

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**FIRST APPEAL NO. 1288 OF 2024
WITH
INTERIM APPLICATION NO. 2428 OF 2023
IN
FIRST APPEAL NO. 1288 OF 2024**

- 1) Punjab National Bank,]
A nationalized Bank having its Regional]
Office at 71/73, Maker Towers,]
Cuffe Parade, Colaba]
Bombay – 400 005] **...Applicant/
Appellant**

Versus

- 1) M/s. Mohan Gandhi & Company]
A Partnership Firm having its registered]
office at 7/2, Gopalpuram First Street,]
Coimbatore - 600 018]
Tamil Nadu, and branch office at 14,]
Judge Jabuling Street, Mylapore,]
Madras - 600 004] **...Respondent**

**WITH
FIRST APPEAL NO. 1287 OF 2024
WITH
INTERIM APPLICATION NO. 3401 OF 2023
IN
FIRST APPEAL NO. 1287 OF 2024**

- 1) Punjab National Bank,]
A body corporate constituted under the]
provisions of the Banking Companies]
(Acquisition and Transfer) of]
Undertakings Act, 1970 having its Head]
Office at Plot No.4, Sector 10, Dwarka,]
New Delhi - 110 075 and a Zonal office at]

11th Floor, Dalamal House, Jamnalal Bajaj]
 Marg, Nariman Point,]
 Mumbai - 400 021] **...Appellant**

Versus

1) M/s. Mohan Gandhi & Company]
 A Partnership Firm having its registered]
 office at 7/2, Gopalpuram First Street,]
 Coimbatore - 600 018]
 Tamil Nadu, and branch office at 14,]
 Judge Jabuling Street, Mylapore,]
 Madras - 600 004] **...Respondent**

*Counsel Shanay Shah a/w Adv. Hamza Lakhani, Mr. Rohit Iyengar, Mr. Anuj Loya i/b Shardul Amarchand Mangaldas & Co., for the Appellant.
 Mr. Prasad Pathare, for the Respondent.*

CORAM : SHARMILA U. DESHMUKH
RESERVED ON : AUGUST 7, 2026
PRONOUNCED ON : SEPTEMBER 29, 2026
(Through Video Conferencing)

JUDGMENT:

1. Both these Appeals filed at the instance of original Plaintiff in Suit No 17 of 1989 and Defendant in Suit No 219 of 1988 challenge the common judgment and order dated 6th January, 2023 passed by the Bombay City Civil Court in Suit No. 17 of 1989 (High Court Suit No. 423 of 1989) and Suit No. 219 of 1988 (High Court Suit No. 2589 of 1988) decreeing Suit No 219 of 1988 and dismissing Suit No 17 of 1989.

2. Common submissions were advanced and the Appeals are disposed of by this common judgment.

3. Suit No. 219 of 1988 was filed by Mohan Gandhi and Company, a partnership firm, against Punjab National Bank (erstwhile New Bank of India) *inter alia*, for a declaration that the agreement for sale dated 5th July, 1982 executed between Mohan Gandhi and Company and New Bank of India is null and void and not binding upon the Plaintiff as it was executed only as security and not an agreement for sale. Suit No. 17 of 1989 was filed by the Punjab National Bank seeking specific performance of the agreement for sale dated 5th July, 1982 in respect of flat bearing no. A/1 in Cuffe Castle Co-operative Housing Society Limited, Cuffe Parade, Colaba.

4. For the sake of clarity Punjab National Bank is referred to as **"PNB"** and Mohan Gandhi and Company is referred to as **"Mohan Gandhi firm."**

5. The case as initially set up by Mohan Gandhi firm is that it is the owner of the suit flat, that one of their partners, Mr. G. Balasubramaniam had taken a loan of Rs. 14 lakhs from PNB without knowledge and consent of the other partners and by representing to be the owner of the flat and garage. PNB approached Mohan Gandhi firm for executing the agreement for sale, which was executed in Madras late in the night as security in respect of the loan taken by Mr. G.

Balasubramaniam. On the date of execution of the agreement, PNB also drew pay order in favor of the Mohan Gandhi firm and had it re-endorsed in favor of PNB and accordingly entries are reflected in the account of PNB. It was represented under the said agreement that PNB be allowed to use of the flat for occupation of the bank officials and compensation/mesne profit for such occupation would be the interest payable on the said loan. Alongwith the purported agreement for sale, certain documents were executed without permitting Mohan Gandhi firm to examine the documents, which are in possession of PNB.

6. The plaint came to be amended on 29th August, 2009 and the amended pleading was that one Argee Textiles Private Limited (**“Argee Textiles”**) had taken business loan from PNB, which it had failed to repay. Mr. G. Balasubramaniam, who was one of the partners of Mohan Gandhi firm was the Managing Director of Argee Textiles, and though, had no authority, offered the suit premises as collateral security for the loan availed. There was no memorandum of deposit of title deeds. Realizing the defect in creation of the collateral security, PNB got the suit agreement unilaterally prepared and obtained the signatures of the executing parties on 5th July, 1982 at Madras at midnight without giving an opportunity to the parties to obtain any legal advice. The bank manager had assured Mohan Gandhi firm that the possession of the suit premises would be returned within five years upon repayment of loan

of Rs. 14 lakhs obtained by Argee Textiles against collateral security of the suit premises. The plaint pleads about Suit No 441 of 1982 filed by PNB against Argee Textiles for recovery of their unpaid dues wherein, Mohan Gandhi firm was sued as mortgagors of suit premises for the loan facility granted to Argee Textiles. In Suit No 441 of 1982, Court Receiver was appointed and formal possession of the suit premises was taken by the Court Receiver on 20th March, 1982 and despite the suit premises being *custodia legis*, the agreement came to be executed on 5th July, 1982 under pressure as security for repayment of the loan advanced.

7. At the time of execution of sale dated 5th July, 1982, two partners of Mohan Gandhi firm were minors and neither of them have signed the agreement nor their guardian has signed the agreement on their behalf. The agreement was also signed by Mr. G.Muruganthaswami, who was never partner of Mohan Gandhi firm. It is pleaded that no consideration was paid by PNB. In the month of November 1986, Mohan Gandhi firm raised sufficient funds to repay the sum of Rs. 14 lakhs and approached PNB to release the suit premises by accepting payment, which was refused falsely claiming that the agreement dated 5th July, 1982 was an agreement for sale. There was exchange of correspondence between the parties, and as possession of suit premises were not handed over, the suit came to be filed on 29th August, 1988.

8. The defense of PNB was that the suit was barred by limitation. It was pleaded that the agreement for sale was executed by all three partners of Mohan Gandhi firm for consideration of Rs. 15 lakhs, out of which substantial amount of Rs 14 lakhs was paid leaving a sum of Rs. 1 lakh. PNB was put in possession of the suit flat and as substantial consideration was paid, there is no question of payment of rent or mesne profit for use and occupation of the subject flat. As there was failure to complete the sale transaction before 30th June, 1987, the suit is filed seeking specific performance of the agreement for sale.

9. The case of PNB in its Suit No. 17 of 1989 (High Court Suit No. 423 of 1989) is reiteration of its defense in the suit filed by Mohan Gandhi firm. The defense of Mohan Gandhi firm in PNB's suit is reproduction of its pleading in Suit No 219 of 1988.

10. The Trial Court framed and answered the following issues in Suit No. 219 of 1988 of Mohan Gandhi firm :

Sr. No.	Issues	Findings
1.	Whether the plaintiffs prove that the suit as framed is maintainable?	Yes
2.	Whether the plaintiffs prove that the suit is within limitation?	Yes
3.	Whether the plaintiffs prove that one of their partners had taken loan of Rs.14 lakhs from the defendants without knowledge or consent of all the partners?	Yes
3A.	Whether the plaintiffs proves that when the Agreement dated 5 th July 1982 was entered into	Partly Yes

	by both the parties, M.Mohan Gandhi and his sister were minors and neither of them or their guardians have signed the said agreement?	
4.	Whether the plaintiffs prove that said agreement has been executed for the purpose and/or as security and not as an Agreement for Sale?	Yes
5.	Whether the plaintiffs prove that the Agreement for Sale as shown in Exhibit "A" is null and void, ineffective and in-operative and not binding upon the plaintiffs and is liable to be cancelled/rescinded?	Yes
6.	Whether the plaintiffs prove that the Agreement for Sale of flat and garage cannot be specifically performed to effect the transfer of the said flat and garage in favour of the defendants?	Yes
7.	Whether the plaintiffs are entitled for a decree against the defendants to hand over vacant and peaceful possession of the flat and garage upon payment of Rs.14 lakh to the defendants?	Yes
8.	Whether the defendants proves that they were ready and willing to perform their part of the contract and the plaintiffs were not ready and willing to perform their part of the contract?	No
8A.	Whether the plaintiffs prove that the defendants are liable to pay mesne profit from 29 th November 1986 till the time the defendants hand over possession to the plaintiffs and if so, at what rate?	No
9.	Whether suit filed by M/s. Mohan Gandhi & Co. is barred by the law of limitation?	No
10.	What decree and order?	As per final order.

