Sharayu Khot.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL (L) NO. 364 OF 2017**
**IN**
**CHAMBER SUMMONS NO. 931 OF 2007**
**IN**
**EXECUTION APPLICATION NO. 434 OF 2006**
**WITH**
**NOTICE OF MOTION (L) NO. 1836 OF 2017**
**IN**
**APPEAL (L) NO. 364 OF 2017**

**Renuka Anantrai Vora** **...Appellant**

***Versus***

**Kirti Kumar F Vora & Ors.** **...Respondents**

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Mr. P. Ranjan, i/by M/s. Halai and Co., for the Appellant.

Ms. Kavita Arvind Shah, for the Respondent No. 1.

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**CORAM : B.R. GAVAI & RIYAZ I. CHAGLA, JJ.**

**DATE : 10 December 2018**

**ORDER :** ***(Per R.I. Chagla J.)***

1. This Appeal challenges the order passed by the learned Judge of this Court on 26th July 2017. By the impugned order, the learned Judge has disposed of the Chamber Summons filed by the Respondent No.1 /Defendant No. 1 in the above Execution Application taken out in Suit No. 1539 of 1979 in favour of Respondent No.1. The learned Judge applied the underlying principles of Order XXI Rule 31 of the Code of Civil Procedure, 1908 ("***CPC***") and directed the Appellant / Plaintiff No. 1 to pay compensation to the Respondent No.1 as computed in the impugned order.

2. It is necessary to advert to the facts leading up to the filing of this Appeal. The original Plaintiff, one Anantrai Fulchand Vora, had filed the Suit in this Court for declaration that the Plaintiff is the owner of 21 National Defence Gold Bonds and for mandatory injunction directing Defendant No. 1 to handover to the Plaintiff the said bonds. The original Plaintiff and Defendant No. 1 were brothers and the original Defendant No. 2 was the mother of the original Plaintiff and Defendant

No.1. The original Plaintiff died intestate on 22nd October 1979 and the present Plaintiffs are his legal heirs.

3. It is the Defendants' case that the gold bonds though purchased in the name of the original Plaintiff was the absolute property of the deceased Fulchand Vora i.e. father of the original Plaintiff and Defendant No. 1 and husband of original Defendant No. 2. It was claimed in the written statement filed in the Suit that the gold bonds were purchased in the year 1966 out of income of Fulchand Vora and at that time, the original Plaintiff had no source of income. The Defendants have claimed that Fulchand Vora transferred 10 gold bonds in the name of Defendant No. 1 and 11 gold bonds in the name of Defendant No. 2. According to the Defendants, the gold bonds were standing benami in the name of the original Plaintiff although it was part of the exclusive estate of Fulchand. By a judgment and order dated 5/6th September 1985, the Suit No. 1539 of 1979 was dismissed and it was held that the Suit gold bonds were acquired by the said Fulchand out of his own income and that

there was sufficient evidence on record to conclude that the purchase of the suit gold bonds was a benami transaction effected by the said Fulchand in the name of his son Anantrai Fulchand Vora. It was held that Fulchand had an absolute right to transfer the suit gold bonds in favour of the Defendants No. 1 and 2 and the suit gold bonds were in fact transferred in favour of the Defendants No. 1 and 2 during his lifetime. The original Plaintiff being aggrieved by the judgment and order dated 5/6th September 1985, preferred an Appeal, being Appeal No. 974 of 1985. The Appellate Court did not interfere with the findings of the learned Single Judge and dismissed the Appeal by the judgment and order dated 19th December 1985. Against this order of dismissal, the original Plaintiff preferred a Special Leave Petition before the Supreme Court. The Supreme Court by its order dated 29th February, 1996 directed the Respondent No.1 herein to deposit the suit gold bonds which were in the name of Respondent No.1 in safe custody of Bank of India with further directions that the gold bonds shall not be encashed and transferred till disposal of the Special Leave Petition. Thereafter, the parties filed Consent Terms dated 23rd February 1996 in the Supreme Court and by an order passed by the Supreme Court dated 29th February 1996, the Consent Terms were taken on record and in which it is recorded that the Reserve Bank of India ("*RBI*") is directed to transfer six National Defence Gold Bonds of the value of 1 Kg. each and one Gold Bond of 199 Gms. in the name of Appellant No. 1. The special leave petition was accordingly, disposed of by the Supreme Court.

4. It is the case of the Appellant that the Appellant received the six gold bonds of 1 Kg. each and one gold bond of 199 gms. from Bank of India and in addition, was paid in a sum of Rs. 2,86,110/- by cheque, being price for the deficit quantity of gold bonds given to the Appellant. The Appellant sold the gold bonds between February 1997 and April 1997.

