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C.S.No.285 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.03.2023

Pronounced on : 01.09.2023

CORAM : JUSTICE N.SESHASAYEE

C.S.No.285 of 2014  
and A.Nos.365 & 2639 of 2016 in C.S.No.285 of 2014

B.V.Reddy Enterprises Private Limited  
Rep. by its Director Mr.V.Dinesh Reddy  
Having registered office at  
No.232, Kilpauk Garden Road  
Kilpauk, Chennai - 600 010.  
Now at :  
Old No.31, New No.7, Swarna Home  
I Floor, Vadivelu Street  
Perambur, Chennai - 600 011.

.... Plaintiff

Vs

1.S.Murali Mani  
2.S.Balan Mani  
Both represented by their Power Agent  
Mr.Arjunlal Sunderdas  
3.Arjunlal Sunderdas  
4.S.M.Lal  
5.The Official Assignee, High Court, Madras.  
[Representing the estate of Arjunlal Sunderdas  
(Insolvent)]

.... Defendants

(5th defendant impleaded as per order  
dated 17.08.2015 in Appln.No.4741 of 2015)



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**Prayer :** Civil Suit filed under Order IV Rule 1 of O.S.Rules read with Order VII Rule 1 of CPC., praying for a judgment and decree :

- i. granting a decree for specific performance directing the defendants 1 and 2 to execute and register sale deed through their power agents defendants 3 and 4 herein either acting jointly or severally absolutely conveying the schedule mentioned property free of all encumbrances in favour of the plaintiff as per the terms of agreement for sale dated 13.12.2006 entered between the defendants 1 and 2 represented by their power agents defendants 3 and 4 herein and the plaintiff within the time fixed by this Hon'ble Court, failing which directing an officer of the court to perform the same;
- ii. directing the defendants 1 and 2 represented by their power agents defendants 3 and 4 herein either acting jointly or severally to deliver vacant possession of the schedule mentioned property to the plaintiff within the time fixed by this Court;
- iii. for a permanent injunction restraining the defendants, their agents, servants and men and everyone claiming under them or acting on their behalf from in any way alienating or encumbering the schedule mentioned property in any manner whatsoever;
- iv. for a permanent injunction restraining the defendants, their agents, servants and men and everyone claiming under them or acting on their



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behalf from in any way altering the physical features of the schedule mentioned property either by putting up construction or by inducting any third parties into the schedule mentioned property in any manner whatsoever;

- v. directing the defendants to pay the costs of the suit to the plaintiff;
- vi. and grant such other suitable relief as this Court may deem fit on the facts and circumstances of this case.

For Plaintiff : Mr.T.V.Ramanujam, Senior Advocate  
for Mr.B.Arvind Srevatsa

For Defendants : Mr.K.V.Ananthakrushnan  
Asst. by Ms.A.Janani for Official Assignee (D5)  
& Mr.Arun Sabapathy, Deputy Official Assignee

D1 to D4 - set exparte

### **JUDGMENT**

1.1 This is a suit for specific enforcement of a sale agreement dated 13.12.2006 against defendants 1 and 2, through their Power Agent, the defendants 3 and 4. The suit property is stated to measure 5.5 grounds in R.Sy. No:97/3 in Block No.17, bearing New Door No.33 at College Road, Nungambakkam.



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1.2 During the pendency of the suit, the third defendant was adjudicated as an insolvent, and his estate vested with the Official Assignee of this Court. The Official Assignee (henceforth will also be referred to as OA) has since been impleaded as the 5th defendant, vide an order dated 17.08.2015. He alone contested the suit defending the estate of the 3rd defendant. It may be stated that pending suit, the 3rd defendant had passed away.

### **Pleadings:**

2.1 The case of the Plaintiff is as follows:

- a) The suit property originally belonged to a certain Subbulakshmi. She bequeathed this property to her sons, the defendants 1 and 2 herein, under a Will dated 21.01.1997. The Will was since probated by this Court.
- b) On 18.08.2006, the 1st and 2nd defendants entered into a registered sale agreement with the 3rd defendant, whereunder the latter agreed to purchase the suit property for a sale consideration of Rs.4,08,65,624/-. This agreement stipulated the time for the performance of mutual contractual obligations as 15.10.2006. The third defendant initially paid Rs.2.50 lakhs as advance, and had later paid the entire sale consideration



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to defendants 1 and 2.

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- c) On receiving the sale consideration, on 28.08.2006, defendants 1 and 2 executed two documents: (a) a Power of Attorney in favour of defendants 3 and 4; and (b) a supplemental sale agreement in favour of the 3<sup>rd</sup> defendant.
- d) The vendors under the agreement had handed over the original title deeds of the property to the third defendant and also the possession of the suit property. The supplemental agreement referred to above provided that the sale deed needs to be executed only as and when required by the purchaser.
- e) On the strength of the Power of Attorney dated 28.08.2006, defendants 3 and 4 entered into a sale agreement dated 13.12.2006 with the plaintiff. This document has two parts: one the sale agreement *per se*; and the other a confirmation document. The third defendant was described in twin capacity, one as the Power of Attorney and another as a confirming party. The sale consideration payable by the plaintiff to the third defendant was fixed at Rs.5.0 crores. This amount was paid by the plaintiff entirely on the date of the agreement.
- f) This sale agreement provides that the defendants 3 and 4 are under an



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obligation to execute the sale deed in favour of the plaintiff or their nominees. Clause 7 of this sale agreement provided that the vacant possession of the property was handed over by defendants 3 and 4 to the plaintiff. Notwithstanding this, the fact remains that this was not done. The original title deeds of the property were, however, handed over by the third defendant to the plaintiff.

- g) On the same date i.e., 13.12.2006, the third defendant and the plaintiff entered into a Memorandum of Understanding (MoU). This Memorandum pertains to the joint development of the suit property along with the property immediately adjacent to the suit property of the third defendant. Under the MoU, the plaintiff advanced a loan of Rs.15.0 crores. The plaintiff had paid this amount on the very date of the MoU. Including Rs.5.0 crores paid under Ext.P4, the plaintiff had parted with Rs.20.0 crores.
- h) The third defendant, however, did not perform any acts as was required to be performed in terms of the MoU dated 13.12.2006. In these circumstances, on 23.02.2012, the plaintiff and third defendant entered into another agreement styled as '*cancellation agreement*' by which both



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sides have agreed to cancel both the sale agreement and the MoU which they had entered into on 13.12.2006, but this was made subject to the condition that the third defendant paid the plaintiff a sum of Rs.52,60,30,000/- (which included Rs.5.0 crores + Rs.15.0 crores which the plaintiff had paid the third defendant under the sale agreement and the MoU + compensation for damages which the plaintiff had suffered owing to the non-performance of agreement by the third defendant). Towards payment of this amount, the third defendant had drawn a cheque for Rs.52,60,30,000/- on his banker in favour of the plaintiff.

- i) The plaintiff presented the cheque issued by the 3rd defendant for encashment, but it came to be dishonoured. Since the condition precedent stipulated in Ext.P6, performing which was essential for cancellation of the sale agreement and MoU dated 13.12.2006 was breached, the original contract continued to remain alive.
- j) Consequent to the dishonour of cheque, the plaintiff had instituted a complaint under Section 138 of the Negotiable Instruments Act, which was taken on record in C.C.No.27547/2012 before the XIV Additional Chief Metropolitan Magistrate, Bangalore. Besides, the plaintiff had also preferred another private complaint before the Chief Metropolitan



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Magistrate Court, Egmore, and that resulted in the registration of a case against the third defendant in Cr.No.15/2013 on the file of CCB, Chennai, for offences under Sections 406, 417 and 420 IPC.

- k) Be that as it may, in order to find a solution to these issues thus far created, the plaintiff and the third defendant again entered into another agreement dated 05.04.2013. Under this agreement, the third defendant agreed to pay the plaintiff a sum of Rs.62.50 crores in 14 instalments to be paid over a period of 13 months. It is stipulated in this agreement, that upon the 3rd defendant performing his part of the obligation of paying Rs.62.50 crores, the plaintiff should return the original title deeds of the suit property to the former. The agreement also stipulated that even if the third defendant defaulted in performing his obligation partially, the plaintiff would be entitled to cancel the very agreement dated 05.04.2013.
- l) The third defendant yet again defaulted in performing his obligation to pay the plaintiff the amount he undertook to pay under the last-mentioned agreement.
- m) Promptly the plaintiff terminated the agreement vide its letter dated 10.04.2014, and addressed a notice to the third defendant requiring him



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to register the sale deed pursuant to the sale agreement dated 13.12.2006.

- n) It is required to be recalled that the sale agreement dated 13.12.2006 is kept alive, owing to the default by the third respondent in performing his contractual obligation under the agreement dated 13.12.2006.
- o) The Power of Attorney that defendants 1 and 2 executed in favour of defendants 3 and 4 is the Power of Attorney coupled with interest since the third defendant had paid the entire sale consideration payable under the sale agreement dated 28.08.2006, that he had entered into with the defendants 1 and 2.
- p) So far as performing the sale agreement dated 13.12.2006 which the plaintiff had entered into with the defendants 3 and 4, the plaintiff has performed his part of the contract fully.
- q) It is in these circumstances, that the plaintiff has filed the present suit for specific performance of the contract coupled with an ancillary relief of direction to defendants 3 and 4 to deliver vacant possession of the suit property.

3.1 The defendants 1 to 4 did not file any written statement and were set



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exparte. However, as indicated in the opening paragraph, the third defendant was adjudicated as insolvent on 21.04.2014. On behalf of the estate of the third defendant, the Official Assignee, the 5<sup>th</sup> defendant had filed his written statement.

### **3.2 Written statement of Official Assignee /5th defendant:**

Narrating the sale agreements which the defendants 1 and 2 had entered into with the 3rd defendant, and the sale agreement and the MoU the latter had entered with the plaintiff on 13.12.2006, (not one of which was disputed by him) the OA would plead:

- a) On 21.04.2014, this Court Vide its order in IP.No.25 of 2014, had declared the 3<sup>rd</sup> defendant as an insolvent, pursuant to which all the properties of the insolvent vested in the Official Assignee. In the course of investigation into the assets and liabilities of the insolvent, the insolvent gave his statements on 20.05.2014, 08.09.2014 and 09.09.2014, in which he disclosed his assets, but not the liabilities. One of the property that was disclosed was the suit property herein, measuring 5.5 grounds in Sy.No:97/3 in door No:33, College Road, Nungambakkam.