11. The issues framed in Suit No. 17 of 1989 of PNB are as under :

Sr. No.	Issues	Findings
1.	Whether the defendants prove that suit is not maintainable as alleged?	No

2.	Whether the plaintiffs prove that under Agreement for Sale dated 5 th July 1982 defendants have agreed to sell and transfer their right, title and interest in the suit flat together with fixtures, fittings and furnitures to the plaintiffs for sum of Rs.15 lakhs?	No
3.	Whether the plaintiffs prove that defendants have received a sum of Rs. 14,00,000/-against the execution of the said Agreement for Sale on 5 th July 1982 and the balance of Rs.1,00,000/- was to be paid on completion of all formalities for sake as provided in the said Agreement?	No
4.	Whether the plaintiffs prove that defendants breached the Agreement?	No
5.	Whether the plaintiffs prove that they are entitled to claim damages of Rs.20,000/-p.m. from 30.06.1987 for non compliance of Agreement dated 6 th July 1982?	No
6.	Whether the plaintiffs prove that they were ready and willing to comply with and perform their part of the contract and the defendants were not ready and willing to perform their part of the contract?	No
7.	Whether the plaintiffs prove that they are entitled for an order and decree against defendants to specifically perform said Agreement for Sale dated 5 th July, 1982 in respect of suit flat?	No
8.	Whether the plaintiffs prove that they are entitled for an order and decree against the defendants to pay to the plaintiffs sum of Rs.40,00,000/- for damages and breach of the contract over and above the damages to the extent of Rs.20,000/- per month from 20 th June 1987 i.e. from the date of filing of the suit till payment and/or realisation?	No
9.	What decree and order?	As per final order

12. Evidence was led by the parties and on behalf of Mohan Gandhi firm, its partner M. Mohan Gandhi was examined and on behalf of PNB, its manager Madhav Waman Naik was examined. The witnesses produced oral and documentary evidence.

13. The Trial Court appreciated the evidence on record to decree the suit of Mohan Gandhi firm and dismissed the suit of PNB by the impugned judgment dated 6th January, 2023. On the issue of limitation, by taking into consideration the fact that Mohan Gandhi attained majority on 29th January, 1987, the Trial Court held that the suit of Mohan Gandhi firm was within limitation. The Trial Court examined the clauses in the agreement for sale and in particular, Clauses 7 and 8, to opine that the clauses create a doubt about the transaction being an outright agreement for sale. It further noted Suit No. 441 of 1982 filed by PNB against Argee Textiles, which was subsequently transferred to the Debt Recovery Tribunal ("**DRT**") in which Mohan Gandhi firm was impleaded as mortgagors and the Original Application ("**OA**") came to be disallowed against Mohan Gandhi firm.

14. The Trial Court answered the issue no. 3A as regards the execution of the sale deed by the guardian of minors, partly in the affirmative by noting that there was signature of M. Mohan Gandhi and Chamundi's mother i.e. Sushila Devi. The Trial Court was of the opinion that upon payment of substantial amount of Rs. 14 lakhs, there is no

justification for waiting for period of five years for execution of the registered sale deed, and from 1982 to 1987, not a single letter was issued on behalf of PNB to Mohan Gandhi firm to execute registered sale deed. It noted that the loan was obtained by Mr. G. Balasubramaniam, who was the Managing Director of Argee Textiles, and no material has been placed to show connection of the Company with Mohan Gandhi firm. It observed that no consent was obtained by G. Balasubramaniam from Mohan Gandhi firm while availing loan and in any event as two partners were minors, there was no question of obtaining consent. It opined that the credit of sum of Rs. 14 lakhs to loan account of Argee Textiles indicates that the agreement was security for loan advanced to Mr. G. Balasubramaniam.

15. Mr. Shah, learned counsel for the Appellant- PNB, would point out that the partners of Mohan Gandhi firm as per partnership deed dated 4th September, 1970 were Mr. G. SethuRamalingam, Mr. G. Balasubramaniam, and the minors i.e. M. Mohan Gandhi and Chamundi Bhubaneshwari, who were the children of Mr. G. Muruganthaswami and M. Sushila Devi, through their guardian, Smt. M. Sushila Devi and admitted to the benefits of partnership. He submits that the agreement for sale was executed on 5th July, 1982 by Mohan Gandhi firm with PNB for consideration of Rs. 15 lakhs. Drawing attention to the various clauses of the agreement, he would submit that the agreement uses the

expression “sell/sold/sale”, and that Clause 2 states about possession being handed over, which are all indicia of sale transaction. He submits that the Trial Court read Clauses 7 and 8 in isolation to treat the transaction as security for loan. He submits that the Trial Court has held the period of five years for completion of sale against PNB, whereas it is open for the parties to agree upon the time period within which the sale was to be completed. He further points out that the agreement for sale was signed on behalf of the minors by their mother, and therefore, the agreement was validly executed. He submits that Argee Textiles was the borrower of PNB and the sale consideration of Rs. 14 lakhs paid by PNB on 6th July, 1982, was adjusted against loan obtained by Argee Textiles in view of the endorsement by Mohan Gandhi firm in favour of PNB and points out the voucher-Exhibit 19.

16. He submits that due to breach in completion of sale within the prescribed period, communication was addressed to Mohan Gandhi firm to transfer the suit flat to PNB, to which Mohan Gandhi firm responded admitting about the loan availed by G. Balasubramaniam, who was one of the partners of Mohan Gandhi firm. He submits it was falsely claimed that the agreement was a security for repayment of loan and the use and occupation was interest. He submits that the pre-suit correspondence unequivocally accepts that Mr. G. Balasubramaniam was partner of Mohan Gandhi firm, however, in its written statement, it is

falsely contended that Mr. G. Balasubramaniam was not a partner of Mohan Gandhi firm. He submits that the pleading of availing of loan by G. Balasubramaniam without consent and knowledge of Mohan Gandhi firm is unacceptable as no notice was issued to G. Balasubramaniam, much less any action.

17. He would submit that if the agreement for sale was not to be acted upon, the firm has not given any explanation as to why it did not seek cancellation of the agreement prior to 30th June, 1987, and the suit also came to be filed only after the bank called upon the firm to specifically perform its obligation under the agreement.

18. He has taken this Court through the evidence of Mohan Gandhi, who admits that he has not given instructions to draft the plaint in 1988. He would further point out that the Bank's witness has deposed about the working capital facility obtained by Argee Textiles for Rs. 20 lakhs, guaranteed by guarantors including Mr. G. Balasubramaniam, who was the partner of Mohan Gandhi firm. He would submit that, as there was a default in repayment by Argee Textiles, Suit No. 441 of 1982 was filed by PNB in the High Court against the directors and guarantors for recovery of loan to an extent of Rs. 24,67,486/-, which suit was then transferred to DRT. He submits that pursuant to negotiations, Mohan Gandhi firm entered into an agreement for sale for consideration of Rs. 15 lakhs, an amount of Rs. 14 lakhs paid by PNB, which was endorsed by

the firm in name of Argee Textiles. He submits that on 14th July, 2005, OA No. 330 of 2001 was finally decided, as against which Defendant No. 3 therein has filed an Appeal.

19. He would submit that all outgoings in respect of the said flat are being paid by PNB, however the bills are being issued in name of the firm and since 2007, the electricity bill is issued in name of PNB.

20. He would further submit that Mohan Gandhi, in his additional affidavit, for the first time put up a case of unilateral preparation of agreement by bank manager, signatures being obtained at Madras and that alleged assurances given by the bank. He submits that there is no deposition regarding which clauses were not acceptable to the firm and what changes were proposed, etc. He submits that the said deposition is not to the personal knowledge of Mohan Gandhi as he was a minor and has admitted in cross examination that he was not present in Madras on 5th July, 1982 and became aware of the agreement only on 5th July, 1988. He would further point out the admission of Mohan Gandhi that he has not personally approached PNB Bank for repayment of Rs. 14 lakhs.

21. He would further submit that it is Mohan Gandhi's own case that the transaction was not a mortgage by deposit of title deeds and points out to the additional affidavit of evidence of Mohan Gandhi. He would submit that the Trial Court erred in questioning the waiting period of

five years when the agreement for sale is itself admitted to have been executed. He submits that the agreement for sale contains stipulations as regards passing of consideration, lawful title of the firm, conveyance of the right, title and interest, possession of the property, which are sufficient indicia for accepting that the document was an agreement for sale.

22. He would submit that the Trial Court erred in failing to consider Sections 91 and 92 of the Indian Evidence Act, 1872 (for short "**Evidence Act**") and no oral evidence can be given contrary to the written contract. He would further submit that the Trial Court has failed to appreciate that Mohan Gandhi has not established that his mother Sushila Devi did not sign the agreement for sale, and that issue no. 3A could not have been partly answered in view of the finding in paragraph 72 of the impugned judgment. He would submit that the agreement for sale was not only signed by Mohan Gandhi's mother but also by his father. He submits that the finding of the Trial Court that the firm had not connection with the transaction between Mr. G. Balasubramaniam and PNB and therefore, the agreement for sale is null and void and inoperative is based on no evidence. He would point out the finding in paragraph 73 of the impugned judgment that Mohan Gandhi firm is liable to pay loan amount of Rs. 14 lakhs and has thereby created a contract which does not exist between the parties under the agreement

for sale. In support he relies upon the following decisions :-

(i) Vimal Chand Ghevarchand Jain And Others vs Ramakant

Eknath Jadoo¹

(ii) Maharaj Singh And Others vs Karan Singh (Dead) through

legal representatives²

23. *Per contra*, Mr. Pathare, learned counsel for the Mohan Gandhi firm-Respondent, would submit that Mr. G. Balasubramanian was the Managing Director in Argee Textiles and partner in Mohan Gandhi firm. He submits that Argee Textiles had borrowed from PNB and due to defect in security sought more security, which was offered by the firm, who stood guarantor for the loan. He submits that the bank had filed suit against Argee Textiles where amongst other reliefs, the bank had sought a declaration that the flat is mortgaged as equitable security for payment of sum of Rs. 24,67,486.46/-. He would point out the pleadings in Suit No. 441 of 1982 to contend that the Bank had admitted in the suit that the flat was given as security by Mohan Gandhi firm. He submits that the Bank had suppressed the proceedings of Suit No. 441 of 1982 as well as about the loan taken by Argee Textiles, as against which part consideration was claimed to have been adjusted.

