

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

Judgment delivered on: December 24, 2014

+ RFA(OS) 152/2014

ANUPAMA GUPTA & ORS

..... Appellants

Through: Mr. Jayant Bhushan & Ms. Geeta
 Luthra, Senior Advocates, with
 Mr.Rohit Bharadwaj & Ms.Bhabna
 Das, Advocates

versus

KULDEEP SINGH & ORS

..... Respondents

Through: Mr. P.S. Patwalia, Senior Advocate
 with Mr.Ashok Mahajan, Advocate
 for R-1.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE NAJMI WAZIRI

JUDGMENT

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KAILASH GAMBHIR, J.

“The difficulties of a litigant in India begin when he has obtained a Decree” observed the Privy Council¹ 142 years ago in the year 1872. The state of affairs are true even as of today as the facts of the present case would amply demonstrate.

¹ *General Manager of the Raj Durbhunga under the Court of Wards v. Maharajah Coomar Ramaput Sing*, 14 MIA 605

1. The dispute between the parties relates to property being Bungalow No.9, admeasuring 867 sq. yards in Sunder Nagar, New Delhi which is regarded as a tony colony of the city. This property was purchased by the respondent No. 1– Mr. Kuldeep Singh vide Agreement to Sell dated 30th July 1980 for a total sale consideration of Rs.14 lacs, out of which an amount of Rs.1,40,000/- was paid to the co-owners of the property in advance and the balance consideration of Rs.12,60,000/- was to be paid at the time of registration of requisite title documents as well as the delivery of actual physical possession of the entire property, sans one garage. Agreement to Sell dated 30.07.1980 was executed by all the legal heirs of Late Shri Nand Lal except one Mr. Rajinder Kumar, who was a minor at the relevant point of time. The fact of his being minor was not disclosed to the purchaser. A suit for specific performance was filed by the respondent No. 1 against all the legal heirs of Late Shri Nand Lal and the same was decreed in his favour vide judgment and decree dated 30.04.1984. The said judgment and decree was challenged by the judgment debtors vide RFA No.1485, however vide orders dated 22nd March 1985 the same was dismissed as being time barred, by the Division Bench of this Court. Thereafter the judgment debtor filed an

application under Order IX Rule 13 of CPC for setting aside the ex-parte decree dated 30th April 1984, however, the said application of the defendants was also dismissed vide order dated 15.7.1985.

2. On 7th November 1990, the decree holder had filed an execution petition. In the said execution petition, the Judgment Debtor, Mohinder Kumar raised objections, but the same were dismissed by the Learned single Judge of this court vide order dated 01.02.2002. Separate objections were also filed by the legal heir– Rajinder Kumar under Order XXI Rule 58 of CPC on the ground that the present decree was not passed against him. Further on the demise of Shri Dhanpat Rai, Judgment debtor, his legal heirs filed I.A. No. 4274/1999 in the main suit, under Section 28 Specific Relief Act for rescission of the Agreement to Sell on the ground of failure on the part of Decree Holder in depositing the balance sale consideration of Rs.12,60,000/-. However, the said I.A. was dismissed by the learned Single Judge vide order dated 23rd February 2000 and this order was challenged by the legal heirs of the Judgment Debtors before the Division Bench of this Court in FAO No.110/2000. Furthermore, against the judgment dated 01.02.2002, FAO (OS) No. 66 of 2002 and EFA (OS) 4 of 2002 were filed by Judgment debtors, R.F.A. (OS) No.152/2014

