5 that the Collector, West Tripura created a Khatian in the name of the respondent No.6 with reference to a purported sale certificate, which was invalid, void and nullity in all respects. After getting information of such creation of the Khatian, when the respondent Nos. 1 to 5 filed review petition before the Collector, it was rejected. Thereafter, a revision petition was filed to the Revenue Secretary, Government of Tripura, but that also has been rejected without appreciating the fact properly and without exercising his jurisdiction in accordance with law. This Court upon hearing the submission of the learned counsel appearing for both the parties and on perusal of record allowed the said CRP 95 of 2022 along with CRP 76 of 2021 in a common judgment and order dated 01.02.2024.

[9] Challenging the aforesaid order passed in CRP 76 of 2021 the review petitioner has preferred the present review petition being numbered as 14 of 2024. According to the review petitioner the respondent Nos. 1 to 5 with malafide intention filed the Revision Petition CRP 76 of 2021 before this Court and suppressed the material fact that the attached property i.e. Hotel Simran was sold by the creditors with the permission of DRT, Guwahati to the Waris Finance International Pvt. Limited and accordingly, a sale certificate was issued in their favour on the basis of which, record of right was created in favour of Waris Finance International Pvt. Limited. Subsequently, when the properties of Waris Finance International Pvt. Limited were attached by the Government of Tripura, the property situated at LN Bari Road, Agartala i.e. Hotel Simran was rightly attached by the State which was made absolute by the Learned Designated Court, West Tripura. Hence, both these review petitions.

[10] Mr. S. S Dey, learned Advocate General appearing for the petitioners submits that the revision petitioners i.e. Respondents (1 to 4 in Rev. Petn. 13 of 2024 and 1 to 5 in Rev. Petn. 14 of 2024) herein are guilty of suppression of material facts that recovery proceedings was closed by the Debt Recovery Tribunal on the basis of an application vide No. MA 24 of 2011 in OA 22 of 2005 filed by the respondent- NEDFi to withdraw the Certificate of recovery vide No. 653 dated 01.05.2007 which was issued in favour the respondent-NEDFi, as the respondent i.e. NEDFi had come to an amicable settlement with the credit debtors i.e. the respondents 1 to 4 in Rev. Petn. 13 of 2024 and Respondent Nos. 1 to 5 in Rev. Petn. 14 of 2024 herein for an amount of Rs. 2,05,00,000/- only by writing off the balance principal amount of Rs. 14,00,000/- and also

balance accrued interest, penal interest and other charges totaling to Rs. 5,32,06,615/- was waived.

[11] Consequently the Ld. Debts Recovery Tribunal, Guwahati allowed the petition for withdrawal of Certificate and closed the recovery proceedings and as such it can be safely concluded that on the basis of amicable settlement due to writing of the balance amount the recovery proceedings was closed but the Sale certificate dated 19.01.2011 issued in favour of Waris Finance International Private Limited was not affected due to closure of said recovery proceedings as the settled amount of Rs. 2,05,00,000/- was paid by the creditors by settling Hotel Simran to the Waris Finance International Private Limited as per the direction of Debts Recovery Tribunal, Guwahati, thus the respondents 1 to 4 in Rev. Petn. 13 of 2024 and respondent Nos. 1 to 5 in Rev. Petn. 14 of 2024 herein had no title over the property in question and had no locus to wither challenge the mutation or taking over of property by the state.

[12] He further contended that the respondents herein (petitioners in both the CRPs) have played fraud on this Court by suppressing facts and obtained orders and same needs to be reviewed by dismissing their cases.

The extract of the Order passed in MA 24 of 2011 (OA 22 of 2005) dated 25.11.2011 is quoted hereunder:-

"I have heard the learned counsel for the misc. applicant. It has been revealed from the above facts and circumstances of the case that the certificate amount was to be recovered by the sale of the primary security of Hotel Simran and other properties of the deceased guarantors. The guarantors were also promoters and Managing Directors of the certificate debtor company who have expired and legal heirs have been substituted accordingly in case. The Certificate was issued on 1/5/07 and as such, this proceedings were started but no recovery could be made till 24/4/09 and as such, a petition was filed by the certificate debtor No.6 for permission to sell the mortgaged property but it was rejected and thereafter another petition was filed by the same petitioner