24. He would submit that the firm had addressed a communication dated 29th November, 1986 specifically stating that the flat was given as

1 (2009) 5 SCC 713

2 (2024) 8 SCC 83

collateral security and the agreement was obtained fraudulently, and calling upon the bank to hand over the possession of the flat, which is sought to be disputed by the Bank. He would point out that from 5th July, 1982 till 26th August, 1987, there was no notice from the Bank seeking completion of sale transaction.

25. He would submit that the Trial Court by order dated 7th June, 2017 did not mark the Agreement for Sale dated 5th July, 1982 as exhibit on the ground of being insufficiently stamped and thereafter by order dated 17th December, 2018 marked the agreement as Exhibit "6".

26. He would point out the cross examination of Bank's witness admitting about Suit No. 441 of 1982 filed in the High Court and the appointment of Official Liquidator. He would submit that Court Receiver was appointed in those proceedings and suit flat being *custodia legis* could not have been sold by Mohan Gandhi firm. He submits that before the DRT, the Bank did not disclose about the agreement of sale and only at the final hearing, the agreement for sale was brought to the notice of DRT.

27. He would point out the Official Liquidator's Affidavit tendered before DRT reserving the right to claim right title and interest in the suit flat. He submits that in view of the said proceedings, the sale could have been conducted only with leave of the Court and the agreement was kept under wraps by both parties.

28. He would further point out the pleadings in Suit No. 441 of 1982 filed by PNB against Argee Textiles, where PNB had pleaded about the suit flat being offered as security. He would submit that while filing the suit, it was not disclosed that Argee Textiles was ordered to be wound up, which came to be pleaded subsequently, as also the prayer for sale of the subject flat to be applied towards the satisfaction of PNB's claim by treating the same as mortgage. He submits that therefore at all points of time, PNB had considered the suit flat as security for the loan advanced to Argee Textiles. He submits that the fact about the mortgage being created as stated in Suit No. 441 of 1982 was suppressed by PNB in present Suit. He submits that in the background of such facts, the document dated 5th July, 1982 cannot be said to be agreement for sale.

29. Drawing attention of this Court to the evidence of Mohan Gandhi, he points out the clauses in the Deed of Partnership and in particular Clause 11 to contend that the deed did not contain any agreement as regards the property of partnership and therefore the Partnership Act would prevail.

30. He would further point out that on behalf of the bank, its current officer had deposed who had no personal knowledge of the facts of the case. He would point out the deposition of the Bank's witness deposing about remittance of Rs 14 Lakhs by way of endorsement by Mohan

Gandhi and Company for credit to the account of Argee Textiles and that the witness had produced voucher dated 6th July, 1982 depositing the said amount of Rs. 14 lakhs to the account of Argee Textiles. He would further point out the admission of the witness that the endorsement behind the pay order was not personally seen by him and he is not aware as to who has signed the endorsement.

31. He would further point out the affidavit of the official liquidator filed in High Court Suit No. 441 of 1982, stating that Argee Textiles was ordered to be wound up and official liquidator was appointed and when the representative went to take possession of the premises, found the bank in possession. He would further point out that the liquidator has stated that it's right is reserved to claim right, title and interest and take possession of the suit flat as it is an asset deemed to be in custody of winding up Court, and that the bank be directed to prove its claim. He would further point out that the official liquidator has stated that a Court Receiver was appointed in respect of the subject flat with directions not to disturb possession of anyone, who might be in possession thereof, and accordingly, formal possession has been taken of the subject flat by the Court Receiver on 20th March, 1982. He submits that in view of the flat being in formal possession of the Court Receiver and official liquidator having been appointed, the sale, if any, can be only to be by leave of the court.

32. He would further point out the cross-examination of Mohan Gandhi that his father had given instructions to draft the letter dated 29th November, 1986 and that based on the Court's order, he has deposed about the flat being in *custodia legis*. He would submit that the Bank's case is that in cross-examination Mohan Gandhi has admitted that he was unaware of execution of the document, which has no relevance, as Mohan Gandhi was a minor at the time of execution of the agreement. He would further submit that the provisions of the Partnership Act provides that a partnership property will vest in all the partners and no partner can deal with any portion of the property as his own. He submits that it is well settled that even if property is brought into partnership by one of the partners, he ceases to be the exclusive owner of the property and would be trading asset of the partnership firm. He submits that in the present case, as the Partnership Act does not provide for the manner of dealing with the partnership property, as per the provisions of the Partnership Act, the property becomes a trading asset of the partnership, with every partner having interest, and therefore, Mr. G. Balasubramaniam could not have mortgaged the property without the consent of the other partners. He would further point out that Section 30 of the Partnership Act and would submit that guardian of a minor, who is admitted to partnership firm is empowered to do all that is necessary to effectuate the conferment and receipt of

benefits of partnership. He submits that the sale of the suit flat was not for the benefit of the minors.

33. He would further submit that the agreement for sale was not properly stamped, as the recitals would show that the document is sale deed. He has further taken this Court through the clauses of the agreement to contend that there is no justification for waiting period of five years to complete the sale. He would further submit that Clauses 7 and 8 deals with the consequences of non-performance, provides for right to claim damages and that bank is not liable to pay any compensation or mesne profit for use and occupation of the flat till the repayment of sum of Rs. 14 lakhs, which are clauses supporting the case of the agreement being agreement for security of the loan. He submits that the clauses of the agreement speaks of vacating and handing over possession and refund of earnest money after five years, which has been rightly considered by the Trial Court as creating a doubt as to whether the agreement is outright agreement for sale.

34. He has taken this Court in detail through the findings of the Trial Court to contend that the Trial Court has rightly dealt with the various Clauses of the agreement, which casts a doubt about the agreement being an agreement for sale. He submits that as substantial consideration was paid and the possession was with the Bank, there was no requirement of execution of any further deed, and therefore, the

document was required to be registered and duly stamped, which has not been done. He submits that the issue of limitation is rightly answered in favour of Mohan Gandhi firm as within period of three years of attaining majority, Mohan Gandhi had filed the suit. In support relies upon the following decisions : -

(i) Duggi Veera Venkata Gopala Satyanaryana vs Sakla

Veera Raghavaiah And Another³

(ii) Hari Chand vs Daulat Ram⁴

(iii) Allam Gangadhara Rao vs G. Gangarao⁵

(iv) Addanki Narayanappa And Another vs Bhaskara

Krishnappa, (dead) and thereafter his heirs and Others⁶

(v) Commissioner of Income Tax, Mysore, Bangalore vs M/s

Shah Mohandas Sadhuram⁷

(vi) Kanhaiyalal vs Dr. D. R. Banaji⁸

(vii) Pattu Lal vs Achchey Lal⁹

(viii) Peyare Lal vs Mt. Misri¹⁰

(ix) Fraser vs Krishnaswamy Aiyer¹¹

(x) Shyamsundar Radheshyam Agrawal vs Pushpabai

3 AIR 1987 SC 406

4 AIR 1987 SC 94

5 AIR 1968 AP 201(V 55 C 63)

6 AIR 1966 SC 1300

7 AIR 1966 SC 15

8 AIR 1958 SC 725

9 1956 Vidhiya Pradesh 42 (AIR V 43 C 23 DEC)

10 AIR 1940 Allahabad 453

11 AIR 1923 Madras 144(2)

Nilkanth Patil¹²

(xi) Veena Hasmukh Jain And Another vs State of

Maharashtra And Others¹³

(xii) Balawantgir Ganpatgir Giri vs Manasi Construction And

Developers¹⁴

35. In rejoinder, Mr. Shah would submit that the order of 20th March, 1982 appointing the Court Receiver was ad-interim relief and the motion was made absolute on 10th March, 1983, excluding the subject flat from the order. He points out that the High Court had taken note of the agreement of sale executed between the parties and the occupation by the Bank, and therefore, did not appoint the Court Receiver in respect of the suit flat. He would further submit that the Court Receiver, if any, was appointed at the instance of the Plaintiff bank, and therefore, it cannot be said that there was any breach.

36. He would further submit that the submission about suppression in DRT proceedings about the sale of the flat in the year 1982 is incorrect and as the affidavit of evidence filed by the witness for the bank specifically deposed in paragraph 48, that after filing of the suit, the said flat mortgaged to the bank was sold by Mohan Gandhi by sale agreement dated 5th July, 1982 for an amount of Rs. 14 lakhs, for which

12 AIR 2024 SC 5074

13 AIR 1999 SC 807

14 2006 AIHC 3715 (BOM)

credit has been given to the account of Argee Textiles. He would point out that the photocopy of the agreement was placed before the DRT and that the DRT in its order dated 14th July, 2005 has observed that since the Plaintiff bank had entered into an agreement for sale against Defendant firm, its claim against the Defendant firm as a mortgagor did not survive.

37. Insofar as the letter of 1986 is concerned, he submits that the suit, as initially filed, did not include the letter dated 29th November, 1986, and it is only after amendment that the letter was made part of their plaint. He would further point out that the contents of paragraph 5 of the said letter is contrary to paragraph 9(D) of the suit of Mohan Gandhi firm. He would further point out the evidence of Mohan Gandhi in respect of the letter dated 29th November, 1986, that he is not aware that his father had given instructions for issuance of the letter dated 29th November, 1986, as deposed on 7th April, 2019, and the contrary deposition on 19th July, 2018 about instructions given by his father. He would further submit that Mohan Gandhi has admitted in the cross-examination that he has not personally approached the Defendant bank in November 1986, which is contrary to paragraph 9(D) and 9(E) of the amended plaint.

38. He would further submit that initially the agreement for sale was not exhibited by Trial Court and came to be marked on 17th December,

2018, as the document was referred to and relied upon by Mohan Gandhi firm and was put in cross-examination to the Bank's witness. He submits that in view of Section 36 of the Stamp Act, no objection can be taken once an unstamped document is marked as exhibit. He would further submit that the agreement for sale specifically provides for completion of sale by executing the sale deed, and therefore, the deed being unregistered does not make it inadmissible.

