IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 31st DAY OF AUGUST 2021

THE HON'BLE MR. JUSTICE V.PARTHIBAN

Appln. No.1178 of 2021
in
C.S. No.106 of 2021

1.Mrs.S.Sangeetha,
W/o Late Sundar, aged about 38 years,
No.5 AVM Colony, 5th Cross Street,
Virugambakkam, Chennai – 600 092.

2.Ms.S.Subathra,
D/o Late Sundar, aged about 24 years,
No.5, AVM Colony, 5th Cross Street,
Virugambakkam, Chennai – 600 092.

Presently living at
61 Medika Boulevard Mansfield Park,
Adelaide,
South Australia 5012.

Represented by her Power of Attorney,
Mrs.S.Sangeetha,
W/o Late Sundar, aged about 38 years,
No.5 AVM Colony, 5th Cross Street,
Virugambakkam, Chennai – 600 092. ... Applicants/
Plaintiffs

-Versus-

1.Mr.R.Krishnamurthy,
S/o Late V.Rangasamy,
New No.3, Old No.58,
1st Floor, Krishna Nagar 3rd Street,
Virugambakkam, Chennai – 600 092.

2.Mrs.Thirugnanaselvi,
W/o Mr.R.Krishnamurthy,
New No.3, Old No.58,
1st Floor, Krishna Nagar 3rd Street,
Virugambakkam,
Chennai – 600 092.

3.Ms.Aswini Krishnamurthy,
D/o Mr.R.Krishnamurthy,
New No.3, Old No.58,
1st Floor, Krishna Nagar 3rd Street,
Virugambakkam,
Chennai – 600 092.

4.Axis Bank,
Virugambakkam Branch,
Represented by its Manager,
No.2/8, 1st Floor, 1st Cross Street,
Lampert Nagar, Virugambakkam,
Chennai – 600 092. ... Respondents/Defendants

Appln. No.1178 of 2021:-

Application praying that this Hon'ble Court be pleased to direct the Respondents/Defendants to furnish security for a value of Rs.2,87,88,703.40/- failing which orders may be granted for Attachment before Judgment of the properties morefully described in Schedules herein in the Judges Summons.

This application having been heard on 12.07.2021of Mr.M.Sricharan Rangarajan, Advocate for the applicants herein and Mr.S.Ravi, for M/s Gupta and Ravi, Advocates for the respondents 1 to 3 herein and Mr.Palanikumar Ramesh, Advocate for the 4th respondent herein and upon reading the judges summons and the affidavit of S.Sangeetha filed herein, and having stood over for consideration till this date and coming on this day before this court for orders in the presence of the said advocates for the parties hereto, and it is ordered as follows:-

That the respondents 1 to 3/defendants 1 to 3 herein be and are hereby directed to furnish security for a value of Rs.2,87,88,703.40/- (Rupees Two Crores Eighty Seven Lakhs Eighty Eight Thousand Seven Hundred and Three and Forty Paise only), on or before 01.10.2021.

2. That there shall be no costs of this Application.

3. That the suit in C.S.No. 106 of 2021 be posted on 05.10.2021.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 31st DAY OF AUGUST 2021.

Sd/-
ASSISTANT REGISTRAR (Comm. Cases)
//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

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21.09.2021

Appln. No.1178 of 2021
in
C.S. No.106 of 2021

ORDER

DATED : 31.08.2021

THE HON'BLE MR. JUSTICE V.PARTHIBAN

FOR APPROVAL: 24.09.2021

APPROVED ON: 24.09.2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 12.07.2021

Orders Pronounced on : 31.08.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Application No.1178 of 2021
in
C.S.No.106 of 2021
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1. Mrs.S.Sangeetha, W/o Late Sundar
2. Ms.S.Subathra, D/o Late Sundar
   Represented by her Power of Attorney
   Mrs.S.Sangeetha, W/o Late Sundar .. Applicants/plaintiffs

Vs.

1. Mr.R.Krishnamurthy, S/o Late V.Rangasamy
2. Mrs.Thirugnanaselvi, W/o Mr.R.Krishnamurthy
3. Ms.Aswini Krishnamurthy, D/o Mr.R.Krishnamurthy
4. Axis Bank, Virugambakkam Branch,
   Represented by its Manager
   No.2/8, 1st Floor, 1st Cross Street,
   Lampert Nagar, Virugambakkam,
   Chennai-600 092. .. Respondents/defendants

Application No.1178 of 2021 in C.S.No.106 of 2021 filed and Judge's Summons issued under Order XIV Rule 8 of the Madras High Court Original Side Rules, read with Order XXXVIII Rules 1, 2, 5 and 6, read with Section 115 Code of Civil Procedure (CPC), praying to direct the respondents/defendants to furnish security for a value of Rs.2,87,88,703.40, failing which orders may be granted for Attachment Before Judgment of the properties, morefully described in the Schedules herein in the Judge's

Summons.

Schedule-A

All that piece and parcel of Commercial Unit on the Third Floor in "B" Block of "Shri Krisshna's Lake View Etate" ad-measuring 3797.870 Sq.Ft. together with a common area comprised in the undivided share of land of about 1733.200 Sq.Ft. out of the total extent of 14986 Sq.Ft. in the Schedule-A property and the building, approved by the CMDA in Planning Permit No.B/Spl.BLDG/66A/B/2010, dated 16.02.2010, vide Letter No.BC1/12111/09 and the same has been approved by the Executive Officer Porur Special Grade Panchayat, vide PA.MU.No.44/2010, dated 31.05.2010 in Mu.Mu.No.134/2010.

Schedule-B

All that piece and parcel of land comprised in Old Sy.No.2/1 in Kumily Village, Kumily Panchayat and ward, Peermade Taluk, Idukki District, bounded on the:

North by : Panchayat Road and Property of Ferndale

South by : Property of Harikumar

East by : Property of M.J.Sabu

West by : Panchayat Road and Property of Ferndale

ad-measuring 10 cents or 4 are 4 Sq.M., within the Sub-Registration District of Peermade and Registration District of Idukki.

Schedule-C

All that piece and parcel of land and building with electricity, water and drainage connections (Electricity connection service No.227-038-094) situated in Plot No.79, Old Door No.79, New Door No.14, AVM Colony 3rd Cross Street, Virugambakkam, Chennai-600 092, comprised in S.No.84, Virugambakkam Village, No.104, then Mambalam-Guindy Taluk, now Mambalam Taluk, Chennai District, bounded on the:

North by : Plot No.78

South by : Road

East by : 10 ft. Road and Children's playground

West by : Plot No.86

ad-measuring 1035 Sq.Ft. measuring as

North to South on the Eastern side : 23 ft.

North to South on the Western side: 23 ft.

East to West on the Northern Side: 45 ft.

East to West on the Southern side: 45 ft.

within the Sub-Registration District of Virugambakkam and Registration District of South Chennai.

