

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA PRADESH**

CIVIL REVISION PETITION No.3055 of 2015

Between:

K. Srinivas Rao & another

.....Petitioners

and

M/s. Aasra Archiventures Pvt. Limited & 2 others

.....Respondents

Date of Judgment pronounced on : 04-11-2016

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

*** HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

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> HEAD NOTE:

! Counsel for the petitioners : Sri Hari Sridhar

^ Counsel for the respondents : Sri V. Ramachander Goud

? Cases referred

1. 1986 (2) ALT 120
2. (2015) 9 SCC 287
3. (2010) 4 SCC 753
4. (2010) 6 SCC 601
5. (2000) 7 SCC 120
6. (1876) 2 Ch D 686 (CA)
7. AIR 1933 Lah 403
8. (2011) 15 SCC 273
9. (2010) 8 SCC 329
10. (2015) 5 SCC 423 (LB)

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**CIVIL REVISION PETITION No.3055 of 2015****ORDER:**

The revision petitioners are the plaintiffs in the suit in O.S.No.1022 of 2012 on the file of District Judge, Ranga Reddy District at L.B.Nagar. The revision respondents are the defendants to the suit. The suit was filed by the plaintiffs for recovery of money of Rs.35,00,000/- along with interest of Rs.5,18,000/- which comes to Rs.40,18,000/-. Pending suit, I.A.No.170 of 2014 was filed for passing of a judgment and decree in favour of the petitioners/plaintiffs for recovery of the admitted liability of Rs.40,00,000/- by the defendants with interest on the principal amount and costs as prayed in the suit under Order XII Rule 6 CPC. The said I.A. was dismissed on 04.08.2014. Against the said order, the petitioners preferred the present revision.

The brief facts of the case are:

2. Originally the 1st defendant entered into a registered development agreement dated 17.04.2006 with one J.Adi Seshaiiah Chowdary and J.Anantha Sai Padmaja, who are the absolute owners and possessors of the land admeasuring Ac.4-02 guntas in survey No.337 of Poppalaguda Village, Rajendranagar Mandal, Ranga Reddy District, for development of the same by constructing apartments and commercial spaces. As per the agreement, 1st defendant is entitled for 55% of the total built up area along with 55% of undivided share of land.

3. Later the 1st defendant offered to sell a flat admeasuring 2000 square feet residential built up area with proportionate

undivided share of land for a total sale consideration of Rs.74,00,000/- to the plaintiffs and received Rs.25,00,000/- as advance sale consideration and executed an agreement of sale on 25.07.2007. As per the agreement, out of the balance sale consideration, Rs.35,00,000/- shall be paid on the date of allotment of 3% built up area and the remaining amount of Rs.14,00,000/- on the date of execution and registration. But, however at the request of 1st defendant, the plaintiffs paid Rs.10,00,000/- on one occasion and Rs.5,00,000/- on another occasion in addition to the advance sale consideration of Rs.25,00,000/-. Thus, the plaintiffs paid Rs.40,00,000/- to the 1st defendant out of total sale consideration of Rs.74,00,000/- under agreement of sale dated 25.07.2007. The 1st defendant on 14.05.2007 assigned through registered agreement No.6851 of 2008 his rights under the development agreement dated 17.04.2006 to M/s. Salarpuria Properties Pvt. Limited (for short 'Salarpuria') & Salarpuria as per the terms of assignment shall discharge the obligations of the 1st defendant in the development agreement supra on condition of Salarpuria supra is entitled to 52% of built up area with proportionate undivided land share out of 55% built up area and undivided share of land. However, the construction could not be commenced by the 1st defendant, then the plaintiffs requested the 1st defendant and Salarpuria supra to return the money with interest by cancelling the agreement. On 11.06.2010, there was a settlement between the plaintiffs and 1st defendant in respect of the above transaction, pursuant to which the 1st defendant agreed to repay the amount of Rs.40,00,000/- together with interest of Rs.30,00,000/- and out of

