

**IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
ORIGINAL SIDE**

Present:

The Hon'ble Justice Krishna Rao

G.A. No. 5 of 2024

In

CS No. 220 of 2019

Sk. Mansur Ali & Anr.

Versus

Sri Kulnath Kapoor & Ors.

Mr. Arabinda Chatterjee, Sr. Adv.

Mr. Shyamal Mukhopadhyay

Ms. Priyanka Chatterjee

... For the plaintiffs.

Mr. Suman Dutt, Sr. Adv.

Mr. Rohit Banerjee

Mr. Satrajit Sen

Mr. Subhankar Chakraborty

Mr. Saptarshi Bhattacharjee

Ms. Sayani Gupta

Ms. Neelanjana Roy

Mr. Sakabda Roy

... For the defendants.

Hearing Concluded On : 23.12.2024

Judgment on : 15.01.2025

Krishna Rao, J.:

1. The defendants have filed the present application under Order IX, Rule 13 of the Code of Civil Procedure, 1908 being G.A. No. 5 of 2024 praying for setting aside ex-parte the Judgment and Decree passed by this Court dated 24th March, 2023 in C.S. No. 220 of 2019.
2. Mr. Suman Dutt, Learned Senior Advocate representing the defendants submits that the defendants first time in the Month of March, 2024 received a copy of Execution Case No. 503 of 2023 wherein the defendants first time came to know that this Court has disposed of C.S. No. 220 of 2019 directing the defendants to pay sum of Rs. 53,20,416/- along with interest at the rate of 10% per annum from the date of receipt of final bill till the date of realization of the decretal amount.
3. Mr. Dutt submits that writ of summons was not served upon the defendants and the services of summons upon defendants were improper.
4. Mr. Dutt submits that the plaintiffs have filed the suit as non-commercial suit before the Ordinary Original Civil Jurisdiction of this Court but the alleged dispute between the parties arises out of a Work Order for construction of a building for setting out of a leather factory over a land allotted to the defendants at the Kolkata Leather Complex. He submits that the disputes between the parties are commercial

disputes, the plaintiffs ought to have filed the suit before the Commercial Division of this Court and not before the Ordinary Original Civil Jurisdiction.

5. Mr. Dutt submits that the decree passed by this Court in C.S. No. 220 of 2019 dated 24th March, 2023 is without jurisdiction and has to be considered as nullity and non-est.
6. Mr. Arabinda Chatterjee, Learned Senior Advocate representing the plaintiffs submits that the writ of summons was sent to the defendants in the address given in the cause title in both ways i.e. through the Sheriff of this Court as well as through the postal services but with the mala fide intention, the defendants did not receive summons. He submits that thereafter in terms of the order passed by this Court, paper publications were also made but the defendants chose not to enter appearance in the suit and this Court proceeded the suit as an “Un-Defended Suit”.
7. Mr. Chatterjee submits that notice was also affixed in the conspicuous place in the premises of the defendants and conspicuous place of the court premises even then the defendants have not appeared in the suit. Mr. Chatterjee submits that application under Order IX, Rule 13 of the Code of Civil Procedure, 1908 can be made by the defendants if the defendants satisfy this Court that the summons was not served or the defendants were prevented by any sufficient cause from appearing

when the suit was called for hearing but in the present case nothing so happened.

8. Mr. Chatterjee submits that for availing the jurisdiction of Commercial Court one has to raise dispute. He submits that dispute means a claim or demand of one side met by contrary claim by another side. He submits that the claim raised by the plaintiffs have not been denied or disputed by the defendants. He submits that merely a failure and inaction to pay which does not lead to the inference of the existence of any dispute and until and unless there is a dispute there cannot be any adjudication by the commercial court. He submits that in the present case, no denial has been raised thus the plaintiffs did not have any opportunity to exhaust the remedy of pre-institution mediation for settling the issue under Section 12A of Commercial Courts Act, 2015. In support of his submissions, he has relied upon the judgments in the case of ***Standard Chartered Grindlays Bank Ltd. Vs. Union of India*** reported in (2005) 12 SCC 738, ***Canara Bank Vs. National Thermal Power Corporation*** reported in (2001) 1 SCC 43 and ***Major (retd.) Inder Singh Rekhi Vs. Delhi Development Authority*** reported in (1988) 2 SCC 338.
9. Mr. Chatterjee submits that even assuming but not admitting the decree has been passed by the Hon'ble Court having no jurisdiction in that case, the defendants cannot take the remedy of filing an application under Order IX, Rule 13 of the Code of Civil Procedure, 1908 for setting aside the ex-parte decree. In support of his

submissions, he has relied upon the judgments in the case of ***Emars Mining and Construction Pvt. Ltd. vs. Manjunath Hebbar*** reported in ***(2021) SCC OnLine Cal 34*** and ***State of Uttar Pradesh and Others vs. Roshan Singh (Dead) by Lrs. and Others*** reported in ***(2008) 2 SCC 488***.

