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For convenience of reference, the ranks given to the parties before the trial Court in Original Suit No.1020 of 1987 will be adopted throughout this judgment. 3. The plaintiff filed the suit seeking a declaration that the 1st defendant, its subordinates, servants, officers, agents, nominees etc., are not entitled to invoke the bank guarantee No.8/86, dated 05.06.1986 furnished by the 2nd defendant in favour of the 1st defendant and that the invocation of bank guarantee by the 1st defendant is illegal, unlawful and unenforceable under law and to grant permanent injunction restraining the 1st defendant and its servants from invoking the bank guarantee No.8/86 dated 05.06.1986 issued by the 2nd defendant alleging that in response to the tender notification No.Movt.5(65)/86, dated 06.03.1986 published in daily news paper for transporting edible oil, in bulk from Visaskhapatnam to any place in the District of Warangal on behalf of the corporation. The plaintiff submitted a pro forma of application by way of tender and the tender of the plaintiff was accepted by the 1st defendant vide proceedings No.Movt.5(65)/86, dated 07.04.1986 and, in token of acceptance of tender, the plaintiff and the 1st defendant entered into an agreement dated 15.04.1986 incorporating usual terms and conditions relating to transportation of edible oil from Visakhatpanm to various places in Warangal District. As per the terms and conditions of the agreement, the plaintiff undertook to perform his part of duties in transporting the palmoline oil from Visakhaptnam to various places in Warangal District, as per the schedule given by the 1st defendant for the period from 01.06.1986 to 31.05.1987 or till the quantity of oil entrusted to the plaintiff is completely transported as per Clause 3 of the said agreement. The plaintiff has performed his part of obligation of the contract by transporting the quantity allotted to him even for the month of May, 1987 without any minute violation of the terms and conditions of the agreement. In fact, the plaintiff also submitted tender for transportation of edible oil for the year 1987 to 1988 and the tender of the plaintiff was accepted by the 1st defendant having found credibility of the plaintiff in discharging his duties entrusted to him. One of the conditions in the agreement is that the plaintiff has to furnish bank guarantee for Rs.1,50,000/- for due performance of the contract and in pursuance of the terms and conditions of the agreement, the plaintiff furnished bank guarantee issued by the 2nd defendant. That apart, the plaintiff also deposited a sum of Rs.50,000/- as refundable earnest money deposit payable after termination of the contract. As per the terms of the bank guarantee, it can be invoked only as per the terms stipulated therein including any violation of the terms by the plaintiff or for non-fulfilling any of the terms of the agreement. The plaintiff has complied with the terms and conditions of the agreement and completed the contract by transporting the quota of edible oil allotted to him before 31.05.1987, final bills were also passed by the 1st defendant. Thus, the plaintiff without any violation performed his part of obligation under the agreement. Therefore, the bank guarantee is deemed to be terminated and that the plaintiff is also entitled for refund of Rs.50,000/-. While the matter stood thus, the plaintiff received a letter dated 09.06.1987 from 2nd defendant enclosing copy of letter addressed by the 1st defendant addressed to the 2nd defendant on behalf of the plaintiff informing that the 1st defendant sought to invoke the bank guarantee and requested the 2nd defendant to pay Rs.1,50,000/- towards amount agreed under the bank guarantee furnished by the plaintiff in favour of the 1st defendant at the time of executing agreement without assigning reasons and without alleging any violation of the terms and conditions of the agreement. The alleged invocation of bank guarantee is totally contrary to the terms and conditions of the agreement since the plaintiff did not violate any of the conditions of agreement in performing his obligation in terms of agreement. Therefore, the invocation of bank guarantee furnished by the 1st defendant is illegal and prayed to pass a decree in favour of plaintiff seeking declaration and permanent injunction. 4. The 1st defendant filed written statement admitting about entering into an agreement for transportation of palmoline oil from Visakhapatnam to various places in Warangal District and furnishing deposit of Rs.50,000/- refundable earnest money, after execution of the work entrusted by the 1st defendant, so also furnishing of bank guarantee by the plaintiff issued by the 2nd defendant, to the 1st defendant, but contended that the plaintiff violated the terms and conditions of the agreement and that there were large scale irregularities committed by one Sri Amarnath, the Palmoline stockist of Essential Commodities Corporation in Karimnagar District involving a sum of Rs.35,00,000/-, as the Government is also taking steps to recover the said amount from him. The 1st defendant further contended that the said Amarnath was also detained under Preventive Detention Act, 1950 for sometime and he was acting on behalf of the plaintiff in transport of palmoline oil and also receiving amount pertaining to transport bills in Warangal district i.e., to pay in other words and the said Amarnath is in fact dealing with the transport of palm oil in Warangal District. It is further contended that the plaintiff has not performed his part of obligation under the contract strictly adhering to the terms and conditions of the agreement and that