it paid by cheque No.530623 dated 11.06.2010 of Rs.1,25,000/-. Later he came with a proposal of construction to commence, to purchase for reduced price of Rs.60,00,000/- and entered into unregistered written agreement on 19.11.2010 by adjusting as advance payment Rs.35,00,000/- out of Rs.68,75,000/- by refunding balance of Rs.33,75,000/- and defendant Nos.2 & 3 [3rd defendant is wife of the 2nd defendant and both also directors of 1st defendant] created equitable mortgage for Rs.33,75,000/- on 19.11.2010 by deposit of their title deeds dated 31.05.2006 document No.8063 of 2006 of 2nd defendant and title deed dated 17.12.2004 document No.6035 of 2004 of 3rd defendant together with confirmation letters. As per instructions of 1st defendant Flycon Blocks Pvt. Ltd. issued 3 cheques to 1st plaintiff for Rs.18,75,000/- and one K.Ramu issued 2 cheques for balance Rs.15,00,000/- that were even returned dishonoured and same are subject matter of criminal cases. The suit claim therefrom as construction is not completed and despite legal notice terminating the agreement dated 19.11.2010 for the 2000 square feet built up area, plaintiffs are entitled to recover said Rs.35,00,000/- also with interest @ 24% per annum and the suit claim is for the same which comes to Rs.40,18,000/-.

4. The common written statement filed by the defendants 1 to 3 dated 03.12.2013 in opposing the suit claim as not true and concocted, with contest further that the 1st defendant entity to which defendants 2 and 3 are Directors, entered the development agreement dated 17.04.2006 with original owners for said Ac.4-02 gts. for 1st defendant to get 55% built up area and land owners for remaining and despite efforts from the various obstacles

development activity could not be taken up within the planed period resulting in losses and defendants thereby to avert further loss, assigned their rights to Salarpuria by reserving 3% of built up area to the 1st defendant. At the time of initial discussion itself defendants informed the plaintiffs about the aspects and implications and plaintiffs agreed to purchase 2000 square feet built up area from 1st defendant as per the MOU dated 25.07.2010 and paid advance of Rs.25,00,000/- and another sum of Rs.15,00,000/-=Rs.40,00,000/-. As per clause (2) of MOU, 1st defendant to execute sale deed in favour of plaintiffs within 30 days from delivery of possession of built up area by Salarpuria to 1st defendant and until possession delivered by Salarpuria, 1st defendant cannot execute sale deed and plaintiffs fully understand the implications therein entered the MOU supra. However after sometime, plaintiffs started creating unnecessary troubles including by criminal intimidation threatening with antisocial associations to eliminate the defendants 2 and 3 and in those circumstances, defendants agreed to return said Rs.40,00,000/- advance received with interest of Rs.30,00,000/- and issued cheque of Rs.1,25,000/- and sought time to pay the balance of Rs.68,75,000/-. Plaintiffs surprisingly changed their mind and requested the defendants to sell the built up area of 2000 square feet afresh for Rs.60,00,000/- which the defendants reluctantly agreed by fresh agreement dated 19.11.2010 whereunder Rs.35,00,000/- agreed to be treated as part payment and remaining Rs.25,00,000/- is to be payable and for the balance Rs.33,75,000/- due to plaintiffs from defendants to arrange through Flycon Blocks and K.Ramu directly to plaintiffs, which in

fact a forcible and coercive outcome and defendants successfully arranged and paid Rs.18,75,000/- and Rs.7,50,000/- =Rs.26,25,000/- through Flycon Blocks and K.Ramu and having so received, plaintiffs once again resorted threatening illegally which made the defendants to surrender their original title deeds for 2 open plots of Shamshabad of 488 square yards each and land of Ac.2-00 guntas at Shankarpally Mandal, Parveda Village, for the outstanding amount of Rs.40,00,000/- and instructed the plaintiffs to sell the land and adjust and return the balance to the defendants as those are by now worth of Rs.2 crores, however plaintiffs dishonourly detained the title deeds. At present plaintiffs are liable to pay after adjustment of Rs.40,00,000/-, Rs.1.6 crores as value of land covered by title deeds for which they reserve their right to take legal recourse for recovery with interest as plaintiffs failed to pay despite demands and the suit of plaintiffs is thereby liable to be dismissed.