Relying upon the said judgments, he submits that the inherent power of the Court cannot be exercised by the Court to do justice between the parties where there is other remedies provided in the Code of Civil Procedure, 1908.

10. Heard the Learned Counsel for the parties, perused the materials on record and the judgments relied by the plaintiffs. The defendants have filed the present application for setting aside the ex-parte judgment and decree on the ground of non-service of writ of summons and the suit filed by the plaintiffs is connected with commercial dispute but this Court passed ex-parte judgment and decree in the Non-Commercial Division.
11. Let this Court first examine whether the writ of summons served upon the defendants or not. The plaint was presented before this Court on 27th September, 2019 and on the same day this Court granted leave to the plaintiffs under Clause 12 of the Letters Patent, 1865 as well as under Order II, Rule 2 of the Code of Civil Procedure, 1908 and admitted the plaint subject to scrutiny by the department.

12. Writ of summons either through the Sheriff or through the postal services were not served upon the defendants. On the prayer of the plaintiffs, this Court allows the plaintiffs for substituted service by affixation the notice of the suit at premises of the defendants and at the conspicuous place of the Court premises. Affixation of notice was issued on 23rd August, 2021 and as per the report of the Deputy Sheriff of Calcutta, on 25th August, 2021, the notices were affixed on the notice board of this Court and at the 8th Floor of the outer wall of the premises No. 105, Park Street, Kolkata- 700016. Though the defendants have denied with respect to affixation of notice but have admitted that the defendants have received notice from the Registrar of this Court on 25th August, 2021 with respect to the suit but have not received copy of the plaint and accordingly, by a letter dated 24th September, 2021, Learned Counsel for the defendants requested the Registrar, Original Side to provide copy of plaint along with documents for taking appropriate steps but inspite of receipt of the request from the defendants, no copy of the plaint was served upon the defendants.

13. It is also find from record that even after affixation of notice at the premises of the defendants and in the notice board of this Court, the defendants have not entered appearance in the suit and accordingly, the plaintiffs have prayed for publication of notice of the suit in Bangla and English Daily News Paper for the information of the defendants. By an order dated 4th May, 2022, this Court allowed the plaintiffs to publish the notice of the suit in the Bengali Daily News Paper

“Bartamaan” and English Daily News Paper “The Statesman”. In terms of the order passed by this Court, the plaintiffs have published the notice of the suit in the said News Papers and have filed affidavit of service showing the publication of the notice in the News Papers as directed by this Court.

- 14.** After publication of notice, the plaintiffs have obtained report from the department wherein it reveals that defendants have not appeared in the suit either in person or through their Learned Advocate even after publication of the notice and by an order dated 12th July, 2022, this Court had placed the suit in the list of “Un-Defended Suit”.
- 15.** The defendants have taken the defence that the notices were not affixed at the premises of the defendants but the report of the Deputy Sheriff proved that the notices were affixed at the outer wall of the premises of the defendants and in the notice board of this Court. On the other hand, it is admitted by the defendants that the defendants have received notice from the Registrar, Original Side of this Court and the defendants by their communication requested the Registrar to provide copy of plaint and documents but the same was not provided to the defendants. It is not the case of the defendants that this Court has fixed the suit in the list of “Un-Defended Suit” due to non-filing of written statement.
- 16.** Taking into consideration of the above, this Court finds that though the writ of summons were not served upon the defendants through Sheriff

or through the postal services but thereafter the notices of the suit were affixed at the outer wall of the premises of the defendants, notice board of this Court, publication of notice in the Bangla News Paper and English News Paper were also made and the plaintiffs have also received notice from the Registrar of this Court, thus it cannot be said that the notice of the suit was not served upon the defendants.