there are several irregularities in transportation of oil from Visakhapatnam to various places in Warangal District and the corporation has suffered huge loss on account of the violation of terms and conditions agreed by the plaintiff. It is further contended that Amarnath was transporting the palmoline oil on behalf of the plaintiff and actually receiving the amount under the transport bills in Warangal District. Thus, the 1st defendant is entitled to invoke the bank guarantee issued by the 2nd defendant furnished by the plaintiff for due performance of the terms and conditions of the agreement. It is specifically contended that the trial Court has no territorial jurisdiction to declare that the 1st defendant cannot enforce the bank guarantee and grant injunction restraining from invoking the said bank guarantee issued by the 2nd defendant in favour of plaintiff on 05.06.1986. The guarantee was furnished for due performance of the work under the contract and the obligation of the 2nd defendant under the guarantee or of any dispute which may arise between parties to the agreement namely the plaintiff and the 1st defendant and the guarantor bank is not concerned in any manner with the said dispute so long as the bank had undertaken to pay the amount to the 1st defendant, without any prior conditions or any qualification, the liability of the 2nd defendant bank to pay the amount to the 1st defendant is absolute and unconditional and once the 1st defendant called upon the 2nd defendant bank to pay the amount guaranteed by it on behalf of plaintiff, the bank is bound to pay the said amount to the 1st defendant. Therefore, the plaintiff cannot restrain the 1st defendant by way of injunction from invoking the bank guarantee No.8/86 dated 05.06.1986 and thereby the Court cannot pass any decree in favour of the plaintiff and prayed for dismissal of the suit. 5. The 2nd defendant filed written statement admitting the bank's liability to pay the amount covered by bank guarantee No.8/86 dated 05.06.1986 and also admitted about receipt of letter from the 1st defendant dated 08.06.1987 calling upon the 2nd defendant to pay the amount covered by bank guarantee as plaintiff violated the terms and conditions of the agreement between the plaintiff and the 1st defendant and, accordingly, the 2nd defendant issued demand draft dated 15.06.1987 in favour of 1st defendant, drawn on Siddamber Bazar, Hyderabad for Rs.1,50,000/-. As the 2nd defendant received prohibitory order in I.A.Nos.2189 and 2198 of 1987 directing the 2nd defendant not to pay the amount under Demand Draft No.742610/2210 dated 15.06.1987 to the 1st defendant, the demand draft was not encashed. Therefore, the duty of the 2nd defendant is only to pay the amount subject to orders of the Court and, finally, prayed to dismiss the suit against the 2nd defendant. 6. On the basis of the above pleadings, the Trial court framed the following issues: 1. Whether the plaintiff is entitled for declaration and permanent injunction, as prayed for? To what relief? 7. During course of trial, on behalf of plaintiff, PW.1 was examined and Exs.A-1 to A-4 were marked. On behalf defendants, no witnesses were examined, no documents were marked. 8. Upon hearing argument of both the counsel, considering oral and documentary evidence available on record, the trial Court found that the plaintiff violated the terms and conditions of the principal agreement marked as Ex.A-4, thereby not entitled to grant both declaratory relief and permanent injunction on the ground that when the unconditional bank guarantee was furnished, when there is a breach of contract, the 1st defendant is entitled to invoke the bank guarantee relying on the law laid down by the Apex court. 9. Aggrieved thereby, the unsuccessful plaintiff therein, preferred the present appeal on various grounds. The main contentions urged before this Court and in the grounds of appeal are that the invocation of bank guarantee for the alleged fraud committed by Amarnath is not attributable to the plaintiff as he is no way concerned with Ex.A-4 agreement, between the plaintiff and 1st defendant and, in fact, after completion of contract a separate contract was given to the plaintiff for transportation of edible oil for a period of three months till finalization of tenders as per Ex.A-3 dated 31.07.1987 but the trial Court without looking into the specific pleas of the plaintiff and alleged fraud committed by Amarnath, who is unconcerned with the agreement between the plaintiff and 1st defendant, erroneously concluded that the fraud played by the said Amarnath amounts to violation of terms and conditions of Ex.A-4 and thereby the decree and judgment under challenge is on erroneous appreciation of evidence on record and prayed to set-aside the impugned decree and judgment granting decree in favour of the plaintiff, as prayed for. 10. During course of argument, Sri G. Dhananjai, learned counsel for the plaintiff-appellant, would contend that the fraud played by Amarnath is not attributable to the plaintiff and he is no way concerned with the contract of the plaintiff and 1st defendant; if for any reason, Amarnath committed large scale irregularities or fraud to a tune of Rs.35,00,000/-, it is for the Government to take necessary action against the said Amarnath who is a Palmoline Oil Dealer of 1st defendant corporation in Karimnagar, but on account of irregularities committed by the said Amarnath, the bank guarantee cannot be invoked. Added to that, there is neither express nor implied agency between the plaintiff and the said Amarnath to attribute those irregularities to the plaintiff and in such a case, invocation of bank guarantee is illegal and arbitrary, but the trial Court did not appreciate the specific contention of the plaintiff, and evidence adduced in support of the same, and committed an error in dismissing the suit. 11. It is further contended that the 1st defendant, having satisfied with the due performance of the obligation under Ex.A-4, granted three months further contract till finalization of tenders vide Ex.A-3 which letter itself clinchingly established that the plaintiff performed his obligation under Ex.A-4, but the trial Court overlooking the oral and documentary evidence, dismissed the suit without assigning any legal and valid reasons, therefore, the decree and judgment of the trial Court are expressly erroneous and liable to be set-aside and hence prayed to pass a decree in favour of the plaintiff setting aside the decree and judgment under challenge. 