Mohinder Kumar and Rajinder Kumar, respectively. Vide order dated 19.2.2010, the Division Bench of this Court dismissed F.A.O. No.110/2000 and F.A.O. (OS) No. 66/2002 but allowed EFA (OS) 4 of 2002. Two separate review petitions No. 210 of 2010 and 328 of 2010 were also preferred against the said judgment by the Judgment Debtors to seek review of order dated 19th February 2010. Both the review petitions were dismissed by the Division Bench of this Court vide judgment and order dated 25.04.2011. Against the judgments dated 19th February 2010 and 25th April 2011, four Special Leave Petitions were preferred by the Judgment Debtors in the Hon'ble Supreme Court. All the above SLPs were consolidated as CA Nos.1873-1877 of 2014. During the pendency of these SLPs, the present appellants had filed a fresh suit vide C.S. (OS) No. 948/2013 seeking a declaration that the decree dated 30.04. 1984 was vitiated by fraud and was liable to be set aside. Vide order, dated 7th February 2014 the Hon'ble Supreme Court dismissed the said four SLPs but partly allowed the appeal arising out of appeal under Section 28 of the Specific Relief Act, and directed the respondent No. 1 to deposit the balance sale consideration at the Circle Rate i.e. Rs. 2.15 lacs per sq.

meter which comes to. Rs.15,50,15,000/-. Accordingly the said amount was duly deposited by him.

3. Again two separate review petitions; one by Judgment Debtor – Ms. Dipti Bansal vide Review Petition No.D-1102/2014 and other by the Judgment Debtors who are appellants before this court were filed and the same were dismissed by Hon’ble Supreme Court vide order dated 29th April 2014. To challenge the maintainability of fresh suit filed by these Appellants, the application under Order VII Rule 11 was filed by respondent No. 1 and vide orders dated 17th July 2014 the learned Single Judge allowed this application and consequently rejected the plaint filed by these appellants. Feeling aggrieved by the Impugned order dated 17th July, 2014, the appellants filled the present appeal.

4. Mr. Jayant Bhushan, the learned Senior Advocate appearing on behalf of the appellants strenuously contended that the learned Single Judge committed a grave error in overlooking the fact that the Hon’ble Supreme Court did not deal with the aspect of fraud and concealment of facts on the part of the respondent No. 1 in filing the false affidavit with the L&DO of not owning any residential property/plot/house in

Delhi/New Delhi either in his name or in the name of his wife or any dependent children, while in fact, the wife of respondent No. 1 had owned plot No. N-7, Green Park Extension, New Delhi on the relevant date besides owning numerous other properties. He further submitted that the filing of such false affidavit by respondent No. 1 was a fraud played upon by him not only upon the Vendor but upon the court as well as the Office of the L & DO under the Urban Land Ceiling Act and had he disclosed this fact earlier neither he would have been eligible to purchase the property from the appellants nor they would have executed the Agreement to Sell in his favour.

5. He further submitted that it is a settled legal position that any judgment and order obtained by fraud would be nullity as fraud vitiates even the most solemn act; that the Hon'ble Supreme Court in the order dated 07.02.2014 had nowhere dealt with the issue of fraud, as raised by the appellants in the fresh suit and the mere mention of these facts by the appellants in their review petition would not deprive them from re-agitating the same by filing a fresh suit, being the only remedy available to the appellants under law; and that the suit filed by the appellants would be hit by neither the principles of *res judicata* nor by *constructive res*

judicata as the bar under Section 11 of CPC operates in the subsequent suit only when in the previous suit, a court had heard and finally decided a matter directly and substantially in issue and if the same matter were directly and substantially in issue in a subsequent suit. He contends that such is not the case in the subsequent suit now challenging the previous act as being vitiated by fraud.

6. The contention raised by him was that the issue of fraud as has been raised by the appellants in the suit was not a subject under consideration in the Special Leave Petitions filed before the Hon'ble Supreme Court and accordingly, no finding or even a comment on the aspect of fraud was recorded. Mere mentioning of facts relating to fraud in their written submissions would not prejudice the rights of the appellants to seek fresh adjudication on this issue. He also submitted that even the Hon'ble Supreme Court was conscious of this fact that they were not deciding the issue of fraud and due to this reason alone, it directed the executing court to finalize the execution proceedings within a month, in the event of the purchaser depositing the amount. He also contended that in the execution proceedings, the objectors raised the aspect of fraud and

had the Hon'ble Supreme Court given any decision on it, then it would not have given further time for a decision of the execution proceedings.

