

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL MISCELLANEOUS APPEAL Nos.277 and 297 of 2017

COMMON ORDER:

These two civil miscellaneous appeals are filed aggrieved by the orders dated 02.02.2017 passed in I.A.Nos.781 and 780 of 2016 in O.S.No.306 of 2016 by the III Additional Chief Judge, City Civil Court at Hyderabad, filed under Order XXXIX Rule 1 and 2 of Code of Civil Procedure (for short, hereinafter, referred to as "C.P.C."), whereby the said interlocutory applications were dismissed.

I.A.No.781 of 2016 was filed under Order XXXIX Rule 1 and 2 of C.P.C. seeking temporary injunction restraining the respondent No.5 and all other persons claiming through him not to make any further constructions over the suit schedule premises, whereas I.A.No.780 of 2016 was filed under Order XXXIX Rule 1 and 2 of C.P.C. seeking ad-interim injunction restraining the respondent Nos.1, 2, 3, 5, 8 and 9 and all other persons claiming through them from selling, alienating, transferring or otherwise dealing with the said property during pendency of the suit.

Suit O.S.No.306 of 2016 was filed to declare that the registered sale deed dated 27.05.2013 vide document No.2622/2013, sale deeds dated 01/11/2013 vide document Nos.2169 and sale document No.2170 of 2013 and also development agreement dated 09.02.2015 vide Document No.666 of 2015 as null and void and not binding on plaintiffs;

to direct defendant Nos.1 and 4 to refund the amount to plaintiffs the sum of Rs.38,50,000/- together with interest at the rate of 24% per annum by way of compensation, from the date of the suit till the date of realisation of the amount; to grant damages; to grant relief of perpetual injunction restraining defendant No.1, 2, 3, 5, 8 and 9 and all persons claiming through or under them from selling, alienating, transferring or otherwise dealing with the said property in favour of third parties; to grant perpetual injunction not to make further constructions on the suit schedule property by defendant No.5.

During the pendency of the suit, interlocutory applications referred above were filed before the III Additional Chief Judge, City Civil Court, Hyderabad alleging that the respondent No.4 was the original owner of the premises bearing No.6-3-345/2 admeasuring 2400 sq.yards situated at Road No.1, Banjara Hills, Hyderabad. On 26.05.1997 the petitioner Nos.1 and 2 jointly entered into an agreement with the respondent No.4 along with respondents Nos.6 and 7 for total consideration of Rs.32,00,000/-. The petitioner Nos.1 and 2 paid an amount of Rs.12,00,000/- by way of advance/earnest money and as part of sale consideration, respondent No.4 acknowledged receipt of the same under separate receipt. The petitioners paid entire consideration of Rs.20,00,000/- under four separate receipts dated 26.11.1997, 28.12.1997, 29.05.1998 and 29.05.1998 covered

Rs.5,00,000/- each. No time was fixed for payment of either balance sale consideration or execution of registered sale deed at the time of agreement of sale herein since there were some pending cases between the family members, which were resolved later. The petitioners are entitled to protect their possession invoking doctrine of part performance under Section 53-A of the Transfer of Property Act. The petitioners along with defendants No.6 and 7 with the tactic understanding and consent of defendant No.4 in suit entered into agreement of sale cum Power of Attorney with respondent No.1 and another person named Abu Ahmed Bin Mehfooz on 01.02.2001 which is also an unregistered document. Though the petitioners were only agreement holders, the respondent No.4 original owner was also ready and willing to be a party to the said agreement dated 01.02.2001 and joined as a party to the said agreement. Under the said agreement petitioner received total consideration of Rs.90,00,000/- from defendant No.1 out of which a sum of Rs.40,00,000/- was received by them towards part payment. However, defendant No.4 made it clear that he would join in the execution of agreement with defendant No.1 without demanding any payment.

At the request of the defendant No.1 on 05.02.2001 a fresh agreement was executed by and between the petitioners and defendant No.4 on one side along with one of the two vendees under the agreement of sale dated 01.02.2001. It

would appear that there were disputes between respondent No.1 and former backed out of leaving defendant No.1 alone to complete the transaction and pay the balance consideration of Rs.50,00,000/-. Respondent No.1 therefore executed fresh agreement under which respondent No.1 undertook to pay sale consideration of Rs.50,00,000/-.

While things going on, respondent No.1 expressed his inability to pay balance of Rs.50,00,000/- which was payable under agreement of sale dated 05.02.2001, on the other hand, agreed to pay the said sum if the four vendees agreed to receive the balance sale consideration separately in respect of each portion notionally among the four parties as and when such notional division takes place. Respondent No.4 would execute and register separate sale deed in respect of each portion so divided notionally and such agreement was an original agreement and petitioner accepted the said offer. It was further agreed that out of sale consideration of Rs.40,00,000/- already received by the petitioners and respondents No.6 and 7 a sum of Rs.20,00,000/- would be adjusted towards sale consideration paid by petitioners in respect of future Agreement of sale cum GPA to be executed by respondent No.4 and the balance of Rs.20,00,000/- to be paid to respondents No.6 and 7 only.