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And, regarding the liability which the estate of the insolvent faced, some 188 creditors have made a claim totalling Rs.104 crores.

- b) Turning to the sale agreement dated 13.12.2006, on which the cause of action rests, the sale agreement together with the MoU intended for developing both the suit property and the property at door No:34 belonging to the 3<sup>rd</sup> defendant, with an understanding between them to share the proceeds of the developed property. On payment of the entire sale consideration on the basis of his sale agreements with the first and second defendants, the 3<sup>rd</sup> defendant took possession of the suit property. The plaintiff was only an investor for sharing the proceeds of the contemplated development of the property as per the MoU. However, on 27.07.2012, the 3<sup>rd</sup> defendant sold his property at Door No:34, which was one of the properties proposed to be developed along with the suit property. Since the MoU did not take off, the 3<sup>rd</sup> defendant agreed to return the amount received and also entered into a cancellation agreement dated 23.02.2012.
- c) The title deeds relating to the properties at Door No.33, College Road, Nungambakkam, Chennai-34, were handed over to Nirmal Cariappa and K. Jacob George, Advocates.



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d) The third defendant issued a cheque 13.06.2012 for Rs.52,60,20,000/-as agreed in the cancellation agreement. This amount represents the refund of the sale consideration paid under the sale agreement dated 13.12.2006 (between the plaintiff and the 3<sup>rd</sup> defendant), Rs.15.0 crores paid as loan by the plaintiff to the 3<sup>rd</sup> defendant under the MoU and the balance Rs.32.60 crores as compensation for breach of contract. The aforesaid cheque was dishonoured as the account was closed. There were exchange of notices between the parties and in his reply dated 06.11.2012, the 3<sup>rd</sup> defendant disputed that the very cancellation agreement was obtained under coercion. Therefore, the plaintiff preferred a complaint under Sec. 138 of the Negotiable Instruments Act before the XIV ACMM Bangalore, and also preferred a private complaint before the Chief Metropolitan Magistrate, Egmore. Thereupon, on 05.04.2013, an agreement was entered into between the plaintiff and the 3<sup>rd</sup> defendant, wherein the latter had agreed to pay the former a sum of Rs.62.5 crores in instalments between 30.04.2013 and 31.03.2014. A sum of Rs.1,50,00,000/- was paid on 31.03.2013. The 3<sup>rd</sup> defendant again defaulted. While so, on 21.04.2014., the 3<sup>rd</sup> defendant was declared as an insolvent.



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- e) Inasmuch as the 3<sup>rd</sup> defendant had paid the entire sale consideration to defendants 1 and 2 on his agreements with them, and had also obtained a Power of Attorney (coupled with an interest) from the latter, and had also come into possession of the suit property without registration of a formal sale deed in his favour, this possessory right had vested in the OA. The transactions with the plaintiff in respect of the said property, issuance of the cheques, criminal proceedings initiated by the plaintiff, cancellation agreement etc., on the adjudication of the third defendant as an insolvent, automatically abates. Indeed, the agreement of cancellation dated 05.04.2013, the 3<sup>rd</sup> defendant, the insolvent had agreed to compensate the plaintiff to an extent of Rs.62.50 crores, supersedes all the earlier agreements entered between the plaintiff and the third defendant.
- f) On the date of adjudication, after cancellation of agreement, the third defendant alone had the right over the said property. On adjudication all the rights of the third defendant vests with the official assignee. In accordance with the agreement dated 05.04.2013, entered between the plaintiff and third defendant, the original title deeds which were in the custody and possession of Advocates Nirmal Cariappa and Jacob George, only the OA is entitled to enforce the agreement with the original owners



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S. Murali Mani and S. Balan Mani, and seek the custody of original deeds relating to the suit property. Indeed the OA had taken out an application on 11.03.2015 for a direction to Nirmal Cariappa and Jacob George, Advocates, to hand over the original title deeds relating to the suit property for their safe custody and for bringing the property to public auction. To the knowledge of the OA, these Advocates have not yet handed over the title deeds of the suit property to the plaintiff.

- g) The plaintiff is only entitled to claim Rs.20.0 crores less Rs. 1.50 crores paid to him. The subsequent transactions between the plaintiff and 3<sup>rd</sup> respondent are suspended by the final agreement dated 05.04.2013, which is within two years prior to the date of adjudication. The agreement to pay compensation under the agreement dated 05.04.2013, was within two years prior to the date of adjudication. Indeed, it was entered into under the threat of criminal proceedings, and confers a preferential treatment to one of the creditors of the insolvent. The agreement for payment of Rs.62.50 crores is voidable against the OA and will not bind him. More so, it also includes the compensation payable. Even the payment of Rs.20,00,00,000/- made by the plaintiff is subject to proof and has to be ranked in *pari passu* with other general body of



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creditors.

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- h) The MoU executed between the plaintiff and the third defendant on 05.04.2013 for payment of exemplary compensation will not bind the Official Assignee as it is not a bonafide and true transaction done within two years prior to the date of adjudication. It lacks good faith. Hence it is voidable under Sec. 55 of the Presidency Towns Insolvency Act. Except the payments of Rs.20.0 crores made by the plaintiff towards sale consideration and development, the other amounts claimed as compensation, not adjudicated and culminated into liquidated account and mere cheques issued by the insolvent, the third defendant, for compensation will not bind the official assignee for the above said reasons. The genuine payments in respect of the transaction alone can be claimed. No person can be permitted to enrich himself at the cost and to the detriment of the interest of the general body of creditors.
- i) The creditor's petition to declare the 3<sup>rd</sup> defendant as an insolvent was filed on 10.03.2014, and was declared insolvent as 21.04.2014, which relates back to the date of the petition. The present suit was laid after the 3<sup>rd</sup> defendant was adjudicated insolvent, and hence, the plaintiff, who had to maintain the suit, should have taken the leave of the Court under



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Sec.17 of the Presidency Towns Insolvency Act. Since leave was not obtained by the plaintiff, the suit is liable to be dismissed.

- j) It may be stated that on 09.06.2014, the plaintiff had filed a claim petition ranking him as one of the creditors to claim a sum of Rs.21,64,000/- (This, however, is based on some other transaction, and does not relate to the cause of action of the present suit).
- k) As per Sec. 18 of the Presidency Town Insolvency Act, any proceedings pending before the Civil Court which is the subject matter before the insolvency Court, can be stayed in view of the adjudication of the third defendant as insolvent. There cannot be parallel proceedings to determine the right of the parties which will create conflicting decisions.
- l) The grant of decree in a suit for specific performance is a discretionary relief. The plaintiff who comes to the Court must come with clean hands. The plaintiff having entered into subsequent agreement to claim compensation and having given up its right to suit property cannot seek specific performance of the sale agreement. The plaintiff also suppressed the insolvency of the third defendant, in its plaint.
- m) Without prejudice to the above contention, admittedly the relief claimed in the suit filed on 21.04.2015 to enforce the agreement dated



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13.12.2006, is barred by limitation, notwithstanding the contention that the same is superseded by the agreement dated 05.04.2013. Hence, the suit is liable to be dismissed on the ground of limitation.

### **Issues:**

4.1 On the above pleadings, this Court framed the following issues :

1. *Whether the suit is barred by limitation?*
2. *Whether the plaintiff is entitled to the relief of specific performance as prayed for as the entire sale consideration of Rs.5.0 crores has been paid by the plaintiff?*
3. *Whether the plaintiff is entitled for delivery of vacant possession of the suit property?*
4. *Whether the plaintiff is entitled for permanent injunction restraining the defendants from in any way alienating or encumbering the suit property in any manner whatsoever?*
5. *Whether the plaintiff is entitled for permanent injunction restraining the defendants from in any way altering the physical features by putting up construction or by inducting any third parties into the suit property?*
6. *Whether the suit property is the estate/property of the 3rd defendant herein, who has been declared as insolvent?*
7. *Whether the Official Assignee, the 5th defendant herein can claim to act as power agent of defendants 1 and 2 since the erstwhile power*



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*agent, the 3rd defendant herein has been declared as insolvent?*

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- 8. Whether the suit filed after adjudication of the 3rd defendant as insolvent on 21.04.2014, without leave and impleading Official Assignee under Section 17 of the Insolvency Act maintainable?*
- 9. Whether the plaintiff is entitled to the discretionary relief of specific performance in view of the plea of the fifth defendant that it has suppressed the material fact and the insolvency of the third defendant?*
- 10. Whether the plaintiff in the alternate is entitled to get the refund of the advance amount?*
- 11. Whether the plaintiff in the event of entitlement of refund of the advance amount, joins pari passu with other creditors?*
- 12. To what relief the parties are entitled to?*

4.2 The dispute went to trial. During the trial, the Director of the plaintiff company was examined as P.W.1, and he has produced Ext.P1 to Ext.P23. For the 5th defendant, the third defendant – insolvent examined himself as D.W.1. Besides, an officer of the Official Assignee was examined as D.W.2. For the defendants only two documents namely Exts.D1 & D2 were marked.