12. Per contra, Sri N. Subba Reddy, learned counsel for the 1st defendant-respondent, would contend that the admissions made by PW.1 in the cross-examination clinches the issue to presume an agency between Amarnath and the plaintiff in submission of bills and receiving cheques for execution of work and, therefore, the act done by agent is binding on the principal; consequently, the plaintiff being the principal of Amarnath is liable for the loss caused to the 1st defendant and thereby, for violation of terms and conditions of the contract by agent on behalf of principal enables the 1st defendant to invoke the bank guarantee furnished by the plaintiff issued by the 2nd defendant for Rs.1,50,000/- and that apart the bank guarantee is an unconditional and irrevocable and it is the duty of the plaintiff to keep it alive during the subsistence of the contract, and unless there is a fraud attributable to the 1st defendant or the plaintiff would sustain irreparable injury or injustice, the court cannot grant any relief restraining the 1st defendant to invoke the bank guarantee, but, here the plaintiff did not plead and prove the fraud, if any, played by the 1st defendant in invoking the bank guarantee and also failed to plead and prove irreparable injury or injustice caused to the plaintiff in the event the bank guarantee is invoked by the 1st defendant, in the absence of the above two conditions, the Courts must be slow in passing any order restraining the beneficiary from invoking the bank guarantee. Therefore, the trial Court rightly exercised its discretion in declining the relief under Sections 34 and 38 of the Specific Relief Act, 1963 dismissed the suit, thereby, the decree and judgment of the trial Court does not call for interference of this Court and prayed to dismiss the Appeal confirming the decree and judgment of the trial Court placing reliance on several judgments of the Apex Court reported in Mahatma Gandhi Sahakara Sakkare Karkhane Vs. National Heavy Engineering Co-operative Limited and another, Vintec Electronics Private Limited Vs. HCL Info Systems Limited and Himadri Chemicals Industries Limited Vs. Coal Tar Refining Company. 13. Considering rival contentions, perusing oral and documentary evidence including the decree and judgment under challenge, the points that arise for consideration are: 1. Whether any relationship of agent and principal existed between Amarnath and the plaintiff? If so, whether the fraud committed by the said Amarnath in sale of palmoline oil to a tune of Rs.35,00,000/- is attributable to the plaintiff? If so, does it amounts to violation of terms and conditions of the transport contract for transport of palmoline oil from Visakhapatnam to various places in Warangal District? 2. Whether the bank guarantee No.8/86 dated 05.06.1986 is unconditional and irrevocable? If so, is the 1st defendant entitled to invoke the bank guarantee, if any, for breach of contract committed by the plaintiff? 3. Whether the plaintiff is entitled to a declaration that the 1st defendant is not entitled invoke the bank guarantee No.8/86 furnished by the plaintiff? 4. Whether the plaintiff is entitled to permanent injunction restraining the 1st defendant from invoking the bank guarantee issued by the 2nd defendant? 14. POINT No.1: It is an admitted fact that the plaintiff furnished bank guarantee for Rs.1,50,000/- bearing No.8/86 dated 05.06.1986 issued by the 2nd defendant for due performance of the principal contract marked as Ex.A-4. But, as per the terms of bank guarantee, the preamble of the bank guarantee referred to principal agreement for transportation of edible oil in bulk quantity from Visakhapatnam to various places in Warangal District and the main reason for furnishing the bank guarantee is for due performance of obligation under the contract by the plaintiff. In the bank guarantee, the bank agreed to indemnify the loss, if any, sustained by the corporation on account of breach of any terms and conditions of the contract. The 2nd Para of the bank guarantee is an important condition and it is extracted hereunder for better appreciation: “We, The Vysya Bank Ltd., Karimnagar do hereby undertake to pay the amounts due and payable under this guarantee without any demur and without any reference to the Contractor but merely on a demand from the Corporation stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Corporation by reason of any breach by the said Contractor of any of the terms or conditions contained in the said agreement or by reason of the said Contractor failure to perform the duties prescribed in the agreement.” 15. Thus, in view of the 2nd condition, the 2nd defendant agreed to pay Rs.1,50,000/- without any demur on receipt of demand from the 1st defendant, if the contractor i.e., plaintiff committed any breach of terms and conditions of the agreement and caused loss to the 1st defendant. 