Later, respondent No.1 requested petitioners, respondents No.6 and 7 and respondent No.4 to execute and

register separate sale deed in respect of each party in proportion to the consideration received from four parties, petitioners, respondents No.6 and 7 agreed to notionally partition the open land into four separate plots under which respondents No.6 and 7 would sell to the respondent No.1, 600 sq.yds of open land representing their share by executing separate registered sale deed by them in favour of respondent No.1. Pursuance to the said arrangement, respondents No.6 and 7 executed separate sale deed for 600 sq.yds out of total land admeasuring 2400 sq.yds and separately demarcated in the plan annexed to the said sale deed. The portion was already sold and registered for consideration to the respondent No.1 which is not subject matter of the present petition and to avoid confusion the same is shown as 'D' portion in rough sketch annexed and also to the schedule annexed to the plaint. On 24.04.2001 respondent No.4 entered into agreement of sale with GPA holder along with petitioners and also along with respondents No.6 and 7 vide document No.902/2001 under which they agreed to sell to the vendees defendants No.2 and 3,600 sq.yds out of remaining 1800 sq.yds for a total consideration of Rs.18,00,000/- out of which receipt of Rs.10,00,000/- was acknowledged (adjusted out of Rs.40,00,000/- received as per agreement dated 01.02.2001) and the balance of Rs.8,00,000/- agreed to be paid within eight months. The said portion which was agreed to be sold under the said

document is prescribed in detail annexed to the agreement and delineated in the plan annexed to the said agreement. The property is shown as 'B' schedule annexed to the plan and also to the sketch. Under clause 3 of the said agreement, there is a recital to that effect that petitioners were already in peaceful and undisturbed possession of part of the property mentioned thereunder. On 25.04.2001 respondent No.4 entered into an agreement of sale with GPA holder along with petitioners and also respondents No.6 and 7 vide document No.913/2001 under which they agreed to sell to the vendee defendants No.2 and 3, 600 sq.yds of the remaining 1800 sq.yds for a total consideration of Rs.18,00,000/- out of which receipt of Rs.10,00,000/- was acknowledged and received earlier (adjusted out of Rs. 40 lakhs received on agreement dated 01.02.2001) and the balance of Rs.8,00,000/- was to be paid within eight months. The said part which was registered is agreed to be sold under the said document which is described in detail in schedule annexed to the said agreement and delineated in the plan shown as 'C' schedule annexed to the plan and also in the sketch. Under Clause-3 of the said agreement it is recorded and recited to the effect, petitioners were already in peaceful and undisturbed possession of the property mentioned thereunder. On 07.3.2002 defendant No.4 executed an agreement of sale with GPA holder along with petitioners No.1 and 2 vide document No.1457/2002 under which respondent

No.4 sold and conveyed balance of 600 sq.yds land which is shown as 'A' portion in the schedule and also sketch annexed to the plaint. Incidentally the same property was shown in schedule annexed to the plaint filed by defendant No.1 vide O.S.No.147/2006.

The respondent No.1 has filed suit O.S.No.147/2006 on the file of III Additional Chief Judge, Hyderabad against respondent No.4/petitioner and respondent No.7 for specific performance of agreement of sale dated 05.02.2001 in respect of 600 sq.yds of land shown in the sketch annexed to the plaint, the said suit was dismissed for default on 20.03.2014. During the pendency of the said suit respondent No.4 reportedly have sold 600 sq.yds directly to respondent No.1 under the registered sale deed dated 27.05.2013 vide document No.2622/2013 for a sale consideration of Rs.22,50,000/- to have been received by the date of the sale. In the recitals of the said sale deed in particular clause 6 of the document it is falsely reported “the vendor herein already put the vendee in physical possession long back (without a date).” Obviously the said statement is false even to the knowledge of respondent No.4 since the possession of the entire property was originally delivered to petitioners and respondents No.6 and 7 under the agreement of sale dated 26.04.1997 and it is nobody's case that either petitioners or respondents No.6 and 7 were dispossessed from the said

property. It is contended that the same is a fraudulent transaction entered into by respondent No.4 with respondent No.1 without the knowledge and behind the petitioners/respondents No.6 and 7. In fact respondent No.4 had no right to execute any such document. Petitioners came to know about the illegal sale transaction alleged to have been entered into in favour of respondent No.1 on 27.05.2013 when they visited the spot and found to their shock and surprise some construction activities are going on at the site sometime in the first week of March, 2015. When they enquired it was revealed that respondent No.1 alleged to have purchased the said land from respondent No.4 under the sale deed No.2622/2013 dated 27.05.2013. Immediately the petitioners lodged complaint with GHMC on 18.3.2015 about the said construction and also sought certified copies of sanction plan and sale deed. Since there was no response from GHMC petitioners applied for certified copies of sale deed and procured the same and filed the letter addressed to GHMC.