4.3 In the context of the present suit, following documents are very pertinent :



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| <b><i>Exhibit No.</i></b> | <b><i>Date</i></b> | <b><i>Nature of document</i></b>                                          | <b><i>Executed by / in favour of</i></b>                                                                                                                      |
|---------------------------|--------------------|---------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ext.P1                    | 18.08.2006         | Sale Agreement                                                            | Executed between defendants 1 and 2 on one part and the third defendant on the other part                                                                     |
| Ext.P2                    | 28.08.2006         | Supplemental Agreement                                                    | Executed by defendants 1 and 2 in favour of 3 <sup>rd</sup> defendant                                                                                         |
| Ext.P3                    | 28.08.2006         | Power of Attorney                                                         | Executed by defendants 1 & 2 in favour of defendants 3 & 4                                                                                                    |
| Ext.P4                    | 13.12.2006         | Composite Agreement of Sale and Confirmation Agreement                    | Executed by defendants 3 & 4 in favour of plaintiff                                                                                                           |
| Ext.P5                    | 13.12.2006         | Memorandum of Understanding for development of properties                 | Entered into between the plaintiff and defendants 3,4                                                                                                         |
| Ext.P6                    | 23.02.2012         | Conditional Agreement of Cancellation of Ext.P4 & Ext.P5                  | Entered into between the plaintiff and the third defendant                                                                                                    |
| Ext.P13                   | 05.04.2013         | Sale Agreement                                                            | Executed between the plaintiff and the third defendant                                                                                                        |
| Ext.P15                   | 21.08.2013         | Transfer Petition in Tr.P.(Crl.) No.341/2013 before Hon'ble Supreme Court | Filed by the third defendant for transfer of C.C.No.27547/2012 on the file of XIV Additional Chief Metropolitan Magistrate, Bangalore, to a Court in Chennai. |
| Ext.P21                   | 10.04.2014         | Letter                                                                    | Addressed to the defendants by the plaintiff for cancelling Ext.P6 and Ext.P13.                                                                               |
| Ext.P22                   | 10.04.2014         | Letter                                                                    | Addressed to the defendants by the plaintiff for correcting the date of Ext.P6 which was wrongly given in Ext.P21                                             |
| Ext.D1                    | 09.06.2014         | Claim Petition No.25 of 2014                                              | Filed by the plaintiff against the third defendant before the Official Assignee as regards claiming Ext.P14                                                   |
| Ext.D2                    | 02.11.2012         | Reply notice                                                              | Addressed to the plaintiff by the third defendant                                                                                                             |



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4.4 Neither side disputed any of the documents tabulated in paragraph No.4.3 above. But they did share a serious difference as regards the construction of some of these documents, and the legal consequence that these differing understandings produce. That in essence occupied the critical core of the rival arguments.

**A. Arguments for the Plaintiff :**

5.1 Mr. T.V. Ramanujam, the learned senior counsel appearing for the plaintiff made the following submissions:

- a) The suit property belonged to the defendants 1 and 2. On 19.08.2006, they entered into a sale agreement for the sale of the suit property with the 3<sup>rd</sup> defendant vide Ext.P1, for a total sale consideration of Rs.4,08,65,624/- to be paid in equal halves to each of the defendants 1 and 2. Accordingly, the 3<sup>rd</sup> defendant is required to pay Rs.2,04,32,812/- to each. Under Ext.P1, the 3<sup>rd</sup> defendant had paid each of defendants 1 and 2, Rs.2.50 lakhs. He now has to pay them Rs.2,01,82,812. The agreement stipulated that the 3<sup>rd</sup> defendant should pay and complete the sale on or before 15.10.2006.



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- b) This was followed by a supplemental agreement in Ext.P.2, dated 28.08.2006. This document shows that the purchaser under Ext.P.1, namely the 3<sup>rd</sup> defendant, had paid both defendants 1 and 2, the balance sale consideration payable to them in terms of Ext.P1. They also put the 3<sup>rd</sup> defendant in possession of the suit property and also handed over the original title deeds to the latter, and agreed to execute the Power of Attorney jointly in favour of the 3<sup>rd</sup> defendant and the latter's nominee, the 4<sup>th</sup> defendant. The 4<sup>th</sup> defendant is the brother of the 3<sup>rd</sup> defendant.
- c) As was agreed in Ext.P.2, both defendants 1 and 2 executed a Power of Attorney in favour of defendants 3 and 4 vide Ext.P.3 dated 28.08.2008. In other words, defendants 1 and 2 had executed both Ext.P2 and P3 on the same day.
- d) Now, the 3<sup>rd</sup> defendant, (the agreement holder of Ext.P1 read with Ext.P.2) along with the 4<sup>th</sup> defendant, have joined to execute Ext.P4, sale agreement cum confirmation agreement dated, 13.12.2006, in favour of the plaintiff in their capacity as the Power of Attorney of defendants 1 and 2 for the sale of the suit property for a total consideration of Rs 5 crores. So far as the confirmation part of Ext.P4 is concerned, the 3<sup>rd</sup> defendant as the confirming party, makes a statement in Ext.P4 that he



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has nominated the plaintiff as the purchaser. It is not in dispute that the plaintiff had paid the entire sale consideration of Rs 5 crores under Ext.P.4 itself. That apart, the plaintiff was put in possession of the suit property by the 3<sup>rd</sup> defendant, and the title documents of defendants 1 and 2 were also handed over to the former.

e) Now, contemporaneous with Ext.P4, both the plaintiff and the 3<sup>rd</sup> defendant entered into a MoU. It needs to be underscored that the 4<sup>th</sup> defendant is not a party to Ext.P5. This document envisaged that both the plaintiff and the 3<sup>rd</sup> defendant would pool the suit property in door No: 33 (described as the 'A' schedule property in Ext.P.5) and also the adjacent property at Door No:34 (described as 'B' Schedule property in Ext.P5, which exclusively belonged to the 3<sup>rd</sup> defendant) and develop the same. It refers to Ext.P4 and records payment of Rs.5.0 crores, the sale consideration payable by the plaintiff under the said document to the 3<sup>rd</sup> defendant, and provides the ratio in which the developed property should be shared between the plaintiff and the 3<sup>rd</sup> defendant. And, significantly it records the loan or financial assistance of Rs.15.0 crores which the plaintiff had provided the 3<sup>rd</sup> defendant.

f) Ext.P5 also reiterates that the 3<sup>rd</sup> defendant had assigned his right under



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Ext.P1 and P2 to the plaintiff yet another time. It also states that the plaintiff had handed over the vacant possession of the suit property and also the original title deeds back to the 3<sup>rd</sup> defendant again.

g) A combined reading of Ext.P4 and P5 indicates that the 3<sup>rd</sup> defendant had constituted the plaintiff as the nominee-purchaser or assignee of his rights under Exts.P1 and P2, and its effect is that the 3<sup>rd</sup> defendant would no more have any right left in him on the basis of Exts.P.1 and P.2. It is, hence, the plaintiff has laid a suit for specific performance against defendants 1 and 2, since the mere sale agreement in Ext.P1 cannot confirm any title in the agreement holder. And, inasmuch as he along with the 4<sup>th</sup> defendant are the power of attorneys of defendants 1 and 2 vide Ext.P4, they both were impleaded for completing the sale. This apart, sale consideration was paid only to defendants 3 and 4.

h) So far there is no confusion. However, notwithstanding the total performance of a contractual obligation under Ext.P4 by the plaintiff, the 3<sup>rd</sup> defendant did nothing vis-a-vis the development agreement. This brewed differences between the parties which finally led to the execution of Ext.P.6 dated 23.02.2012 by the plaintiff and the 3<sup>rd</sup> defendant, whereby the parties agreed to cancel Exts.P4 and P5, but subject to the



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condition that the 3<sup>rd</sup> defendant pays the plaintiff Rs. 52,60,30,000.

Towards repayment of this amount, the 3<sup>rd</sup> defendant issued a cheque, which when presented for encashment, came to be dishonoured. This led to the plaintiff instituting a proceeding in C.C.No.27547/2012 from the Chief Metropolitan Court, Bangalore.

- i) The execution of Ext.P6, however, was disputed by the 3<sup>rd</sup> defendant in Ext.D2, reply notice, dated 02.11.2012, where he would allege that it was obtained by the plaintiff under duress. However, he did a volte-face in the Tr.P.(Crl).No.341 of 2013 (Ext.P.15) which the 3<sup>rd</sup> defendant had filed before the Hon'ble Supreme Court for transfer of C.C.No.27547/2012 from Bangalore to a competent Court in Chennai, where the 3<sup>rd</sup> defendant had admitted to the execution of Ext.P.6 cancellation agreement. It is also a fact that at no time the 3<sup>rd</sup> defendant had opted to approach a civil court for establishing that Ext.P.6 is a product of coercion. Therefore, Ext.P.6 stands.
- j) As stated, Ext.P.6 proposes to cancel both Ext.P.4 and P.5, but only upon the defendant paying the plaintiff a sum of Rs.52,60,30,000/- This is made clear in Clause 2 (a) of Ext.P.6. And, the defendant had not complied with the said condition subsequently, as a result of which the



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intended cancellation of Exts.P4 and P5 did not happen, and no damage was done to the contractual obligations created thereunder.

5.2 Developing his arguments further, the learned senior counsel submitted, that the plaintiff has retained to himself the option of keeping alive Ext.P4 agreement in two ways: (a) due to the non-performance of the condition stipulated in Ext.P6, there was no cancellation of Ext.P4 and Ext.P5 agreements; and (b) as was earlier stated, since Ext.P.4 was executed by the 3<sup>rd</sup> defendant (along with his brother the 4<sup>th</sup> defendant) by which he had assigned his rights under Ext.P.1 and P.2 in favour of the plaintiff, the former ceased to have any right under Exts.P1 and P2, and inasmuch as Ext.P4 was executed by the 3<sup>rd</sup> defendant along with the 4<sup>th</sup> defendant only in their capacity as the power of attorneys of the first and second defendants (vide Ext.P.3), they only need to execute the sale deed on behalf of the defendants 1 and 2.

5.3 It is true that subsequent to Ext.P6, and after its non-performance, and the institution of a criminal case as referred to above, the parties had entered into Ext.P13 agreement. In this there is hardly any reference to Ext.P.4 to P.6, nor is there anything therein regarding cancellation of the earlier agreements. This



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implies that the right conferred on the plaintiff under Ext.P4 remains intact, submitted the senior counsel.

5.4 The only point which the plaintiff now requires to negotiate is on limitation. It was argued that Ext.P4 sale agreement nowhere has specified any time for performance of the contract by the defendants 1 and 2. This would necessarily mean that the time for performance would run only from the date of denial, which had happened only on 02.12.2012, when the 3<sup>rd</sup> defendant had issued Ext.D.2 notice. Hence, determining terminus quo for computing limitation for instituting the suit will be governed only by second part of Article 54 of the Limitation Act. The suit was instituted on 22.04.2014. The suit is, hence, within limitation.