on 5/10/09 to sell the attached property not below the reserve price of Rs.2,03,87,000/- and Rs. 50.00 lakhs was deposited simultaneously with a prayer to allow time to deposit the remaining amount of Rs. 1.55 lakhs which was allowed by the learned Recovery Officer and the auction sale was not given effect to. The certificate debtor No.6 had accordingly, deposited an amount of Rs. 2,05,00,000/- and the learned Recovery Officer vide order dated 6/4/09 allowed her to sell the attached property this order of the Recovery Officer has not been challenged by the certificate holder institution. That the certificate creditor had settled the account amicably for the said amount of Rs. 2,05,00,000/- after adopting certain rules and procedures of their institution reportedly framed as per RBI guidelines which means that the settlement was arrived in accordance with the conformity with the RBI guidelines as stated by the General Manager of the Corporation on Oath. Since the settlement was arrived at between the parties for an amount of Rs. 2,05,00,000/- as per final debtors and No Due Certificate has been issued by the Corporation they prayed that the certificate be withdrawn and the recovery proceeding be closed.

In view of the above facts and circumstances narrated by the certificate holder institution on oath that the settlement has been arrived at in conformity with the RBI guidelines there appears no hesitation to allow the petition for withdrawal of the Certificate and to close the recovery proceedings with the Recovery Officer. Accordingly, I Pass the following order

ORDER

The Misc. Application No. 24/2011 is allowed relating to O.A No. 22/05. The Certificate being No. DRPC No. 653 dated 1/5/07 is accordingly withdrawn and the recovery proceeding is closed and as such, Misc. Application No. 24/11 and also O.A No. 22/05 is disposed of finally.

Copy of this order be sent to the Recovery Officer for information and compliance.

Copy of this order be also provided to the misc. applicant.

Consign the record to the Record Room.

Presiding Officer".

[13] On the contrary Mr. S.M Chakraborty, learned Sr. counsel appearing for the respondents-Hotel Simran denied the allegation of fraud and submits before this Court that as per petitioners counsel submission the amount was paid by them to DRT for settlement of the amount and the amount so given was obtained from Waris Financial International Ltd. if it is accepted for a while then it is a case of the advancement of amount and if somebody advances a loan to someone he/she cannot claim the ownership of the property unless it is sold. He further submitted that whether the state has filed any sale deed because as a private person one cannot sell property by executing a sale certificate.

Only when the auction sale is made under Sarfaesi Act, the State Financial Corporation Act or The Financial Institution Act, the court can issue the sale certificate. A private person cannot sell his property by issuing a sale certificate. He also submitted that if Mrs. Babita Saha- respondent herein sold the property to Waris Financial International Ltd. than under section 17 of the Registration Act it must be a registered sale deed but the same is not brought by them. Thus, he prayed to dismiss the Review Petitions.

[14] Heard the submission made at the Bar. Perused the evidence on record.

[15] On perusal of record, it is seen that the Learned Debt Recovery Tribunal, Guwahati by a Judgment dated 23.02.2007 allowed the application filed by the respondent No.7 herein whereby he has been entitled to receive from Hotel Simran Pvt. Ltd the loan and interest amounting to Rs.3,64,86,728/- along with @6% p. a simple interest from 08.07.2005 till realization of the entire sum due and recoverable with cost. A certificate of recovery was also ordered to be prepared and the same was prepared accordingly. vide No. 01.05.2007 was issued in favour of the respondent No.7 to recover the certificate amount. For better appreciation of the facts the relevant contents of the said judgment is extracted herein below:

" O R D E R

Hence, the Application of the Applicant is, hereby accepted and allowed with cost ex-parte against the defendant No.1 Company and it is hereby ordered that the Applicant is entitled to receive from defendant No.1 the loan and interest amounting to Rs. 3,64,86,728/- (Three Crores sixty four lakhs eighty six thousand seven hundred twenty eight) along with interest @ 6 % p.a. simple from 8/7/2005 till the realization of the entire sum due and recoverable with cost. The liability of defendant No.2 to 9 are limited only to the extent, the properties and assets of deceased two guarantors are laying in their hands. Let a certificate of recovery be prepared in terms of provision contained in Section 19(22) of Recovery of Debts due to Banks and Financial Institutions Act, 1993. Put up for seal and signature on 27-3-2007.

Judgment pronounced in the open court on this the 23rd day of February, 2007."

[16] On issuance of the certificate of recovery vide No. 653 dated 01.05.2007 by the learned Debt Recovery Tribunal, Guwahati the Recovery Officer of the Debt Recovery Tribunal at Guwahati proceeded for recovery of certificate amount and by an order dated 07.05.2008 issued attachment of the property of Hotel Simran. The respondent- Mrs. Babita Saha herein filed an application before the Recovery Officer of the Debts Recovery Tribunal at Guwahati for allowing her to sell Hotel Simran but the Recovery Officer by an Order dated 06.07.2009 rejected the prayer of the respondent-Mrs. Babita Saha for sale of Hotel Simran and by an order dated 13.08.2009 directed for auction sale of Hotel Simran on 07.10.2009.