- 17.** Now the question whether the suit filed by the plaintiffs relating to the commercial dispute or non-commercial dispute. The plaintiffs contended that the as per Section 2(1)(c) of the Commercial Courts Act, 2015, Commercial Disputes means “a dispute arising out of” and in the present case no dispute between the parties is raised, thus the Commercial Court has no jurisdiction. Mr. Chatterjee relied upon the definition of “Dispute” from Black Law Dictionary which reads as follows:

“Dispute:- 1). *to question or deny the accuracy or validity of (a statement, etc),*
 2. *to quarrel over rights to or possession of something disputed territory.*
 3. *to argu about something. In dispute being debated or contested.*

As per other dictionary word Dispute means:
A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined.”

The plaintiffs say that there is no document to show that the defendants have raised any dispute. The plaintiffs have raised bills and

also sent notices to the defendants for payment but the defendants have not disputed with regard to the claim raised by the plaintiffs or sent any reply by disputing the claim of the plaintiffs thus there is no dispute arose and it cannot be said that there is any dispute.

In the case of **Major (Retd.) Inder Singh Rekhi (Supra)**, the Hon'ble Supreme Court held that:

“3. Therefore, in order to be entitled to order of reference under Section 20, it is necessary that there should be an arbitration agreement and secondly, difference must arise to which this agreement applied. In this case, there is no dispute that there was an arbitration agreement. There has been an assertion of claim by the appellant and silence as well as refusal in respect of the same by respondent. Therefore, a dispute has arisen regarding non-payment of the alleged dues of the appellant. The question is for the present case when did such dispute arise. The High Court proceeded on the basis that the work was completed in 1980 and therefore, the appellant became entitled to the payment from that date and the cause of action under Article 137 arose from that date. But in order to be entitled to ask for a reference under Section 20 of the Act there must not only be an entitlement to money but there must be a difference or dispute must arise. It is true that on completion of the work a right to get payment would normally arise but where the final bills as in this case have not been prepared as appears from the record and when the assertion of the claim was made on 28-02-1983 and there was non-payment, the cause of action arose from that date, that is to say, 28-02-1983. It is also true that a party cannot postpone the accrual of cause of action by writing reminders or sending reminders but where the bill had not been finally prepared, the claim made by a claimant is the accrual of the cause of action. A dispute arises where there is a claim and a denial and repudiation of the claim. The existence of dispute is essential for appointment of an arbitrator under Section 8 or a reference under Section 20 of

the Act. See Law of Arbitration by R.S. Bachawat, first edition, page 354. There should be dispute and there can only be a dispute when a claim is asserted by one party and denied by the other on whatever grounds. Mere failure or inaction to pay does not lead to the inference of the existence of dispute. Dispute entails a positive element and assertion of denying, not merely inaction to accede to a claim or a request. When in a particular case a dispute has arisen or not has to be found out from the facts and circumstances of the case.”

In the case of **Canara Bank (Supra)**, the Hon’ble Supreme Court held that:

“11. What the Court has directed in ONGC’s case is that frivolous litigation between Government Departments and Public Sector Undertakings of the Union of India should not be dragged in the Courts and be amicably resolved by the Committee. The judgment is intended to prevent avoidable litigation between the Government Departments and the Undertakings of the Union of India. In the present litigation there does not appear to be a genuine dispute between the Government of India undertakings. In this case one of the public sector undertaking is shown to be acting not as an undertaking but as Trustee of a Trust. The Board was, therefore, justified in holding “that the real litigation in this case, therefore, is between the Mutual Fund and NTPC” and not between the two undertakings. The meaning of the word “dispute” is, “a controversy having both positive and negative aspects. It postulates the assertion of a claim by one party and its denial by the other”. In the instant case the claim preferred on behalf of the CBMF was not denied by the Corporation but in turn a counter-claim with respect to the liability of a subsidiary of the Bank was raised. The dispute raised is without laying any basis or placing on record any evidence in support thereof. Imaginative disputes raised only to defeat the undisputed claim of the Trustee could not be made the basis to deprive the Trustees and ultimately the public at large, of the value of the bonds which had, admittedly, been received by the

Corporation with unambiguous undertaking to repay back the same.”