**B. Arguments of the Official Assignee (5th defendant, representing the estate of the 3<sup>rd</sup> defendant)**

6.1 Mr.K.V.Ananthakrushnan, the learned counsel for the Official Assignee submitted :

- a) The 3<sup>rd</sup> defendant was severely indebted which led a certain Chitra Desai, one of his creditors, filing I.P.No.25 of 2014 to declare the 3<sup>rd</sup>



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defendant as an insolvent. Indeed, the 3<sup>rd</sup> defendant was a financier who had been generously lending money to various persons and was also engaged in real estate business. He also created certain private limited companies taking some of his close relatives as sharers.

b) I.P.No.25 of 2014 was laid on 10.03.2014 and the third defendant was adjudicated as an insolvent on 21.04.2014. In terms of Sec.17 of the Presidency Towns Insolvency Act III of 1909, upon adjudication of a person as insolvent, all his assets would vest in the Official Assignee. Sec.17 specifically stipulates that no suit can be laid vis-a-vis the property of the insolvent except with the leave of the Court. In the instant case, while the 3<sup>rd</sup> defendant was adjudicated as insolvent on 21.04.2014, the suit was presented on the very next day, i.e., on 22.04.2014 to be precise. This implies the plaintiff ought to have obtained the leave of the Court under Section 17 of the Act. Since no leave was obtained, the suit itself is not maintainable.

c) In terms of Sec. 7 of the Act, the questions which arise in an Insolvency proceedings can be decided only by an Insolvency Court, and not by a regular Civil court. Post adjudication of the 3<sup>rd</sup> defendant as an insolvent, cause for the present action which the plaintiff pursues, can be



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decided only by the Insolvency Court.

- d) Once the assets of the insolvent are vested in the Official Assignee under Sec.17 of the Insolvency Act, he takes charge of the same under Sec. 58 of the Act. Indeed, Sec.58(4) includes an actionable claim. This apart, under Sec. 68(d) of the Act, the Official Assignee has the authority to institute any litigation or to continue any litigation laid against the insolvent. This apart, Sec. 65 of the Act vests the Court with the power to rescind any contract too. All these aspects are covered in the report of the Official Assignee dated 18.04.2015 filed before the Insolvency Court. And, the OA has laid applications in A.Nos.345 to 348 of 2015 for the purposes tabulated below :

| <i>Sl. No.</i> | <i>Application No.</i> | <i>Prayer</i>                                                                                                                                                            |
|----------------|------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1              | A.No.345 of 2015       | To Direct to Advocates Mr.Nirmal Cariappa and Mr.K.Jacob George, to hand over the title deeds of the property at Door No.33, College Road, Nungambakkam.                 |
| 2.             | A.No.346 of 2015       | To Permit him to bring the property at College Road, Nungambakkam for public auction and the sale proceeds to be utilised to the claim of the general body of creditors. |
| 3.             | A.No.347 of 2015       | To declare that the cancellation of agreement dated 05.04.2013 as null and void                                                                                          |
| 4              | A.No.348 of 2015       | To stay the proceedings in C.S.No.285 of 2014                                                                                                                            |



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| <b><i>Sl. No.</i></b> | <b><i>Application No.</i></b> | <b><i>Prayer</i></b>                               |
|-----------------------|-------------------------------|----------------------------------------------------|
|                       |                               | relating to the property at Nungambakkam, Chennai. |

e) It is not that the plaintiff has not only failed to obtain the leave of the Court under Sec. 17 for instituting the suit, but he even attempted to obtain an ex-parte decree. The suit was posted for recording *exparte* evidence on 09.07.2015. On that date, the plaintiff knew about the adjudication of the third defendant as an insolvent, and also about the Official Assignee taking control of his assets and liabilities. This is evident from Ext.D1, a claim petition (pertaining to some other transaction between the plaintiff and the 3<sup>rd</sup> defendant under Ext.P14) which the plaintiff had filed on 09.06.2014, about 30 days prior to the date on which the matter was referred to for recording *exparte* evidence.

6.2 Shifting his focus pointedly to the submissions in the counter of the plaintiff's contention, Mr.K.V.Ananthakrushnan would argue :

a) Ext.P4 was conjointly executed by the third defendant/insolvent and his brother the 4<sup>th</sup> defendant, and that the plaintiff had issued Ext.P21, termination notice only on the 3<sup>rd</sup> defendant, but not on the 4<sup>th</sup> defendant.



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- b) Ext.P4 and Ext.P5 must be read conjointly, and they are composite agreements. Indeed, a close reading of these documents will lead to an inference that the joint venture agreement under Ext.P5 paved the way for Ext.P4.
- c) The suit is not maintainable even on the point of limitation. While Ext.P4, agreement was dated 13.12.2006, the suit indeed was laid on 22.04.2014, some eight years thereafter.
- d) Be that as it may, some third parties have laid applications in A.No.41 and A.No.43 of 2018 against the defendants 1 and 2 herein in I.P.No.25/2014 for a direction to deposit the sale consideration to the credit of the estate of the insolvent, but in these applications, defendants 1 and 2 have taken a position that they have no interest in the property, based on which, these applications were closed (documents not filed).

6.3 Arguing further, the Official Assignee contended that the plaintiff tries to oversimplify a complex equation into a simple one. He has projected Ext.P4 as a stand-alone agreement and when the contingency indicated in Ext.P6 was not complied with, it would automatically revive Ext.P4. This however may not fit in if the other associated facts are considered. Developing his arguments, the



learned counsel submitted:

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- a) Ext.P4 is not a stand-alone agreement and Ext.P5 cannot be separated from Ext.P4. Indeed, a close reading of Ext.P5 agreement along with Ext.P6 and Ext.P13 agreements and also Ext.P9, criminal complaint in C.C.No.27547/2012 filed against the 3<sup>rd</sup> defendant would indicate that the dominant intent of the parties is to go for a joint venture agreement, and Ext.P4 agreement for the sale of the suit property is an adjunct agreement entered into between them to give effect to the intent disclosed in Ext.P5 MoU. Reading clauses 9,3,10,4 and 8 in the same order would reflect that the parties intend to develop both the suit property in Door No.33 and the adjacent property bearing Door No.34 belonging to the 3<sup>rd</sup> defendant. And clause 4 thereof makes a statement that the third defendant would assign his right and interest over the suit property as part of the joint venture agreement in Ext.P5.
- b) Now if as contended by the plaintiff, on the default of the 3<sup>rd</sup> defendant to pay a sum of Rs.52,60,30,000/- as stipulated in Ext.P6 not just Ext.P4 sale agreement would be revived, but Ext.P5 will also get revived. However, today, Ext.P5 joint venture has become incapable of being performed, and inasmuch as the reason for entering into Ext.P4



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agreement itself has failed, and it too has become incapable of being performed.

- c) Alternatively, if Ext.P6 is considered as reviving Ext.P4 sale agreement, it still cannot be enforced, since the property scheduled to in Ext.P6 agreement is only the suit property and not the other property bearing Door No.34. However, inasmuch as the sale agreement as regards the suit property cannot stand in isolation without the other property in Door No.34, it cannot still be enforced.
- d) Today, building No.34 is not available as the third defendant himself had sold it to a certain Amarnath Reddy vide Ext.P8, sale deed dated 27.07.2012, and when this building is not available, MoU cannot be performed and necessarily Ext.P4 agreement too cannot be performed.
- e) Under Ext.P6, the 3<sup>rd</sup> defendant was to pay the plaintiff a sum of Rs.52,60,30,000/-. Indeed, Ext.P6 refers to a cheque dated 13.06.2012 for the said sum. When this cheque was dishonoured, the third defendant issued another post-dated cheque bearing the date 13.10.2012 for a sum of Rs.56,93,75,000/-. A copy of this cheque is available in Ext.P7 series of documents. This cheque when presented, was dishonoured, following which the plaintiff has instituted C.C.No.27547/2012 before the Chief



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Metropolitan Magistrate Court, Bangalore. This is disclosed in Ext.P9, a copy of the said complaint.

6.4 The OA then proceeded to make a very fair statement that he had tried to have Ext.P8 sale deed cancelled under Sec. 65 of the Presidency Towns Insolvency Act, but the same was dismissed as a learned Single Judge of this Court had found that the sale was a *bonafide* sale made by the third defendant in favour of the purchaser under Ext.P8, and that it was not intended to defeat the interest of the creditors. This was confirmed by a Division Bench in OSA.Nos.214 to 219 of 2016.

### **Discussion & Decision:**

7. The battle lines are well drawn. And it is adequately made known through the rival arguments. The parties apparently knew what they were contesting, had gone to trial, and had also assumed unambiguous stands vis-a-vis the cause of action through the line of their arguments. Given the position that the parties herein have assumed, it is made evident to this Court about the issues on which parties require a finding from this Court. Hence, this Court considers it necessary to recast the issues, and they are:



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1. *What is the nature of right that the 3<sup>rd</sup> defendant obtained under his agreements with defendants 1 and 2 dated 18.08.2006 and 28.08.2006?*
2. *What is the nature of right which the plaintiff had obtained under the sale agreement dated 13.12.2006, and what remained in the 3<sup>rd</sup> defendant after executing this agreement?*
3. *Whether the sale agreement and the MoU, both dated 13.12.2006, should be read as indivisible document?*
4. *In the context of the sale agreement dated 13.12.2006 entered into between the plaintiff and the 3<sup>rd</sup> defendant along with the 4<sup>th</sup> defendant, what is the nature of the right which vested in the Official Assignee upon the adjudication of the 3<sup>rd</sup> defendant as an insolvent?*
5. *What is the effect of the deed of cancellation dated 23.02.2012, and the subsequent agreement dated 05.04.2013 which the plaintiff and the third defendant had entered into on the suit sale agreement dated 13.12.2006?*
6. *Is the suit barred by limitation?*
7. *Whether the plaintiff is entitled to a relief of specific performance of the sale agreement dated 13.12.2006?*
8. *What is the order as to costs.*

### **ISSUES 1 AND 2 (RECASTED)**

8. The admitted position is that the suit property originally belonged to defendants 1 and 2. They entered into Ext.P1 sale agreement with the 3<sup>rd</sup>



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defendant for the sale of the suit property. Under Ext.P1, the 3<sup>rd</sup> defendant had paid only Rs.2.5 lakhs to each of the defendants 1 and 2. However, ten days later, on 28.08.2006, he paid the balance sale consideration to defendants 1 and 2, and it brought into existence Ext.P.2, again in the name of the 3<sup>rd</sup> defendant exclusively. Contemporaneous with Ext.P.2, defendants 1 and 2 had executed Ext.P3 Power of Attorney, constituting the 3<sup>rd</sup> defendant and his brother, the 4<sup>th</sup> defendant as their power holders. If these three documents are spread on a plane of law to understand their legal consequence, it produces the following effect:

- a) Notwithstanding the payment of the entire sale consideration by the 3<sup>rd</sup> defendant to defendants 1 and 2 under Exts.P.1 and P.2, the right the former had obtained was only a personal right to enforce Ext.P.1 contract against the latter, since in terms of Sec.54 of the Transfer of Property Act, an agreement to sell does not create any interest in the suit property in favour of the 3<sup>rd</sup> defendant. See ***Suraj Lamps & Industries v State of Haryana*** [AIR 2012 SC 206].
- b) To reiterate and to re-emphasise, the 3<sup>rd</sup> defendant never acquired any right or interest over the suit property, except the right to hold



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possession given in pursuance of the sale agreement.