For applicants : Mr.M.Sricharan Rangarajan

For respondents : Mr.S.Ravi for M/s.Gupta and Ravi for RR-1 to 3
M/s.Palanikumar Ramesh for R-4

ORDER

The applicants are the plaintiffs in the suit.

2. The suit has been filed for the following reliefs:

(a) to direct the defendants to pay a sum of Rs.2,87,88,703.40/- being the monies illegally withdrawn by the defendants to the plaintiffs, towards amount due from Insurance Policies, Fixed Deposits and amounts withdrawn, from the Bank Accounts of the plaintiffs;

(b) to direct the defendants to return the 550 Gm. of Gold being the first plaintiff's husband's share of Gold in Locker No.U13/7 with Axis Bank, Virugambakkam Branch, Chennai, valued at Rs.28,18,750/- or in the alternative, pay the amount of Rs.28,18,750/- being the amount equivalent to the 550 gms. of Gold deposited in Locker No.U13/7 with Axis Bank, Virugambakkam Branch, Chennai to the plaintiffs;

(c) to direct the defendants to pay an interest at 18% p.a. to the plaintiffs on Rs.1,25,77,251/- being the principal amount illegally withdrawn from the Bank Accounts of the plaintiffs from the date of filing of the suit till the date of its actual realisation, and

(d) to direct the defendants to pay the costs of the present suit.

3. The first applicant herein is the wife of late R.Sundar, who is

the younger brother of the first respondent/first defendant. The second and third respondents are the wife and daughter of the first respondent. The second applicant is the daughter of the first applicant.

4. The facts and circumstances that gave rise to the filing of the present suit and the application, are briefly stated hereunder:

The first applicant's father-in-law - late Mr.V.Rangasamy had four sons and one daughter. One of his sons was late Sundar, the husband of the first applicant, and the said Sundar died on 15.11.2012. Another son Mr.Vairamani of late V.Rangasamy also died and one other son Mr.R.Krishnamurthy is the first respondent/first defendant herein. The fourth son Mr.Ponmani also died and one daughter Mrs.Vijayalakshmi is alive and she is not connected to the present dispute.

5. The late father-in-law of the first applicant, being a head of the family, was involved in the construction business in the name and style of M/s.V.Rangasamy and Co. vIt was a partnership firm and original partners were father-in-law himself, his wife Mrs.Geetha, the first applicant's late husband Mr.Sundar and one other son Mr.Vairamani. Subsequently, the first respondent/first defendant was inducted in the partnership on retirement of the said Vairamani from the partnership.

6. The partnership business was being carried on under the supervision and control and leadership of the father-in-law V.Rangasamy and the first applicant's late husband Sundar along with the first

respondent/first defendant were taking care of the day-to-day activities of the partnership business. Unfortunately, the first applicant's husband died on 15.11.2012, leaving behind the first applicant with three minor daughters as his legal heirs. On the death of the said Sundar, i.e the late husband of the first applicant, the first applicant was inducted into the partnership and there was a re-constitution of partnership on 18.01.2013. On the death of the first applicant's husband, the first respondent/first defendant took the entire control of the partnership business and was running the business without the active participation of the first applicant. According to the first applicant, she being not well educated and having studied only upto VII Standard in Tamil Medium school, was not conversant with the partnership business, but was inducted as partner only due to the sudden demise of her husband.

7. Subsequently, due to old age, the father-in-law found it difficult to manage the partnership business and therefore, the partnership was converted into a private limited company by including his grand-son Vijay, who was born to Vairamani, being one of the sons of the first applicant's father-in-law. The said partnership business (M/s.V.Rangasamy and Co.) was re-named as M/s.V.R.G.Constructions Private Limited, having been formed on 01.04.2013 and a Memorandum of Understanding (MoU) was entered into between the parties on 14.04.2013. In the said Company, the

first applicant was allotted 1,00,000 shares of Rs.100/- each and the

Company's Directors were initially Mr.V.Vijay and the first respondent herein. Subsequently, the first applicant was also appointed as Director of the Company by Board Resolution, dated 31.03.2017.

8. According to the first applicant, the first respondent/first defendant being the sole surviving elderly male member of the family and also her late husband's brother, had reposed complete faith and trust on the first respondent/first defendant in respect of the administration and management of the affairs of the Company. The first applicant being not sufficiently educated, was not actively in participation of the affairs of the Company. She had been under the bona-fide impression that as an elderly male member of the family, her family's interest would be taken care of and their financial interest would be protected, by the first respondent/first defendant.

9. While matters stood thus, according to the applicants/plaintiffs, they came to know of certain irregularities in February 2018 in the management and affairs of the Company, like fraudulent transfer of 80,000 shares belonging to the first applicant in favour of her father-in-law on 25.03.2017, etc. On further verification, it was found that the huge amounts lying in the personal account belonging to the first applicant, had been withdrawn and siphoned-off by the first respondent/first defendant in

collusion with the other two respondents herein and the amounts have been utilised for buying certain properties for themselves.

10. The first applicant and her daughter, having faith in the first defendant that he would mean no harm to them, have not evinced active interest in the day-to-day running of the business and the cheque book(s) in relation to the personal account of the first applicant, have also been left in the custody of the first respondent/first defendant as a consequence of absolute faith reposed in them. Unfortunately, the first respondent exploiting their faith to his unfair advantage, withdrawn over a period of time various amounts without the knowledge of the first applicant by misusing the cheque book(s) lying in his custody. The Fixed Deposits running to Lakhs of Rupees in relation to the personal account of the first applicant, had been withdrawn. Apart from that, according to the first applicant, the Insurance Policies which became payable after the death of the first applicant's husband, on maturity, have been illegally utilised by the first respondent without their knowledge and without crediting the policy amounts into her account.

11. According to the first applicant, the first respondent appeared to have forged her signatures and withdrawn Lakhs of Rupees from the personal accounts maintained by them like Fixed Deposits, etc., and in that regard, the Police complaints have also been lodged. However, on

assurance from the first respondent that the matter would be amicably settled, the Police complaints were not pursued by the first applicant herein. The first applicant claims to have not signed any cheque till July 2018, however, it was found that several cash withdrawals had been recorded in relation to her account from 2013 onwards. The first applicant particularly pointed out that on 04.01.2013 and 10.01.2013, her account was credited with Rs.19,98,000/- and Rs.1,00,000/- towards insurance money. Immediately after that, the amount of Rs.9,00,000/- was debited on 12.01.2013 "To Self" in the first applicant's account. The first respondent might have managed to forge her signatures and had withdrawn the amount for himself and for his use illegally and fraudulently. Likewise, the first respondent had also withdrawn several other amounts running to Lakhs of Rupees for over several years without the knowledge of the first applicant.

12. In the above said circumstances, the suit has been filed by the applicants/plaintiffs for recovery of money, which became due and payable as a consequence of the fraud played by the first respondent upon the applicants/plaintiffs, by illegally withdrawing the amounts from the personal account of the applicants/plaintiffs and using the amounts for their own benefits by the respondents.