39. He would submit that the principle of law with respect to sale of immovable property for the benefit of minor would apply if the immovable property is owned by the minor himself, whereas in the present case, the immovable property is owned by the partnership firm, of which Mohan Gandhi is a partner. He submits that the impugned order gives a finding in favor of the Bank as regards the natural guardian of minor signing the agreement on their behalf, which has not been challenged by Mohan Gandhi and has attained finality.

40. The facts of the case gives rise to the following points for determination:

(i) Whether the indenture dated 5th July, 1982 constitutes a transaction for sale of suit flat or is executed as security for the loan taken by Argee Textiles from PNB.

(iii) Whether the credit of the part consideration in the loan account of Argee Textiles constitutes payment of part

consideration to Mohan Gandhi firm under the indenture dated 5th July, 1982.

(iii) In the event, the indenture dated 5th July, 1982 is held to be an agreement for sale, whether it is null and void on the ground that

(a) it was not signed by the then minors or their guardian

(b) the alienation of immovable property cannot be said to be for the benefit of minors admitted to the benefits of partnership.

(c) the alienation was at the sole instance of G. Balasubramaniam.

41. The pleaded case of PNB is that the agreement for sale was executed on 5th July, 1982 for total consideration of Rs 15 lakhs out of which Rs 14 lakhs was paid as earnest money by cheque/pay order No 280363/352/82 dated 5th July, 1982 and balance Rs 1 lakh was to be paid on completion of sale. As there was breach on part of Mohan Gandhi firm, the suit is filed for specific performance.

42. The contention of Mr. Pathare is that of suppression of filing of Suit No. 441 of 1982 and loan advanced to Argee Textiles. The cause of action in present case was breach of agreement for sale by Mohan Gandhi Firm. Considering the relief sought, PNB pleaded about execution of the agreement and the alleged breach.

43. The decision in the case of ***Duggi Veera Venkata Gopala Satyanaryana vs Sakla Veera Raghavaiah And Another*** (supra), pressed into service by Mr. Pathare in support of his contention that the suit of PNB is liable to be dismissed as there is suppression of facts, is misplaced. In that case, the Hon'ble Apex Court was considering the issue of eviction of the Appellant and in that context has observed that all the ingredients of the statutory provision therein was required to be pleaded in the Petition, and as the same was not pleaded and was only raised during arguments, the Hon'ble Apex Court refused to interfere with the order of eviction. The decision is rendered in a different factual scenario and does not assist the case of Mohan Gandhi Firm.

44. In so far as the decision in the case of ***Hari Chand vs Daulat Ram*** (supra) is concerned, the suit was filed for recovery of possession of the disputed land on the ground that the Plaintiff had become the owner of the said land. There was no pleading by the Plaintiff that the disputed property fell within the allotment of the Plaintiff on the basis of the deed of partnership and that the disputed property was in possession of his vendor before the sale of the said land. In that case, the facts which were essential in order to prove the encroachment were not pleaded, and in that context the Hon'ble Apex Court held that the Plaintiff had failed to prove his case. In present case, PNB seeks the relief of specific performance and has pleaded and proved the execution and payment of

sale consideration.

45. The decision in the case of **Allam Gangadhara Rao vs G. Gangarao** (supra) reiterates the well-settled principle about variance between pleading and proof and that no relief can be granted on facts and documents not disclosed in the plaint. Pertinently, the Court considered that the suit based on one cause of action cannot be decreed on another cause of action. The decision being clearly distinguishable does not apply to the facts of present case.

46. The suit by Mohan Gandhi firm was filed on 29th August, 1988 and initially the pleaded case of Mohan Gandhi firm was that one of their partners G. Balasubramaniam had taken loan of Rs 14 lakhs from PNB without knowledge or consent of other partners and the agreement dated 5th July, 1982 was executed as security for repayment of loan. It was pleaded that on date of execution of agreement, PNB drew pay order in favour of Mohan Gandhi firm and had it re-endorsed in favour of PNB on the reverse and pay order has been retained and entries reflected in account with PNB. It was pleaded that it was represented that in lieu of occupation of the flat by officials of PNB, the compensation for such occupation would be the interest payable on the said loan. It was pleaded that Mohan Gandhi firm called upon the PNB to hand over vacant possession of the flat upon making payment of Rs 14 lakhs, which was not complied by PNB.

47. After the amendment in the year 2009, the case put up by Mohan Gandhi firm was that the loan was taken by Argee Textiles and to cure the defect in creation of collateral security, the agreement for sale dated 5th July, 1982 was executed. By way of amendment, the pleading about Suit No 441 of 1982 filed by PNB against Argee Textiles was incorporated. Pertinently, though the amendment was carried out by Mohan Gandhi firm to plead about the loan taken by Argee Textiles and the suit flat offered as security for the loan of Argee Textiles, the initial paragraphs about loan taken by G Balasubramaniam as partner of Mohan Gandhi firm was not deleted.

48. Though the case of Mohan Gandhi firm was that PNB was liable to hand over possession of suit flat upon receipt of Rs. 14 lakhs, which was offered in November, 1986, there is no prayer sought by Mohan Gandhi firm for direction to PNB to receive Rs 14 lakhs offered by Mohan Gandhi firm and to hand over possession of suit flat or for redemption of mortgage or handing over of original title deeds in view of the amended pleadings.

49. The Trial Court clubbed both suits and permitted the parties to lead common evidence. On behalf of Mohan Gandhi firm, its partner Mohan Gandhi deposed and on behalf of PNB, its Manager was examined.

50. The roznama indicates that the witness for PNB filed his Affidavit

of evidence and list of documents on 28th April, 2015 as Exhibit "3" and "4" respectively. Exhibit "4" listed four documents and particulars of claim. The agreement for sale was listed as Serial No 1, letter dated 26th August, 1987 was listed at Serial No 2, letter dated 17th September, 1987 was listed at Serial No 3, letter dated 11th November, 1987 was listed at Serial No 4 and Particulars of claim listed at Serial No 5. The proceedings came to be adjourned for say of Mohan Gandhi firm to 10th June, 2015. The roznama of 7th June, 2017 records that order was passed on Exhibit "4" and document at Sr No 2 which was letter dated 26th August, 1987 was marked as Exhibit "5". The hand written endorsement behind Exhibit "4" is that there was no admission or denial by the Defendant and document at Serial No 1 is insufficiently stamped. Document at Serial No 3 and 4 are not original. The document at Serial No 2 is taken on record and marked as Exhibit. The roznama of 17th December, 2018 records that admission denial not given by Defendant. The agreement for sale was marked as Exhibit "6", the letter dated 26th August, 1987 was marked as Exhibit "7", letter dated 17th September, 1987 was marked as Exhibit "8", letter dated 11th November, 1987 was marked as Exhibit "9" and particulars of claim was marked as Exhibit "10".

51. The witness for PNB has deposed that pursuant to negotiations held on 5th July, 1982, Mohan Gandhi firm entered into the agreement

to sell the suit flat for consideration of Rs 15 Lakhs out of which Rs 14 lakhs was paid on execution of the agreement and possession was handed over to the Bank. The witness has tendered the original Agreement for Sale and identified the signature of the then Area Manager of the Bank. The Trial Court initially did not mark the Agreement for Sale as exhibit on the ground of being insufficiently stamped, though there was no objection raised by the Mohan Gandhi firm. Under Section 33 of the Stamp Act, the document was required to be impounded and the stamp duty and penalty paid before the document could be exhibited. The Trial Court neither impounded the agreement nor marked the document as exhibit. Subsequently, the Trial Court marked the agreement for sale as exhibit. Section 36 of the Stamp Act provides that where an instrument has been admitted in evidence, such admission shall not be called in question at any stage of the same suit or proceedings on the ground that the instrument has not been duly stamped. Further, the cross examination of PNB's witness in paragraph 5 indicates that he was questioned on the Agreement for sale. As the agreement for sale came to be marked as exhibit by Trial Court, it is not open for Mohan Gandhi Firm to question the admissibility of the agreement for sale in appellate proceedings in view of the embargo placed by Section 36 of Stamp Act.

52. In ***Shyamsundar Radheshyam Agrawal vs Pushpabai Nilkanth***

Patil (supra), the Hon'ble Apex Court has considered the provisions of the Stamp Act to uphold the action of impounding of documents. There is no quarrel with the said proposition.

53. In **Veena Hasmukh Jain And Another vs State of Maharashtra And Others** (supra), the Hon'ble Apex Court has held that if there is an agreement to sale immovable property and possession of such property is transferred without executing any conveyance in respect thereof, such agreement is deemed to be a conveyance. The issue before the Court was as regards the duty payable under the Bombay Stamp Act, 1958 on an agreement for sale of flat covered by Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 and Maharashtra Apartment Ownership Act, 1970. The issue arose in the context of considering stamp duty leviable on such agreement for sale, and in the present case, the issue is as regards the admissibility of an unstamped document. In view of Section 36 of Stamp Act, as the document has been admitted in evidence, no objection can be taken as regards its admissibility at appellate stage.

54. In the case of **Balawantgir Ganpatgir Giri vs Manasi Construction And Developers** (supra), Trial Court therein had disallowed the document in evidence on the ground of being insufficiently stamped. The order of the Trial Court was challenged by way of Writ Petition and came to be allowed. In that case, as the agreement

contemplated delivery of possession only on execution of sale deed, the Court held that the document was liable to be admitted in evidence. The relevancy of the said decision to the facts of the present case is not demonstrated and would not assist the case of the Appellant.

55. The witness for PNB has admitted that he was not personally present at the time of execution of the agreement. The witness is the manager of PNB and has deposed that he has perused the records of the Bank and the Affidavit of evidence is based on information therefrom.