7. The learned counsel further argued that the learned Single Judge has wrongly held that the issue – “*whether the decree is executable* as was framed by the Hon'ble Supreme Court while deciding the said Special Leave Petitions was a very wide issue and the same would encompass all the issues between the parties including the issue of ‘fraud’ raised by the appellants in the suit.’ He also submitted that the two issues which were framed by the Hon'ble Supreme Court, relates to or touches the aspect of fraud taken by the appellants in their independent suit. He further submitted that the Hon'ble Supreme Court did not at all go into the issue of fraud while taking a view that the decree for specific performance is executable for all intents and purposes, therefore, the issue of fraud was left open by the Hon'ble Supreme Court to be decided in the suit already filed by these appellants. With regard to the other issue relating to rescission of the agreement, the Hon'ble Supreme Court took a view that the Trial Court should have passed an equitable order while considering the application for rescission and in order to do complete justice for parties, the Hon'ble Supreme Court took a view that the

purchaser should pay the land value to the vendors as per the circle rates notified for the residential property in category 'A' colonies as prevalent during November 16, 2011 to January 05, 2012 i.e. @ Rs.2,15,000/- per sq. mtr.

8. The other contention raised by him was that the learned Single Judge also erred in taking the view that the suit filed by the appellants was hopelessly barred by limitation; perhaps failing to not notice the fact that the said fraud committed by the respondents came to the knowledge of the appellants only on 15.10.2012, therefore the period of limitation would have to be reckoned from this date and not from the date when the fraud was actually committed. He also submitted that the learned Single Judge has misconstrued the import of Section 17 Limitation Act, 1963 by shifting the onus on the plaintiff/appellants for making efforts for the discovery of the said fraud. He also submitted that the learned Single Judge has also erred in observing that the objection as to the false affidavit filed by the respondents should have been raised by L&DO and not by plaintiffs/ appellants. In support of his arguments, reliance was placed by the learned counsel for the plaintiff/appellants on the following judgments:-

- I. *Behari Kunj Sahkari Avas Samiti vs. State of U.P & Ors.*
2008(10)SCALE551
- II. *Supreme Court Bar Association v. Union of India*
AIR1998SC1895
- III. *Smt. Meera Gupta v. State of West Bengal and Others*
AIR1992SC1567

9. The admission of the present appeal has been strongly opposed by Mr. P.S. Patwalia, the learned Senior Counsel who appeared for respondent No.1. The arguments advanced by him in opposition to the present appeal are the same as canvassed by him before the learned Single Judge, and therefore, we may not rewrite the same.

10. As we embark upon analyzing the arguments in the present case, we would refer with profit to the judgment in the case of *T. Arivandandam v. T.V. Satyapal & Anr., AIR 1977 SC 2421*, which has been authored by Late Justice V.R. Krishna Iyer, whose death the country mourns at present. Justice Iyer was an unrivalled crusader of justice, a great legal luminary, a doyen of social justice, a proponent of speedy justice and a prolific writer, who has authored many books and is feted for his landmark judgments and his concern for the cause of the poor. He shall continue to be a guiding light in the path of law. In *T. Arivandandam (supra)*, explaining the scope of Order VII Rule 11 of the

C.P.C., it was held that if on a meaningful—not formal—reading of the plaint, it is manifestly vexatious, meritless, in the sense of not disclosing a clear right to sue, the court should exercise its power under Order VII, Rule 11, C.P.C., taking care to see that the ground mentioned therein is fulfilled. The court further went on to observe that it may be a valuable contribution to the cause of justice if counsel screen wholly fraudulently and frivolous litigation refusing to be beguiled by dubious clients.

Relevant paras of the said judgment are reproduced as under:-

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

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5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From

*the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now, pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. **The learned Munsif must remember that if on a meaningful-not formal-reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Or. VII R. 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial court should insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code (Ch. XI) is also resourceful enough to meet such men, and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi "It is dangerous to be too good.***

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7. We regret the infliction of the ordeal upon the learned Judge of the High-Court by a callous party. We more than regret the circumstance that the party concerned has been able to prevail upon one lawyer or the other to present to the court a case which was disingenuous or worse. It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady actions. The Bar Council of India, we hope will activate this obligation.