13. The present application has been filed by the plaintiffs seeking direction to the respondents/defendants to furnish security for the amount claimed, i.e. Rs.2,87,88,703.40/- pending disposal of the suit, apprehending

that the respondents 1 to 3 herein are collusively taking active steps towards liquidating their property(ies) by sale of the various properties belonging to the family, and that the applicants herein and two other daughters of the first applicant eventually may be left in the lurch, without any definite and immovable source to compensate them in the event of their succeeding in the suit proceedings.

14. Mr.M.Sricharan Rangarajan, learned counsel for the applicants herein has reiterated the above facts. At the outset, he submitted that the second applicant is the daughter of Mr.Sundar is the late husband of the first applicant. She was born from the first marriage of the said Sundar with the first applicant's sister. The first applicant's sister died and the said Sundar has married the first applicant herein, who is the younger sister of the second applicant's mother. At the time when the first applicant was not even major, she had no clue as to how the business was being run. When her husband was alive, she had no issues, as everything was going on smoothly. Only after his death on 15.11.2012, the first applicant was left to look after three minor daughters and the first daughter being born from the earlier marriage and the other two daughters from the marriage between the first applicant and her late husband, namely Mr.Sundar.

15. The learned counsel for the applicant further submitted that

the first applicant being not sufficiently educated and not being aware of the nitty-gritty of the construction business, had been completely depending on the first respondent/defendant, who had, by then, became the sole active Director in running the business of the Company. After her husband's death, the first applicant, for some time, did not notice anything amiss, as there was no room to suspect her own brother-in-law, as she had reposed complete faith and trust in him being a care-taker of the entire family. Only after passage of some time in 2018, she had come to know various illegal activities of the first respondent in relation to the withdrawal of the several Lakhs of Rupees from her accounts by forging her signature.

16. The learned counsel for the applicants further contended that the matured amounts of the Insurance Policies, had been illegally withdrawn and used by the first respondent for his own purpose and so also, several cash withdrawals were made from the Bank from the Fixed Deposit receipt. In addition to the above acts, in the family arrangement, dated 22.06.2018, 80,000 shares belonging to the first applicant, had been transferred in the name of her father-in-law without her knowledge and when the same became known and was protested by the first applicant, the said shares were re-transferred in her name subsequently.

17. According to the learned counsel, the first respondent/first defendant has misused this position as being the elder male member at the

helm of family business, and exploited the plaintiff's ignorance to the hilt and illegally enriched himself and his family members, the second and third respondents, by operating the accounts of the first applicant on his own without her knowledge for several years misused the cheques of the first applicant's husband in 2012.

18. The learned counsel also referred to the amounts that were appropriated by the first respondent from the plaintiffs' account in the tabular statement as given in the plaint. Apart from cash withdrawal, the first respondent has also illegally taken away the entire gold deposit of about 550 grams from the Axis Bank of Virugambakkam Branch, Chennai. Although the gold was deposited jointly by the first applicant's late husband and the first respondent, but not an iota of share has been given to the applicants herein , as the entire quantity of gold lying in deposit has been taken away by the respondents 1 to 3. The learned counsel has also drawn reference to various details of money transactions by the first respondent, the details of the withdrawal of the huge amounts from the accounts of the applicants over a period of time and siphoned off the same for buying immovable properties for his family.

19. The learned counsel finally submitted that from all the transactions, it could be clearly established that the first respondent has played a consummate fraud upon the applicants by exploiting their relationship, good faith and trust reposed in him. According to the learned

counsel, the conduct of the first respondent in particular, and the respondents 2 and 3 being inimical to the interest of the applicants, unless they are directed to furnish security, the applicants would be eventually left with nothing, even if they were to succeed in the suit at a later point of time. The balance of convenience is therefore in favour of the applicants herein for ordering the respondents 1 to 3 to furnish security with reference to the specific details in the plaint as well as in the affidavit supporting the suit claim by the applicants herein.

20. Per contra, the learned counsel appearing for the respondents 1 to 3/defendants 1 to 3 submitted that the entire case of the applicants is premised on falsehood. According to him, the actual persons behind this suit, are one Mr.Vijay and Mr.Gokul, who are the grand-sons of late V.Rangasamy and the nephew of the first respondent, sons of Mr.Vairamani, the brother of the first respondent and the brother-in-law of the first applicant. The first applicant, in collusion with her husband's nephews, have been acting against the interest of all the three respondents herein. This statement could be established from the fact that the applicants, along with Mr.Vijay and Gokul and their mother-in-law Mrs.Geetha, the wife of late Rangasamy, are living in the same house.

21. According to the learned counsel, it is a fact that all the above

persons joined together and chased the respondents 1 to 3 from their house in which they are living as on date, after 2018. Earlier to that, all the family members including the applicant, were living together in the same house and had been in possession and enjoyment of the property jointly at Virugambakkam. Therefore, the first applicant cannot claim complete ignorance or innocence in regard to the running of the family business. The learned counsel referred to the deed of re-constituted partnership, dated 18.01.2013. In the deed of re-constituted partnership, the first applicant has been allotted 30% share equally as that of the first respondent and the other original partners, namely the father-in-law and the mother-in-law of the first applicant, have been allotted 20% share each. Without any compulsion, the family of the first applicant's late husband thought fit to induct her as partner, with a share of 30%. The learned counsel also referred to Articles of Association of the Company in which, along with the first respondent, the said Mr.Vijay, son of Vairamani was also shown as one of the two Directors.

22. The learned counsel also referred to the Memorandum of Understanding, dated 14.04.2013 entered into between V.Rangasamy and Co. and M/s.V.R.G.Constructions Private Limited. In the Memorandum of Understanding, the first respondent as well as the first applicant have been shown as partners of the erstwhile partnership firm, along with her mother-in-law and the father-in-law, which had been taken over by the Company.

This was referred to only to show that the first applicant had been party to all the transactions and Mr.Vijay being a Director of the Company, had been assisting her in all her banking transactions. Her claim that she has not been aware of any of the transactions at the instance of the first respondent, is therefore false and contrary to the records.

23. The learned counsel has also drawn the attention of this Court to the Company Petition filed before the National Company Law Tribunal by the first and second respondents against the first applicant, Mr.Vijay and Mr.Gokul alleging oppression and mis-management. He particularly referred to the statement contained in paragraph 21 of the Company Petition, in which, it has been stated that the first applicant, along with Mr.Vijay and Mr.Gokul, have systematically misappropriated funds of the Company over a period of time from Axis Bank Accounts of the company during the year 2018-2019. It has also been stated in the Company Petition that the said Mr.Vijay and Mr.Gokul have misappropriated a sum of Rs.82 lakhs and the first applicant herein had misappropriated Rs.45 lakhs from the Bank Account of their company, aggregating to a sum of Rs.1,27,00,000/-.