In the case of **Standard Chartered Grindlays Bank Ltd.**

(Supra), the Hon’ble Supreme Court held that:

“10. The principal issue, which requires consideration, is whether the Central Government was justified in making a reference to the Industrial Tribunal in terms set out earlier. Section 2(k) of the Act defines "industrial dispute" and it means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. The definition uses the word "dispute". The dictionary meaning of the word "dispute" is: to contend any argument; argue for or against something asserted or maintained. In Black's Law Dictionary the meaning of the word "dispute" is: a conflict or controversy, specially one that has given rise to a particular law suit. In Advance Law Lexicon by P. Ramanatha Iyer the meaning given is: claim asserted by one party and denied by the other, be the claim false or true; the term dispute in its wider sense may mean the ranglings or quarrels between the parties, one party asserting and the other denying the liability. In Gujarat State Cooperative Land Development Bank Ltd. Vs. P.R. Mankad and others (1979) 3 SCC 123, it was held that the term dispute means a controversy having both positive and negative aspects. It postulates the assertion of a claim by one party and its denial by the other.”

- 18.** The plaintiffs have filed suit for recovery of an amount of Rs. 53,20,416/- along with interest at the rate of 18% per annum against

the defendants. The claim of the plaintiffs is that, a piece and parcel of Government land being Plot No. 618, Zone-8, Kolkata Leather Complex, allotted to the defendants with the condition that the defendants would establish a leather industry on the said plot and would use the same for commercial purposes. The defendants acquainted with the plaintiffs and requested the plaintiffs for quotation of rates for construction of building for setting up leather factory over the said allotted plot to the defendants. The plaintiffs have submitted their quotation and being satisfied with the quotation, the defendants placed work order dated 24th June, 2014 for a value of Rs. 1,79,22,500/- for the work mentioned in the work order. The plaintiffs undertook the work of construction as per work order and completed the entire work with the satisfaction of the defendants. The plaintiffs have submitted final bill of Rs. 53,20,416/- but the defendants have not paid the said amount along with interest inspite of repeated requests made by the plaintiffs to the defendants.

- 19.** Under Section 2(1)(c) of the Commercial Courts Act, 2015, meaning of Commercial dispute already defined which reads as follows:

“2.(1) In this Act, unless the context otherwise requires,-

(c) “commercial dispute” means a dispute arising out of—

- (i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;*

- (ii) export or import of merchandise or services;*
- (iii) issues relating to admiralty and maritime law;*
- (iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;*
- (v) carriage of goods;*
- (vi) construction and infrastructure contracts, including tenders;*
- (vii) agreements relating to immovable property used exclusively in trade or commerce;*
- (viii) franchising agreements;*
- (ix) distribution and licensing agreements;*
- (x) management and consultancy agreements;*
- (xi) joint venture agreements;*
- (xii) shareholders agreements;*
- (xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;.”*
- (xiv) mercantile agency and mercantile usage;*
- (xv) partnership agreements;*
- (xvi) technology development agreements;*
- (xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;*

(xviii) agreements for sale of goods or provision of services;

(xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;

(xx) insurance and re-insurance;

(xxi) contracts of agency relating to any of the above; and

(xxii) such other commercial disputes as may be notified by the Central Government.

Explanation – A commercial dispute shall not cease to be a commercial dispute merely because –

a. It also involves action for recovery of immovable property or for realization of monies out of immovable property given as security or involves any other reliefs pertaining to immovable property;

b. One of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions.”

20. The plaintiffs have relied upon the definition of “Dispute” from Black Law Dictionary and also relied upon the judgments (supra). It is settled law that meaning of word “dispute” is a controversy having both positive and negative aspects. It postulates the assertion of a claim by one party and its denial by other. The Counsel for the plaintiffs has pressed the word “dispute” out of total sentence of Section 2(1)(c) means “a dispute arising out of” but the Learned Counsel for the plaintiffs has not considered that Section 2(1)(c) of the Commercial Courts Act, 2015 define the word “Commercial Dispute”.

As per Section 2(1)(c) of the Act of 2015, the definition of “commercial dispute” means the dispute between the parties arose any of the clauses i.e. from clause (i) to clause (xxii) including explanation.

- 21.** In the present case, the claim of the plaintiffs is in connection with the work order issued by the defendants to the plaintiffs for construction of building for setting up leather factory and the plaintiffs have constructed the building for leather factory in terms of work order but the defendants have not paid the bill amount raised by the plaintiffs. The case of the plaintiffs covered under the Clause (vi) of Section 2(1)(c) of the Commercial Courts Act, 2015 which reads as follows:

“(vi). Construction and infrastructure contracts, including tenders.”