We are constrained to make these observations and hope that the co-operation of the Bar will be readily forthcoming to the Bench for spending judicial time on worthwhile disputes and avoiding the distraction of sham litigation such as the one we are disposing of. Another moral of this unrighteous chain litigation is the gullible grant of ex parte orders tempts gamblers in litigation into easy courts. A judge who succumbs to ex parte pressure in unmerited cases helps devalue the judicial process. We must appreciate Shri Ramasesh for his young candor and correct advocacy.”

11. It is the solemn duty of a Court to see that the process of the court is not abused and entry of any frivolous litigation is nipped in the bud and to deal with such frivolous and vexatious litigation, the legislature has enacted the provision of Order VII Rule 11 in the C.P.C.

12. It is a matter of some serious concern for the court and it would be distressing for a litigant to see how successfully the present appellants and other legal heirs of the original sellers prevented the execution of the decree of specific performance, which was passed in favour of respondent No.1 in the year 1984 i.e. for almost thirty years. Even the Judgment dated 07.02.2014 passed by the Hon’ble Supreme Court, while dismissing the Special Leave Petitions filed by the appellants, failed to deter them. The entire emphasis of the Supreme Court, while passing the said

judgment, was to do the complete justice and bring about a finality to the litigation between the parties; and took the view that there is no case that the Court which passed the decree did not have the jurisdiction; and further held that the decree is executable for all purposes and intents, limited to the share of the vendors. In so far as the claim of the appellant, Rajinder Kumar was concerned since he had also filed an independent suit, the Court clearly held that determination of this issue/claim would depend on the outcome of his suit. Apropos the other objections raised by the judgment debtors which were pending disposal before the Executing Court, the Supreme Court held that in the event of purchaser depositing the amount as directed, the execution proceedings shall be finalized within another one month, and the suit OS No. 1428 of 1981 filed by Rajinder Kumar shall be disposed off within the period of three months from the date of the order. The appellants filed the civil suit being OS No.948 of 2013, much prior to the said decision of the Hon'ble Supreme Court and they had duly referred to the pendency of the same in the written submissions filed by them in the said Special Leave Petition filed before the Hon'ble Supreme. The relevant para of the written submissions is reproduced as under:-

“1. At the very outset, it is submitted that the judgment and decree dated 30.4.1984 is a nullity being (a) obtained by deception, concealment and fraud both prior to the passing of the decree as well as after, and (b) against statutory provisions of the Urban Land Ceiling Act, 1976 wherein there was a bar against the vendee decree holder (DH) from purchasing the suit property. These issues have been dealt with in the arguments and submissions made on behalf of respondent no.6, Vijay Lakshmi, by learned senior counsel, Mr. Jayant Bhushan. The petitioners adopt the same and are not repeating them to avoid prolixity. These frauds are the subject matter of pending objections before the Executing Court as well as Suit No.948/2013 pending in the High Court of Delhi for a declaration that the decree is a nullity as it was obtained by fraud.”

Furthermore in para 6 of the Written Submission under the heading **“Fraud played by the Decree Holders”** these appellants have submitted as under:-

“6. The DH obtained the Decree by manifest concealment and fraud. In the pre Decree period, the DH did not disclose his inability to pay the money demanded by the L&DO, he also did not disclose his ineligibility to purchase the property as he was debarred from such a purchase under Sec 29(b) of the ULCA 1976. These aspects are subject matter of pending objections in the Executing Court.”

13. Even in their application for bringing on record additional documents in the said proceedings before the Supreme Court, the appellants took a stand that the decree passed by the learned trial court is a nullity and *non est* in the eye of law, on the ground of fraud and concealment of facts on the part of the purchaser. The relevant para of their application is reproduced as under:

“2. That, after the filing of this Petition, there have been important subsequent developments in the Execution proceedings, as well as in connected Suit entitled Shri Rajinder Kumar v. Kuldip Singh, that have an essential bearing on the present Petition. The accompanying documents, are a part of the proceedings in the Courts below. They are necessary to be placed on Record before this Hon’ble Court. These documents establish that the Decree dated 30.04.1984 was obtained by concealment and fraud on the Hon’ble Court. Such a Decree is a nullity on its own and is non-est in the eyes of law. It has been held in numerous pronouncements that such a Decree can be and has to be held as a nullity in any connected proceeding – including these proceedings [Vide (2012) 11 SCC 574; (1994) 1 SCC 1].”