24. The learned counsel referred to paragraph 15 of the affidavit filed in support of the present application, and in the said paragraph, the

cause of action has been clearly brought out to overcome the limitation period, as if she had come to know about the so-called illegal transactions only post-family arrangement, dated 22.06.2018. In fact, as could be seen from the Bank records, all the transactions were few years prior to that family arrangement in 2013 and in order to overcome the limitation, deliberately, the averments have been incorporated in the affidavit as if the first applicant had come to know about all those transactions of 2013 only in 2018.

25. The learned counsel referred to paragraphs 16 to 18 of the counter affidavit filed on behalf of the respondents, wherein the so-called illegal transactions, withdrawals, illegal encashment of Insurance Policies belonging to the first applicant's late husband which are self-explanatory. The said paragraphs read as under:

> "16. The allegations in para 16 are completely denied. The allegation that I purchased properties utilizing the amounts siphoned off by me from the accounts of the Applicants is completely false and denied. The allegation that I have taken the 1st Applicant's share of gold amounting to 550 grams kept in Locker no.U13/7 with Axis Bank, Virugambakkam Branch and failed to return it till date despite many requests is false and is denied. The further allegation that I have siphoned off the profits of the Company from 2014 to 2020 worth Rs.12 crores to further my illegal activities are completely denied.
>
> 17. I deny the allegations in para 18. I deny the allegation that the Applicants have entrusted the cheque books with me and that I am in collusion with the other Respondents swindled all those amounts to pay off the builders/developers in order to procure properties for myself by forging the signature of the Applicants in the cheque leaves. The false nature of the allegation will be evident from the fact that before the NCLT, the 1st Applicant had pleaded that I have utilized the funds of the

Company for purchasing properties in my individual name, whereas, in the Affidavit filed before this Hon'ble Court, it is alleged that the properties were purchased utilizing the amounts belonging to the Applicants which is totally contradictory in nature. I deny the allegation that I have embezzled funds from the Applicants account. At every point of time, the 1st Applicant was handing her bank accounts and she was operating her bank accounts through Mr.V.Vijay in collusion with whom the present proceedings have been maliciously instituted. In fact, similar allegations have been made in the Counter filed by the 1st Applicant before the NCLT Tribunal which are totally false in nature. The 1st Applicant, who was in complete control of her finances at every point of time, has chosen to approach this Hon'ble Court at this distant point of time with allegations which are totally malafide in nature.

18. I deny the allegations in para 19 that I changed the name of the nominee without the consent and knowledge of the Applicants. I also deny the allegation that I have failed to give the money due from the policy after the demise of Mr.R.Sundar. A land measuring 1035 Sq.Ft. was purchased jointly in the name of myself and R.Sundar the husband of the 1st Applicant in the year 2011 in Virugambakkam for the purpose of constructing a residential house for R.Sundar since the first applicant refused to live in a joint family. After the demise of Mr.R.Sundar on 15.11.2012, I completed the construction of the building comprising of ground plus two floors admeasuring a total area of approximately 3105 Sq.Ft. At the time when R.Sundar died, the construction had advanced only to the basement level and thereafter I completed the construction by utilising the amount received from the LIC policy of R.Sundar with additional contribution of nearly Rs.40 lakhs from my own funds. The office of VRG Constructions Pt. Ltd. is functioning in the ground floor of the said premises even as on date. The 2nd Floor has been let out on rent and the 1st Applicant is receiving a monthly rent of around Rs.17,000/ till date. This will clearly show that the amount received by me from the LIC policy was only utilised to put a construction in the property jointly belonging to the first respondent and R.Sundar. The Applicants were completely aware of the aforesaid facts and have chosen to make these false and reckless allegations at this distant point of time only as a counter blast to the Company Petition filed by the 1st and 2nd Respondents herein. The Applicants were completely aware of the insurance policy taken in the name of

> Mr.R.Sundar and the receipt of the amount in the name of the 1st Respondent as a nominee after his demise. When Mr.R.Sundar admittedly had passed away way back on 15/11/2012, the very fact that the Applicants kept quite till 2021 clearly shows that all these allegations are malicious in nature. At any rate, as a nominee of the insurance policy, I was entitled to receive the said money which was infact utilized only for constructing the. The claims of the Applicants with regard to the sum of Rs.20,17,083/- is clearly barred by limitation in view of the fact the same is raised after a period of more than 9 years."

26. According to the learned counsel, the first respondent and the late husband of the first applicant had jointly purchased the property at Virugambakkam in 2011 and as the construction was being put up , the husband of the first applicant died and thereafter, the place was converted with a construction having ground + two floors measuring approximately an extent of 3105 Sq.Ft. All the amounts which had been withdrawn by the first respondent, had been spent for completion of the construction and in addition to that, the first respondent had incurred Rs.40 lakhs personally in the course of the completion of the building at Virugambakkam, wherein all the family members are presently living in exclusion of the respondents herein. As a nominee of the late husband of the first applicant, the policy amount that had matured, had been directly credited to his accounts and those amounts have been used only for putting up the building where the applicants and others are still living.

27. According to the learned counsel, the first floor of the

building at Virugambakkam being used for the Company office, the second floor has been rented out, the rent being enjoyed by the applicants and the first floor is under the occupation of the applicants and other family members. The Insurance Policies that have been taken, show the first respondent as a nominee, when the husband of the first applicant died as early as on 15.11.2012, the applicants had not raised any protest regarding the encashment of the policies any time in the past. Being a nominee of the policies, the amounts were directly credited to his account and her plea of ignorance of the encashment of the policies by the first respondent, is unbelievable at this distance point of time. The inclusion of the policy amounts as part of their suit claim is barred by limitation in the circumstances of the case.

28. The learned counsel also submitted that the allegation that the first respondent has forged the signature of both the applicants, is false and untrue, as the transaction pertain to the year 2013 and that at that point of time, the second applicant was not even major and she attained majority on 06.10.2014. Such reckless allegations have been made by the applicants only for the purpose of the case.

29. The learned counsel also submitted that the cheque book(s) had always been with the first applicant's custody and her Bank accounts

have been operated through Mr.Vijay and he alone has been helping the first applicant in all her banking transactions, and the allegation is a complete falsehood being created for the purpose of supporting the claim of the applicants herein. In this connection, the learned counsel referred to the Bank Accounts of the applicants, wherein the name of Mr.Vijay had been mentioned as a nominee. The learned counsel also submitted that the second applicant is pursuing higher education in Australia without any scholarship and considerable amounts have been spent on her education.

30. Finally, the learned counsel submitted that, in any event, the claim in the suit for a sum of Rs.2,87,88,703.40, is not supported by any documentary evidence. How the said figure had been arrived at by the applicants/plaintiffs, had not been disclosed in the plaint nor in the affidavit filed in support of the present application. When the extent of the suit claim itself is unclear, the question of ordering furnishing of security for the claim amounts, is not warranted at all.