16. The only defence set up by the 1st defendant is that Amarnath committed irregularities amounting to Rs.35,00,000/- and he was detained under Preventive Detention Act for causing such loss to the 1st defendant and he is only an agent of the plaintiff thereby the irregularities committed by Amarnath are attributable to the principal i.e., plaintiff; thereby, on account of the acts of the Amarnath, the plaintiff committed breach of terms and conditions of the agreement Ex.A-4. In such a case, the 1st defendant is entitled to invoke the bank guarantee. 17. As per the pleadings in the plaint, the plaintiff is no way concerned with Amarnath, who allegedly committed fraud in sale of palmoline oil in Karimnagar District and caused loss to a tune of Rs.35,00,000/- to the corporation and there is no express or implied contract between said Amarnath and the plaintiff; consequently, the 1st defendant is not entitled to invoke the bank guarantee. In view of the controversy with regard to subsisting agency between Amarnath and plaintiff, I must necessarily advert to the evidence on record to find out whether there exists either express or implied agency between Amarnath and the plaintiff, so as to saddle with any liability to the plaintiff, attributing the fraud committed by Amarnath to the plaintiff. 18. A contract of agency is the employment of one person by another in order to bring the latter into legal relations with a third party. The Latin maxim conveys the basic notion ‘Qui per alium facit, per se ipsum facere videtur’ i.e., he who does an act through another is deemed in law to do it himself. This may also be stated concisely thus ‘Qui facit per alium facit per se’ i.e., he who acts by another acts by himself. Under common law a person can authorise another to contract for and to bind him by an authorized contract. Here, Amarnath acted on behalf of plaintiff in dealing with the 1st defendant-corporation in performance of contract for transportation of Palmoline oil from Visakhapatnam to various places in Warangal District. Either by express agreement between Amarnath and plaintiff or by implied or presumed agency, the plaintiff can be made liable for the acts done by his agent being the principal. In the facts of the present case, initially, the plaintiff by over vehemence contended that there was no subsisting relationship of agent and principal between Amarnath and the plaintiff. Undoubtedly, there is no agreement in writing between the plaintiff and Amarnath permitting Amarnath to act as an agent on behalf of the plaintiff in performance of contract for transportation of edible oil from Visakhapatnam to various places in Warangal district. But in the cross-examination, PW.1 made crucial admissions with regard to authorizing Amarnath to file bills and receiving amount from the 1st defendant on behalf of the plaintiff. The admissions made by PW.1 during his cross-examination are relevant to decide the subsistence of express or implied or presumed agency between the plaintiff and Amarnath, they are extracted hereunder for better appreciation: “The letter by me to the District Manager, A.P. State Civil Supplies Corporation, dated 11.6.1986 is true. I do not know whether the letter was issued as per the agreement. I do not know whether Amarnath was detained in jail by the Government under Prevention of Black Marketing Act. I am in talking terms with him. It was published in the papers that he has sold large quantity of Palm Oil in black market. It is not true to say that I was not doing business with him in Palmoil. I have not asked him about the fact of the said publication. I kept quite after going through the News paper. I do not know what business he is doing. I have confidence in him and as such I gave authorization to submit bills, and also demand drafts. I received only 5 or 6 transport bills. I do not remember how may times he has furnished the D.Ds.” 19. From these unequivocal admissions, it is clear that PW.1 (plaintiff) authorized Amarnath to submit bills and demand drafts to the 1st defendant-corporation on his behalf and most of the bills were submitted and amount was received by said Amarnath. In view of the clear clinching admissions regarding authorizing Amarnath to submit bills and demand drafts, creates an implied agency between the plaintiff and the said Amarnath and thereby there is a presumed agency between them. 20. Undoubtedly, the material on record does not disclose subsisting agency between Amarnath and the plaintiff in writing, but by the acts of plaintiff and Amarnath, there is an implied agency between plaintiff and Amarnath in performance of the contract for transportation of edible oil from Visakhapatnam to various places in Warangal district. 21. Admissions are two kinds; they are judicial admissions (admissions in pleadings or admissions in writing) and evidential admissions. If the admission is judicial, it is binding on the parties and such admission is not required to be proved in view of Section 58 of the Indian Evidence Act, 1872. However, the admission is not a conclusive proof but is estops the person who made such admission to contend otherwise under Section 31 of the Indian Evidence Act. 22. Here, the plaintiff as PW.1 made crucial admission about authorizing Amarnath to deal with the 1st defendant-corporation on his behalf in performance of contract of transportation of edible oil from Visakhapatnam to various places in Warangal district including submissions of bills and demand drafts and receiving amount from the corporation by issuing a letter dated 11.06.1986, but the said letter was not furnished either before this Court or before the trial Court. When issue of such letter is not in dispute, failure to produce the same before this Court or before the trial Court would not make any difference. As per the admissions made by PW.1, basing on the letter dated 11.06.86 admittedly issued by the plaintiff to 1st defendant-corporation authorizing Amarnath to deal with the 1st defendant-corporation, on behalf of the plaintiff submitting bills and demand drafts etc., creates an implied agency and basing on those admissions, the Court can draw an inference that there existed an implied agency between the plaintiff and Amarnath. 