[17] The Recovery Officer obtained valuation for sale of Hotel Simran which was assessed by the valuer at Rs. 2.05 Crores and on 05.10.2009 the respondent- Mrs. Babita Saha again filed an application before the Recovery Officer of Debt Recovery Tribunal at Guwahati for staying auction of the attached property and to allow her to sell the attached property i.e. Hotel Simran not below the reserve price of Rs. 2.05 Crores and the respondent- Mrs. Saha deposited Rs.50,00,000/- with the Recovery Officer and undertook to make payment of remaining 1.55 Crores within a month and accordingly, the Recovery Officer stayed the auction sale of Hotel Simran. Thereafter, as per the order passed by DRT at Guwahati, the respondent- Mrs. Saha on 06.04.2010, deposited the remaining amount before the DRT, Guwahati confirmed by an order dated 06.04.2010, which is extracted herein below:-

"06-04-10

The case record is put up today, Certificate Debtor Smti Babita Saha is present and deposited an amount of Rs 60,00,000/- (Rupees sixty lakhs) only vide Demand Draft No. 000459 dtd 5-4-10 (for Rs. 30 lakhs) in favour of the Recovery Account of this Tribunal.

Applicant corporation is also present by authorized representative Shri A Buragohain who is well aware of the fact of this case

Perused the records. As per order dated 05-10-09 of the undersigned, the Certificate Debtor prayed for allowing her to sell the attached property not below the reserve price as per the valuation report in order to liquidate the amount of loan taken by her husband form the applicant corporation

Accordingly, Smti Babita Saha has made complete payment in the following manner.

<i>Date</i>	<i>Amount deposited</i>
<i>05-10-09</i>	<i>Rs.50,00,000/-</i>
<i>22-01-12</i>	<i>Rs. 30,00,000/-</i>
<i>16-02-10</i>	<i>Rs.15,00,000/-</i>
<i>08-03-10</i>	<i>Rs.25,00,000/-</i>
<i>31-03-10</i>	<i>Rs.25,00,000/-</i>
<i>06-04-10</i>	<i>Rs.2,05,00,000/-</i>

Contd...

[18] It is brought to the notice of this Court that the respondent-M/s Waris Finance International Ltd. submitted an application before the DRT, Guwahati and prayed for a description of the attached property which was purchased by them that was not reflected in the aforesaid order dated 06.04.2010 passed by the Recovery Officer DRT, Guwahati. Accordingly, the learned DRT, Guwahati by an order dated 05.08.2010 mentioned the detailed description of the property purchased by the respondent-M/s Waris Finance International Ltd. from the respondent- Hotel Simran.

It is necessary to extract the relevant contents of the order dated 05.08.2010 for examining the instant review petitions filed by the petitioner:-

"Case record is put up today in view of Petition No.109/2010 filed Petitioner M/S Waris Finance International Ltd. and earlier order dated 06/04/10 passed by the undersigned.

The Petitioner has prayed for a description of the attached property which was purchased by them that was inadvertently not reflected in order dated 06/04/10 of the undersigned.

Perused the records. It appears that Petitioner M/S Waris Finance Internatioal Ltd. had purchased the attached property of Certificate Debtors for an amount of Rs. 2,05,00,000/- (Rupees two crores five lakhs) only as per order dated 06/04/10 of the undersigned.

The description of the property so purchased is as follows :

DESCRIPTION OF PROPERTY AS PER VALUATION REPORT SUBMITTED BY APPLICANT CORPORATION

A four storied RCC structural building covering an area of 0.122 acres i.e. 5270.40 sq ft., situated at L. N Bari Road, Banamalipur, Agartala, West Tripura, under Khatian No.4386; Sale/Gift Deed No. 1-10588 dated 21-12-2000, Mouja- Agartala Sheet No. 14, Tahasil- Sadar East Agartala; PS- East Agartala; Dag No.- 11768/70619, 11768/70621, 11768P, Revenue Holding No. 6233; District-West Tripura, and bounded by:

North: H/o Smt. Ranjana Barua;

South: L. N. Bari Road;

East : H/o Dr. Prasenjit Saha

West : Gali Road."