- c) So far as Ext.P3 is concerned, in nominating the 3<sup>rd</sup> defendant and his brother the 4<sup>th</sup> defendant as their Power of Attorney, defendants 1 and 2 had only appointed them as their agents. While the 3<sup>rd</sup> defendant had obtained at least a contractual right of enforcing Ext.P.1 agreement against defendants 1 and 2, the 4<sup>th</sup> defendant was no more than a mere agent of these defendants.
- d) Regarding Ext.P.3 Power of Attorney, insofar as the 3<sup>rd</sup> defendant - agreement holder (under Exts.P.1 read with P.2) had paid the entire sale consideration payable under Ext.P1, it may be considered as an irrevocable power of attorney, as it was coupled with an interest for securing the investment which the 3<sup>rd</sup> defendant had made under the sale agreement. There is, however, no specific clause regarding it.

9.1 The scene now changes. Here, defendants 3 and 4 *as the Power of Attorneys or the agents of defendants 1 and 2*, executed Ext.P.4 sale agreement dated 13.12.2006, in favour of the plaintiff. This is a composite document with two independent parts: (a) first is the sale agreement part, which, as stated earlier, both defendants 3 and 4 had executed as the agents of



the vendors; and (b) a confirmation agreement which relates exclusively to the 3<sup>rd</sup> defendant, under which the 3<sup>rd</sup> defendant confirms his nomination of the plaintiff as the purchaser of the suit property, which otherwise may be termed as transfer of his contractual right created under Exts.P.1 and P.2 to the latter. The relevant portion will be extracted, *infra*. The sale consideration payable under Ext.P.4 was Rs.5.0 crores, and it was fully paid to the 3<sup>rd</sup> defendant, and this is not in dispute.

9.2 One immediate consequence of the execution of Ext.P.4 sale agreement is, the irrevocability-aspect of Ext.P3 Power of Attorney which the defendants 1 and 2 had executed in favour of the 3<sup>rd</sup> defendant, something which this Court has earlier indicated, for protecting the investment made by the 3<sup>rd</sup> defendant, This was shifted to secure the investment of Rs.5.0 crores made by the plaintiff under Ext.P.4. To recall, the vendors under both Exts.P1 and P2, and also Ext.P.4 are the same ie., the defendants 1 and 2.

10. On the same date (13.12.2006) both the plaintiff and the 3<sup>rd</sup> defendant had entered into Ext.P.5 MoU, for developing the suit property along with its adjacent property belonging to the 3<sup>rd</sup> defendant. In this document, the 3<sup>rd</sup>



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defendant corroborates and reaffirms his intent as disclosed in the confirmation-agreement part of Ext.P.4. This intent of the 3<sup>rd</sup> defendant as disclosed by Exts.P4 and P5 are now extracted:

|               |                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                        |
|---------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Ext.P4</b> | <b>Last Recital</b>                                                                                                                                     | <b><i>“Where as the Confirming Party has nominated the Purchaser herein and the purchaser is desirous of purchasing the Schedule mentioned property for a sale consideration of Rs.5,00,00,000 (Rupees Five Crores only) on the following terms and covenants. In order to assure and give a better tile to the Purchaser, the Confirming Party has also joined as a Party to this Agreement.</i>”</b> |
|               | <b>Clause 1</b>                                                                                                                                         | <b><i>“The Vendors* agree to sell and the Purchasers agrees to purchase the Schedule Property.</i>”</b>                                                                                                                                                                                                                                                                                                |
|               | <i>* Vendors in Ext.P.4 are defendants 1 and 2, and to repeat defendants 3 and 4 sign the document only as the Power holders of defendants 1 and 2.</i> |                                                                                                                                                                                                                                                                                                                                                                                                        |

Turning to Ext.P5 (In this document, the 3<sup>rd</sup> defendant was described as the Party of the First part, and the Plaintiff was described as the Party of the Second Part), and the suit property herein is described as the A schedule property. In the last recital to this document, it is recited:

*“....The party of THE SECOND PART approached the PARTY OF THE FIRST PART and offered to purchase the Schedule A property to develop and sell along with the Schedule Property B property. The PARTY OF THE FIRST PART agreed to sell the Schedule A property to the PARTY OF THE SECOND PART, and assign his right and interest.”*



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over the Schedule A property and the Agreement to sell dated 19.08.2006 and 28.08.2006 and deliver vacant possession of the A schedule property to the PARTY OF THE SECOND PART.."

No more can there be a doubt, nor could anyone create one, that the 3<sup>rd</sup> defendant had, in unequivocal terms, assigned the contractual right that he had obtained under Ext.P.1 and P.2, to the plaintiff. And, the fact that the First Party to Ext.P.4 are defendants and 1 and 2, and the fact that the 3<sup>rd</sup> defendant had executed this document in twin capacity (one as one of the two Power of Attorneys constituted by defendants 1 and 2, and the other as a Confirming Party) makes it amply evident, that with the execution of Ext.P.4 and P.5, whatever contractual rights the 3<sup>rd</sup> defendant had possessed under Ext.P.1 and P.2 has now changed, and with it occurred the elimination of the 3<sup>rd</sup> defendant from the equation. To state it differently, post execution of Ext.P.4, the role of the 3<sup>rd</sup> defendant is relegated to that of a mere agent of defendants 1 and 2, and no more.

11.1 To sum up, and to answer **Issues 1 and 2**, it is held that under Exts.P.1 and P.2, the 3<sup>rd</sup> defendant had only a personal right to enforce these contracts without any right over the property, except his right to be in possession of the



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same, which is capable of being protected under Sec.53A of the Transfer of Property Act. The situation for invoking Sec.53-A however, did not arise, as the 3<sup>rd</sup> defendant himself had transferred his right under Ext.P1 and P2 along with the possession of the suit property to the plaintiff vide Ext.P.4. ***And, once the possession which the plaintiff had obtained under Ext.P4 was handed over back to the 3<sup>rd</sup> defendant under Ext.P5, the former's capacity had changed, and the 3<sup>rd</sup> defendant would be holding possession of the suit property only as a trustee for the plaintiff, and not under any independent capacity.*** See. 88 of the Indian Trust Act.

11.2 To repeat, the 3<sup>rd</sup> defendant has now been reduced from the status of an agreement holder with contractual rights under Ext.P1 and P2, to a mere agent of the defendants 1 and 2 under Ext.P.3. Issues 1 and 2 are answered accordingly.

### **ISSUE No.3:**

12.1 Even though it was argued by the OA that Ext.P4 and P5 must be read together as conveying a certain intent, this is not seen pointedly pleaded by him in his written statement. This Court however decided to address it for



completeness.

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12.2 Turning to this issue, the findings on issues 1 and 2 having been entered, this Court now proceeds to consider whether Ext.P4, sale agreement and Ext.P5, MoU have to be read as one composite document, with one having the ability to affect the other, the fact that these two are independently executed documents notwithstanding. Here the strategy of the OA is to establish that since the MoU had failed or could not be performed, Ext.P4 too will automatically fail, meaning thereby, the plaintiff would now be entitled to nothing more than a claim for the money he had either invested, or advanced, as the case may be, and consequently will only be entitled to a rateable distribution of the resources which the estate of the 3<sup>rd</sup> defendant may enable him to raise.

12.3 When Ext.P.4 is read plainly, understanding the expressions used therein, it only discloses (a) that defendants 1 and 2 had promised to sell the suit property to the plaintiff; (b) that the 3<sup>rd</sup> defendant who had earlier entered into Exts.P.1 and P.2 sale agreements, had assigned his right obtained under them to the plaintiff, and thereby, had made it a straight contractual equation between



the plaintiff and defendants 1 and 2. Turning to Ext.P.5, this document was a bilateral document executed by the plaintiff and the 3<sup>rd</sup> defendant, in which defendants 1 and 2 do not figure. Turning to the aspect raised by the OA, this Court does not consider that despite the fact that Exts.P4 and P5 were executed contemporaneously, they should be read as one composite document. The reasons are :

- a) As indicated earlier, the vendors under the Ext.P4 sale agreement were defendants 1 and 2. The fact that this document was executed by the 3<sup>rd</sup> defendant on behalf of defendants 1 and 2 as the latter's Power of Attorney does not make Ext.P.4 a document executed by the 3<sup>rd</sup> defendant in any independent capacity.
- b) As found earlier, the only right that the 3<sup>rd</sup> defendant had possessed at all times was the contractual right personal to him for enforcing Ext.P1 and Ext.P2 agreements against defendants 1 and 2, and once this right was assigned to the plaintiff, no right vis-a-vis Ext.P1 & Ext.P2 continues to vest in the 3<sup>rd</sup> defendant.
- c) Again, as already been found, inasmuch as the 3<sup>rd</sup> defendant had received the consideration from the plaintiff for assigning his contractual interest to the latter, the owners of the property namely



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defendants 1 and 2 can even revoke the Power of Attorney, and choose to execute the sale deed directly to the plaintiff. This would imply that the role of the 3<sup>rd</sup> defendant can be entirely eliminated from the scheme of performance of Ext.P4, sale agreement. This reinforces the view of this Court that Ext.P4 can operate on its own strength, and it does not and need not draw any power from Ext.P.5 MoU for sustaining its enforceability against the first and the second defendants.