56. The witness for Mohan Gandhi firm has deposed in paragraph 6 as under:

"6. I say that despite the suit premises being custodia legis, the officials of the defendants got the Agreement dated 5/7/82 executed at Madras late in the night as and by way of security towards repayment of loan amount given to the said Co. I say that the said Agreement dated 5/7/82 is a camouflage and has been executed only as a security and the same is not a genuine Agreement for sale as falsely contended by defendants."

57. The witness for Mohan Gandhi has admitted the execution of the agreement dated 5th July, 1982 and the factum of execution of the agreement dated 5th July, 1982 has been duly established.

58. On the aspect of payment of consideration, the witness for PNB has deposed that sum of Rs. 14 lakhs was paid on execution of the said agreement. He has deposed in his additional affidavit of evidence in paragraph 6 as under:

"6.. The amount of Rs. 14 lakhs paid by the Bank to Mohan Gandhi & Co. by way of pay order for purpose of suit flat was endorsed by Mohan Gandhi & Co in the name of ATPL and accordingly credited to the account of ATPL on 6th July, 1982. I am tendering a certified copy of relevant entry in the same in

the records of Plaintiff bank and the same may be taken on record."

59. In the additional affidavit in lieu of examination in chief, the witness for PNB has deposed as under:

"4. I say that Rs 14,00,000/- was received by Mandvi Branch of the Plaintiff from Mount Road, Madras Branch on 06.07.1982. The said amount of Rs 14,00,000/- was remitted by way of endorsement by M/s Mohan Gandhi & Co. The amount of Rs 14,00,000/- was remitted for credit to the account of Argee Textiles Pvt Ltd.

5. Voucher dated 06.07.1982 was generated depositing the said amount of Rs 14,00,000/- transferring the said amount from Mount Road Branch, Chennai of the Plaintiff to account of Argee Textiles Pvt Ltd. The voucher has been signed by the Accountant and Manager of the Mandvi Branch. Hereto annexed and marked as Exhibit "A" is a copy of the voucher dated 06.07.1982.

8. I say that M/s Mohan Gandhi & Co received consideration of Rs 14,00,000/- by Pay order No. 280363/352/82 dated 05.07.1982 and M/s Mohan Gandhi & Co. re-endorsed the said Pay order in favour of Punjab National Bank (New Bank of India as it was then) at Mount Road Branch for credit of account of Argee Textile Pvt Ltd. Pursuant to the said endorsement, Mount Road Branch, Chennai by way of telegraphic transfer remitted Rs 14,00,000/- at the behest of Mohan Gandhi & Co to Mandvi Branch in favour of Argee Textiels Pvt Ltd. The said amount was credited to the Account No 49 of M/s Argee Textiles Pvt Ltd with Mandvi Branch."

60. In the cross examination, the witness for PNB has stated that the pay orders were credited to the account of M/s Argee Textiles which is reflected in the entry in account statement. Even though the witness for PNB has admitted that he is not aware about who had signed the endorsement on behalf of Mohan Gandhi & Co, it needs to be noted that the bank's witness was deposing on basis of official records and was not personally acquainted with the endorsed signatures. There is no specific deposition by witness of Mohan Gandhi firm denying any such endorsement on behalf of Mohan Gandhi firm. The witness for PNB has

stated that his deposition is based on the voucher dated 6th July, 1982 and the deposition is that the voucher was generated depositing the said amount of Rs. 14,00,00,000/- transferring the said amount from Mount Road Branch, Chennai of the Bank to the account of Argee Textiles.

61. The statement of account-Exhibit 13 of Argee Textiles maintained by the Bank reflects deposit entry of Rs 14,00,000/- on 6th July, 1982 with narration as "By Trf (Proceeds of flat sold Dep by party)". The voucher dated 6th July, 1982 is the voucher of the Bank with the narration of remitter being Mohan Gandhi & Co kept in sundry deposits in favour of Argee Textiles Pvt Ltd.

62. In O.A No. 320 of 2001, which was transferred Suit No 441 of 1982 from High Court to DRT, the DRT has noted that after filing of O.A., the flat was sold and sale proceeds of Rs. 14 lakhs are credited. Suit No 441 of 1982 was filed by PNB against Argee Textiles seeking recovery of Rs 24,67,486.46 alongwith interest. In these proceedings, after transfer of the suit to DRT, the judgment of DRT notes about sale proceeds of Rs 14 Lakhs being credited to Argee Textiles account and disallows the claim of PNB against Mohan Gandhi firm. The statement of account produced by PNB in DRT proceedings shows credit given to Argee Textiles for sum of Rs 14 lakhs on 6th July, 1982.

63. It is nobody's case that the sum of Rs. 14 lakhs for which due

credit was given in the loan account of Argee Textiles, was payment by Argee Textiles. The credit was given in the account of Argee Textiles of sum of Rs 14 lakhs on 6th July, 1982 after the execution of the agreement of sale on 5th July, 1982. There is not even a suggestion given to the witness for PNB that Mohan Gandhi firm had not endorsed the pay order in favour of Argee Textiles.

64. The written arguments of Mohan Gandhi firm before DRT states in paragraph 26 as under:

"26. As per the balance of dues indicated as on 3rd August, 1983 is Rs 5,10,632.35 paise on account of realisation of a sum of Rs 5,56,854.11 paise by sale of hypothecated goods and the bank having adjusted a payment of Rs 14 lakhs due to M/s Mohan Gandhi & Co (Defendant No 6) in the alleged purchase of flat situated at A1 Cuffe Castle, Cuffe Parade, Mumbai 400 005. The Agreement for sale was made under duress from the officials of the lender, New Bank of India. No part of the Earnest Money was paid to M/s Mohan Gandhi & Co and the said amount was adjusted against the debts of the Company..."

65. The written submissions of Mohan Gandhi firm constitutes an admission about the adjustment of Rs. 14 lakhs against debt of Argee Textiles. In the present suit filed by Mohan Gandhi firm, it is pleaded in paragraph 14 as under:

"14. The Plaintiffs, therefore, state that they are entitled to a declaration that the agreement of sale shown in Exhibit "A" is null and void and the same is ineffective, inoperative and not binding upon the plaintiff upon the plaintiffs paying a sum of Rs 14,00,000/ and, therefore, the agreement is liable to be cancelled and/or rescinded by an order of this Honourable court...."

66. In the event, there was no flow of consideration of Rs. 14,00,000/- from PNB to Mohan Gandhi firm, there is no justification for Mohan

Gandhi firm to then offer to pay Rs. 14 lakhs for seeking possession of the suit flat. The acceptance of adjustment of sum of Rs. 14 lakhs against debt of Argee Textiles and offer of repayment of Rs. 14 lakhs constitutes an admission by Mohan Gandhi firm that there was flow of part consideration from PNB to Mohan Gandhi firm under the agreement for sale dated 5th July, 1982, which was re-endorsed in favour of Argee Textiles and accordingly there was reduction in loan account of Argee Textiles. The net effect of the transaction is payment by PNB of Rs. 14 lakhs by way of crediting the loan account of Argee Textiles. In view of the evidence on record, it is difficult to accept the contention that no consideration was paid by PNB to Mohan Gandhi firm.

67. There is no pleading and no deposition by the witness for Mohan Gandhi firm that the adjustment of Rs 14 lakhs by PNB towards the loan of Argee Textiles was not authorised by Mohan Gandhi firm and there was no endorsement by Mohan Gandhi firm on the pay order issued by PNB. It is specifically pleaded by PNB that PNB drew a pay order in favour of Mohan Gandhi firm and had it re-endorsed in favour of PNB on the reverse. There was no objection taken by Mohan Gandhi firm to the endorsement in favour of PNB and even in the pre suit communication dated 29th November, 1986, there is no grievance raised that the endorsement or the adjustment of Rs. 14 Lakhs was not at the instance

of Mohan Gandhi firm.

68. The suit of Mohan Gandhi firm was amended in the year 2009, by which time the judgment of DRT was passed and the specific case of PNB about endorsement of the pay order in favour of Argee Textiles, the adjustment of loan account of Argee Textiles with the part sale consideration of Rs. 14 lakhs was to the knowledge of Mohan Gandhi firm. As such, the suit should have pleaded about unilateral act of PNB in adjusting the amount against loan of Argee Textiles or that the endorsement, if any, being forged and fabricated or not being authorised by Mohan Gandhi firm. The witness for Mohan Gandhi firm admits that the pay order drawn by the bank was endorsed in favour of the bank and retained by the bank. This lends credence to the case of PNB that the endorsement was by Mohan Gandhi firm in favour of Argee Textiles, which came to be retained by PNB after giving due credit for Rs. 14 lakhs in loan account of Argee Textiles. The testimony of PNB's witness as regards the endorsement of sum of Rs. 14 lakhs in favor of Argee Textiles by Mohan Gandhi firm has not been shaken in the cross-examination. It is admitted position that the partner of Mohan Gandhi firm was the Managing Director of Argee Textiles. There can be no explanation for the reduction of Rs 14 lakhs of loan account of Argee Textiles than the adjustment of part consideration to be paid by PNB to Mohan Gandhi firm in the loan account at the instance of Mohan Gandhi

firm.

69. The case of Mohan Gandhi firm that the assurance was given that upon repayment of loan of Rs. 14 lakhs, the possession of suit flat would be handed back to Mohan Gandhi firm is unacceptable. If the said contention is accepted, it would mean that in addition to the loan amount of about Rs. 24 lakhs for which suit for recovery was already filed, the Bank advanced further Rs. 14 lakhs as it reduced the loan account of Argee Textiles. The offer of repayment of Rs 14 lakhs by Mohan Gandhi would only set off the additional advance keeping the original outstanding of about Rs. 24 lakhs intact. As per judgment of DRT, the decree was reduced to the extent of sale consideration of Rs. 14 lakhs paid by PNB. Such a transaction would mean the Bank has paid Rs. 14 lakhs out of its own pocket, which is improbable. A financial institution seeking to recover its outstanding amount by resorting to legal remedy would not enter into a transaction which would result in failure to recover its outstanding amount. If the suit flat was only security for loan already advanced, there was no requirement for the Bank to set off Rs. 14 lakhs against the outstanding loan amount.