Petitioners further contended that on enquiry they came to know that the respondent No.1 clandestinely, illegally executed two sale deeds on 01.11.2013 in favour of his two sons, respondents No.2 and 3 bearing document No.2169 and 2170/2013. It would reveal that respondent No.1 falsely claiming himself as owner under agreement of sale cum GPA dated 24.04.2001 and 25.04.2001. The said transactions

patently false, illegal and fraudulent. The same are not binding on the petitioners. The said portions are shown as B and C in the plaint schedule and also sketch annexed to the plaint. In the meanwhile respondents No.1 to 3 along with their neighbour one Smt. Aparna Rao, who is reported to have own some land adjacent to the petition schedule property, entered into development agreement with respondent No.5 dated 09.02.2015 vide document No.666/2015. The said Smt. Aparna Rao is added as respondent No.9 in the above suit, and no relief is claimed against her. The petitioners further alleged that the respondent No.4 entered into agreement of sale with GPA along with petitioners is not revoked or cancelled, that respondent No.4 in collusion with respondents No.1 and 2 and their family members entered into dishonest and fraudulent transaction behind them. They are seeking the said document as null and void and not binding on petitioners.

Petitioners submit that they have balance of convenience and they also have *prima facie* case and if interim injunction is not granted, the petitioners would suffer irreparable loss which cannot be compensated in terms of money and prayed to allow the interlocutory applications Nos.781 and 780 of 2016.

The respondents filed the counter denying all the material allegations raised in the affidavits annexed to

petitions and contended that the present suit to declare that the registered sale deed dated 27.05.2013, 01.11.2013 and Development Agreement dated 01.02.2015 as null and void and not binding on the petitioners/plaintiffs and to direct defendants No.1 to 4 to refund a sum of Rs.38,50,000/- with interest @ 24% per annum, damages, perpetual injunction is devoid of any merits, unsustainable either in law or facts and the suit was hopelessly barred by limitation. Further the petitioners are guilty of suppression of material facts. In the counter it is admitted that the extent of 2400 sq.yds of land forming part of premises bearing No.6-3-345/2 of suit schedule property was purchased by the petitioners and respondents No.6, 7 under a agreement of sale dated 26.05.1997 for total sale consideration of Rs.32,00,000/-. The recitals of the said receipts are false. They denied that on 29.5.1998 the respondent No.4 delivered vacant possession of the property in terms of the agreement of sale dated 26.05.1997 and they are entitled to protect their possession under Section 53-A of Transfer of Property Act on payment of entire sale consideration and delivery of possession as per Section 53-A of Transfer of Property Act. They admit that the petitioners sent defendants No.6 and 7 entered into agreement of sale (but not agreement of sale cum power of attorney) with respondent No.1 and another on 01.02.2001 and it is an unregistered document. The respondent No.4 was also party to the said agreement and the said agreement

never acted upon. They also admitted on 05.02.2001 a fresh agreement was executed between the petitioners, respondents No.4, 6 and 7 in favour of respondent No.1 and respondent No.1 paid Rs.40,00,000/- at the time of said agreement and the same was not acted upon. The allegations made in paragraph Nos.8 and 9 are not found in the earlier suit in O.S.No.501/2015 on the file of II Additional Chief Judge, at Hyderabad which was intentionally and deliberately suppressed by the petitioners. It is admitted that the respondents No.6 and 7 executed a registered sale deed for 600 sq.yds in favour of respondent No.1. On 24.04.2001 the respondent No.1 executed a registered agreement of sale with GPA along with the petitioners and respondent Nos.6 and 7 vide document No.902/2001 in favour of respondents No.1 and 2 in respect of 600 sq.yds for a total sale consideration of Rs.18,00,000/-, similarly on 25.04.2001 respondent No.4 along with petitioners and respondents No.6 and 7 executed registered agreement of sale vide document No.913/2001 in favour of respondent No.1, respondent No.3 but not in favour of respondent No.2, the respondent No.3 as alleged in respect of 600 sq.yds for total sale consideration of Rs.18 lakhs. The said recitals of registered document are not disputed.

During hearing, both parties did not adduce any oral evidence but marked documentary evidence.

Upon hearing arguments of both the counsel, trial Court dismissed both the applications on various grounds mainly

on the ground that the petitioners did not approach the Court with clean hands and suppressed the filing of earlier suit O.S.No.501 of 2015 and incidental proceedings therein. Thereby, the petitioners are not entitled to claim equitable and discretionary relief of interim injunction. The trial Court also found that the balance of convenience is tilting towards respondents and petitioners would suffer no loss much less irreparable loss in case no interim injunction is granted and dismissed both the petitions.