d) Turning to Ext.P5, this in essence is a joint-venture agreement which the plaintiff and the third defendant had joined to execute. Since the possession of the suit property had already been given to the 3<sup>rd</sup> defendant by defendants 1 and 2 under Ext.P1 and Ext.P2, which possession the 3<sup>rd</sup> defendant had in turn transferred to the plaintiff under Ext.P4, the plaintiff re-transferred this possession to the 3<sup>rd</sup> defendant under Ext.P5 MoU as part of his JV commitment for developing the suit property along with the adjacent property belonging to the 3<sup>rd</sup> defendant. Now, if for some reason, the MoU fails to take off (which has actually happened in this case), say for instance, where both the parties to Ext.P5, choose to terminate it, or



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where the 3<sup>rd</sup> defendant's right over his property in Door No:34 was lost to him by operation of any law, it only makes the MoU impossible of performance, but it cannot affect the performance of Ext.P4, sale agreement. After all, when the plaintiff seeks to enforce Ext.P4, it is the defendants 1 and 2 who have to perform the agreement, and not the 3<sup>rd</sup> defendant, and the former can now sideline the latter, and opt to perform the contract, eliminating the 3<sup>rd</sup> defendant entirely from the line of action. Here a few salient aspects of the MoU may be highlighted:

- Clause 4 states that the 3<sup>rd</sup> defendant would enter into an agreement for sale with the plaintiff to assign his right and interest over the suit property. This has been fulfilled with the execution of Ext.P4;
- Under Clause 8, the third defendant agrees to sell the suit property along with the constructions to prospective purchasers with the knowledge and consent of the plaintiff;
- Under Clause 9, the third defendant agrees to complete the development of the suit property and also his own adjacent property within a period of 24 months;



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- Clause 20 provides for arbitration of any dispute that may arise while working on the MoU.
- And that the plaintiff had advanced Rs.15.0 crores as a loan to the third defendant.

When the contents of Ext.P5 is juxtaposed with that of Ext.P.4 it makes it evident that both Exts.P.4 and P.5 are made with different and differing intent. Given the setting in which these two documents had come into existence, it is possible to infer that if the performance of Ext.P.4 fails, it may impact the performance of Ext.P5, but not vice versa. As will be seen later in paragraph 20(c), the third defendant sold his property at door No:34, and committed breach of the MoU, and it is demonstrated there that Ext.P.4 will not fail with that. It cannot, since the plaintiff had paid a separate sale consideration of Rs.5.0 crores under Ext.P4.

12.4 It has to be stated that there might have been an intent as indicated by the Official Assignee when Ext.P.4 and P.5 were executed, but this cannot affect the need for performing Ext.P4 agreement, since both the sale agreement and the joint venture agreement have to be performed by different entities for



different objectives.

12.5 To conclude the discussion on this issue, this Court holds that Ext.P4 can have its independent existence, dehors the MoU, and Issue 3 is answered accordingly.

#### **ISSUES 4 & 5**

13. This relates to the nature of the right of the third defendant vis-a-vis the ongoing dispute, which came to be vested in the Official Assignee when the former was declared as an insolvent. As was found earlier, at no point of time, the 3<sup>rd</sup> defendant had any interest in the suit property as he was a mere agreement holder though with possession of the property, which too had come end when he transferred his rights and interests to the plaintiff under Ext.P4 along with possession of the suit property.

14. The strategy of the OA here is slightly complicated. It is as below:

- a) When Ext.P6 cancellation deed followed by Ext.P.13 deed, the right which the plaintiff claims under Exts.P4 and P5 stands superseded;
- b) Once, Ext.P4 is superseded by Exts.P6 and P13, it revives instantly



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revives Ext.P1 and P2 agreements, and the OA is entitled to enforce against the defendants 1 and 2. The justification for this is that the 3<sup>rd</sup> defendant had paid Rs.4,08,65,624/- under Ext.P1 and Ext.P2, and to that extent an equitable interest was created in his favour vis-a-vis the suit property, and this right has now vested in the Official Assignee. Besides, the possession of the suit property is also with the 3<sup>rd</sup> defendant in terms of Ext.P5 MoU.

- c) So far as the plaintiff's claim is concerned, it is now reduced to a mere money claim, but it is not what is stated in Ext.P13. This is because Ext.P.13 agreement was executed on 05.04.2013, within two years next before the adjudication of the 3<sup>rd</sup> defendant as an insolvent in IP 25 of 2014, the same is void.
- d) What the plaintiff, therefore, can only claim is Rs.20.0 crores which he had paid under Exts.P4 and P5, like any other creditor of the 3<sup>rd</sup> defendant, but subject to proof that he had actually paid the said sum.

15. Principally this Court considers that the OA, in making his moves through his labyrinthine-strategy, exposes himself to the compulsions of negotiating a few internal contradictions. This is now explained: None - neither the OA, nor



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the 3<sup>rd</sup> defendant had disputed the execution of Exts.P4 and P5, nor about the payment of the entire sale consideration of Rs.5.0 crores under Ext.P4, and a loan of Rs.15.0 crores under Ext P.5 by the plaintiff. Indeed, in about eight years, between 13.12.2006, the date on which Exts P.4 and P.5 came into existence, and on 21.04.2014, the date on which the 3<sup>rd</sup> defendant was adjudicated as an insolvent, the 3<sup>rd</sup> defendant never chose to deny the payment of a total sum of Rs.20.0 crores made by the plaintiff in 2006. It is therefore, not given to the OA, who had arrived on the scene only after 21.04.2014 (being the date of the order of adjudication) to deny that which the 3<sup>rd</sup> defendant had not chosen to deny for eight years. Therefore, why should the OA seek proof of these payments, in the eventuality of the plaintiff joining the queue of the creditors for making his claim?

16.1 Now, arrives the core issue: What is the effect of Exts.P6 and P13 on Ext.P4? Here it may have to be clarified, that so far as Rs.15.0 crores which the plaintiff had lent the 3<sup>rd</sup> defendant, as the OA had contended, the plaintiff might have to be at par with other creditors of the insolvent and that it is a debt merely. And, even going by the MoU, this loan was not intended to be absorbed in the intended development of the suit property.



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16.2 Turning to Ext.P6 cancellation deed, while the OA seems to agree about its execution, the 3<sup>rd</sup> defendant, the one who ought to speak about it, has alleged in Ext.D2 reply notice that it was executed under duress, notwithstanding the fact that he had earlier admitted its execution without any qualification in Ext.P15, (the copy of the Transfer Petition 341 of 2013 which the 3<sup>rd</sup> defendant had filed before the Hon'ble Supreme Court for transfer of C.C.27547 of 2012 that was pending before the Metropolitan Magistrate Court, Bangalore to Chennai). His double speak makes his position viz-a-viz the genuineness of Ext.P6 ambivalent. For the strategy of the OA to work, there should be a committed position viz-a-viz the genuineness of Ext.P6. Here the OA cannot build a case inconsistent with the position that the 3<sup>rd</sup> defendant had assumed.

16.3 The next aspect is that the 3<sup>rd</sup> defendant had paid the entire sale consideration under Exts.P1 and P2 to defendants 1 and 2, and hence his contract with the defendants is still capable of enforcement. What he conveniently sidelines is that the plaintiff too had paid the entire sale consideration under Ext.P4, and in fact had paid more than what the 3<sup>rd</sup> defendant had paid under Exts.P1 and P2. And, what the OA seems to have



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ignored is that, in a matter of about 4 months, the 3<sup>rd</sup> defendant had already made a profit of about 92.0 lakhs. If the strategy of the OA were to succeed, then the interest of the plaintiff - the one who had paid more under Ext.P4 than the 3<sup>rd</sup> defendant had paid under Exts.P1 and P2, must be put under the guillotine. The plaintiff must be made a sacrificial goat to save the interest of the creditors of the 3<sup>rd</sup> defendant. The plaintiff had entered into pure and simple commercial contracts with the 3<sup>rd</sup> defendant to obtain a benefit in its favour, and for consideration, and has not surrendered its interest at any time for saving the interest of the creditors of 3<sup>rd</sup> defendant. After all the plaintiff did not introduce itself as a charitable institution.

16.4 The OA is keen to keep alive the contractual interest of the insolvent obtained under Exts.P1 and P2, which the latter had lost to the plaintiff even in 2006, and for it to happen the plaintiff must be stripped of all the rights that he had obtained under Ext.P4 which he had bonafide entered. And, today the plaintiff finds himself in a situation which he could not have anticipated even in its wildest contemplation, and also in a trap, not due to any of its faults, but singularly due to the fault of the 3<sup>rd</sup> defendant. Should the fault of the 3<sup>rd</sup> defendant go unaccounted? Do Courts exist to put premium on the defaulters



and contract-breakers? This is a suit for specific performance, and given the factual matrix of this case, this Court is compelled to examine the conduct of the defendant under the forensic microscope, even as it evaluates the conduct of the plaintiff.

17. The next limb of the defence-strategy is that with Ext.P6 and Ext.P13 arriving on the scene, Ext.P4 stood superseded. Let this be examined. It is now an indisputable fact that the plaintiff had fully performed his part of the contract in terms of Ext.P4 agreement. According to the plaintiff, he and the 3<sup>rd</sup> defendant had entered into Ext.P6 cancellation agreement by which both had agreed to cancel both Ext.P4 and Ext.P5. But there is a string attached to this document, in that, the 3<sup>rd</sup> defendant was now required to pay the plaintiff a sum of Rs.52,60,30,000/-, and towards payment of which the latter had issued a cheque. This is made evident in Clause 2(a) of Ext.P6, which reads as below :

*"2. Subject to realization of the aforesaid cheque and in consideration of such payment :*

*(a) the Agreement for Sale dated 13.12.2006 and the Understanding recorded in the Memorandum of Understanding dated 13.12.2006 shall stand cancelled in all respects so that the parties hereto stand discharged from all their respective obligations under the said Agreement and the*



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*said Understanding."*

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As stated, 3<sup>rd</sup> defendant's position viz-a-viz Ext.P6 was ambivalent. He chose not to file any written statement explaining it either. Given the scenario, the OA cannot step into the shoes of the insolvent to plead against the genuineness of Ext.P6. (And, it must be stated to the credit of the OA, that he positioned himself with absolute dignity and considerable fairness consistent with his role).