14. Thus there is sufficient evidence on record to prove that the appellants had raised the issue of fraud time and again in several proceedings taken up in the Supreme Court and therefore we do not find

any error in the findings of the learned Single Judge that on the reading of

the said application for placing additional documents on record and written submissions filed by them, leave no room for doubt that the plaintiffs had fully argued the grounds taken in the said suit before the Supreme Court of India. In this context we are in agreement with the view of the learned Single Judge that if the aim and objective of the plaintiffs was not to seek a decision from the Supreme Court and only bring to the latter's notice the pendency of the present suit, then there was no reason for the plaintiffs to cite the list of judgments in support of the submission that a decree obtained by fraud and concealment is a nullity.

15. The appellants had also filed a review petition being no. 954-955 Of 2014 against the said judgment dated 07.02.2014 but in the entire review petition these appellants did not raise any plea of challenge made by them in an independent suit to the judgment and decree dated 30.04.1984 on the ground of alleged fraud played by respondent No.1. These appellants also did not seek any leave from the Supreme Court for prosecuting the said independent suit, although this fact was duly disclosed by them in their application for filing additional documents; in their Written Submissions and also during the course of their oral arguments, as can be gathered from the judgments, cited by the learned counsel representing

them on the plea of fraud and concealment. The review of the said order was also sought by other judgment- debtor Ms. Dipti Bansal by filing a separate review petition being No.1102/2014. Both these review petitions were dismissed by the Hon'ble Supreme Court vide order dated 29.04.2014 and on perusal of the review petition as well as the connected papers, it did not find any error in the order dated 07.02.2014 much less an error apparent on the face of the record so as to call for its review. The dismissal of these review petitions, particularly that of these appellants, leave no further scope for these appellants to re-agitate or seek fresh adjudication on the alleged plea of nullity of decree on the ground of fraud and concealment on the part of respondent No.1. We find ourselves in complete agreement with the judgment passed by the learned Single Judge wherein he says that issue No. A framed by the Hon'ble Supreme Court i.e. "Is the decree executable?" is a very wide issue and the same would pertain to all the issues between the parties.

16. Mr. Bhsuhan, the learned Senior Counsel further contended that nothing could come in the way of the appellants right to challenge the judgment and decree dated 30.04.1984 on the ground of fraud as it vitiates the judicial acts whether in *rem* or in *personam*. Furthermore

there being no adjudication on this issue by the Supreme Court, the learned Single Judge erred in rejecting the plaint filed by the appellants; that the Hon'ble Supreme Court in exercise of its powers under Article 142 of the Constitution of India cannot prevent the appellants from claiming their independent legal remedy of seeking fresh adjudication on the issue that the decree of specific performance dated 30.04.1984 is a nullity in law being obtained by respondent No.1 by practicing fraud upon the Court, L&DO and all the vendors and their successors in interest; that this right of the appellants is indefeasible, and in the absence of any adjudication of the said issue, the remedy of the appellants is not barred by principles of *res judicata* or *constructive res judicata* even after the decision of the Supreme Court dated 07.02.2014 wherein the issue of fraud remained untouched.

17. Before we deal with the said contention raised by the learned Senior Counsel for the appellants, we may reproduce Article 142 of the Constitution of India, which reads as under:-

“142. Enforcement of decrees and orders of Supreme Court and unless as to discovery, etc

(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or orders so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.”