- 22.** The Division Bench of Andhra Pradesh High Court in ***Blue Nile Developers (P) Ltd. v. Movva Chandra Sekhar, MANU/AP/1486/2021: 2021:APHC:28878*** has extensively dealt with the above clause. The relevant extracts are reproduced below:-

"22. Hence from the above, it is clear that the "legislature" has included the various types of commercial transactions to bring under the fold of "commercial dispute" in case of any dispute arises from any of those transactions. On a careful reading of the above said provision of the Act, it is obvious that the legislature has taken due care while incorporating the above said clauses from (i) to (xxii) in Section 2(1)(c) of the Act by avoiding the repetition of words and sentences without effecting the full fledged meaning of the same even on expansion of the said each clause. Therefore, either giving any restrictive meaning or reading of a clause in isolation and expansion of one word only in the said clause would hamper and frustrate the

meaningful definition of the said clause on its expansion by abrogating certain category of transactions from the purview of the benefit of the above said Act which is not otherwise the intendment of the legislature in bringing out the said enactment.

23. For the sake of illustration, if we confine the definition of clause (vi) of the above said provision of the Act to the infrastructure contracts only, then it would exclude the category of construction contracts and construction and infrastructure contracts from its purview.

24. Suppose, if it is read as "construction and infrastructure contracts" as one word/one sentence, then it would exclude the category of the construction contracts and infrastructure contracts separately from its purview.

25. But that is not the intendment of the above said central enactment, as it is clear from the scope and object of the Act. All the types of "commercial transactions" are saved in the Section 2(1)(c) of the Act subject to the condition that it satisfies the "specified value" stipulated under the Act for the purpose of assumption of the jurisdiction by the Special Court/the Commercial Court. Except that no category of commercial transaction is excluded from the purview of the above said Act which is evident from the reading of the above said section and its clauses."

- 23.** In view of the above, this Court finds that the suit filed by the plaintiffs is a commercial suit covered under clause (vi) of Section 2(1)(c) of the Commercial Courts Act, 2015, but this Court passed Judgment and Decree dated 24th March, 2023 in C.S. No. 220 of 2019 as non-commercial suit.
- 24.** The defendants have raised another issue that assuming that this Court held that the judgement and decree passed by this Court without

having jurisdiction, this Court cannot set aside the said decree in an application under Order 9, Rule 13 of the Code of Civil Procedure, 1908. He submits that inherent power of the Court can be exercised by the Court to do justice between the parties where there is no other remedies provided in the Code of Civil Procedure, 1908. He submits that it cannot be used as an alternative remedy. In support of his submissions, Mr. Chatterjee relied upon the judgment in the case of ***Emars Mining and Construction Pvt. Ltd. (Supra)*** wherein the Coordinate Bench of this Court held that:

“12. The Supreme Court in Ram Prakash Agarwal v. Gopi Krishnan (Dead through LRS), reported in (2013) 11 SCC 296 had held:

*“15. In exceptional circumstances, the Court may exercise its inherent powers, apart from Order 9 CPC to set aside an ex parte decree. An ex-parte decree passed due to the non-appearance of the counsel of a party, owing to the fact that the party was not at fault, can be set aside in an appeal preferred against it. So is the case, where the absence of a defendant is caused on account of a mistake of the court. **An application under Section 151 CPC will be maintainable, in the event that an ex parte order has been obtained by fraud upon the court or by collusion. The provisions of Order 9 CPC may not be attracted, and in such a case the court may either restore the case, or set aside the ex parte order in the exercise of its inherent powers.***

*There may be an order of dismissal of a suit for default of appearance of the plaintiff, who was in fact dead at the time that the order was passed. Thus, where a court employs a procedure to do something that it never intended to do, and there is miscarriage of justice, or **an abuse of the process of Court, the injustice so done must be remedied, in accordance with the principle of actus curia neminem***

gravabit - an act of the court shall prejudice no person.

16.**

17.**

18.**

19. **In view of the above, the law on this issue stands crystallised to the effect that the inherent powers enshrined under Section 151 CPC can be exercised only where no remedy has been provided for in any other provision of the CPC. In the event that a party has obtained a decree or order by playing a fraud upon the court, or where an order has been passed by a mistake of the court, the court may be justified in rectifying such mistake, either by recalling the said order, or by passing any other appropriate order.** However, inherent powers cannot be used in conflict of any other existing provision, or in case a remedy has been provided for by any other provision of the CPC. Moreover, in the event that a fraud has been played upon a party, the same may not be a case where inherent powers can be exercised.”