Aggrieved by the orders and decreetal orders passed by the trial Court in I.A.Nos.781 and 780 of 2011, these two appeals are filed and the grounds in both the appeals are general in nature and identical.

Though the amendment petition was filed to amend the pleadings by bringing to the notice of the Court the factum of filing of the suit and the result in the interlocutory applications, but the trial Court did not consider the same in proper perspective and dismissed the petitions erroneously.

The trial Court also failed to refer the judgments of the Apex Court which the petitioners' counsel placed before the Court and conveniently avoided to refer the principles laid down therein and dismissed the petitions for one reason or other. The trial Court also failed to advert to Order XXXIX Rule 1 and 2 of C.P.C. since the intention of the petitioners is only to preserve the property despite the petitioners became owners of 600 square yards. Thus, the order passed by the

trial Court is erroneous, suffers from several infirmities warranting interference of this Court and prayed to set aside both the orders granting interim injunction by allowing I.A.Nos.780 and 781 of 2016.

During hearing, learned senior counsel Sri E.Venugopal on behalf of Sri Ch.Siddhartha Sarma, counsel on record for the appellants, mainly contended that the appellant under the impression that the earlier suit O.S.No.501 of 2015 was dismissed as withdrawn as the petitioners filed memo before the Court, but the Court without passing any order kept the said memo pending. Therefore, the petitioners thought that it is not necessary to refer the same before the Court in the plaint and petitions; therefore it is not an intentional suppression of fact much less material fact. Even otherwise, petitioners filed I.A.No.1584 of 2016 for grant of leave to add paragraph No.21 in O.S.No.306 of 2016 disclosing certain facts with regard to earlier litigation and the order passed in interlocutory applications therein, but the trial Court dismissed the said petition. Similarly, petitioners filed two petitions I.A.Nos.1582 and 1583 of 2016 seeking leave to amend the affidavit in I.A.Nos.780 and 781 of 2016 in O.S.No.306 of 2016, but those two applications were also dismissed on various grounds and against the dismissal of said petitions, three revisions were filed before this Court against the orders passed by the trial Court in I.A.Nos.1582, 1583 and 1584 of 2016.

He further contended that the trial Court dismissed all the three applications for amendment and dismissed the present petitions on the ground that the petitioners did not approach the Court with clean hands as they allegedly suppressed the facts with regard to earlier litigation. But when an application is filed to amend both the plaint and petition, the trial Court instead of dismissing the petitions on the ground that the petitioners did not approach the Court with clean hands, ought to have granted permission to clean dirt to their hands, thereby in such case the petitioners are entitled to claim temporary injunction and placed reliance on “**Arunima Baruah v. Union of India**”¹, wherein the Apex Court held that when a party approached the Court to claim discretionary jurisdiction suppressing material fact, the Court has to decide what would be a material fact, suppression whereof would disentitle to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief.

¹ (2007) 6 SCC 120

He also placed reliance on the judgment of Apex Court rendered in “**S.J.S.Business Enterprises (P) Ltd. v. State of Bihar**²” to distinguish “what is material fact and material particular.”

On the strength of the principles laid down in the above two judgments, learned senior counsel appearing for the appellants contended that when material fact is not disclosed and amendment is permitted, the discretionary relief of interim injunction cannot be dismissed when the dirt is removed from the hands and became clean. Therefore, he requested to allow the I.A.Nos.781 and 780 of 2016 granting interim injunction setting aside the orders passed by the trial Court.

Per contra, Sri P.Shiv Kumar, learned counsel for the respondents, would contend that when the appellants/petitioners approached the Court with unclean hands by false and fraudulent means made an attempt to obtain order, the Court is bound to decline discretionary and equitable relief under Order XXXIX 39 Rule 1 and 2 of C.P.C. The appellants did not disclose the earlier litigation intentionally and it is a material fact to the proceedings, non-disclosure of such fact would disentitle the appellants to claim equitable and discretionary relief of injunction during pending of the suit. Apart from that the appellants failed to establish the essential requirements which are *sine qua non*

² (2004) 7 SCC 166

for grant of interim injunction and the Court also concluded that the prima facie case is in favour of the respondents and the appellants would not sustain any loss much less irreparable injury to claim interim injunction during the pendency of the suit. The trial Court after elaborate consideration of the facts and law dismissed the applications and he requested to dismiss both the appeals by placing reliance on the judgment of Apex Court rendered in **“S.P.Chengalvaraya Naidu v. Jagannath³”**

Considering the rival contentions and material available on record, the point that arises for consideration is:

“Whether non disclosure of filing of suit O.S.No.501 of 2015 and incidental orders passed therein would amount to suppression of material fact, if not, whether the appellants are entitled to claim discretionary and equitable relief of interim injunction restraining the respondent No.5 and all other persons claiming through him not to make any further constructions over the suit schedule premises and restrain the respondent Nos.1, 2, 3, 5, 8 and 9 and all other persons claiming through them from selling, alienating, transferring or otherwise dealing with the said property during pendency of the suit under Order XXXIX Rule 1 and 2 of C.P.C.?”