18. Turning to the point under consideration, the 3<sup>rd</sup> defendant had issued a cheque for the sum stated in Ext.P6, and it was dishonoured, following which criminal proceedings were launched against him by the plaintiff. This amount payable was never realised, which implied that the condition precedent for the cancellation of the Ex.P4 contract, of which this Court is presently concerned itself, was not complied with. Reading the recitals of Ext.P6 it is clear that cancellation of Exts.P4 and P5 can happen only when the sum covered under the cheque was realized. Evidently, the sum was never realized and hence the cancellation of Exts P4 and P5 as contemplated under Ex P6 never kicked in.



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19. Now, during the pendency of the criminal proceedings relating to dishonour of the cheque referred to above, parties again came out with Ext.P.13, dated 05.04.2013, but it does not state anything about the cancellation of Exts P.4 and P.5. What Ext.P13 in effect has done is that it replaced Rs. 52,60,30,000 that was required to be paid by the 3<sup>rd</sup> defendant under Ext.P6 with Rs.62.50 crores. It was stipulated in Clause 4, that this amount had to be paid within 12 months in 13 instalments. It was also provided under clause 5, that on execution of Ext.P.13, the two Advocates (who are third parties to Ext.P.13), in whose custody the title documents of the suit property is (which had been earlier handed over by the plaintiff to the 3<sup>rd</sup> defendant pursuant to Ext.P.5 MoU) would be returned to the plaintiff. And under Clause 7, it is made evident that if the 3<sup>rd</sup> defendant commits any breach in making payments as per the schedule of payments, the plaintiff would have the right to cancel Ext.P.13. And, P.13 came to be cancelled through Ext.P.21 notice, since the 3<sup>rd</sup> defendant did not make payments as mandated under Ext.P13. And, it had happened even before the adjudication of the 3<sup>rd</sup> defendant as an insolvent. Now, the OA requires this Court to inject life into a document which even the 3<sup>rd</sup> defendant did not consider it necessary to revive. For the OA to succeed, the termination of Ext.P13 must have been challenged, but the 3<sup>rd</sup> defendant did not challenge it as



required in the ratio in ***I.S.Sikandar(Dead) by LRs. Vs K.Subramani and Others*** [(2013) 15 SCC 27]. The OA, howsoever noble his intent may be, in discharging his responsibility, yet he may not do that which the 3<sup>rd</sup> defendant had omitted to do before he was declared an insolvent, for the OA is not the conscience keeper of the insolvent, but only a manager of his estate.

20. Now, can it be contended that the plaintiff had opted to settle for money under Exts.P6 and P13, in substitution of his rights under Ext.P4? Here, it should not be ignored that the plaintiff had received Rs.1.50 crores on 31.03.2013, a few days prior to the execution of Ext.P13. This Court considers that the plaintiff's right to enforce Ext.P4 still remains intact, despite Exts.P6 and P13, and the reasons are:

- (a) Never had the plaintiff been seen to have indicated an intent to settle for money in substitution of its right under Ext.P.4. If that is so, when it entered into Ext.P6, it need not have made cancellation of Ext.P4 conditional upon payment of the amount stipulated by the 3<sup>rd</sup> defendant. What it signifies is that, at all material times, the plaintiff has been careful enough to retain control over its right under Ext.P.4 even as it



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entered into Ext.P6 and then Ext.P.13. On the day when it entered into Ext.P6, the plaintiff had already been bitten badly, which never was in contemplation when Ext.P4 was made. Standing in the shoes of the reasonable man of law, and applying the thumb rule of '*ordinary course of human conduct*' in appreciation of evidence, this Court considers that the plaintiff has behaved exactly along the lines anyone with some degree of common sense and commercial prudence would have behaved to secure its interest. '*How to trust the 3<sup>rd</sup> defendant any longer*', should have occupied its consciousness more, but for which there was hardly any reason for making the cancellation of Exts.P4 and P5 conditional. Now, if the contention of the OA were to be accepted, where to hide the conditional cancellation, and the subsequent breach of that condition stipulated by the 3<sup>rd</sup> defendant? It is true, that the plaintiff tried to encash the cheque for the payment of the amount stipulated in Ext.P6 by the 3<sup>rd</sup> defendant, and had even laid criminal proceedings, but can it be inferred that he had done it by surrendering his right under Ext.P4? In circumstances such as this, the Court should be, and would be wary of applying pure logic as in solving a problem in mathematics, but must endeavour to understand a fact in its contextual setting. After all life of



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law is not logic but experience. When this Court tries to appreciate the point in the context of the experience which the plaintiff was going through when Ext.P6 was executed, it does hear a loud statement from it, that it was keen to get out of the mess which the 3<sup>rd</sup> defendant had created for it, still it was careful enough not surrender the interest it has under Ext.P4.

(b) Turning to Ext.P.13, as stated earlier today it stands terminated vide Ext.P.21, but to sustain the theory of the OA one has to revive Ext.P.13, and then Ext.P.6, but when the 3<sup>rd</sup> defendant had not chosen to challenge the termination.

(c) It is an admitted position that the plaintiff had received Rs.1.50 crores under Ext.P.13. But it will have little impact on plaintiff's right under Ext.P4. This is now explained:

- i. Under Ext.P6, there was an agreement to cancel both Ext.P4 and Ext.P5 together on payment of the consolidated sum of money. However, on 27.07.2012, under Ext.P8, the third defendant had sold his property at Door No.34. The arrangement under Ext.P5 is that while the plaintiff was to offer the suit property, the third defendant was to offer his property at Door No.34 for the joint



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venture. But this Ext.P5 MoU has almost become incapable of performance, unless the plaintiff also lays a suit for specific enforcement of this joint venture contract. To state in differently, on the execution of Ext.P8, only Ext.P4 is capable of being enforced whereas Ext.P5, MoU has come to a necessary end due to breach of contract by the third defendant. It could now be derived from the situation created by the default of the third defendant, that Ext.P4 and Ext.P5 cannot co-exist any longer as was envisaged when Ext.P6 cancellation agreement was entered into. They both got severed, and accordingly Ext.P4 alone is still capable of performance. The payment of Rs.1.50 crores by the third defendant to the plaintiff on 31.03.2013 must be seen in this context.

- ii. Under the MoU, the plaintiff had advanced Rs.15.0 crores to the 3<sup>rd</sup> defendant, which the former was keen to recover from the 3<sup>rd</sup> defendant. Therefore, unless it is pleaded and established that Rs.1.50 crores paid by the defendant, few days before Ext.P13, represented repayment of the sale consideration which the plaintiff



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had paid under Ext.P4, it cannot be held that the plaintiff had intended to give up his right under Ext.P4. After all the condition precedent imposed under Ext.P6 is the full payment of the entire money indicated therein for the intended cancellation of Exts.P4 and P5 to take effect. To repeat and to re-emphasize there is nothing on record to show that the plaintiff intended to give up his right under Ext.P4 till he was fully paid what was promised to him.

iii. There is an another way of looking at it. When once Ext.P5 MoU was breached, necessarily the benefit received by the third defendant, more particularly, the loan amount of Rs.15.0 crores plus interest has to be restored back to the plaintiff. Therefore, given the point that plaintiff at all times intended to retain control over his interest under Ext.P4, the nearest probability is Rs.1.50 crores would have been received only towards part restoration of the benefit received under Ext.P5 MoU.

21. When the 3<sup>rd</sup> defendant had assigned his right obtained by him under Exts.P1 and P2 to the plaintiff vide Ext.P4, where then exists either a legal right or an equitable interest in favour of the 3<sup>rd</sup> defendant under Ext.P.1 and P.2, as



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to form part of his estate when he was adjudged as an insolvent? None at all. To recall, the only role which the third defendant could play was that of a Power of Attorney, or as an agent, of defendants 1 and 2. This is a mere personal obligation of the 3<sup>rd</sup> defendant to defendants 1 and 2, and it can never become part of his estate. This personal obligation as an agent would necessarily come to an end by virtue of the order of adjudication under Sec. 17 of the Presidency Towns Insolvency Act, 1909, since adjudication as insolvent would result in a situation akin to a “civil death” of the person so adjudged insolvent. See ***Paramjeet Singh Patheja v ICDS Limited*** [(2006) 13 SCC 322]. Even otherwise, with the demise of 3<sup>rd</sup> defendant, the agency between him and the defendants 1 and 2 had come to an end.

22. An interesting aspect which appears intriguing to this court is effect of the sale of an exclusive and independent property of the 3<sup>rd</sup> defendant in door No:34 (which was proposed to be developed along with the suit property in terms of Ext.P5 MoU) to a third party under Ext.P-8 sale deed, dated 27.07.2012. This sale, though was made within two years next before the 3<sup>rd</sup> defendant was declared as an insolvent on 21.04.2014, has been found to be a bonafide sale by this Court in OSA.Nos.214 to 219 of 2016, and it has become



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final. But a sale agreement (Ext.P4) which was made some eight years prior to the date of declaration of the 3<sup>rd</sup> defendant as an insolvent, can be brought under the scanner to secure the interest of the body of creditors of the insolvent, despite the fact that the 3<sup>rd</sup> defendant was shown to have zero interest vis-a-vis Ext.P1 and P2 contract. **An estate that could not even secure to itself the property of the very insolvent for the benefit of his creditors, is now seen angling for the property of defendants 1 and 2, in relation to which only the plaintiff has Ext.P4 agreement.** Does it not appear strange, inequitable, and unconscionable?

23. The Official Assignee took this Court extensively to a few provisions of the Presidency Towns Insolvency Act, 1909. Referring to these provisions may be necessary only if a suit is laid vis-a-vis the estate of an adjudicated insolvent, but the Act has no application where a litigation does not involve any such estate. Today, even the presence of the 3<sup>rd</sup> defendant (who at any rate is now no more) for executing the sale deed is not necessary, since Ext.P4 was executed only by defendants 1 and 2 through the 3<sup>rd</sup> defendant. This issue is resultantly decided against the Official Assignee.