5. The sum and substance of the defence of the defendants supra is Rs.40,00,000/- as due however in saying the title deeds given are not as security for the amount by creating equitable mortgage, but to sell at the market value property covered thereunder, and after adjusting Rs.40,00,000/- to refund balance. The equitable mortgage created and letter of confirmation executed by defendants 2 and 3 as per the plaintiffs as security for the Rs.40,00,000/- with interest was dated 20.11.2010. The plaintiffs' legal notice to the 1st defendant was dated 07.03.2012 with postal receipt of even date there is no reply from the defendants for that. If really the title deeds given is not by creating equitable mortgage as security for the amount of Rs.40,00,000/-, but to sell the

property to market value and adjust and pay balance way back in 2010. It is unknown why reply is not given by the defendants with that fact. The giving of title deeds not in dispute. For saying those were given not as security for the amount due but for to sell and adjust the amount due and pay balance, there is no scrap of paper. Even contrary to their version there were letters of confirmation of deposit of title deeds by creating equitable mortgage and that papers are not even denied from plaint pleadings in the written statement. It is no doubt within the scope of Order VIII Rules 3 to 5 CPC for denial must be specific and any non denial or evasive denial tantamounts to admission.

6. In the factual scenario, the plaintiffs filed the application in I.A.No.170 of 2014 against the defendants under Order 12 Rule 6 CPC saying since defendants having admitted their liability for the Rs.40,00,000/-, based on the admission the suit may be decreed against the defendants by passing a decree on admission to that extent. The affidavit averments are covering the facts contained in the plaint and referring to the written statement averments in saying same is an admission and thereby no way requires repetition. The counter filed by the respondents in opposing the petition to pass decree on admissions sought for, while requesting to read the written statement of them as part of the counter, for the amount due of Rs.70,00,000/- after payment by cheque of Rs.1,25,000/- for the balance Rs.68,75,000/-, Rs.35,00,000/- agreed to adjust from the fresh sale agreement dated 19.11.2010 and to pay balance Rs.25,00,000/- at the time of sale and for refund of remaining balance of Rs.33,75,000/- to plaintiffs by defendants and they arranged through Flycon Blocks

and K. Ramu to the plaintiffs as referred supra and still from the pressures of the plaintiffs for execution of sale deeds and to receive balance Rs.25,00,000/- out of Rs.60,00,000/-, the defendants with no option surrendered their original title deeds for the 2 open plots of 488 square yards of Shamshabad and for land of Ac.2-00 guntas of Parveda Village for the total outstanding of Rs.40,00,000/- due to the plaintiffs so as to sell the properties and adjust the amount and to refund the balance and there was oral understanding between them to that effect and it is now costs Rs.2 crores, thereby plaintiffs have to pay to the defendants of Rs.1.6 crores and there is absolutely no liability from the defendants to the plaintiffs thereby but for vice versa, on sale to pay the balance.

7. From the rival contentions in the application vide impugned order of lower Court dismissing the application dated 04.08.2014, the learned trial Judge observed from the original order page 9 onwards that as per **Kasturi Benkata Subramanyam Vs. Kodukulla Krishna Murthy**¹ omission to file written statement or omission to non traverse (deny) can be construed as an admission under Order VIII Rule 5 CPC to pass decree on admission therefrom. However here the defendants filed their written statement with a contest supra and it is not a positive admission of the suit claim of Rs.40,00,000/- with interest due, from reading of the written statement either to attract under Order 12 Rule 6 CPC or Order 8 Rule 5 CPC, but for to frame issues and put the parties to trial. The admitted facts in the case were entering of original development agreement dated 17.04.2006 and subsequent settlement dated 11.06.2010 to refund and entering of

¹ 1986 (2) ALT 120

another agreement of sale dated 19.11.2010 and the amount referred thereunder and Flycon Blocks and K. Ramu issued 2 cheques total of Rs.26,25,000/- out of Rs.33,75,000/- they undertook to pay and the cheque issued by K. Ramu for Rs.15,00,000/- was settled and there is nothing due for that, but for the Rs.40,00,000/- under the 2nd agreement advance dated 19.11.2010 to refund subject to right of plaintiffs to unilaterally cancel and in the absence defendants to execute sale deed pursuant to the agreement and need not pay apart from they contend deposited title deeds and if proved entitled to mortgage preliminary decree and as there are triable issues. The written statement averments cannot be construed as an admission to grant decree on admission. The same is now impugned in the revision.

8. The revision grounds vis-à-vis oral submissions of the learned counsel for the revision petitioners/plaintiffs are that the lower Court gravely erred in not taking into consideration the pleadings of plaintiff and the admissions of the defendants in their written statement and arrived at erroneous conclusions which are prima facie contrary to the material on record. If the lower Court had gone through the pleadings of plaintiff and the pleadings of defendants in the written statement, it would have seen that the suit claim was admitted by the defendants/respondents herein categorically in their written statement and as such, the plaintiffs are entitled for a decree under Order XII Rule 6 CPC. The lower Court gravely erred in arriving at various conclusions on the basis of some other transactions which have nothing to do with the suit claim and also despite referring to the law laid down in **Kasturi**

Supra, the lower Court erred in not following the same though the respondents/defendants admitted in their written statement with regard to their liability to pay Rs.40,00,000/- to the plaintiffs and prays to allow the revision as prayed for.