70. Mr. Pathare would seek to rely on the pleadings in Suit No. 441 of 1982 filed by PNB against Argee Textiles to substantiate the case of suit flat being offered for security. Suit No. 441 of 1982 was filed by PNB against Argee Textiles, Mr. R. C. Govinda Swami, Mr. G. C.

Balasubramaniam, Mrs. Balasubramaniam Kamini Kaushalya, Mr. Balubhai Prabhubhai Pajawala and in the said suit M/s Mohan Gandhi and Company was impleaded as Defendant No. 6. The pleading in the plaint insofar as Defendant No. 6 is concerned, is that on 3rd September, 1981, the Defendant No. 6 guaranteed to pay the amount due and payable by Argee Textiles and also offered to give their flat as security, and accordingly, gave in Bombay to the Plaintiff their title deeds in respect of Flat no. A/1 as and by way of equitable security for securing the amount payable by Argee Textiles to the bank.

71. In the evidence filed by G. Balasubramaniam in DRT, he has deposed that there is no document produced to show that the suit flat was given as equitable security for loan given to Argee Textiles and there is no memorandum signed by Mohan Gandhi firm for creating any equitable mortgage in respect of the suit flat. The common written arguments filed by the Defendants therein are replete with denial to the creation of equitable mortgage in respect of suit flat. The stand taken by Mohan Gandhi firm was that of denial of creation of equitable mortgage of the suit flat and no reliance can then be placed on the pleadings of PNB in DRT proceedings to contend that the suit flat was offered as security.

72. In any event, the pleading by PNB about the suit flat being flat being offered as security was as of 3rd September, 1981. In the affidavit

of evidence filed before the DRT, the witness for PNB has deposed that after filing of the suit by the bank against Argee Textiles, the flat mortgaged to the bank was sold by the partnership firm by agreement for sale dated 5th July, 1982 for sum of Rs. 14 lakhs, for which the bank has given credit in the account of Argee Textiles and had also produced the agreement for sale. The case of PNB in the proceedings filed by them against Argee Textiles was of creation of equitable mortgage by deposit of title deeds, and thereafter, during the pendency of the suit, the suit flat came to be sold by the partnership firm to the bank, for which due credit was given to Argee Textiles.

73. Suit No. 441 of 1982 was filed by PNB against Argee Textiles and others on 18th March, 1982 and the agreement for sale is executed on 5th July, 1982. It is difficult to accept that after the suit was filed by PNB for recovery of the amount from Argee Textiles, in which Mohan Gandhi firm was also impleaded as a party, and the stand of PNB was that equitable mortgage has been created in respect of the suit flat by deposit of title deeds, Mohan Gandhi firm, would offer the same flat again as security during the pendency of the suit.

74. The contention of Mr. Pathare is that the agreement for sale could not have been executed as the property was *custodia legis*. During the pendency of Suit No. 441 of 1982, the Bank moved Notice of Motion seeking appointment of Court Receiver and by order dated 20th March,

1982, ad-interim order was passed by the High Court appointing Court Receiver in respect of the suit flat with directions not to disturb the possession of the occupant. By order dated 10th March, 1983, the High Court made the Notice of Motion absolute except in respect of the suit flat and granted liberty to PNB to take out fresh Notice of Motion for the flat subsequently noticing that the suit flat is in occupation of Bank at present under an agreement. No objection was taken by Mohan Gandhi firm at that point of time against the observation of the Court about the execution of agreement of sale.

75. In ***Kanhaiyalal vs Dr. D. R. Banaji*** (supra), the Hon'ble Apex Court was considering the question as to whether the provisions of Berar Land Revenue Code, 1928, bar the suit out of which the Appeal arose. In that case, there was a mortgage and the suit was filed for enforcement of mortgage and the Court Receiver came to be appointed in respect of the mortgaged property. The subject plot was sold and auctioned without giving notice to the Court Receiver in respect of arrears of revenue payable in respect of the said plot. The contention that was advanced was that the property in the hands of Court Receiver is *custodia legis* and is exempted from all judicial processes except with leave of the Court. The Hon'ble Apex Court assumed for the purpose of the case that such a sale is only voidable and not void ab initio. The Hon'ble Apex Court noted that if Court has exercised its power to

appoint receiver of a certain property, it has done so with a view to preserve the property for the benefit of rightful owner and judicially determined. In the present case, the Court Receiver was appointed at the instance of PNB and the High Court noted the execution of the agreement and exempted the flat while appointing the Court Receiver in respect of the other properties. In the case before the Hon'ble Apex Court, the property though in custody of the Court Receiver was sold to a third party for recovery of arrears of land revenue, which is different from the facts of the present case, where it is PNB, at whose instance the Court Receiver was appointed, has purchased property.

76. The decision in the case of ***Pattu Lal vs Achchey Lal*** (supra), ***Peyare Lal vs Mt. Misri*** (supra) and ***Fraser vs Krishnaswamy Aiyer*** (supra), though forming part of the compilation, was not referred to by Mr. Pathare.

77. During the pendency of proceedings before the High Court, Argee Textiles came to be wound up and Official Liquidator was appointed. The official liquidator filed an affidavit in reply in the O.A before DRT, stating that Argee Textiles was ordered to be wound up by order dated 22nd June, 1983 in Company Petition No. 407 of 1982, and when the representative of official liquidator went to take possession of the subject premises, it was found that the bank was in occupation thereof. He has further stated that the agreement for sale was executed by

Defendant No. 6 on 5th July, 1982, i.e. within six months before the date of commencement of winding up on 23rd November, 1982. He has further stated that he reserved his right as liquidator of the first Defendant company to claim right, title and interest in the said flat and take possession, as the same is an asset deemed to be in custody of winding up Court as from the date of winding up order.

78. The said Affidavit does not assist the case of Mohan Gandhi firm as the official liquidator was appointed as liquidator of the assets of Argee Textiles. Admittedly, the suit flat was owned by the partnership firm of M/s Mohan Gandhi & Co, and therefore, in winding up of Argee Textiles, the official liquidator could not have claimed any right in respect of the suit flat owned by M/s Mohan Gandhi & Co., as it was never an asset of Argee Textiles.

79. The material on record, such as the DRT judgment, the bank statement and the voucher produced on record, would unequivocally point out that the sum of Rs. 14 lakhs, which was a part consideration for the agreement for sale, has been routed in the account of Argee Textiles, thereby reducing its loan amount to that extent. There is therefore, a flow of consideration from the bank's account which could not have taken place, if the agreement for sale was only a document of security. The evidence on record establishes that there was an agreement for sale dated 5th July, 1982 executed by Mohan Gandhi firm

in favour of PNB and there was flow of part consideration from PNB to Mohan Gandhi firm, which was endorsed by Mohan Gandhi firm in favour of Argee Textiles, and accordingly, credit was given by PNB in the loan account of Argee Textiles. In the proceedings before High Court subsequently transferred to DRT, Mohan Gandhi firm was impleaded as party and was conscious of the specific case of PNB about the adjustment of Rs. 14 lakhs towards loan account of Argee Textiles. There is therefore no justification to plead about offer to repay Rs. 14 lakhs by Mohan Gandhi firm.

80. The witness for PNB has specifically deposed about working capital facility given to ARGEE Textiles to the tune of Rs. 20 lakhs in 1980 and which was enhanced to Rs. 30 Lakhs by 1981. The witness has deposed that the loan was guaranteed by Ramalingam Govindswami Chettiar-Chairman and Govindswami Chettiar Balasubramaniam-Managing Director amongst others. He has further deposed that Ramalingam Govindswami Chettiar is the father of Govindswami Chettiar Balasubramaniam (partner of Mohan Gandhi & Co.) and of G.Muruganthaswamy who is the father of the minors Mohan Gandhi and Chamundi Bhuvaneshwari. G. Balasubramaniam is therefore the paternal uncle of the minors. The witness for Mohan Gandhi firm has admitted in cross examination that the other partner G. Sethuramalingam is his uncle. The evidence discloses about the family

relations and strengthens the probability of the sale transaction having being executed by Mohan Gandhi firm to help reduction of loan liability of Argee Textiles. The evidence on record points out to an internal arrangement between the partnership firm and Argee Textiles pursuant to which the pay order in favour of Mohan Gandhi firm was endorsed in favour of Argee Textiles.

81. The suit of Mohan Gandhi firm has been filed by the partnership firm through its partner Mohan Gandhi, who was a minor at the time of execution of the agreement dated 5th July, 1982. He has deposed that he and his sister Chamundi were minors and admitted to the benefits of partnership on 4th September, 1970 and apart from them G Sethuramalingam and G. Balasubramaniam were other partners of the firm. He has deposed that the minors had not signed the agreement for sale dated 5th July, 1982 nor their guardian has signed the agreement on their behalf. Perusal of the agreement for sale discloses four signatures on behalf of Mohan Gandhi firm. Two signatures are of G. Balasubramaniam, G Sethuramalingam and on behalf of the minors by M. Sushila Devi. Mohan Gandhi has deposed that G Muruganthaswamy who has executed the suit agreement was never partner of the firm. The said G.Muruganthaswamy is the father of the minors as recorded in the partnership deed and appears to have signed the agreement in his capacity as guardian of the minors. In cross examination, Mohan Gandhi

has admitted that Sushila Devi is his mother. The Trial Court has recorded a finding that the guardian of the minors had signed the agreement for sale, which finding has attained finality.