31. The learned counsel further added that the suit itself is hopelessly barred by limitation, as all the transactions pointed out by the applicants were relating to the year 2013 or to the period prior to three years before the suit was instituted, and hence, the question of grant of any interim relief, does not arise in this case.

32. By way of reply, the learned counsel for the applicants submitted that, the contention of the first respondent that the Policy amounts

have been utilised for the construction of the building at Virugambakkam, is without any factual basis. On behalf of the respondents, not a shred of material has been filed in support of such submission.

33. As far as the limitation aspect is concerned, the learned counsel for the applicants submitted that siphoning off the amounts that legally belonged to the applicants, is the result of fraudulent acts of the first respondent. Act of fraud vitiates all the transactions, and therefore, the limitation period would start from the point when the fraud has been discovered. He would refer to Section 16 of the Indian Contract Act in this regard.

34. The learned counsel also referred to the Note prepared and submitted to the Court in order to highlight the various banking transactions involving the first respondent, withdrawing the policy amounts, Fixed Deposits, etc., for the purpose of supporting the total claims in the suit. The learned counsel also specifically refuted the contention that the amounts which had been withdrawn from the accounts of the first applicant, had been fully utilised for the construction of the building at Virugambakkam. A re-joinder affidavit has been filed by the applicants/plaintiffs and in paragraph 33 therein, the applicants/plaintiffs specifically refuted such contention. It has been also stated in the re-joinder that the construction in the land

situated in No.91, AVM Colony 3rd Street, Virugambakkam, Chennai-600

092, was completed by one K.Palani in June 2014 and the payments to the said K.Palani were made periodically from the funds of the Company.

35. As far as the Company Petition filed before the National Company Law Tribunal, is concerned, according to the learned counsel for the applicants/plaintiffs, the same is a counter-blast to the Police complaint filed against the first respondent by the first applicant. The Company Petition filed against the first applicant and others, is an act of desperation on the part of the first respondent in the teeth of the lodging Police complaint against him, as the same is premised on utter falsehood.

36. According to the learned counsel for the applicants/plaintiffs, the first respondent being the person in active confidence in the family, the burden of proving good faith, is upon him in terms of the above provisions of the Indian Evidence Act. He referred to Section 111 of the Indian Evidence Act in this regard. Nothing has been produced or stated in the counter affidavit which could carry conviction with this Court discharging the onus cast upon first respondent on the aspect of the various transactions done by him in good faith.

37. According to the learned counsel, the pleading of fraud being the essence of the suit, is a mixed question of fact and law, and therefore, the applicability of limitation cannot be decided at this stage.

38. In support of his various contentions as above, the learned counsel for the applicants/plaintiffs relied on the following decisions:

(i) AIR 1968 SC 956 (Ningawwa VS. Byrappa Shiddappa Hireknrabar and others):

> "**7.** As regards Plots Nos. 407/1 and 409/1 of Tadavalga village the trial court has found that the husband of the appellant was in a position of active confidence towards her at the time of the gift deed and that he was in a position to dominate her will and the transaction of gift was on the face of it unconscionable. Section 16(3) of the Indian Contract Act says that where a person who is in a position to dominate the will of another enters into a transaction with him which appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such transaction was not induced by undue influence, shall lie upon the person in a position to dominate the will of another. Section 111 of the Indian Evidence Act also states:
>
> > "Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence."
>
> The trial court found that the respondents had not adduced sufficient evidence to rebut the presumption under these statutory provisions and reached the finding that the gift deed was obtained by the appellant's husband by undue influence as alleged by her. The finding of the trial court has been affirmed by the High Court. But both the trial court and the High Court refused to grant relief to the appellant on the ground that the suit was barred under Article 91 of the Limitation Act so far as Plots Nos. 407/1 and 409/1 were concerned. On behalf of the appellant it was contended that the lower courts were wrong in taking this view. We are, however, unable to accept this argument as correct. Article 91 of the Indian Limitation Act provides that a suit to set aside an instrument not otherwise provided for (and no other provision of the Act applies to the circumstances of the case) shall be subject to a three year's limitation which begins to run when the facts entitling the plaintiff to have the instrument cancelled or set aside are known to him. In the present case, the trial court has found, upon examination of the evidence, that at the very time of the execution of the gift deed, Ex. 45 the appellant knew that her husband prevailed upon her to convey survey Plots Nos. 407/1 and 409/1 of Tadavalga village to him by undue influence. The finding of the trial court is based upon the admission of the appellant herself in the course of her evidence. In view of this finding of the trial court it is manifest that the suit of the appellant is barred under Article 91 of the Limitation Act so far as Plots Nos. 407/1 and 409/1 of Tadavalga village are concerned. On behalf of the appellant Mr K.R. Chaudhuri presented argument that the appellant continued to be under the undue influence of her husband till the date of his death and the three years period under Article 91 should

therefore be taken to run not when the appellant had knowledge of the true nature of the gift deed but from the date when she escaped the influence of her husband by whose will she was dominated. It is not possible to accept this argument in view of the express language of Article 91 of the Limitation Act which provides that the three years' period runs from the date when the plaintiff came to know the facts entitling her to have the instrument cancelled or set aside. This view is borne out by the decision of the Judicial Committee in *Someshwar Dutt* v. *Tirbhawan Dutt* [61 IA 224] in which it was held that the limitation of a suit to set aside a deed of gift on the ground that it was obtained by undue influence was governed by Article 91 of the Indian Limitation Act, and the three years, period runs from the date when the plaintiff discovered the true nature of the deed, and not from the date when he escaped from the influence by which he alleged that he was dominated."

(ii) <u>1971 (1) SCC 597</u> <u>(S.S.Ghulam Mohiuddin Vs. S.S.Ahmed Mohiuddin)</u>:

"19. Section 18 of the Limitation Act, 1908 provides that when a person having a right to institute a suit has by means of fraud been kept from the knowledge of such right or of the title on which it is founded, the time limited for instituting a suit against the person guilty of the fraud shall be computed from the time when the fraud first became known to the person affected thereby. In *Rahimboy* v. *Turner* [20 IA 1 : 17 Bom 341] Lord Hobhouse said "When a man has committed a fraud and has got property thereby it is for him to show that the person injured by his fraud and suing to recover the property has had clear and definite knowledge of those facts which constitute the fraud, at a time which is too remote to allow him to bring the suit". Therefore if the plaintiff desires to invoke the aid of Section 18 of the Limitation Act he must establish that there has been fraud and that by means of such fraud he has been kept from the knowledge of his right to sue or of the title whereon it is founded. In the present case, the right to sue arose when the appellant came to know that the properties were Matrooka and not Dargah and Khankah. When Abdul Hai got the properties released by reason of the decision of the Government of the Nizam in the year 1927 the properties became divisible among the appellant and his brothers and sisters. The existence of the right of the appellant was kept concealed by Abdul Hai. The appellant was not aware of the right nor could he have with reasonable diligence discovered it. There was active concealment by Abdul Hai of the fact that the properties were not Dargah and Khankahhaving full knowledge of the fact. It was only in 1941 (1350 Fasli) that the appellant came to know of the Matrooka character of the properties. It was then that the appellant also came to know that Abdul Hai had kept the character of properties concealed from the parties and entirely misstated and misrepresented the character of the properties by misleading the parties and obtaining by consent an award and a decree thereon without any contest