9. Learned counsel for the revision respondents/defendants submits that the order of the lower Court holds good and for this Court within the limited scope of revision, there is nothing to interfere hence to dismiss the revision.

10. Heard and perused the material on record.

11. The learned counsel for the defendants/revision respondents cited three Judge Bench expression of the Apex Court in **S.M. Asif Vs. Virender Kumar Bajaj**², where it was in relation to rent control eviction of the premises against the tenant sought by landlord. A perusal of the written statement shows no way admitted in claim made in the eviction suit and raised substantial objections to the eviction suit and from the disputed claim in defence saying there was an agreement for sale entered in favour of the tenant by the landlord and paid advance of Rs.82,50,000/- and tenancy ceased and ripened vendor vendee relation, pursuant of the premises for which a suit for specific performance stated filed, thus by virtue of which it cannot be said there is an admission of the landlord tenant relationship to pass any decree thereunder. It was the observation by the Apex Court that the words used in Order 12 Rule 6 CPC 'may and makes such order' show the discretionary power of the Court to pass decree on admission and not as a right of a party, that too when the objections raised in the

² (2015) 9 SCC 287

defence of the claim by the defendants goes to the root of the case, it would not be appropriate to exercise judicial discretion to pass decree on admission alleged. In fact this decision has no application to the facts on hand as there is landlord tenant relationship subsists or not is the issue framed to decide from the rival contentions from the tenant while admitting ownership of landlord claimed subsequent contract for sale and the status thereby changed.

12. Here coming to the facts, Rs.35,00,000/- advance adjusted out of balance due to the plaintiffs by the defendants of Rs.68,75,000/- and for the balance Rs.33,75,000/- arranged the payment by the defendants to the plaintiffs through Flycon Blocks and K.Ramu and they issued cheques and payments made in part or otherwise out of it which is not subject matter of suit claim, but for Rs.35,00,000/- under the 2nd agreement to be refunded if any with interest for the suit claim of Rs.40,00,000/- and odd.

13. The written statement of the defendants is also very clear in saying as plaintiffs were pressuring to execute sale deed by receiving the balance out of the sale consideration arrived of Rs.60,00,000/- which is to refund and the construction was not commenced to execute sale deed, they have delivered their property title deeds to the plaintiffs with oral arrangement to sell and take that Rs.35,00,000/- with interest which comes to Rs.40,00,000/- and odd and refund the amount with further say of the properties cost about Rs.2 crores, thereby plaintiffs to refund Rs.1.6 crores or so on sale. As stated supra, plaintiffs case is for the refund of the amount by the cancellation of the 2nd sale agreement advance of

Rs.35,00,000/- with interest which comes to Rs.40,00,000/- above. They created equitable mortgage by deposit of title deeds and letter of confirmation of creating equitable mortgage also executed on 20.11.2010. The lower Court's observation was whether plaintiffs can unilaterally cancel the 2nd sale agreement dated 19.11.2010 to claim back advance amount of Rs.35,00,000/- with interest which comes to Rs.40,00,000/- above. The defendants version supra itself is that they handover the title deeds since the sale agreement is cancelled, to refund the amount with interest supra to adjust after sale and to pay balance. The same is not an unilateral cancellation but for bilateral arrangement. Here therefrom, the crux is whether the title deeds given are as security for the advance amount to refund or the sale deeds given with an oral arrangement to sell the property by adjusting the advance with interest and pay back anything remained.

14. Importantly the 2nd sale agreement was dated 19.11.2010 as per the plaint particularly Para 2(x). The confirmation letter executed by defendants by deposit of title deeds as security for the said amount advanced under the sale agreement was 20.11.2010 i.e., on the next day of the sale agreement, the confirmation letter executed of the title deeds are deposited on the date of agreement for the said Rs.35,00,000/- advance under the agreement. As remaining Rs.33,75,000/- stated arranged through Flycon Blocks and K.Ramu respectively, who issued cheques leave about any dishonour and criminal cases and subsequent compromise with anybody which is now not that portion subject matter herein. Thus suffice to say, the giving of