23. The principal is bound by all acts of the agent acting within the scope of actual, apparent and ostensible authority as per Sections 226 to 228, 237 and 238 of Indian Contract Act. The principal is bound by misrepresentation or fraud of his agent in the course of employment vide Section 238 of Indian Contract Act. At the same time, as per Sections 233 and 234 of Indian Contract Act, the principal is responsible for contract entered into by agent though his name is not disclosed. He is responsible for the acts of agent even where agent is personally liable. The acts done by the agent are binding on the principal and fraud played by the said Amarnath in black-marketing the palmoline oil transported under the contract Ex.A-4 is directly attributable to the plaintiff being the principal of Amarnath. Therefore, I hold that there existed an implied or presumed agency between Amarnath and the plaintiff and the acts done by Amarnath are binding on the plaintiff. Accordingly, the point is answered in favour of the defendants and against the plaintiff. 24. POINT No.2: The bank guarantee bearing No.8/86 dated 05.06.1986 was admittedly issued by the 2nd defendant for due performance of the contract by the plaintiff with the 1st defendant and furnishing of bank guarantee by the plaintiff to the 1st defendant is an undisputed fact. As seen from the terms and conditions of the bank guarantee, the 2nd defendant undertook to pay the amount agreed to be paid under the bank guarantee on receipt of letter from the beneficiary i.e., 1st defendant without any demur to compensate the loss sustained by the 1st defendant, on account of breach of terms and conditions of the contract by the contractor, the 2nd defendant is unconcerned with the dispute between the plaintiff and the 1st defendant i.e., contractor and beneficiary of bank guarantee and even on perusal of the bank guarantee it is unconditional and irrevocable. Even the plaintiff also did not dispute about the nature of bank guarantee, but, the only endeavour of the plaintiff is for the acts done by Amarnath, the plaintiff cannot be saddled with any liability. This contention is not accepted by the trial Court and this Court while answering point No.1 held that there is an implied agency between Amarnath and plaintiff and for the acts done by said Amarnath, the corporation sustained huge loss and consequently, the plaintiff being the principal of Amarnath has to compensate the loss. Therefore, the loss caused by Amarnath is directly attributable to the plaintiff being the principal on whose behalf the said Amarnath acted. When the bank guarantee is irrevocable and unconditional, the 1st defendant is entitled to invoke the bank guarantee. 25. The strange contention raised by the plaintiff is that he performed his obligation under the contract, without any minute violation, before the time fixed for performance and thereafter the 1st defendant granted a shorter contract for three months, even after completion of original contract till finalization of the tender process for the next year and issued Ex.A-3 letter. The letter marked as Ex.A-3 shows that the plaintiff performed his part of obligation under the contract. However, the fraud played by the Amarnath being the agent of the plaintiff was detected subsequent to payment of final bill on issuance of letter Ex.A-3 dated 31.05.1987. Based on Ex.A3, it is difficult to hold that the plaintiff discharged his obligation under the contract for transportation of edible oil, granting three months contract from 01.06.1987 to 31.07.1987 or till new contract starts does not amount to waiver of the plea of fraud committed by Amarnath who is agent of the plaintiff. In such circumstances, the loss caused on account of the conduct of Amarnath, who is an agent of the plaintiff, according to the admissions extracted in earlier paragraphs, the plaintiff is liable for the loss caused to the 1st defendant being the principal. Therefore, I find that the bank guarantee is unconditional and irrevocable, and that the 1st defendant is liable to compensate the loss sustained by the 1st defendant, thereby 1st defendant is entitled to invoke the bank guarantee. Accordingly, the point is held in favour of 1st defendant and against the plaintiff. 26. POINT No.3: The plaintiff claimed declaratory relief under Section 34 of the Specific Relief Act, which is equitable and discretionary, and to claim such discretionary and equitable relief of declaration, the plaintiff has to approach the court with clean hands disclosing the facts; otherwise the Court cannot exercise its discretion to grant declaratory relief in favour of the plaintiff. 27. In Union of India (UOI) and others Vs. Vasavi Co-operative Housing Society Limited and others, the Apex Court held as follows: “The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited.” 28. In Union of India Vs. Ibrahim Uddin and another, the Apex Court held as follows: “In a suit for declaration of title or ownership of land, burden of proof should have been exclusively on the plaintiff to prove his/her own case.” 29. This Court, in Gorige Ailamma Vs. Utkoori Somaiah and others, relying on Sebastiao Luis Fernandes (dead) through L.R., and others Vs. K.V.P. Shastri (dead) through L.Rs., and others held as follows: “Where a party is seeking declaration of title and recovery of possession, burden lies on such party to adduce satisfactory evidence to prove his title and possession.” 