P O I N T:

Appellants admittedly filed earlier suit O.S.No.501 of 2015 and certain applications were filed for grant of various

³ (1994) 1 SCC 1

reliefs with respect to schedule property, which is the subject matter of the present suit and parties to the earlier suit and to the present suit are same, in such case non-disclosure of earlier suit filed for different reliefs or filing suit, suppressing the said fact is a material fact or not is a question.

According to the learned counsel for the appellants, there is a difference between material fact and material particular.

All facts which are essential to clothe the petitioner with a complete cause of action are “material facts” which must be pleaded, and failure to plead even a single material fact amounts to disobedience, would disentitle him to claim any relief more particularly equitable and discretionary relief. “Material particulars” on the other hand are “the details of the case set up by the party”. Material particulars would therefore mean all the details which are necessary to amplify, refine and embellish. The material facts already pleaded in the petition in compliance with the requirements. “particulars” serve the purpose of finishing touches to the basic contours of a picture already drawn, to make full, more detailed and more informative vide “**V.S.Achuthanandan v. P.J.Francis**”⁴.

Similarly in “**Sopan Sukhdeo Sable and others v. Assistant Charity Commissioner and others**”⁵ and “**Sandeep Polymers Pvt. Ltd. v. Bajaj Auto Ltd. and**

⁴ AIR 1999 Supreme Court 2044

⁵ AIR 2004 Supreme Court 1801

others⁶” the Court drawn the distinction between material facts and particulars. The words 'material facts' show that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. The distinction which has been made between 'material facts' and 'particulars' was brought by Scott, L.J. in *Bruce v. Odhams Press Ltd.* (1936) 1 KB 697 in the following passage:

The word "material" means necessary for the purpose of formulating a complete cause of action; and if any one "material" statement is omitted, the statement of claim is bad; it is "demurrable" in the old phraseology, and in the new is liable to be "struck out" under R.S.C. Order XXV, Rule 4 (see *Philipps v. Philipps* (1878) 4 QBD 127; or "a further and better statement of claim" may be ordered under Rule 7.

The function of "particulars" under Rule 6 is quite different. They are not to be used in order to fill material gaps in a demurrable statement of claim - gaps which ought to have been filled by appropriate statements of the various material facts which together constitute the plaintiff's cause of action. The use of particulars is intended to meet a further and quite separate requirement of pleading, imposed in fairness and justice to the defendant. Their function is to fill in the picture of the plaintiff's cause of action with information sufficiently detailed to put the defendant on his

⁶ AIR 2007 Supreme Court 2656

guard as to the case he had to meet and to enable him to prepare for trial.

The dictum of Scott, L.J. in Bruce case (supra) has been quoted with approval by this Court in Samant N. Balkrishna v. George Fernandez [1969]3SCR603 , and the distinction between "material facts" and "particulars" was brought out in the following terms:

The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet.

In view of clear distinction between material fact and material particular drawn by the Supreme Court in the judgments referred supra, this Court has to examine whether non-disclosure of earlier suit and incidental proceedings therein would amount to non-disclosure of material fact. As discussed above, the undisputed fact is that appellants filed suit O.S.No.501 of 2015 and filed interlocutory applications and some incidental orders were passed by the Court and the appellants filed a memo seeking permission to withdraw the suit without reserving the right to file a separate suit on same cause of action, for one reason or other reason the trial Court

did not pass appropriate order dismissing the suit as withdrawn. Memo is only information intimating the intention of the appellants. Though no judicial order cannot be passed on the memo, when such memo is passed on to the Court withdrawing the suit without reserving the right to file a separate suit on same cause of action, the Court has to pass appropriate order immediately without keeping it pending either dismissing suit or rejecting the memo, but obviously for different reasons no such order has been passed till today.