title deeds from the plaintiffs pressuring for refund of Rs.35,00,000/- with interest sometime after entering of the sale agreement dated 19.11.2010 either to execute sale deed or refund and by cancelling the agreement agreed to refund Rs.40,00,000/-, in giving the title deeds to sell the property adjust the same and pay the balance if any. Said version *per se* is absurd to believe more particularly, when the defendants are doing real estate business and not the plaintiffs. The written statement speaks they got vast experience in the real estate field and plaintiffs were never dealt with any real estate business, but for entered sale agreement with the defendants initially and on its cancellation for 2nd time for a lesser price. The defendants in the written statement did not deny the execution of the confirmation letters of deposit of title deeds as security for equitable mortgage to refund the amount in the event of non execution of sale deed within the time stipulated under the sale agreement dated 19.11.2010 from clauses 2, 4 to 7 in particular.

15. In fact the expression in **Kasturi Supra** speaks a non specific denial tantamount to admission by referring to Order 8 Rules 3 to 5 CPC to construe as an admission to pass a decree on admission under Order 12 Rule 6 CPC. It is also from the facts herein of the said contention of defendants of the title deeds given not as security, but with understanding to sell the properties and to take the amount under the cancelled agreement due with interest total above Rs.40,00,000/- and pay balance if any is apart from absurd to believe as stated supra; running contra to the undisputed factum of recital regarding the confirmation of equitable mortgage created by deposit of title deeds to pass a

decree on admission. From that also from what **Kasturi Supra** laid down no doubt from **S.M. Asif Supra** the three Judge Bench of the Apex Court stated it is the discretionary power to exercise though in the facts of that case the tenancy entered not in dispute, but subsequent contract for sale by payment of huge advance and specific performance suit filed pending and thereby once the contest is that the tenancy not in subsistence and ripened into vendor vendee relation, there is no admission of tenancy in subsistence and thereby those facts when no way applies here, but the principle laid down of the judicial discretion can be exercised from the admission to pass a decree on admission.

16. Here the non giving of reply also to the notice one of the adverse inferences which no doubt in an admission substantiated to the non denial of facts, tantamount to admission of title deeds deposited are by creating equitable mortgage and not for the said version of oral subsequent arrangement in giving title deeds to sell the property and to adjust for the amount and to refund the balance. In fact, as per Order 12 Rule 6(1) of CPC, where admissions of fact have been made either in the pleadings or otherwise whether oral or in writing. Thus the admission in the pleadings or otherwise is an admission to pass a decree on admission. Therefrom the recital regarding the equitable mortgage created is once an admission otherwise, that too in the plaint when same is mentioned in Para 2(x) and same not denied in the written statement specifically but for coming with contradictory version of oral arrangement, which no way survive much less any basis to believe, from non denial tantamount to admission as per Order 8 Rules 3 to 5 within the meaning of Order 12 Rule 6 CPC as laid

down in **Kasturi Supra**. According to the further wording of the provision, the Court may at any stage of the suit either on the application of a party or on its own motion, and without waiting for determination of any other question between the parties, makes such order or give such judgment as it may think fit and having regard to such admission to draw a decree in accordance with judgment as if a regular judgment and decree. Thus the Court may even pass decree on admission not only on the application of a party but also *suo motu*.

17. The Apex Court in **Raveesh Chand Jain Vs. Raj Rani Jain** in SLP(C).No.29805 of 2014 (CA.No.1822 of 2015) dated 12.02.2015 referring to Order 12 Rule 6 CPC and the expression in **Karam Kapahi Vs. Lal Chand PC Trust**³ Para 39 held that the amended provision of Order 12 Rule 6 CPC is to further the ends of justice in a wider sweep by empowering the Judges to use it *ex debito justitiae* for in an appropriate case on admission of other party-defendants, the plaintiffs can press for judgment as a matter of legal right. However, the Court always retains its discretion in the matter of pronouncing judgment on admission and it is such a wider concept of admission not limited by pleadings as it is even otherwise to say other than by pleadings and even an oral admission and as laid down referring to the provision from the scope of width of this rule of admissions can be inferred from the facts and circumstances vide, **Charanjit Lal Mehta & Uttam Singh Duggal**. The two expressions of the Apex Court say the provision cannot be knocked down unduly as its object is to enable a party to obtain speedy judgment.