Mr. Chatterjee further relied upon the judgment in the case of **State of Uttar Pradesh and Ors. (Supra)** wherein the Hon’ble Supreme Court held that:

“7. The principles which regulate the exercise of inherent powers by a court have been highlighted in many cases. In matters with which the Code of Civil Procedure does not deal with, the court will exercise its inherent power to do justice between the parties which is warranted under the circumstances and which the necessities of the case require. If there are specific provisions of the Code of Civil Procedure dealing with the particular topic and they expressly or by necessary implication exhaust the scope of the powers of the court or the jurisdiction that may be exercised in relation to a matter, the inherent powers of the

court cannot be invoked in order to cut across the powers conferred by the Code of Civil Procedure. The inherent powers of the court are not to be used for the benefit of a litigant who has a remedy under the Code of Civil Procedure. Similar is the position vis-à-vis other statutes.

8. *The object of Section 151 CPC is to supplement and not to replace the remedies provided for in the Code of Civil Procedure. Section 151 CPC will not be available when there is alternative remedy and the same is accepted to be a well-settled ratio of law. The operative field of power being thus restricted, the same cannot be risen to inherent power. The inherent powers of the court are in addition to the powers specifically conferred on it. If there are express provisions covering a particular topic, such power cannot be exercised in that regard. The section confers on the court power of making such orders as may be necessary for the ends of justice of the court. Section 151 CPC cannot be invoked when there is express provision even under which the relief can be claimed by the aggrieved party. The power can only be invoked to supplement the provisions of the Code and not to override or evade other express provisions. The position is not different so far as the other statutes are concerned. Undisputedly, an aggrieved person is not remediless under the Act."*

25. The defendants relied upon the provisions of Order 43, Rule 1 of the Code of Civil Procedure, 1908 and Section 151 of the Code of Civil Procedure, 1908 and submit that error apparent on the face of record and this Court can rectify the error by recalling or review of the judgement to avoid multiplicity of proceedings.

26. In the case of **My Palace Mutually Aided Co-operative Society Vs. B. Mahesh and Ors.** reported in **MANU/SC/1030/2022**, the Hon'ble Supreme Court held that:

“33. The subsequent judgment of this Court in **Ram Prakash Agarwal v. Gopi Krishan, (2013) 11 SCC 296** further clarifies the law on the use of the power Under Section 151 of the Code of Civil Procedure by the Court in cases of fraud and holds as follows:

13. Section 151 Code of Civil Procedure is not a substantive provision that confers the right to get any relief of any kind. It is a mere procedural provision which enables a party to have the proceedings of a pending suit conducted in a manner that is consistent with justice and equity. The court can do justice between the parties before it. Similarly, inherent powers cannot be used to re-open settled matters. The inherent powers of the Court must, to that extent, be regarded as abrogated by the legislature. A provision barring the exercise of inherent power need not be express, it may even be implied. Inherent power cannot be used to restrain the execution of a decree at the instance of one who was not a party to suit. Such power is absolutely essential for securing the ends of justice, and to overcome the failure of justice. The Court Under Section 151 Code of Civil Procedure may adopt any procedure to do justice, unless the same is expressly prohibited.

Xxx

19. In view of the above, the law on this issue stands crystallised to the effect that the inherent powers enshrined Under Section 151 Code of Civil Procedure can be exercised only where no remedy has been provided for in any other provision of Code of Civil Procedure. In the event that a party has obtained a decree or order by playing a fraud upon the court, or where an order has been passed by a mistake of the court, the court may be justified in rectifying such mistake, either by recalling the said order, or by passing any other appropriate order. **However, inherent powers cannot be used in conflict of any other existing provision, or in case a remedy has been provided for**

by any other provision of Code of Civil Procedure. Moreover, in the event that a fraud has been played upon a party, the same may not be a case where inherent powers can be exercised.”

27. The defendants have filed the application under Order IX, Rule 13 of the Code of Civil Procedure, 1908 for setting aside the judgment and decree on the ground of non-issuance of writ of summons and further the suit is commercial in nature but judgment and decree passed in non-commercial suit. As regard issuance of writ of summons, this Court already held that it cannot be said that the notice of the suit was not served upon the defendants. This Court already held that the suit filed by the plaintiffs is commercial in nature but neither under Order IX, Rule 13 nor under Section 151 of the Code of Civil Procedure, 1908, this Court cannot recall/review the judgment and decree dated 24th March, 2023 passed due to lack of jurisdiction as the defendants having alternative remedy under the Code of Civil Procedure, 1908.

28. In view of the above, the **G.A. No. 5 of 2024** is thus **dismissed**.

(Krishna Rao, J.)