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24. To conclude the discussion on these issues, this Court holds the 3<sup>rd</sup> defendant did not have any right which the law recognises as a right, either over the suit property, or under Exts.P1 and P2 for it to vest in the OA, and that neither Ext.P6 nor Ext.P13 will affect the plaintiff's right under Ext.P4. At the best Ext.P6 and P13 may only mean that the plaintiff might be planning to get out of the mess created by the non-performance of the contractual obligations by the 3<sup>rd</sup> defendant, but does not indicate any intent to forego or sacrifice the interest that the plaintiff had obtained under Ext.P4 till he is fully paid. These issues are answered against the OA.

#### **ISSUE 6 :**

25. Is this suit barred by limitation? Here this Court agrees with the contention of the counsel for the plaintiff. Ext.P4 does not stipulate any time for performance; hence, the terminus quo can be reckoned only from the date of denial of performance. See *Madina Begum v Shiv Murti Prasad* [(2016) 15 SCC 322]. The 3<sup>rd</sup> defendant had conveyed his denial only vide Ext.D2, dated 02.11.2012, but the suit was laid on 22.04.2014, well within the three-year limitation period stipulated.



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26. That apart as the Supreme Court has instructively pointed out in *Mademsetty Satyanarayanan Vs G. Yelloji Rao* [AIR 1965 SC 1405], the principles governing the grant of specific relief in India belong to the realm of statutory law, and do not rest purely on equitable principles as in England. The Court points out:

*“7. Mr Lakshmaiah cited a long catena of English decisions to define the scope of a court's discretion. Before referring to them, it is necessary to know the fundamental difference between the two systems—English and Indian—qua the relief of specific performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory law. In England there is no period of limitation for instituting a suit for the said relief and, therefore, mere delay — the time lag depending upon circumstances — may itself be sufficient to refuse the relief; but, in India, mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. If the suit is in time, delay is sanctioned by law; it is beyond time, the suit will be dismissed as barred by time; in either case, no question of equity arises.”*

The aforesaid decision has been followed in *R. Lakshmikantham Vs Devaraji* [(2019) 8 SCC 62]. Resultantly, the issue of limitation must also be answered in favour of the plaintiff.

**ISSUE No: 7**



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27.1 Should the plaintiff be granted the discretionary relief of specific performance? Why not, since nowhere he is seen to have been at fault? It must be remembered that the entire sale consideration had been paid upfront. This is an important consideration that must weigh with the Court when it decides to grant or withhold specific relief. In ***Chokkammal Vs K. Balraj*** [2009 (3) MLJ 1168], this Court had observed that withholding specific performance where the entire sale consideration had been paid upfront would be inequitable in view of Section 10 of the Specific Relief Act, which states that in respect of immovable property, the breach on the part of the vendor cannot be compensated only by money and specific performance of the agreement alone is the adequate remedy. As regards the requirement of Section 16 of the Specific Relief Act, 1963 this aspect need not detain the Court since the plaintiff has already paid the entire sale consideration and performed his end of the bargain. The requirement of readiness and willingness would, therefore, be relegated to the background (See : ***Ganeshram Satyanarayana Pandya v. Ayaneshwar Bijoria*** [(2000) 6 ALT 739]).

27.2 This Court holds that this plaintiff deserves a decree for specific performance, for at no time it finds it blameworthy. The plaintiff is not seen to



be fraudulent, but is found to be a victim of the fraud played by the 3<sup>rd</sup> defendant.

28.1. This Court is conscious about the plight of the creditors of the insolvent. That is no reason as to why it should destroy the rights of a third party, read it as the plaintiff. For the strategy of the OA to work, at least the money invested by the plaintiff with all interest should have been paid to it first, in order he may aim to restore status quo ante as was prior to Ext.P4. When it comes to payment to the plaintiff, the OA requires the plaintiff to stand in queue with other creditors of the insolvent. So, without payment of money, the OA requires the suit property in relation to which the plaintiff has the right, perhaps its only security for the investment it had made, to come to the estate of the insolvent, so that the latter's creditors can be paid. There is neither equity nor justice.

28.2 For securing interest of these creditors, the right of an innocent agreement holder – to repeat the victim of the 3<sup>rd</sup> defendant's fraud or ploy, should not be killed. In civil litigation, the Court is expected to weigh the rights of the parties viz-a-viz the cause of action, and cannot afford to engage in charity, at the



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expense of the very right which cries for its protection. Courts are only expected to do that which they could do within the framework of law. After all, Courts are not expected to solve all the problems that people may either create for themselves or allow them to visit without an invitation.

29. Here in this case, this Court finds adequate reasons to protect and save the rights of the plaintiff, and there its responsibility ends.

30.1 A.No.2639 of 2016 stands dismissed, since it was filed very belatedly and in the context of the decision made in the suit, an alternate prayer, to introduce which this application was filed, has become irrelevant.

30. Insofar as A.No.365 of 2016 filed by the official assignee is concerned, this application apparently was not pressed, since the applicant / the official assignee has participated in the final arguments fully and effectively. Hence, it is liable to be closed.

## **CONCLUSION:**



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31. In the result the suit is decreed as below:

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- a) The suit is decreed with costs, and defendants 1 and 2 are directed to execute the sale deed as regards the suit property in favour of the plaintiff within a period of one month from today. However, costs is directed to be realised against the estate of the 3<sup>rd</sup> defendant, since it is his default that has led to the institution of the suit.
- b) That the plaintiff is entitled to obtain possession of the suit property.
- c) In so far as connected applications in the suit are concerned, A.No.2639 of 2016 is dismissed and A.No.365 of 2016 is closed.

01.09.2023

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**APPENDIX**

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**I. Witnesses :**

|                            |                                                  |
|----------------------------|--------------------------------------------------|
| <b><i>Plaintiff :</i></b>  |                                                  |
| PW1                        | V.Dinesh Reddy (Director of Plaintiff company)   |
| <b><i>Defendants :</i></b> |                                                  |
| DW1                        | Arjunlal Sunderdas (3rd defendant)               |
| DW2                        | P.S.Krishnan (Section Officer of 5th defendant ) |

**II. Exhibits :**

|        |            |                                                                                                                                                                                                  |
|--------|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ex.P1  | 18.08.2006 | Original registered Agreement of Sale entered into between defendants 1 to 3.                                                                                                                    |
| Ex.P2  | 28.08.2006 | Original Supplemental Agreement of Sale entered into between defendants 1 to 3.                                                                                                                  |
| Ex.P3  | 28.08.2006 | Original registered Power of Attorney executed by defendants 1 to 2 in favour of defendants 3 and 4.                                                                                             |
| Ex.P4  | 13.12.2006 | Original Agreement of Sale entered between the defendants 1 and 2 with the plaintiff, represented by their Power Agent, the 3rd defendant                                                        |
| Ex.P5  | 13.12.2006 | Original Memorandum of Understanding entered between the 3rd defendant and the plaintiff.                                                                                                        |
| Ex.P6  | 23.02.2012 | Original Cancellation Agreement entered between the 3rd defendant and the plaintiff.                                                                                                             |
| Ex.P7  | 13.10.2012 | Original Cheque bearing No.121201 dated 13.10.2012 for a sum of Rs.56,93,765,000/- issued by the 3rd defendant in favour of the plaintiff.                                                       |
| Ex.P8  | 27.07.2012 | Certified copy of Sale Deed executed by defendants 3 and 4 in favour of P.Amarnath Reddy.                                                                                                        |
| Ex.P9  | 17.11.2012 | Certified copy of complaint filed by the plaintiff against the 3rd defendant in PCR.No.2206/2012 in C.C.No.27547/2012 before the XIV Additional Metropolitan Magistrate, Mayo Hall at Bangalore. |
| Ex.P10 | 26.12.2012 | Criminal complaint filed by plaintiff against the 3 <sup>rd</sup> defendant before the CMM, Egmore, Chennai in CrI.MP.No.66/2013                                                                 |
| Ex.P11 | 25.10.2012 | Board of Resolution passed by the plaintiff-company                                                                                                                                              |
| Ex.P12 | 22.01.2013 | Copy of the FIR No.15/2013 on the file of Central Crime                                                                                                                                          |



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|                     |            |                                                                                                                                                             |
|---------------------|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                     |            | Branch, Chennai based on the complaint given by Mr.Dinesh Reddy against Mr.Arjunlal Sundardas.                                                              |
| Ex.P13              | 05.04.2013 | Original sale agreement executed between the plaintiff and the third defendant.                                                                             |
| Ex.P14              | 05.04.2013 | Original sale agreement executed between the plaintiff, its Director and the third defendant.                                                               |
| Ex.P15              | 21.08.2013 | Copy of the Transfer Petitioner (Crl) No.341 of 2013 filed before the Supreme Court of India by the third defendant                                         |
| Ex.P16              | 09.09.2013 | Order of the Supreme Court in Transfer Petition (Crl) No.341 of 2013                                                                                        |
| Ex.P17              | 08.10.2013 | Copy of the petition in Crl.OP.No.26318 of 2013 on the file of High Court of Madras filed by defendants 3,4 and one Mrs.Maya Arjunlal for anticipatory bail |
| Ext.P18             | 21.10.2013 | Petition filed by the plaintiff to dismiss the Crl.OP.No.26318/2013 filed by the defendants for granting anticipatory bail to them.                         |
| Ext.P19             |            | Copy of the petition filed by the third defendant before the High Court of Madras, to quash the FIR in Crime No.15/2013.                                    |
| Ext.P20             | 07.03.2014 | Copy of the counter filed by the plaintiff in Crl.OP.No.30374 of 2013, filed by the third defendant to quash the FIR.                                       |
| Ext.P21             | 10.04.2014 | Letter addressed to the defendants 1 to 3 by the plaintiff                                                                                                  |
| Ext.P22             | 10.04.2022 | Letter addressed to defendants 1 to 3 by the plaintiff regarding correction in the date of the cancellation deed dt. 23.02.2012                             |
| Ext.P23             |            | India Post tracking details                                                                                                                                 |
| <b>Defendants :</b> |            |                                                                                                                                                             |
| Ex.D1               |            | Copy of the IP.No.25 of 2014                                                                                                                                |
| Ex.D2               | 02.12.2012 | Copy of the letter addressed to the Advocate of the plaintiff by the third defendant                                                                        |

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N.SESHASAYEE.J.,

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Pre-delivery Judgment in  
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