³ (2010) 4 SCC 753

18. Coming to other expression in **Jeevan Diesels and Electricals Limited Vs. Jasbir Singh Chada (HUF) and Another**⁴, the two Judge Bench of the Apex Court held that the pre-conditions for Order 12 Rule 6 CPC to invoke to pass judgment on admission, it must be a clear admission, and where there is no clarity in the nature of admission, no judgment can be passed therefrom and **Karan Kapahi supra** on facts distinct and not on principle having referred herein and it referred **Uttam Singh Duggal & Co. Limited Vs. United Bank of India**⁵ wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed, the principle of passing decree on admissions will apply. It referred the expression of Court of appeal in **Gilbert Vs. Smith**⁶ that if there was anything clearly admitted upon which something ought to be done, the plaintiff might come to the Court at once and to have that thing done without any further delay or expense. It is observed no doubt that the rule was not meant to apply when there is serious question of law to be argued in *Ellis Vs. Allen* (1914 1 Ch 904), The House of Lords also reiterated the same principles that is quoted with approval in **Abdul Rahman & Bros Vs. Parbati Devi**⁷ and the other two Judge Bench expression in **Himani Alloys Limited Vs. Tata Steel Limited**⁸. It was held that the admission be clear and unconditional, as Court should not exercise the discretion to deny valuable right of defendants to the contest, but where the Court can act upon the admission and the impugning can be construed of admission or not also with reference to Sections 17 and 58 of

⁴ (2010) 6 SCC 601

⁵ (2000) 7 SCC 120

⁶ (1876) 2 Ch D 686 (CA)

⁷ AIR 1933 Lah 403

⁸ (2011) 15 SCC 273

Evidence Act to say the admission by a party his conscious for being bound by it and referred **Jeevan supra, Karam Kapahi, Uttam Singh supra** to the conclusion.

19. From the above and as discussed supra, the lower Court did not exercise the power vested in it by came to a wrong conclusion by ill-appreciation of fact and law to the prejudice of the rights of the plaintiffs from the said admissions of the defendants to pass the decree on admission. The Apex Court held on the scope of revision no doubt in **Shalini Shyam Shetty Vs. Rajendra Shankar Patil**⁹ by noting the expression in Surya Dev Roy did not lay the distinction between the Articles 226 and 227 proceedings from the distinction between the 2 articles having clarified on substantially different foot, they operate in different areas, said Article 227 can be invoked by the High Court even suo motu, as a custodian of justice, though frequent and improper exercise of the power will be counter productive. It was held further that this discretionary power can be exercised on equitable principles for promotion of public confidence and administration of justice and in the larger public interest as the power may be unfettered but the exercise is subject to high degree of judicial discipline to maintain efficiency and smooth and orderly functioning of machinery of justice. It was observed that the power under Article 227 of the Constitution of India is not as a Court of first appeal over orders of subordinate Court for where alternative remedy available, this power cannot be exercised and the parameters for such exercise is not to interfere merely because some other view is also possible

⁹ (2010) 8 SCC 329

but to interfere with orders of subordinate Courts where same is a patent perversity or gross and manifest failure of justice.

20. In fact the principles laid down in **Surya deva supra**, but for the distinction between Articles 226 and 227 laid down in **Shalini Shyam Shetty** quoted with approval in the subsequent 3 Judge Bench expression in **Radhey Shyam and Another Vs. Chhabi Nath and Others**¹⁰ from the expression saying where the order itself is not sustainable, the revision power can be exercised to interfere there with.

21. Having regard to the above, the admission is since clear and the subsequent version is absurd and the principal amount of Rs.35,00,000/- with interest of Rs.5,18,000/- is the suit claim and what is admitted is only for Rs.40,00,000/ and Rs.40,18,000/- includes subsequent interest, the trial Court should have been passed decree on admission for recovery of it by kept open the remaining issues regarding entitlement of interest and rate of interest on said Rs.35,00,000/-, either from the sale agreement terms dated 19.11.2010 and in the absence from date of legal notice and its service till date of suit for the prelitit interest, besides pendentilite interest, the discretion of the Court as per the Section 34 CPC equally of postliti interest apart from costs of the suit if any.

22. Accordingly and in the result, the revision is allowed by setting aside the dismissal order of the lower Court and by allowing the application and by passing decree on admission for

¹⁰ (2015) 5 SCC 423 (LB)

Rs.40,00,000/- for rest of the suit claim to be determined on the other disputed aspects on merits from the pleadings of the parties.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 04.11.2016

Note: L.R. copy to be marked

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