30. In view of the law declared by the Apex Court and this Court, the undisputed legal position is that, in a suit for declaration, the plaintiff has to succeed on the strength of his own case but not on the weakness of the defence set up by the defendants. In the instant case, the plaintiff produced Exs.A-1 to A-4 but did not disclose the implied or presumed agency between plaintiff and Amarnath, who committed a large scale fraud in sale of palmoline oil, transported under the contract which is directly attributable to the plaintiff being principal of Amarnath in view of the admissions made by PW.1 in the cross-examination. Thus, the plaintiff approached the Court with unclean hands which disentitled him to claim discretionary relief of declaration under Section 34 of the Specific Relief Act. It is settled principle of law that the person who approached the Court claiming equitable relief must do equity, but here the conduct of the plaintiff is totally inequitable. On this ground also, the plaintiff is disentitled to claim the declaratory relief. 31. In view of my findings on Point Nos.1 and 2 and, in addition to that, the plaintiff did not approach the Court with clean hands but suppressed the agency between Amarnath and the plaintiff, the said Amarnath caused huge loss to the 1st defendant by sale of palmoline oil in black-marketing is directly attributable to the plaintiff, therefore, the plaintiff is disentitled to claim discretionary relief under Section 34 of the Specific Relief Act. Consequently, the plaintiff is disentitled to claim relief of declaration under Section 34 of the Specific Relief Act. Accordingly, the point is held in favour of defendants and against the plaintiff. 32. POINT No.4: One of the major reliefs claimed by the plaintiff is that to restrain the 1st defendant from invoking bank guarantee dated 05.06.1986, issued by the 2nd defendant, for due performance of the contract of transportation of edible oil from Visakhapatnam to various places in Warangal district for the reason that he did not commit any breach of terms and conditions of the contract and performed the obligation under the contract but, as seen from the material available on record, the plaintiff entered into a contract with the 1st defendant and executed Ex.A-4 agreement. However, the plaintiff authorized Amarnath to submit bills and demand drafts to the 1st defendant on behalf of the plaintiff and issued a letter dated 31.07.1987, thereby, the said Amarnath acted as an agent to the plaintiff by implied authority and the action of the Amarnath was ratified by the plaintiff by his conduct and not even denied the acts of said Amarnath, never disowned the agency between Amarnath and the plaintiff before addressing letter to the 2nd defendant by the 1st defendant invoking bank guarantee. Thus, the plaintiff ratified the acts of Amarnath by receiving amount under various bills. In such case, when the bank guarantee is unconditional and irrevocable and caused loss on account of the conduct of the agent of the plaintiff, the plaintiff is disentitled to claim an injunctive relief under Section 38 of the Specific Relief Act, which is purely discretionary and equitable. Even otherwise, the law is well settled that when the bank guarantee is unconditional and irrevocable, the Courts must be slow in injuncting the beneficiary to invoke the bank guarantee. In Mahatma Gandhi Sahakra Sakkare Karkhane Vs. National Heavy Engineering Cooperative Limited and another, the Apex Court in Para 28 held as follows: “The learned counsel in support of his submission relied upon the decision of this Court in Hindustan Construction Co. Ltd. Vs. State of Bihar [(1999) 8 SCC 436] having referred to the terms of Clause (9) of principal contract between the parties therein came to the conclusion that the bank guarantee specifically refers to the original contract and postulates that the obligations expressed in the contract, are not fulfilled by HCCL, the right to claim recovery of the whole or part of the "advance mobilisation" then alone the bank was liable to pay the amount due under the guarantee to the Executive Engineer. The Court found that the bank guarantee specifically refers to Clause (9) of the principal agreement and it is under those circumstances came to the conclusion that the amount covered by the bank guarantee becomes payable and the same could be invoked only in the circumstances referred to in Clause (9) of the principal agreement. The bank guarantee executed by the bank in the instant case in favour of the appellant herein does not contain any such clause. Mere fact that the bank guarantee refers to the principal agreement without referring to any specific clause in the preamble of the deed of guarantee does not make the guarantee furnished by the bank to be a conditional one. In the very said judgment this Court observed that: "9. What is important, therefore, is that the bank guarantee should be in unequivocal terms, unconditional and recite that the amount would be paid without demur or objection and irrespective of any dispute that might have cropped up or might have been pending between the beneficiary under the bank guarantee or the person on whose behalf the guarantee was furnished. The terms of the bank guarantee are, therefore, extremely material. Since the bank guarantee represents an independent contract between the bank and the beneficiary, both the parties would be bound by the terms thereof. The invocation, therefore, will have to be in accordance with the terms of the bank guarantee, or else, the invocation itself would be bad." What is relevant, therefore, is the terms incorporated in the guarantee executed by the bank. On careful analysis of the terms and conditions of the guarantee, we find the guarantee to be an unconditional one. The respondent, therefore, cannot be allowed to raise any dispute and prevent the appellant from encashing the bank guarantee.” 