82. The witness for Mohan Gandhi firm has deposed in paragraph 4 of the Affidavit in lieu of examination in chief as under:

"4. I say that the defendant bank realised the defect in creation of co-lateral security and as a result was pressurising the partners of the plaintiff firm to create a proper security of the suit premises in favour of the defendant bank. I say that the bank manager got the suit agreement unilaterally prepared and obtained signatures of the executing parties at Madras at midnight on 5/7/1982. I say that the parties executing the said document were not even given an opportunity to obtain any legal advice. I say that when the parties executing the document had pointed out certain objectionable clauses, the bank manager had assured them that the same were only provided by way of safeguard and that we would be entitled to take back possession of the suit premises within five years upon repaying the loan of Rs 14,00,000/ obtained by M/s Argee Textiles Pvt Ltd against the co-lateral security of the suit premises."

83. In cross examination, the witness has admitted that on 5th July, 1982 he was staying at Coimbatore. In cross examination he has stated that the information as regards contentions in para no 4 is given by his Counsel to him. He has further stated that he does not remember the name of the said Counsel. The witness was not personally present at the time of execution of the agreement dated 5th July, 1982 and did not have personal knowledge as to how the agreement for sale dated 5th July, 1982 was prepared and executed. The witness cannot depose about the purported assurance given by bank manager that the firm would be entitled to take back possession after repaying loan of Rs 14 lakhs obtained by Argee Textiles. There is no specific deposition about

which clauses in the agreement were objectionable.

84. It needs to be noted that the purchaser of suit flat is a financial institution and no individual has the authority to take decisions on behalf of the Bank. It is difficult to accept that to cure the defect in collateral security for loan taken by Argee Textiles, the Bank would enter into an agreement for sale as security. In the records of the Bank, the defect in creating the collateral security, if any, would still remain. There is no reason as to why the partners of Mohan Gandhi firm would be pressurized by the bank for giving security for the loan of Argee Textiles. Secondly, there is no reason as to why the loan of Argee Textiles would be repaid by Mohan Gandhi firm for taking back possession of suit premises.

85. The witness for Mohan Gandhi firm has deposed that in August, 1988 he was studying in second year of graduation. He has deposed that he had seen the copy of the plaint in the year 1988 when he signed the same on 29th August, 1988. He has admitted that the instructions for drafting affidavit in lieu of examination in chief was on advice of his father.

86. After the execution of the agreement for sale dated 5th July, 1982, for the first time notice was issued to the Bank on 29th November, 1986. The notice states that G. Balasubramaniam has taken credit facility from the bank for his own personal concerns. Paragraph 5 of the

notice states as under:

"5. In order to secure the repayment of your dues, he has kept my clients said ownership flat no A-1 in Cuffe Castle with you as collateral security without the knowledge, consent and authority of my clients. Your bank officers are also aware about all the said facts. Your bank officers have colluded wrongfully with the said G. Balasubramaniam and have presented the alleged writing so called an agreement for sale 5-7-1982 in respect of the said flat surreptitiously and in a clandestine manner without the knowledge and consent of my clients. The said alleged writing/agreement is obtained fraudulently malafide and to the prejudice of my clients for swallowing their flats worth Rs 40 lacs. The said writing/agreement is a sham and bogus document and is not capable of being enforced upon my clients in view of the said wrongful conduct and action of the said G.Balasubramaniam. The said transaction of taking loan is also wrongful, illegal invalid and not binding upon my clients since the said transaction is colour able and taken place with a view to dupe my clients."

87. The pre-suit correspondence sets up a case which is at variance with the pleaded case by Mohan Gandhi firm. The notice claims that the agreement for sale was executed without the knowledge and consent of the partnership firm whereas the pleading and evidence in Mohan Gandhi suit admits of execution of the agreement for sale *albeit* under coercion and duress. Despite the allegation that there was a collusion between the bank officers and Mr. G. Balasubramaniam, no action was taken against Mr. G. Balasubramaniam for breach of fiduciary capacity. The notice further calls upon the Bank to give details of the dues of Rs 14 lakhs and interest amount to enable the firm to arrange for its early payment and thereafter to vacate the flat. The stand taken in the notice is contrary to the contention of Mohan Gandhi firm that the agreement for sale dated 5th July, 1982 was executed under duress and coercion and that the Bank was permitted to occupy the flat and in lieu thereof,

the Bank would not charge interest. The notice specifically calls upon the Bank to inform the interest amount so that arrangement can be made to pay the same. In the cross examination of the Bank's witness, there is no case put to him that in lieu of occupation of the suit flat, the Bank had agreed not to charge interest on the loan amount of Argee Textiles.

88. The witness for Mohan Gandhi firm has admitted that he did not personally approach the Bank in November, 1986. He has admitted that he was not present in the Bank for payment of amount for release of the suit premises. The evidence establishes that there was no such arrangement between the Bank and Mohan Gandhi firm that possession would be handed over after payment of Rs. 14 lakhs.

89. The case of the agreement for sale being executed under duress and coercion and not binding upon the firm is set up for the first time in the plaint of Mohan Gandhi firm. The witness has deposed that as per understanding with the bank, it was to hand over possession of the suit premises on payment of sum of Rs 14 lakhs and in the meantime, the bank was allowed to retain possession of the suit premises provided that no interest was charged on the loan granted to M/s Argee Textiles Pvt. Ltd. The deposition sets up an oral arrangement contrary to the terms of the agreement for sale executed with PNB. The law is well settled. Section 91 of Evidence Act excludes oral evidence of the terms

of the written document by requiring those terms to be proved by the document. Section 92 excludes oral evidence for contradicting, varying, adding to or subtracting to such terms. It is also settled that these two sections do not prevent the parties from adducing evidence on the issue of whether the parties had agreed to contract on the terms set forth in the document, however, in the present case, Mohan Gandhi was admittedly a minor on the date of execution of the agreement for sale and was not present at the time of execution of the agreement. He has no personal knowledge as to the agreement between the parties and could not depose about the same. The arrangement deposed by the witness of Mohan Gandhi firm do not appear in the agreement for sale and neither in the pre-suit correspondence dated 29th November, 1986.

90. Coming to the Agreement for sale dated 5th July, 1982, the recitals indicates that the agreement was executed at Madras and the Vendor i.e. Messers. Mohan Gandhi and Co. had agreed to sell and transfer to Purchaser i.e. New Bank of India (erstwhile Bank) the suit flat. Clause 1 of the agreement records that the vendor shall sell and the purchaser shall purchase from the vendor the said flat for price of Rs. 15 lakhs out of which Rs. 14 lakhs paid by purchaser as earnest money before the execution of the agreement and there is acknowledgment of cheque no. 280363/352/82 dated 5-7-82 for Rs. 14 lakhs and balance on completion of sale. Clause 2 provides that the

vendor has handed over vacant possession of the said flat and purchaser will be entitled to continue in absolute possession without any hindrance from Vendor. It further records that the Vendor will have no right to claim back the possession of the said flat. Clause 4 of the agreement records that subject to what is stated hereinafter, the sale shall be completed on or before 30th June, 1987 and that the purchaser shall also then apply for being made member of the Society. Clause 5 speaks of obtaining the necessary "No Objection" letter from the Society and if applicable under ULC and will also apply and obtain necessary Income Tax Clearance Certificate. Clause 6 speaks of payment of charges and outgoings by Bank from date of occupation of the flat. Clause 7 and 8 reads as under:

"7. If within 30-6-1987, the sale and transfer of the said shares of the said flat is not completed for any reason whatsoever, it will be the option of the Bank to claim specific performance of this agreement by offering payment of the rest of the unpaid consideration money, or to vacate the same against the sum of Rs 14 Lakhs, received by the Vendor. Further if the Vendor fails and neglects to complete the sale transaction after fulfilling all formalities as mentioned above on or before 30-6-1987, the Purchaser will be entitled, in addition to the right of specific performance, the right to claim damages of Rs 20000/- per month from 30-6-1987. The right to claim damages will be over and above and in addition to the right of specific performance.

8. The Bank shall in no case be liable to pay any compensation or mesne profit for use and occupation of the said flat, so long as the Vendor do not make payment of the sum of Rs 14 Lakhs and interest due thereon at the usual banking rate prevailing at that time and the Bank shall be entitled to enforce recovery of the said amount of Rs 14 Lakhs and interest thereon against the vendor."

91. Clause 7 states that if the sale is not completed on or before 30th June, 1987, the Bank will have the option to claim specific performance of the agreement or to vacate the same against the sum of Rs. 14 lakhs

received by the Vendor and will also be entitled to claim damages over and above right of specific performance. Clause 8 provides that the Bank shall not be liable to pay any compensation or mesne profit for occupation of said flat till payment of sum of Rs. 14 lakhs and interest due thereon and Bank shall be entitled to enforce recovery of the said amount of Rs. 14 lakhs and interest thereon against the Vendor. Clause 9 provides that the stamp duty, registration charge and transfer fees on the agreement and for completion of sale shall be borne and paid by purchaser alone.

92. The Trial Court has considered Clauses 7 and 8 of the agreement for sale in isolation to arrive at a finding that such arrangement creates doubt about the agreement being outright agreement for sale. It further held doubtful a lapse of period of 5 years for completion of sale despite payment of substantial amount of consideration. The agreement has to be read as a whole in order to ascertain the true intention of the parties. The agreement when read holistically indicates that the agreement between the parties was a transaction of sale of flat for total consideration of Rs. 15 lakhs to be completed on or before 30th June, 1987. In event of failure to perform, option was given to the bank either to seek specific performance or to seek refund of earnest money paid.