A similar question came up before the Apex Court in "**Arunima Baruah v. Union of India**" (referred supra). In the facts of the above judgment, appellant filed a suit before the District and also filed an application for grant of injunction, a notice was issued, but no order of injunction was passed. Thereafter, she filed a writ petition before the High Court though original suit was pending, without disclosing the said factum in the writ petition. When the writ petition came up for preliminary hearing, she filed an application for withdrawal of the suit. The said application allegedly could not be moved because of the strike resorted to by the lawyers. When the writ petition came up for preliminary hearing, a notice was issued therein to the respondents. Her application to withdraw the suit came up for consideration before the Civil Court and upon a statement made by her, the same was permitted to be withdrawn. The writ petition was dismissed by a single Judge of the High Court on the ground of

suppression of material facts. An intra-court appeal preferred thereagainst was dismissed by the impugned judgment on the same ground. When the appellant approached the Apex Court, the Apex Court while dealing with such situation, which identical to the present situation held that judicial review is a basic feature of the Constitution, on the other, it provides for a discretionary remedy. Access to justice is a human right. A person who has a grievance against a State, a forum must be provided for redressal thereof. The court's jurisdiction to determine the lis between the parties, therefore, may be viewed from the human rights concept of access to justice. The same, however, would not mean that the court will have no jurisdiction to deny equitable relief when the complainant does not approach the court with a pair of clean hands but to what extent such relief should be denied is the question. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary

jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question. The court would not ordinarily permit a party to pursue two parallel remedies in respect of the same subject matter. But, where one proceeding has been terminated without determination of the lis, can it be said that the disputant shall be without a remedy. Existence of an alternative remedy by itself may not be a relevant factor as it is one thing to say that there exists an alternative remedy and, therefore, the court would not exercise its discretionary jurisdiction but it is another thing to say that the court refuses to do so on the ground of suppression of facts. In the said case the appellant had suppressed a material fact. It is evident that the writ petition was filed only when no order of interim injunction was passed in the civil suit filed by the appellant prior to the writ petition in respect of the same relief. It was obligatory on the part of the appellant to disclose the said fact. In this case, however, suppression of filing of the suit is no longer a material fact. The single Judge and the Division Bench of the High Court may be correct that, in a case of this nature, the court's jurisdiction may not be invoked but that would not mean that another writ petition would not lie. When another writ petition is filed disclosing all the facts, the appellant would be

approaching the writ court with a pair of clean hands, and the court at that point of time will be entitled to determine the case on merits having regard to the human right of the appellant to access to justice, and keeping in view the fact that judicial review is a basis feature of the Constitution and set aside the judgment of the High Court passed by the Single Judge and Division Bench in intra-court appeal.

It is clear from the law declared by the Apex Court in “**Arunima Baruah v. Union of India**” (referred supra) when a fact was suppressed, which is material, almost identical to the present facts of the case, non-disclosure of the same by the appellants disentitle them to claim discretionary and equitable relief. In the facts of the above judgment, in the event the appellants file a fresh writ application, the same may be considered on its own merits.

In the present case, appellants filed amendment petition both to the plaint and to the affidavit, but mere carrying out amendment to the plaint without amending interlocutory applications, would not serve any purpose since the Courts disposing of the interlocutory applications, more particularly, applications filed under Order XXXIX Rule 1 and 2 of C.P.C. based on facts stated in the affidavit filed along with the application, but this Court after elaborate consideration of law dismissed the C.R.P.Nos.1754 and 1772 of 2017 holding

that affidavit is solemn affirmation made by a party as to the facts of the case before an officer authorised to attest the affidavit. In such a case, the affidavit is a substitute to the oral testimony and it would not fall within the definition of pleading under Order VI Rule 1 of C.P.C. Therefore, affidavit cannot be permitted to be amended. As it is, in the present petitions filed under Order XXXIX Rule 1 and 2 of C.P.C. the appellants are disentitled to claim equitable and discretionary relief of interim injunction.

Sri P.Shiv Kumar, learned counsel for the respondents, while stressing that non-disclosure of the factum of filing of suit and other incidental proceedings therein is a material fact since the appellants failed to obtain any order in the earlier suit, suppressing the said fact, the present suit is filed with an intention to obtain interim order to restrain the respondent from raising construction etc.

If the principle laid down in “**Arunima Baruah v. Union of India**” (referred supra) is strictly applied to the present case, the appellants are disentitled to claim relief of interim injunction, which is purely discretionary in nature.

When an identical question came up before the Apex Court in “**S.P.Chengalvaraya Naidu v. Jagannath**” (referred supra), the Apex Court held that the principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for

imparting justice between the parties. One who comes to the court, must come with clean-hands. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court - process a convenient lever to retain the illegal-gains indefinitely. A person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.”

If the said principle is applied to the present facts of the case, the appellants having suppressed the factum of filing of earlier suit and incidental proceedings therein, disentitled to claim relief of temporary injunction during pendency of the suit.

It is settled law that a person who approaches the Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known

by exercising diligence expected of a person of ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person. In one of the earliest decisions on the subject i.e., - *R. v. Kensington Income Tax Commissioner* {(1917) 1 KB 486} Viscount Reading, Chief Justice of the Divisional Court observed:

“Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the applicant was not candid and did not fairly state the facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant’s affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that this Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit.”