33. In Himadri Chemicals Industries Limited Vs. Coal Tar Refining Company, the Apex Court in Para 14 laid certain guidelines to restrain the encashment of bank guarantee or letter of credit, which are as follows: “From the discussions made hereinabove relating to the principles for grant or refusal to grant of injunction to restrain enforcement of a Bank Guarantee or a Letter of Credit, we find that the following principles should be noted in the matter of injunction to restrain the encashment of a Bank Guarantee or a Letter of Credit:- (i) While dealing with an application for injunction in the course of commercial dealings, and when an unconditional Bank Guarantee or Letter of Credit is given or accepted, the Beneficiary is entitled to realize such a Bank Guarantee or a Letter of Credit in terms thereof irrespective of any pending disputes relating to the terms of the contract. (ii) The Bank giving such guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer. (iii) The Courts should be slow in granting an order of injunction to restrain the realization of a Bank Guarantee or a Letter of Credit. (iv) Since a Bank Guarantee or a Letter of Credit is an independent and a separate contract and is absolute in nature, the existence of any dispute between the parties to the contract is not a ground for issuing an order of injunction to restrain enforcement of Bank Guarantees or Letters of Credit. (v) Fraud of an egregious nature which would vitiate the very foundation of such a Bank Guarantee or Letter of Credit and the beneficiary seeks to take advantage of the situation. (vi) Allowing encashment of an unconditional Bank Guarantee or a Letter of Credit would result in irretrievable harm or injustice to one of the parties concerned.” 34. In the above judgment, the Apex Court placed reliance on several judgments including its earlier judgment in U.P. State Sugar Corporation Vs. Sumac International Limited, which is a classic judgment on the principles of revocation of bank guarantee. 35. In Vintec Electronics2, the Apex Court reiterated the same principles. In view of the law declared by the Apex Court referred supra, if the invocation of the bank guarantee by the beneficiary, the 1st defendant herein, is by playing fraud the Court can grant an injunction or when an irreparable loss or injustice is caused to the plaintiff on account of invocation of bank guarantee an injunction can be granted to restrain the beneficiary from invoking the bank guarantee. In the instant case, fraud, irreparable injury or injustice is neither pleaded nor proved by adducing any evidence, except contending that the acts of Amarnath are not attributable to the plaintiff. But, as per my finding on Point Nos.1 to 3, there is an implied agency between Amarnath and the plaintiff and taking advantage of implied agency, the said Amarnath, during the course of his employment as agent, committed large amount of irregularities which is quantified to Rs.35,00,000/- to the 1st defendant-corporation. Therefore, in those circumstances, it is difficult to accept the contention of the plaintiff and grant permanent injunction restraining the 1st defendant from invoking bank guarantee issued by the 2nd defendant. 36. In a recent decision of this Court in M/s. Superbuild India Private Limited Vs. M/s. Niraj Cement Structural Limited and Others, in Para 13 it was held as follows: “In Reliance Salt Ltd.'s case (supra) it was held that subsequent breach of contract on the part of a party to the contract will not amount to fraud, as the fraud, which vitiates the contract must have a nexus with the acts of the party prior to entering into the contract. Obviously, on the facts of the present case, there are no allegations of any fraud prior to entering into the contract by the plaintiff with the first defendant much less so far as the second defendant is concerned. In State Trading Corporation of India Ltd.'s case (supra) it was held that in order to seek a temporary injunction on the ground of fraud or irretrievable injury, the plaintiff must make out a strong prima facie case or special equities in his favour. 14. As has been held above, since there is no material to hold privity of contract between the plaintiff and the second defendant, the plaintiff cannot seek to restrain the second defendant from invoking the bank guarantees. The order of the trial Court, therefore, requires no interference but for the reasons mentions above, insofar as the invocation of the bank guarantees relating to work-I is concerned. Question, as framed above, is answered accordingly so far as bank guarantees given for work-I is concerned. 