20. The cause of action for partition of properties is said to be a "perpetually recurring one" (See *Monsharam Chakravarty* v. *Ganesh Chandra Chakravarty* [17 CWN 521 : 16 IC 383] . In Mohammedan law the doctrine of partial partition is not applicable because the heirs are tenants-in-common and the heirs of the deceased Muslim succeed to the definite fraction of every part of his estate. The shares of heirs under Mohammedan law are definite and known before actual partition. Therefore on partition of properties belonging to a deceased Muslim there is division by metes and bounds in accordance with the specific share of each heir being already determined by the law.

In the present case the suit is for partition of properties which were by consent of parties treated as Dargah and Khankah but which were later discovered to be Matrooka properties in fact and therefore the declaration in the award and the decree on the award that those were Dargah and Khankah properties cannot stand and the entire partition is to be reopened by reason of fraud in the earlier proceedings."

(iii) 2010 (3) SCC 251 (Santosh Vs. Jagat Ram):

"**26.** A fraud puts an end to everything. It is a settled position in law that such a decree is nothing, but a nullity. It has come in the evidence that when the respondents herein started disturbing the possession of the appellant and also started bragging about a decree having been obtained by them, the appellant chose to file a suit. In that view, her suit filed in 1990 would be absolutely within time. The casual observation made by the High Court that her suit would be barred by limitation, is also wholly incorrect."

(iv) 2014 SCC Online Madras 2960 = 2014 (8) Mad.L.J. 417 (Madras High Court) (Indiabulls Housing Financ Ltd. Vs. Uma Maheswari):

"19. It is also held by the Hon'ble Supreme Court and other High Courts that the fraud vitiates the entire transaction and once the respondent/plaintiff is able to prove fraud, the entire transaction becomes void and it goes to the root of the case of the fourth defendant/applicant herein and therefore, when the allegations of fraud are made out, the transaction becomes void and to set aside the void transaction, there is no period of limitation. Hence, the contention of the applicant that the suit is barred under Articles 56, 58 and 69 of the Limitation Act cannot be accepted."

(v) 2002 (4) CTC 641 (Division Bench of Madras High Court) (Ramasubbu Chettiar B. (died) Vs. N.Ganesan (died) :

"24. In this case, the plaintiff came to know of the sale deed only in the year 1986 inasmuch as it is admitted that defendants 2 to 4, knowing fully well of the preemption clause, had taken a sale deed in a different State and avoided the registration of the sale within the jurisdiction of the registration office where the property is situated or the parties permanently reside and that no notice of any kind was issued to the plaintiff. Even after the filing of the written statement, the particulars were not given and only in the amended written statement, the date of the sale deed was given. Further, the first defendant, in his suit for specific performance, has given up the plaintiff as not a necessary party, after having lost to get the ex pane decree confirmed. Therefore, it is a clear case of fraud and the first defendant has got the property in that manner and the defendants have miserably failed to show that the plaintiff had knowledge of the sale. On the contrary, the plaintiff has established that he had no information of the sale deed and that the same was executed in secrecy in order to deprive him of his rights.

25. A Division Bench of this court, in *M. Mohamed Kasim* v. *C. Rajaram*, 1988 (1) M.L.J. 447, referred the taking of a sale deed in a different place as an important circumstance showing the fraudulent intention. In that case, the sale deeds were registered at Patasalai in Kerala after including an item of property situated in Kerala, to which the first defendant had absolutely no right, even though the suit properties were situated in Tamil Nadu. This was done with a view to maintain secrecy of the sale deed so that he can secrete the amount and defeat the rights of his creditors. The facts in the case on hand are also similar. Therefore, this is one of the crucial circumstances to show the intention of the defendants to commit fraud against the plaintiff. The decisions referred above would support the case of the plaintiff that the suit is not barred by limitation. The sale deed taken by the first defendant is void and illegal and has to be ignored.

26. For all the reasons stated above, we hold that the appellants are entitled to a decree for redemption in the mortgage as well as a decree for possession of property by way of preemption. The appellants are directed to deposit the mortgage amount and a sum of Rs. 69,000, the sale consideration to respondents 2 to 4 and respondents 2 to 4 shall execute the sale deed in favour of the appellants, and on their failure and on the appellants depositing Rs. 69,000, the court shall execute the sale deed in respect of the suit property. The appeal is accordingly allowed with costs."

39. In all the above cases, it has been clearly held by this Court and the Honourable Supreme Court that in an allegation of fraud, the law of limitation will not come in the way of granting relief to the parties in the event of the fraud being established by them. Therefore, the contention raised on behalf of the respondents 1 to 3, about the limitation, is contrary to the established legal principles and such contention is absolutely without any merit and substance. So also is the decisions cited in regard to the concept of good faith. The burden of proving the transaction done in good faith is on the person in a position to dominate the will of another.

40. Lastly, the learned counsel also submitted that in the re-

joinder and the note circulated with regard to the details of the claim and also in the plaint averments, the calculation has been given as to the principal amount(s) due and also the interest payable on the principal amount. Therefore, the applicants/plaintiffs are entitled to be considered for grant of interim protection, as otherwise, the respondents 1 to 3 who are already taking efforts towards disposing of their property(ies), with a view to frustrate the rights of the applicants/plaintiffs. The learned counsel therefore submitted that the application may be ordered with a view to protect the interest of the innocent applicants, pending disposal of the suit.

41. As far as the consideration of the present application is concerned, the fourth respondent/Axis Bank is only a formal party and they cannot have say in the matter.

42. Heard the learned counsels appearing for the parties, perused the pleadings and the materials placed on record.

43. The dispute between the applicants/plaintiffs on one side and the respondents 1 to 3/defendants 1 to 3 on the other, is mainly revolving around the conduct of the first respondent/first defendant in handling the

cash withdrawals on various dates running to several Lakhs of Rupees from the Bank Accounts of the applicants/plaintiffs. Whether such withdrawals by the first respondent herein, had been within or without the knowledge of the applicants/plaintiffs or the amounts withdrawn had been utilised for the benefit of the applicants/plaintiffs or the benefit of the respondents, is the core consideration of this Court in the present application for furnishing of security.