18. The Hon’ble Supreme Court in ***Union Carbide etc. v. Union of India etc., AIR 1992 SC 248(1)*** authoritatively took a view that the power of the Hon’ble Supreme Court under Article 142 of the Constitution is at an entirely different level and of a different quality and prohibitions or limitations or provisions contained in ordinary laws cannot *ipso facto*, act as prohibitions or limitations on the constitutional powers under Article 142 of the Constitution of India. Relevant paras of the said judgment are reproduced as under:

“The power under Article 142 is at an entirely different level and of a different quality. Prohibitions

on limitations on provisions contained in ordinary laws cannot, ipso-facto, act as prohibitions or limitations on the constitutional powers under Article 142. Such prohibitions or limitations in the statutes might embody and reflect the scheme of a particular law, taking into account the nature and status of the authority or the court on which conferment of powers-limited in some appropriate way is contemplated. The limitations may not necessarily reflect or be based on any fundamental considerations of public policy. It will be wholly incorrect to say that powers under Article 142 are subject to express statutory prohibitions. That would convey the idea that statutory provisions override a constitutional. In exercising powers under Article 142 and in assessing the needs of 'complete justice of a cause or matter, the Apex Court will take note of the express prohibitions in any substantive statutory provisions based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly. The proposition does not relate to the powers of the Court under Article 142, but only to what is or is no 'complete justice' of a cause or matter and in the ultimate analysis of the propriety of the exercise of the power.”

19. In ***Delhi Judicial Service Assn v. State of Gujarat, AIR 1991 SC 2176 (1)*** also, the view taken by the Hon’ble Supreme Court was that no enactment made by Central or State Legislature can limit or strict the powers of the Supreme Court under Article 142 of the Constitution of India and the need for complete justice in a case would depend upon the

facts and circumstances of each case. Relevant para of this judgment is reproduced as under:

“This constitutional power of the Apex Court cannot be limited or restricted by provisions contained in statutory law. [997G] 6.4 What would be the need of "complete justice" in a cause or matter would depend upon the facts and circumstances of each case and while exercising that power the Court would take into consideration the express provisions of a substantive statute. Once this Court has taken seisin of a case, cause or matter, it has power to pass any order or issue direction as may be necessary to do complete justice in the matter.”

20. Clarifying some of the misconceptions touching the scope of the powers of Supreme Court under Article 142 of the Constitution of India, the Hon'ble Supreme Court in *Union Carbide (supra)* held that to contend that the powers under Article 142 are subject to express statutory prohibitions would convey the idea that statutory provisions override a constitutional provision. The Supreme Court further held that proper way of expressing the idea is that in exercising powers under Article 142 and in assessing the need for complete justice in a cause or matter, the Supreme Court will take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of

public policy and regulate the exercise of its powers and discretion accordingly.

21. In the facts of the present case, there is no statutory provision which could prohibit the Supreme Court from passing a final order between the parties by declaring the said decree as an executable decree. We cannot lose sight of the fact that Article 142 itself envisages that the Supreme Court has been conferred with the power of passing a decree or to pass any such order as is necessary for doing complete justice between the parties in the exercise of its power under this article. Admittedly the appellants were before the Supreme Court where indeed the entire issue of the alleged fraud was raised by them. After having gone into all the issues, the Supreme Court passed the said order dated 07.02.2014 so as to do “complete justice” between the parties. Had it not been so, the Supreme Court would not have taken into consideration the fact that it would be great injustice to the judgment-debtors if they are not paid the price prevailing during November 16, 2011 to January 5, 2012, as the purchaser failed deposit the balance sale consideration of the amount till the year 2010.

22. The judgment *Supreme Court Bar Association vs. Union of India and others*, AIR 1998 SC 1895, on which the reliance was placed by learned counsel for the appellant, is of no help to sustain the argument of the counsel for maintaining a fresh suit to challenge the judgment and decree dated 30.04.1984 on the ground of fraud and concealment in the fact situation of this case. In the said case, the Constitution Bench was seized with the issue of whether the punishment for established contempt of courts committed by an advocate can include punishment to debar the advocate concerned from practice by suspending his license for a specific period in exercise of its power under Article 129 read with Article 142 of the Constitution of India. The Supreme Court Bar Association had filed a petition under Article 32 of the Constitution of India to challenge the decision given by three judges bench in the case *of Vinay Chand Mishra (Re: (1995) 2 SCC 584*, wherein the Supreme Court, while holding him guilty for contempt of courts passed an order on sentence and also suspended his license for practicing for a period of three years in the exercise of powers under Article 129 read with Article 142 of the Constitution of India. In the background of these facts, the Hon'ble Supreme Court took a view that constitutional powers conferred under

Article 142 of the Constitution of India cannot, in any way be controlled by any statutory provisions but at the same time, these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in a statute dealing expressly with the issue.