The above extracted observations were approved by the Court of Appeal in the following words: “It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction: and it is no excuse for him to say that he was not aware of the importance of any facts which he has omitted to bring forward. If an applicant does not act with uberrima fides and put every material fact before the Court it will not grant him an injunction, even though there might be facts upon which the injunction might be granted.” His Lordship rightly pronounced: “The Court, for its own protection, is entitled to say: We refuse this writ... without going into the merits

of the case on the ground of the conduct of the applicant in bringing the case before us.” Warrington, L.J. was also of the same opinion. In a concurring judgment His Lordship observed: “It is perfectly well settled that a person who makes an ex parte application to the Court – that is to say, in absence of the person who will be affected by that which the Court is asked to do – is under an obligation to the Court to make the fullest possible disclosure of all material facts within his knowledge, and if he does not make that fullest possible disclosure, then he cannot obtain any advantage from the proceedings, and he will be deprived of any advantage he may have already obtained by means of the order which has thus wrongly been obtained by him.”

This Court and different High Courts have repeatedly invoked and applied the rule that a person who does not disclose all material facts has no right to be heard on the merits of his grievance – *State of Haryana v. Karnal Distillery Co. Ltd.* (1977) 2 SCC 431, *Vijay Kumar Kathuria v. State of Haryana* (1983) 3 SCC 333, *Welcome Hotel and others v. State of Andhra Pradesh and others etc.* (1983) 4 SCC 575, *G. Narayanaswamy Reddy (dead) by LRs. and another v. Government of Karnataka and another* (1991) 3 SCC 261, *S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by LRs. and others* (1994) 1 SCC 1, *Agricultural and Processed Food Products v. Oswal Agro Furane and others* (1996) 4 SCC 297, *Union of India and others v. Muneesh Suneja* (2001) 3 SCC 92, *Prestige Lights Ltd. v. State Bank of India* (2007) 8 SCC 449, *Sunil Poddar and others v. Union Bank of India* (2008) 2 SCC 326, *K.D. Sharma v. Steel Authority of India Ltd. and others* (2008) 12 SCC 481, *G. Jayshree and others v. Bhagwandas S. Patel and others* (2009) 3 SCC 141 and C.A.

No. 5239/2002 – *Dalip Singh v. State of U.P. and others*,
decided on 3.12.2009.

In “***Seema Arshad Zaheer and Ors. v. Municipal Corporation of Greater Mumbai and Ors***⁷” the Apex Court while refusing to grant equitable relief of injunction on the ground that the petitioners therein have not approached the Court with clean hands, held as follows:

“.....the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.

Neither the trial court nor the High Court have kept in view and applied their mind to the relevant settled principles of law governing the grant or refusal of interlocutory injunction in trade mark and trade name disputes. A refusal to grant an injunction in spite of the availability of facts,

⁷ 2006 (5) ALD 1 (SC)

which are prima facie established by overwhelming evidence and material available on record justifying the grant thereof, occasion a failure of justice and such injury to the Plaintiff as would not be capable of being undone at a later stage. The discretion exercised by the trial court and the High Court against the Plaintiff, is neither reasonable nor judicious. The grant of interlocutory injunction to the Plaintiff could not have been refused, therefore, it becomes obligatory on the part of this Court to interfere.

The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the Plaintiff: (i) existence of a prima facie case as pleaded, necessitating protection of the Plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of the Plaintiff's rights is compared with or weighed against the need for protection of the Defendant's rights or likely infringement of the Defendant's rights, the balance of convenience titling in favour of the Plaintiff; and (iii) clear possibility of irreparable injury being caused to the Plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the Plaintiff's conduct is free from blame and he approaches the court with clean hands."

From the law declared in various judgments referred above, it is clear that the person, who approached the Court to claim equitable relief, must do equity and must come with clean hands. The maxim "he who comes into equity must come with clean hands" is a Latin maxim. This maxim has been variously expressed.

- (1) No one is entitled to the aid of a court of equity when that aid has become necessary through his or her own fault.

(2) Equity does not relieve a person of the consequences of his or her own carelessness.

(3) A Court of equity will not assist a person in extricating himself or herself from the circumstances that he or she has created.

(4) Equity will not grant relief from a self-created hardship.

This maxim is not a moral persuasion but an enforceable rule of law. It does not require every plaintiff to have an unblemished background in order to prevail, but the Court will refuse to assist anyone whose cause of action is founded on his or her own misconduct towards other party.

This maxim bars relief for anyone guilty of improper conduct in the matter at hand. It operates to prevent any affirmative recovery for the person with "unclean hands," no matter how unfairly the person's adversary has treated him or her. The maxim is the basis of the clean hands doctrine. Its purpose is to protect the integrity of the court. It does not disapprove only of illegal acts but will deny relief for bad conduct that, as a matter of public policy, ought to be discouraged. A court will ask whether the bad conduct was intentional. This rule is not meant to punish carelessness or a mistake. It is possible that the wrongful conduct is not an act but a failure to act. For example, someone who hires an agent to represent him or her and then sits silently while the agent

misleads another party in negotiations is as much responsible for the false statements as if he himself or she herself had made them.