5. The Supreme Court by its subsequent order dated 22nd August 1997, recalled the earlier order dated 29th February 1996 which had disposed of the Appeal in accordance

with the Consent Terms and the parties were directed to maintain *status quo*. By a subsequent order dated 19th April 2000, the Supreme Court referred the Civil Appeal and other disputes to Arbitration. Thereafter, the Arbitrator by an Award dated 6th December 2001 dismissed the Arbitration proceedings for non prosecution. The matter was placed before the Supreme Court and the Supreme Court by an order dated 25th October 2002 dismissed the Civil Appeal No. 1525 of 1986. Accordingly, the judgment and order dated 19th December 1985 passed in Appeal No. 974 of 1985 by the Division Bench of this Court, has become final, operative and binding on all the parties.

6. The Respondent No.1 took out the above Chamber Summons for directing the Appellant to deposit in this Court within a period of two weeks 6.119 Kg. of gold of 0.995 fineness that the Appellant had received against the seven National Defence Gold Bonds, 1980 from the RBI and Rs. 2,86,110/- being the price for the deficit quantity of the gold bonds and the Registry to hand over the same to the Respondent No. 1 decree

holder. A further relief was sought that in the event the Appellant fails to comply with the above relief sought, this Court fix the amount of compensation with interest as per the provisions of Order XXI Rule 31 of the CPC and the Appellant pay the same to the Respondent No.1. By the impugned order, the learned Single Judge has disposed off the Chamber Summons by directing the Appellant to pay compensation to the Respondent No. 1, which has been determined on the price that the Appellant obtained from selling the gold bonds. The impugned order takes into account that the Appellant had deposited a sum of Rs. 14,28,786/- with the Prothonotary & Senior Master on 5th March 2011 pursuant to the order of this Court dated 1st February 2011 and has given credit of this amount to the Appellant. Accordingly, the Appellant was directed to pay the balance amount together with the cumulated interest to Respondent No. 1.

7. Shri. Ranjan, the learned Counsel appearing for the Appellant has submitted that the impugned order is erroneous

on two main grounds. The first ground being that the learned Single Judge has passed the impugned order by invoking Order XXI Rule 31 of the CPC which is not applicable in the facts and circumstances of the present case as there was no decree passed in the Suit filed by the Appellant as the Suit had been dismissed. He has submitted that Order XXI Rule 31 of the CPC is applicable to a decree for specific movable property and execution of that the decree by the seizure of the movable property and delivery thereof to the party to whom it has been adjudged to receive delivery. The second ground being that the learned Single Judge by invoking Order XXI Rule 31 of the CPC, has erroneously determined the compensation to be paid by the Appellant to Respondent No.1. He has submitted that the Appellant had been transferred the gold bonds by Respondent No.1 under Consent Terms which were filed in the Supreme Court and pursuant to an order dated 29th February 1996. He has submitted that the Appellant in pursuance of Rules of RBI which allegedly provided that gold bonds are required to be sold within a period of six months as evidenced by certificate of the

RBI, disposed of the gold bonds. He has submitted that it is only after the sale of the gold bonds that the Supreme Court by a further order dated 22nd August 1997 recalled its earlier order dated 29th February 1996 which had disposed of the Appeal in terms of the Consent Terms. He has submitted that the learned Single Judge although referring to the Judgment of the Rajasthan High Court in ***Amarchand & Anr. Vs. Gopi Chand***[1] and considering that the judgment to be relevant, has decided contrary to that judgment in directing compensation to be paid by the Appellant to the Respondent No. 1 determined at the price on the date of sale of the gold bonds. The Rajasthan High Court in ***Amarchand Vs. Gopi Chand*** (supra) had held that the correct principle in determining compensation under Order XXI Rule 31 of the CPC is that the compensation should be calculated at the rate prevailing on the date of decree itself if there has been a rise in the value of the specific movable property claimed and decreed. He has submitted that the learned Single Judge in so ordering compensation to be payable

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on the date of the sale of the gold bonds has misapplied the principles in determining compensation by Order XXI Rule 31 of the CPC and thus held contrary to the judgment in ***Amarchand Vs. Gopi Chand*** (supra) which the learned Single Judge considered as relevant to the present case. He has submitted that presuming Order XXI Rule 31 is applicable, the learned Single Judge should have awarded compensation to the Defendant No. 1 by determining the compensation payable by the Appellant on the date of the decree, presuming there was a decree or otherwise the date, when this Court had dismissed the Suit filed by the Appellant. He has thus, submitted that the impugned order is required to be set aside on these main grounds of challenge.