44. The first applicant/first plaintiff is admittedly not sufficiently educated person having studied only upto VII Standard, and therefore, there can be a reasonable presumption that she could not have involved herself in the day-to-day administration and management of the construction business run by the family of her deceased-husband. Although, after the death of her husband on 15.11.2012, she had been inducted as a partner on 18.01.2013 by re-constitution of the partnership, yet, at that time, she could not have learnt the nitty-gritty of the business run by the partnership and her participation in the partnership business could have been only at a passive level.

45. On behalf of the applicants/plaintiffs, several facts have been stated in regard to the withdrawals of the cash amounts from the Bank Account belonging to the first applicant by the first respondent. As to the

encashment of the insurance policies that became payable after the death of the first applicant's late husband, it is not in dispute that the amount(s) had been directly credited to the account of the first respondent/first defendant and the amounts had been withdrawn by him. The explanation given by him in this regard is that the money had been spent for the construction of the common property at No.5, AVM Colony, 5th Cross Street, Virugambakkam, Chennai-600 092.

46. According to the first respondent, the said property was purchased in the joint name of the deceased husband of the first applicant and himself and at the time of the death of the applicant's (late) husband, there was barely any construction in the property. After the death of the first applicant's husband on 15.11.2012, the policy amounts which became payable was withdrawn and utilised for putting up ground + 2 floors. The first respondent in fact asserted that he had spent nearly Rs.40,00,000/- in excess than the amounts withdrawn by him from the accounts belonging to the applicants.

47. This Court, in the facts and circumstances of the case, is unable to countenance such factual assertion by the first respondent, as the learned counsel for the applicants/plaintiffs has rightly contended that no

material whatsoever has been produced before this Court supporting the factum of utilisation of the amounts for common purpose of the family members. This Court is in agreement with the contention that not a shred of material has been produced on behalf of the respondents 1 to 3 in this regard. Therefore, the contention of utilising the amount(s) for common benefit of all family membes, appears to be not free from doubt.

48. Although it was the contention of the applicants/plaintiffs that the first respondent has forged her signature and withdrawn the Insurance Policy amount(s), but it was established on behalf of the first respondent that his brother, the deceased husband of the first applicant, had declared him as a nominee for the insurance policies, and therefore, the amounts had been directly credited into his account. The charge of forgery alleged against the first respondent in this regard may not be correct, in view of the above explanation. But what is to be seen here is that even as a nominee, he was only a custodian of the policies and he was certainly under both legal and moral obligation to transfer the amounts matured to the benefit of the applicants who had lost her husband/father when they were young and yearning for financial and moral support.

49. The most crucial argument advanced on behalf of the

applicants/plaintiffs needs to be considered herein. The learned counsel referred to Section 16 of the Indian Contract Act and Section 111 of the Indian Evidence Act. Section 16 of the Indian Contract Act defines what is "undue influence", which reads as under:

> 'Section 16: "Undue influence" defined:--(1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.
>
> (2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another--
>
> (a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or
>
> (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.
>
> (3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.
>
> Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872 (1 of 1872)."

50. In this case, factually, the first respondent/first defendant is in a position of dominating the will of the applicants/plaintiffs as being the surviving elderly male member of the family in active business. On the other hand, the first applicant being not sufficiently educated and at the crucial point of time, was having three minor daughters without any kind of economic or moral support after her husband Mr.R.Sundar died in 2012. In the instant case, this Court could reasonably infer that the applicants could have come under the "undue influence" of the first respondent. It is quite common that young mother and her minor daughters after the demise of her husband/father, could have inevitably been forced to become dependant on the elderly members of the family for material and other support.

51. Moreover, as rightly contended by the learned counsel for the applicants/plaintiffs, in terms of Section 111 of the Indian Evidence Act, the burden of proving the good faith on any transaction is on the part of the person who is active confidence. Section 111 of the Indian Evidence Act reads as under:

> "Section 111: Proof of good faith in transactions where one party is in relation of active confidence:-- Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence."

52. In this case, several withdrawals and transfers made by the first respondent from the applicants'/plaintiffs' accounts, have been pointed out relating to polices and Fixed Deposits. In fact, serious allegations have been made against the first respondent that he has exploited the faith and trust reposed in him by the credulous applicants by forging their signatures in the cheque leaves entrusted to him and made those illegal withdrawals and transfers over a period of time.

53. As a matter of fact, the entire claim in the suit is premised on the fraudulent transfers, withdrawal, etc., from the accounts of the applicants by the first respondent and the calculations have been given in the affidavit filed in support of the present application, as well as in the plaint. These transactions appeared to be borne out by records and the Bank connected to the transactions is the fourth respondent/Axis Bank herein. In fact, earlier, an application in A.No.1179 of 2021 in C.S.No.106 of 2021, had been filed for summoning the records from the Bank in order to establish the allegation of forgery by the first respondent and this Court, vide order dated 28.04.2021, had ordered the said application seeking

direction to the fourth respondent/Bank to deposit all the documents including cheques issued in relation to the Bank Accounts of the applicants/plaintiffs to the safe custody of this Court.

54. A detailed argument was advanced on behalf of the respondents 1 to 3 herein that the applicants herein have been falsely projected as if they had been the victims of fraud committed by the first respondent, but on the other hand, the respondents 1 to 3 have been the actual victims of the collusive and conspirational conduct of the applicants/plaintiffs, along with two other family members, namely Mr.Vijay and Mr.Gokul. The above two persons who are none other than the newphews of the first respondent, joined hands with the applicants/plaintiffs and chased the respondents 1 to 3 out of the common and joint possession held by them in their dwelling house at Virugambakkam (mentioned supra). It was also elaborately argued that the first applicant was not as innocent as made out to be, as the entire Bank transactions had been operated through her husband's nephew Mr.Vijay.

55. It was also argued that after the death of the first applicant's husband on 15.11.2012, the first respondent, on his own, along with the other family members, volunteered to re-constitute the partnership by

inducting the first applicant as partner, was allotted major share of 30% in the partnership. When a private limited Company was formed, thereafter, she was again inducted in the Company as one of the Directors. Therefore, the entire case built on fraud or she being the victim of undue influence etc., is contrary to the records and facts. In this regard, the learned counsel for the respondents 1 to 3 referred to the detailed averments contained in paragraphs 16 to 18 which had been extracted supra.

56. It is also contended that when the Insurance Policy amount(s) had been credited and withdrawn in 2013/2014/2015/2017, the applicants have not protested at all for several years and only after 2018, they claimed to have woken up to the fact of having been cheated by the so-called fraudulent acts of the first respondent.

57. This Court considered the above contentions of the respondents 1 to 3, but is unable to persuade itself atleast on a prima-facie consideration that the contra case put up by the respondents 1 to 3, appears to be unconvincing and not valid enough to disregard the claims of the applicants herein.