93. The agreement discloses reiteration of the transaction of sale

and purchase of the suit flat, the obtaining of no objection from the Society and income tax department, completion of the sale transaction till 30th June, 1987, the right to be admitted as member of the Society and payment of registration charges and transfer fees by the purchaser. The transfer of possession of suit flat upon receipt of substantial consideration is strong indicia of sale transaction. The purchaser is a financial institution and the bank manager does not possess the authority to agree to an oral arrangement to waive the amount of interest in lieu of occupation of the suit flat. The clauses in the agreement for sale are consistent with the terms usually associated with the sale transaction. In so far as Clause 7 is concerned, the option given to the Bank to not insist on specific performance and take back the earnest money cannot be construed as a term of security. It needs to be noted that Clause 7 also speaks of right of Bank to claim specific performance of the contract, which could not have been incorporated in event the transaction was only a security for the loan advanced. The failure to execute the agreement by the stipulated date giving rise to claim for damages does not turn the contract into a contract for security. Clause 8 of the agreement protecting the Bank from payment of compensation or mesne profits for use and occupation of the said flat till payment of Rs. 14 lakhs is a condition relatable to option given in Clause 7, in event Bank chooses not to seek specific performance and

claims refund of earnest money. The period of five years for completion of sale cannot be a reason to consider the contract as security for loan advanced to Argee Textiles. The Bank was put in possession of the suit premises on execution of the agreement upon parting with substantial part of consideration and the agreement for completion of sale within a period of five years did not cause prejudice to the Bank.

94. The Trial Court held the adjustment of Rs. 14 lakhs in account of Argee Textiles as indicator of the agreement being security for loan advanced. The Trial Court failed to notice that the loan had to be repaid by Argee Textiles and the flow of consideration from PNB in favour of Mohan Gandhi firm to be adjusted against loan amount of Argee Textiles would result in PNB paying a sum of Rs. 14 lakhs without any liability on part of PNB to do so.

95. The Trial Court further held against PNB for not issuing any communication prior to 30th June, 1987. As per the agreement, the sale was to be completed on or before 30th June, 1987 and on account of breach for non completion within the stipulated period, PNB issued the notice on 26th August, 1987, which is normal course to be adopted. There was no necessity of issuing any notice particularly when PNB was put in possession of the suit premises. The Trial Court ignored the glaring fact that the contention of Mohan Gandhi firm was that the agreement was executed under duress and coercion and contained

objectionable clauses. The partners of Mohan Gandhi firm did not issue even a communication to PNB for about four years since execution of agreement raising a grievance about the manner in which the agreement came to be executed and denying the terms of the agreement. No suit was filed by the partners seeking cancellation of the contract, which was prejudicial to the firm. Instead the firm waited till PNB sought specific performance of sale and immediately the suit came to be filed through Mohan Gandhi upon him attaining majority. The silence and inaction on part of the other partners of the firm from 1982 till filing of the suit in the year 1988 militates against the case of Mohan Gandhi firm.

96. The suit flat is admittedly the property of the partnership firm. The pleading in paragraph 9B of Mohan Gandhi firm's suit qua the minors is that neither the minors nor their guardian has signed the said agreement and other partners did not have any authority to enter into agreement for sale of suit premises on their behalf. The partners of Mohan Gandhi firm as per the partnership deed of 1970 were the minors M. Mohan Gandhi and M. Chamundi Buvaneswari through their guardian Sushila Devi, G.Balasubramaniam and G.Sethuramalingam. The partnership deed records that the minors are admitted for benefit of partnership during their minority. The share of each partner as per the Schedule annexed to the partnership deed records that 25% share each

of the minors and no share in the losses of partnership. Section 14 of Partnership Act provides that subject to contract between the partners, the property of the firm includes all property originally brought into the firm or acquired by the firm for purpose and course of business. The partnership deed on record does not disclose any arrangement between partners of the firm as regards the property of the firm and the suit flat would constitute partnership property. During the subsistence of partnership, no partner can deal with any portion of the property as his own. [See **Narayanappa vs Bhaskara Krishnappa** (supra)]. In the present case, the agreement for sale has been executed by all partners of the firm including the guardian of the minors and as and by way of abundant precaution even by the father of the minors. The agreement for sale would evidence consent of all partners of firm in alienating the partnership property and not by any partner exclusively dealing with the partnership asset.

97. Section 30(2) of Partnership Act provides that minors admitted to the benefits of partnership have a right to such share of the property and of the profits of the firm as may be agreed upon, and he may have access to and inspect and copy any of the accounts of the firm. There is no statutory provision demonstrated which bars the partnership firm from alienating the property of the firm with the consent of all partners of the firm including the guardian of the minors. Mr. Pathare would rely

on the decision of ***Commissioner of Income Tax, Mysore, Bangalore vs M/s Shah Mohandas Sadhuram*** (supra) to contend that sale or mortgage of the suit flat was not for the benefit of the minors and the transaction is null and void. The reliance on the said decision is misplaced as in that case, the issue was as regards the registration to be granted to the assessee firm under Section 26A of Income Tax Act on the basis of partnership deed. The registration was initially rejected on the ground that the minors were debited with share of loss. The Court observed that whether the partnership deed only confers benefits of partnership on the minor or is any clause of the deed void. It considered what is a guardian of a minor competent to do on behalf of a minor to secure full benefits of partnership to a minor. In that context it considered the provisions of Section 30 of Partnership Act and the clauses in the partnership deed. It noted Clause 7 of the deed therein which provided that capital contribution of each member will be equal and the accounts to show what each member has not contributed in personal capital ledger account and the argument that guardian is not entitled to agree to contribute capital. The Court opined that if it is one of the terms on which benefits of partnership are being conferred either the guardian must refuse to accept the benefits or he must accept this term. In such factual background, the Court held that such an agreement by a guardian may be avoided by the minor, if it was not

entered for his benefit and the agreement will remain valid till it is avoided. The agreement referred to in the said decision is the agreement by the guardian accepting the term of capital contribution as the term based on which the benefits of partnership can be conferred. The observation of the Hon'ble Apex Court as regards the avoidance by the minor of such an agreement is rendered in different context and would not assist the case of Mohan Gandhi firm. That apart, there is no pleading and no evidence on record to establish that the alienation of the immovable property was not beneficial to the partnership firm or its partners including the minor partners.

98. There is no evidence led on the claim for damages by PNB and no arguments advanced on the said relief. There is no material on record to show that the balance consideration of Rs 1,00,000/- was deposited by PNB in the Trial Court and the balance sale consideration is required to be paid alongwith interest.

99. In light of the above discussion, the conclusions are as under:

(i) The indenture dated 5th July, 1982 is a transaction for sale of the suit flat by Mohan Gandhi firm to PNB. The clauses in the agreement are consistent with the sale transaction and the option to PNB to claim refund of the Rs. 14 Lakhs paid by PNB as part consideration will not characterize the agreement as security for the loan advanced by PNB to Argee Textiles.

(ii) Mohan Gandhi firm has failed to establish that the agreement dated 5th July, 1982 was an agreement for security of loan taken by Argee Texiles executed under undue influence and coercion and is null and void.

(iii) The case set up by Mohan Gandhi firm of oral agreement that upon repayment of Rs 14 lakhs, the possession of the suit flat would be handed to Mohan Gandhi firm has not been established and is unacceptable on pre-ponderance of probabilities. There is no justification for PNB, who had filed Suit No 441 of 1982 for recovery of about Rs. 24 lakhs against Argee Textiles, to reduce the loan outstanding by Rs. 14 lakhs and recover the balance amount and thereafter accept repayment of Rs. 14 lakhs, keeping the initial outstanding loan amount intact.

(iv) PNB being a financial institution, there is no authority vested in the bank manager to agree to waiver of interest in lieu of occupation of premises by the Bank or enter into an agreement for sale to cure the defect of collateral security for loan taken by Argee Textiles. The records of the Bank would still reflect the defect in creation of collateral security, if any, in respect of loan taken by Argee Textiles.

(v) The oral agreement set forth by Mohan Gandhi firm that

upon repayment of Rs. 14 Lakhs, PNB was to hand over possession of the suit flat cannot be accepted in view of Section 91 and 92 of Evidence Act. That apart, the purported oral agreement was not within the personal knowledge of the witness. The witness has admitted in the cross examination that he has not personally approached PNB offering repayment of Rs. 14 lakhs. There is no explanation as to why Mohan Gandhi firm would offer to repay Rs. 14 lakhs towards the loan taken by Argee Textiles.

(vi) The DRT judgment, the bank statement and the voucher produced on record, would unequivocally point out that the sum of Rs. 14 lakhs, which was part consideration for the agreement for sale, has been routed in the account of Argee Textiles, thereby reducing its loan amount to that extent. There is therefore, a flow of consideration from PNB's account which could not have taken place if the agreement for sale was only a document of security.

(vii) PNB has established that the agreement for sale has been executed by all the partners of Mohan Gandhi firm and by the guardian of the minors. The alienation of suit flat in favour of PNB was with the consent of all the partners of the partnership firm and there is no statutory provision which

places an embargo on the alienation of partnership property with consent of all partners.

100. In light of the above discussion, the following order is passed:

(a) First Appeal No. 1287 of 2024 and First Appeal No. 1288 of 2024 is allowed.

(b) The impugned common judgment dated 6th January, 2023 passed in S.C Suit No. 219 of 1988 and Suit No. 17 of 1989 is hereby quashed and set aside.

(c) S.C. Suit No. 219 of 1988 is dismissed.

(d) S.C. Suit No. 17 of 1989 is decreed in terms of prayer clause (a), (b) and (c) with direction to PNB to make the payment of balance consideration of Rs 1,00,000/- to Mohan Gandhi firm alongwith interest @ 12% p.a. from 30-6-1987 till date of payment within a period of four weeks.

101. Interim Applications do not survive for consideration and stand disposed of.

(SHARMILA U. DESHMUKH, J.)