8. Smt. Kavita Shah, the learned Counsel appearing for the Respondent No. 1 has submitted that the learned Single Judge has correctly granted compensation to the Respondent No. 1 by applying the underlying principles of Order XXI Rule 31 of the CPC to the facts and circumstances of this case. She

has submitted that the learned Counsel for the Appellant is incorrect, when he has stated that there was no decree which has been passed by this Court. She refers to the decree which has been drawn up by this Court. The certified copy of the decree passed by this Court in Appeal No. 974 of 1985 in Suit No. 1539 of 1979 on 19th December 1985 having been obtained on 29th January 2005. She has submitted that the learned Judge has considered that the Appellant has suppressed the fact of having sold the gold bonds from the Supreme Court, when the order of *status quo* had been granted by the Supreme Court whilst recalling its earlier order disposing of the Appeal in accordance with the Consent Terms on 22nd August 1997. She has submitted that the Appellant for the first time had stated that she had sold the gold bonds on 15th December 2006, when the Bailiff went to execute the warrant of seizure. She has submitted that the learned Judge has after considering the conduct of the Appellant and considering him to be a wrongdoer, has correctly held that the Appellant cannot be allowed to benefit from her own wrong. Hence, the learned

Judge fixed the compensation on the actual date of sale of the gold bonds instead of the date of the decree. The learned Judge has further considered the fact that the Appellant has enjoyed this money all these years and has granted compensation along with interest at 10 percent per annum from 1st April 1997 until payment / realisation. She has accordingly, stated that the learned Judge although considering the judgment of the Rajasthan High Court in ***Amarchand Vs. Gopi Chand*** (supra) as relevant has decided to fix the compensation in the light of the findings that the Appellant is a wrongdoer and that she cannot be allowed to benefit from her own wrong. She has therefore, submitted that there is no infirmity in the impugned order.

9. We have considered the submissions. We find that the Appellant has taken advantage of the Consent Terms which had been filed before the Supreme Court and by which gold bonds were handed over to the Appellant. The Appellant has immediately sold of the gold bonds i.e. before the Supreme Court had passed its order of recall of its prior order disposing

of the Appeal in accordance with the Consent Terms. We find that the Appellant had suppressed the fact of the sale of the gold bonds from the Supreme Court, when the Supreme Court had directed the parties to maintain *status quo* by its order of recall dated 22nd August 1997. According to the Appellant, the gold bonds had been sold between February 1997 and April 1997 and hence, there were no gold bonds to be handed over to the Respondent No. 1 when the status quo order was passed. The Supreme Court by its subsequent order dated 19th April 2000 referred the Civil Appeal and other disputes to Arbitration. The Arbitrator by an Award dated 6th December 2001 had dismissed the Arbitration proceedings for non prosecution and after which the matter was placed before the Supreme Court and the Supreme Court by an order dated 25th October 2002 dismissed the Civil Appeal. Accordingly, the judgment and order dated 19th December 1985 passed in Appeal No. 974 of 1985 by the Division Bench of this Court became final, operative and binding on all the parties. The Appellant therefore, had to handover to the Respondent the gold bonds and the sum of Rs. 2,86,110/-

being price for the deficit quantity of the gold bonds that the Appellant got pursuant to the Consent Terms. We are of the view that the learned Single Judge has correctly arrived at the finding that the Appellant is a wrongdoer and that the Appellant cannot be allowed to benefit from her own wrong. The Appellant's reliance on alleged RBI Rules for sale of the gold bonds cannot justify the suppression of the sale from the Supreme Court when the status quo order was passed. We therefore, find that there is no merit in the submissions of the learned Counsel appearing for the Appellant that the learned Single Judge had in the impugned order wrongly applied the provisions of Order XXI Rule 31 of the CPC and incorrectly computed the compensation payable by the Appellant to the Respondent No.1. This Court had in fact drawn up a decree, passed by this Court on 19th December 1985 in Appeal No. 974 of 1985 in Suit No. 1539 of 1979 and the certified copy of which was obtained on 29th January 2005 after the notice issued to the Appellant. We are of the view that the impugned order passed by the learned Single Judge cannot be find fault with.

The learned Single Judge has correctly computed the compensation payable by the Appellant to the Respondent No. 1 by determining the compensation based on the price that the Appellant obtained from selling the gold bonds rather than the date of the decree. This particularly, in the light of the findings of the learned Single Judge which we concur with i.e. the Appellant is a wrongdoer and cannot be allowed to benefit from her own wrong. There is thus, no infirmity in the impugned order in directing the Appellant to pay the compensation to the Respondent No. 1 as directed in the impugned order after taking into consideration the sum of Rs. 14,28,786/- which had been deposited by the Appellant with the Prothonotary & Senior Master and credit of which has been given to the Appellant.

10. Accordingly, we find no merit in this Appeal and the same is dismissed. In view of dismissal of Appeal, Notice of Motion is disposed of.

**[RIYAZ I. CHAGLA J.]** **[B.R. GAVAI, J.]**