[19] The aforesaid orders dated 06.04.2010 and 05.08.2010 of the DRT Guwahati, have been brought to the notice of this Court by the learned Advocate General. From the aforesaid orders it is seen that the property in question i.e. Hotel Simran was sold to M/s Waris Finance international Ltd. and the facts which have been reflected in the aforesaid orders were suppressed by the respondents herein. Thus, this court draws an adverse inference against the respondents and holds the respondents herein have played fraud and obtained orders from this Court.

[20] Mr. S.S Dey, learned Advocate General contends that the respondents herein committed fraud in suppressing the facts in CRPs and as such these review petitions are maintainable. To support his contention, learned Advocate General has placed reliance on ***S.P. Chengal Varaya Naidu (Dead) By LRS Versus Jagannath (Dead) By LRS and Others. (1994) 1 Supreme Court Cases 1*** passed by the Hon'ble Supreme Court. The relevant paragraphs of the said judgments as referred by the learned Advocate General are quoted herein below:-

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."

[21] On the question of suppression of facts Mr. S. S Dey, learned Advocate General further placed reliance on a judgment of Hon'ble Supreme Court in **A. V. Papayya Sastry and Others vs. Govt. of A.P. and Others (2007) 4 Supreme Court Cases 221**, the relevant paragraphs of this Judgment is quoted herein below :

"7.The State Authorities, thereafter, filed recall- applications on June 13-06-2001. In the recall applications, it was stated inter alia that fraud was committed by the land-owners and material facts were suppressed by them. It was alleged that possession of land was never handed over to Port Trust Authorities, nor Port Trust Authorities received such possession of land and yet it was asserted by the owners that possession of land was given to Port Trust Authorities in 1972 which was not correct. It was only in December, 1985 that the correct fact came to the knowledge of the State Authorities from a letter by the Chief Engineer of Port Trust. Hence, the order was taken in suo motu revision under Section 34 of the Ceiling Act. It was further stated that even if the Port Trust Authorities would be deemed to be in possession of land on the day the Ceiling Act came into force, Land Acquisition Proceedings were not concluded and no award was passed. The Port Trust Authorities, in the circumstances, would be in possession of the land for and on behalf of the land-owners and the land was required to be declared surplus and vacant under the Ceiling Act.

21. Now, it is well settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed;

"Fraud avoids all judicial acts, ecclesiastical or temporal".

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 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.

23. In the leading case of Lazarus Estates Ltd. v. Beasley, Lord Denning observed: (AIR 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."

24. In Duchess of Kingstone, Smith's Leading Cases, 13th Edn., p.644, explaining the nature of fraud, de Grey, C.J. stated that though a judgment would be res judicata and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was "mistaken", it might be shown that it was "misled". There is an essential distinction between mistake

and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been rendered, but it can be set aside, if the court was imposed upon or tricked into giving the judgment.

25. It has been said; Fraud and justice never dwell together (*fraus et jus nunquam cohabitant*); or fraud and deceit ought to benefit none (*fraus et dolus nemini patrocinari debent*).

26. Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even 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. The principle of "finality of litigation" cannot be stretched to the extent of an absurdity that it can be utilized as an engine of oppression by dishonest and fraudulent litigants."

[22] On the other hand, Mr. SM Chakraborty, learned Sr. counsel on the point of review also placed reliance on two judgments i.e. **(2023) 2 Tripura Law Reports 130, Indian Oil Corporation Ltd. Vs. Tripur India (P) Ltd.** and another i.e. **(2008) 8 SCC 612, State of West Bengal and Others. Vs. Kamal Sengupta and Another**, the relevant portion of this Judgment is quoted hereunder:-

"22. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of [Order 47 Rule 1 CPC](#) or [Section 22\(3\)\(f\)](#) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of fact or law. In any case, while exercising the power of review, the Court/Tribunal concerned cannot sit in appeal over its judgment/decision.

[23] In view of the above discussion, this court finds force in the argument made by the learned Advocate General and also confirms that the respondents herein have played fraud on this Court and also have not approached this Court with clean hands. In view of their act, this Court feels that it is not open for the respondents to argue on technicalities and maintainability. Therefore, the arguments of the

respondents is rejected. The respondents- i.e. (1 to 4 in Rev. Petn. 13 of 2024 and 1 to 5 in Rev. Petn. 14 of 2024) suppressed the facts before this Court while arguing the CRPs.

[24] Hence, this court is of the opinion that the order dated 01.02.2024 passed in CRPs i.e. CRP No. 95 of 2022 and CRP. No. 76 of 2021 be reviewed and the same is hereby dismissed.

Resultantly, the present review petitions stand allowed.

As a sequel, miscellaneous application(s) pending if any, shall stand closed.

JUDGE



Paritosh