The bad conduct that is condemned by the clean hands doctrine must be a part of the transaction that is the subject of the lawsuit. It is not necessary that it actually have hurt the other party. For example, equity will not relieve a plaintiff who was also trying to evade taxes or defraud creditors with a business deal, even if that person was cheated by the other party in the transaction.

Equity will always decline relief in cases in which both parties have schemed to circumvent the law.

In “**Smt. A. Nagamani Vs. the Government of A.P. Rep. by Its Secretary**”⁸ this Court held as follows:

“..... bona fides on her part. it is well known that persons who come to court seeking a relief under article 226 of the constitution of india should come with clean hands, as the doctrine of uberrima fides applies on all fours to petitions under article 226 as held in ibiza industries limited v. union of india : 1998(5)ald565 and followed in g prejudice and injustice to the petitioner.6. the contention of the learned special government pleader representing the advocate general is that the petitioner who did not come to court with clean hands, is not entitled to any relief under article 226 of the constitution, and contend that the fraud played by the petitioner would be evidenced from the fact that she who”

Coming to the facts of the present case, when the petitioners/appellants approached the Court by suppressing

⁸ 2008 (4) ALD 352

the factum of filing earlier suit and incidental proceedings therein, more particularly denial of interlocutory orders in the petitions, is a material fact and non-disclosure of such fact while claiming an equitable and discretionary relief of interim injunction in the petition filed under Order XXXIX Rule 1 and 2, they are disentitled to claim such relief as they approached the Court claiming equitable and discretionary relief with unclean hands in view of the law declared by various Courts referred supra. Therefore, the appellants are disentitled to claim discretionary relief of injunction and the trial Court rightly declined to grant such equitable and discretionary relief in a petition filed under Order XXXIX Rule 1 and 2 of C.P.C.

The trial Court discussed about the principles for granting interim relief like sustaining irreparably loss, balance of convenience ignoring the prima facie case. Of course, it is not a ground to reverse the order since the petitioners approached the Court by suppressing the material factum of denial of relief in interlocutory petitions in the earlier suit.

The petitioners also filed another application Under Order VI Rule 17 of C.P.C., which is a subject matter of C.R.P.No.1805 of 2017 and other 2 applications which are subject matter of C.R.P.Nos.1754 and 1772 of 2017 seeking amendment of both the petitions and affidavits filed in I.A.Nos.780 and 781 of 2016. Those three revision petitions

were also disposed of today, while rejecting the leave to amend the affidavits recording specific reasons. As discussed in C.R.P.Nos.1754 and 1772 of 2017 affidavits cannot be amended and in the absence of any specific allegation regarding filing of earlier suit and incidental proceedings therein, where the appellants/petitioners were denied relief of temporary injunction, the appellants are not, now, entitled to claim same relief based on such affidavits. Even according to the appellants they filed petitions seeking leave of the Court to amend the affidavits filed along with I.A.Nos.780 and 781 of 2016. Therefore, based on such defective affidavits, the present appeals cannot be allowed in view of the law declared by the Apex Court in “**S.P.Chengalvaraya Naidu v. Jagannath**” (referred supra). Even otherwise, as per the prospective pronouncements of various Courts (referred supra), when the appellants/petitioners approached the Court with unclean hands, they are disentitled to claim temporary injunction, which is purely discretionary and equitable in nature. Therefore, the order passed by the trial Court cannot be interfered with by this Court while exercising power under Order XLIII Rule 1 of C.P.C. for the simple reason that the appellants/petitioners filed defective affidavits without disclosing the previous litigation, which is the subject matter of O.S.No.501 of 2015 and incidental proceedings therein denying interim injunction. In one of the judgments

rendered in “**Dwaraka Nath v. Income Tax Officer⁹**”, the Apex Court held that, if an affidavit is defective in any manner, instead of rejecting it a reasonable opportunity is to be given to the party concerned to file better affidavit complying with the requirements of law. But in the present case, there is no such possibility because in the plaint itself, the appellants/petitioners did not disclose those facts. Further, those petitions were dismissed by the trial Court, in such case this Court cannot direct the appellants/petitioners to file better affidavit or fresh affidavit with complete details. Hence, the above judgment is also not helpful to the appellants to claim discretionary relief as on today. Viewed from any angle, the appellants are guilty of suppression of material fact and thereby they are disentitled to claim equitable and discretionary relief under Order XLIII Rule 1 of C.P.C. Consequently, the appeals are liable to be dismissed as I find no legal infirmity warranting interference of this Court exercising power under Order XLIII Rule 1 of C.P.C.

In the result, the civil miscellaneous appeals are dismissed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

04.08.2017
Ksp

⁹ AIR 1966 SC 81