15. So far as work-II is concerned, it is necessary to point out that the plaintiff alleges to have been given sub-contract relating to the said work-II also in his favour, which is relating to widening of two lanes from Chintalnar to Maigudam road from KM 0.00 to KM 65.00 under LWE project. As per the plaint allegations, the performance bank guarantees, as mentioned in schedule III of the plaint covering Rs.3,56,86,677/-, are said to have been furnished by the plaintiff on behalf of the first defendant in favour of the second defendant. During the hearing, learned counsel for the second defendant has categorically stated that the bank guarantees, which are subject matter of work-I, which was awarded to the first defendant by the second defendant, are as shown under schedule I, III and IV of the plaint. It is categorically stated by the learned counsel for the second defendant that the second defendant is no way concerned with work-II for which the performance bank guarantees, as noted under schedule III, were said to have been furnished by the plaintiff. It is also stated by the learned counsel for the second defendant that no such work-II was allotted since the second defendant is not concerned with the said work. The performance bank guarantee, allegedly, furnished by the plaintiff, as shown under schedule III of the plaint, therefore, obviously, cannot be invoked by the second defendant. It is also not the case pleaded by the second defendant either in the written statement or in the counter affidavit that they are any way concerned with the said work-II and the schedule III bank guarantees. In view of that, therefore, since the second defendant is no way concerned with work-II nor with the bank guarantees under schedule III of the plaint, the invocation and encashment of those bank guarantees is clearly not warranted. The authority, which has, allegedly, allotted the said work-II to the first defendant, which has since been sub-contracted, allegedly, to the plaintiff, is not impleaded in the suit nor any other details of the said work, are on record. Hence, in my view, to the extent of bank guarantees under schedule III, the appellant/plaintiff is entitled for injunction, as against the second defendant. In view of that, the impugned order of the trial Court dismissing I.A. No. 1596 of 2011 in O.S. No. 367 of 2011 is confirmed and injunction restraining invocation of bank guarantees with respect to bank guarantees covered under schedule I, II and IV of the plaint is dismissed.” 37. In the above judgment, no bank guarantee was furnished for the 2nd works contract but the contractee wanted to invoke the bank guarantee for the default committed by sub-contractor. In those circumstances, the Court is of the view that the bank guarantee cannot be invoked for the second contract however reiterated the principle aid down by the Apex Court in Vintec Electronics2 and declined to grant both declaratory and injunctive relief for the first contract for which unconditional bank guarantee was furnished. Even by applying the principle laid down by the Apex Court in Vintec Electronics2 to the present facts of the case, in view of implied agency between Amaranth and the plaintiff in performance of the contract of transportation of edible oil by submitting bills and demand drafts etc., to the 1st defendant on behalf of the plaintiff by Amarnath, the misdeeds of Amarnath in performance of the contract being an agent of the plaintiff caused loss to the 1st defendant and those acts were not disowned by the plaintiff before issuing Ex.A-1. In such case, taking into consideration of nature of unconditional bank guarantee, it is difficult to sustain the contention of the plaintiff for the reason that Amarnath is an agent of the plaintiff in performance of the contract. That apart, the 1st defendant sustained huge loss on account of large scale irregularities committed by Amarnath the agent of the plaintiff. In such case, it is difficult for this Court to exercise the discretion to grant equitable relief of injunction under Section 38 of the Specific Relief Act. Even otherwise, the Court must be slow in granting such injunctive relief in view of principles laid down in the above judgments. Even to grant the injunctive relief, the plaintiff must plead and prove that the fraud played by beneficiary i.e., 1st defendant or substantial injury is sustained by the plaintiff, but no such pleas were raised or proved. Consequently, the plaintiff is disentitled to claim the injunctive relief under Section 38 of the Specific Relief Act. 38. On overall consideration of entire material available on record, the trial Court did commit no error in declining the reliefs both under Sections 34 and 38 of the Specific

Relief Act. Even after discerning entire material on record, I find no legal infirmity in the decree and judgment under challenge warranting interference of this Court. Since both the reliefs under Sections 34 and 38 of the Specific Relief Act are equitable and discretionary, when the plaintiff approached the Court with unclean hands, this Court cannot exercise its discretion to grant such reliefs. Therefore, I find no merits in the Appeal warranting interference in the decree and judgment of the trial Court. Consequently, the impugned decree and judgment are confirmed holding this point in favour of the defendants and against the plaintiff. 39. In view of my foregoing discussion, I find that the Appeal is devoid of merits and deserves to be dismissed. In the result, the City Civil Court Appeal is dismissed confirming the decree and judgment dated 01.08.1997, passed in Original Suit No.1020 of 1987 by the learned V Additional Judge, City Civil Court, Hyderabad. In consequence, miscellaneous petitions, if any, pending in this Appeal, shall stand dismissed. No order as to costs. _______________________________ M. SATYANARAYANA MURTHY, J Date: 01-06-2015. Dsh HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY 121 05062015 CITY CIVIL COURT APPEAL No. 135 OF 1997 Date.01-06-2015 DSH 2007 (6) SCC 470 2008 (1) SCC 544 (2007) 8 SCC 110 AIR 2014 SC 937 2012 (8) SCC 148 2015 (2) ALT 467 2014 (1) ALT 51 (SC) 2007 (6) SCC 470 2007 (8) SCC 110 1997 (1) SCC 568 2014 (2) ALT 613 PAGE PAGE 26 MSM, J C.C.C.A. No.135/1997

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