58. Even assuming that the said Vijay who is the nephew of the first applicant's husband was helping her out in Banking transactions, the

fact of the matter is that the first respondent has admitted withdrawal of the insurance policy amounts from his accounts and not crediting to the rightful beneficiaries of the policy amounts, namely the applicants herein. The fact of withdrawing the money and not crediting the same into the account of the applicants/plaintiffs is admitted by the first respondent. Therefore, this Court is of the prima-facie view that the first respondent appeared to have acted unilaterally against the interest of the applicants/plaintiffs. In fact, there were averments regarding Police complaints given on behalf of the applicants/plaintiffs about the forgery being committed by the first respondent/first defendant. Whether the allegation of forgery is true or not, the fact remained that the applicants/plaintiffs have been forced to go to Police, questioning the conduct of the first respondent, who is none other than a close family member and active business associate at the helm of the family business.

59. Coming back to the issue of acting in good faith, from the materials made available and the contentions raised, this Court could not find anything clinching that the burden imposed upon the first respondent has been discharged to the satisfaction of the Court with reference to the withdrawals and transfers of various amounts from the Bank accounts of the applicants/plaintiffs at the instance of the first respondent.

60. One other plea was taken regarding the pendency of the Company Petition before the National Company Law Tribunal (NCLT), wherein a strong allegation was made that the first applicant herein along with the said Mr.Vijay and Mr.Gokul had swindled Lakhs of Rupees and forcing the first respondent herein in approaching the NCLT alleging oppression and mis-management against them. This Court is not really inclined to go into those aspects, since the allegations and counter-allegations in the Company Petition fall entirely within the domain and purview of the NCLT.

61. In the absence of any evidence on the side of the first respondent that the withdrawals and transactions at his behest were all done in good faith on the face of the serious allegation of fraud and deceit by the applicants against him, the opposition to the present application becomes all the more rickety and lacking in substance. On the other hand, the circumstances in which the applicants have been placed, the first applicant being not sufficiently educated, do give rise to a reasonable doubt and misgiving that there was every possibility of she coming under the "undue influence" of the first respondent and the fiduciary relationship could have

possibly led to indiscriminate withdrawal of amounts without the knowledge of the applicants or without the conscious consent of the plaintiffs.

62. In fact, the learned counsel for the respondents 1 to 3 also contended that the suit is hit by limitation, as all the transactions appear to have taken place in 2013 and the applicants/plaintiffs have cleverly averred in the plaint as if the so-called fraudulent actions by the first respondent became known to them only when the family arrangement was entered into on 22.06.2018. In fact, on behalf of the applicants/plaintiffs, it is also contended that in the family arrangement, behind the back of the first applicant, her 80,000 shares in the Company run by the family, had been illegally transferred in the name of the first applicant's father-in-law and only when Mr.Vijay protested about the illegal transfer, immediately, the 80,000 shares had been re-transferred to her name. In any event, the shares have come back to the applicants as on date and no further grievance could be made out on that aspect.

63. But, as far as the limitation aspect is concerned, it is always a mixed question of fact and law. This is more so, when fraud is alleged against the respondents 1 to 3, the plea of limitation could have no strict

application, as fraud vitiates every transaction, as has been held by the

Honourable Supreme Court and this Court in a catena of decisions. This Court is unable to accept the arguments made on behalf of the respondents 1 to 3, as such objections at least for now cannot be part of the earnest consideration of this Court in deciding the present application. In any case, it is always open to the respondents 1 to 3 to raise such objections, when the suit is taken up for final determination and the aspect of limitation need not be gone into in detail for the present.

64. On behalf of the applicants, number of decisions have been relied upon and relevant observations have also been extracted supra. The decisions cited relate to two aspects of the well enunciated legal principles. One is in relation to good faith and the other is in relation to fraud and limitation. The extracted paragraphs of the decisions supra, clearly support the case of the applicants herein on both the above aspects.

65. In AIR 1968 SC 856 (cited supra), relied on by the learned counsel for the applicants/plaintiffs, the Honourable Supreme Court has clearly held that the period of limitation would run from the date when the plaintiffs discover the true nature of the deed therein. It was further held by the Apex Court that the limitation of a suit to set aside the deed therein on

the ground that it was obtained by undue influence, was governed by Article

91 of the Indian Limitation Act and the three-year period runs from the date when the plaintiff discovered the true nature of the deed. The Honourable Supreme Court, in that decision, has also referred to Section 111 of the Indian Evidence Act regarding the good faith.

66. In 2010 (3) SCC 251 (cited supra), relied on by the learned counsel for the applicants/plaintiffs, the Apex Court held that a fraud puts an end to everything and it is settled position in law that such a decree is nothing but a nullity.

67. The learned counsel for the applicants also placed reliance on the decision of a Division Bench of this Court reported in 2002 (4) CTC 641 (cited supra), which also relates to a fraudulent transaction, and it was held therein that the suit was not barred by limitation. The other decisions (cited supra) relied on by the learned counsel for the applicants are also equally applicable to the facts of this case, as legal answers to the contentions raised by the learned counsel for the respondents 1 to 3 on the aspect of applicability of law of limitation.

68. This Court, in consideration of the above facts and the

circumstances, has to take a final call as to whether the furnishing of security for the amount(s) claimed in the suit, is prima-facie supported by materials on record. This aspect was in fact lastly argued and resisted by the learned counsel for the respondents 1 to 3, as according to him, no proper calculation has also been given for furnishing of security for the claim made in the present application/suit. On this aspect, this Court finds that, on behalf of the applicants/plaintiffs herein, it has been demonstrated adequately as to the details of the cash withdrawals and transfers in relation to the insurance policy amounts and Fixed Deposits belonging to and from the accounts of the applicants/plaintiffs. The details of illegal withdrawals, the consequential amounts became due and payable to the applicants/plaintiffs, with interest accrued, have been stated in the plaint as well as in the affidavit filed in support of the application. In fact, a separate "Note" prepared by the applicants/plaintiffs, has been produced by the learned counsel for the applicants/plaintiffs, containing every single detail of the transactions by the first respondent and attention has also been drawn to the Bank transactions over the subject period of time, meticulously.

69. In the absence of any serious dispute on the said "Note" and the supportive materials, leaving no scope for entertaining any doubt as to the veracity of the transactions/withdrawal details demonstrated by the

applicants/plaintiffs, the amounts sought to be furnished as security by the respondents 1 to 3, on a prima-facie consideration, appear to be supported by acceptable facts and materials.

70. In the over all consideration of all the facts and circumstances of this case, this Court is prima-facie of the view that the applicants/plaintiffs herein have made out a case for grant of relief as prayed for in this application. Accordingly, this application is allowed.

71. There shall be a direction to the respondents 1 to 3/defendants 1 to 3 to furnish security for a value of Rs.2,87,88,703.40 (Rupees two crores eighty seven lakhs eighty eight thousand seven hundred and three, and forty paise only), on or before 01.10.2021. No costs.

72. List the suit for hearing on 05.10.2021.

Sd./-V.P.N.J.
31.08.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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