23. In the facts of the present case, the decision given by the Supreme Court by order dated 07.02.2014 is not in conflict with any of the statute or enactments. Moreover, the appellants had raised the issue of fraud in their Written Submissions and other pleadings and had abandoned the said issue in their review petition, therefore they are estopped from re-agitating the same issue by way of an independent suit. The plenary powers of Supreme Court under Article 142 of the Constitution of India are of very wide amplitude and this provision contained no limitation regarding the causes or the circumstances in which the power cannot be exercised. To do complete justice between the parties is the prime object of this article and the exercise of these powers is left completely to the discretion of the highest Court of the country. However, this power is not to be exercised to override any express provision of a statute. (*Union of India & Ors. Vs. M. Bhaskar & Ors., (1996) 4 SCC 416*).

24. Therefore this court is of the view that the said decision of the Supreme Court, is binding on all the parties for all purposes, who were before the Supreme Court, and the said decision will not be affected by the fact that no express findings have been given on the particular contention raised by the appellants. Once any decision is given by the Supreme Court, it becomes binding under Article 141 of the Constitution of India. The remedy, if any, in a case where any matter or important issue has not been touched by the Supreme Court in its decision, lies before the Supreme Court only and fresh adjudication cannot be sought from any other court. The appellant herein had filed a review petition seeking review of the order dated 07.02.2014 but the said plea of fraud was not raised by them and now to raise the same in the said suit would be a sheer abuse of the process of the Court.

25. The next contention raised by learned counsel for the petitioner was that the learned Single Judge had also erred in taking a view that the suit was barred by limitation on a totally erroneous approach that it was for the seller to have made reasonable inquiries from respondent no.1 and discover the fraud on his part in not disclosing the ownership of the property at Green Park Extension in the name of his wife, on the date of

the execution of the Agreement to Sell. The sale permission was applied by the Vendor to the L&DO on 3.2.1981 and the same was granted by the L&DO on 12.11.1981. Alongwith the said sale permission, the affidavit was filed by respondent No. 1 Kuldeep Singh through his Attorney, wherein he had stated that neither he himself, his wife/dependants own any property in Delhi, New Delhi, Delhi Cantt. As per the appellants, respondent No. 1 had filed a false affidavit and this fact has come to their knowledge on 15.10.2012 when a property broker had approached them with an investment proposal in flats in Property No.N-7, Green Park Extension, New Delhi and on examination of the property papers of this property, they were surprised to learn that the said property was owned by wife of Mr. Kuldeep Singh. Pursuant to this information, the appellants inspected the record of L&DO on 6th November 2012 and found that the said fact of his wife owning the said property is correct.

26. In our considered view, the Learned Single Judge was correct in observing that these parties have been litigating since 10.01.1982 and therefore it was for them to have made reasonable inquiries to find out as to whether any property was owned by the respondent No. 1 or his dependant family members, but this minimum diligence was not

exercised by the appellants during the time span of more than 30 years. The appellants have also not averred in their pleadings that they had ever made any such inquiries from respondent No. 1 either at the time of execution of agreement to sell or even at the time of filing of their application to the L&DO for the sale permission. The learned Single Judge was also correct in observing that the appellants have not given any explanation as to why they have not impleaded L&DO as one of the parties in the suit when primarily the alleged fraud for filing the said false affidavit was upon the L&DO. The reasoning given by the learned Single Judge is well founded and we are not persuaded to take a contrary view.

27. In the light of the above discussion, we find that there is no merit in the present appeal, the same is accordingly dismissed with costs of Rs.25,000/-, to be deposited in the Delhi High Court Staff Welfare Fund, within a period of two weeks from the date of this order.

KAILASH GAMBHIR, J

NAJMI WAZIRI, J

DECEMBER 24, 2014

Pkb/v