

**IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
COMMERCIAL DIVISION**

Present:

The Hon'ble Justice Krishna Rao

CS-COM 741 of 2024

(Old No. CS 276 of 2015)

[Old No. CS-COM 67 of 2024]

[Old No. CS 44 of 2024]

With

IA No. GA 8 of 2023

Frostees Export (India) Pvt. Ltd.

Versus

Sabri Properties Pvt. Ltd. & Ors.

Mr. Sabyasachi Choudhury

Mr. Rajarshi Dutta

Mr. Sayantan Bose

Mr. Sachetan Ghosh

Ms. Ankita Choudhury

Ms. Kuheli Barman

Ms. Neha Mishra

... For the plaintiff.

Mr. Haradhan Banerjee

Mr. Soumajit Majumder

Mr. Sital Chakraborty

Ms. Ankita Bharati

Ms. Susmita Nath

... For the defendants.

Hearing Concluded On : 10.05.2024

Judgment on : 26.07.2024

Krishna Rao, J.:

1. The plaintiff has filed the suit against the defendants for decree a sum of Rs. 2,71,21,096/-, damages of Rs. 300 crores, decree for Rs.10 lacs and interest thereon.

2. CASE OF THE PLAINTIFF :

- a. The plaintiff has applied for dealership of Hyundai Motors India at Howrah. The plaintiff has received a Letter of Intent from Hyundai Motor India Limited offering the plaintiff to establish a dealership at Howrah for sale of passenger range of cars and to provide after sales services and sale of genuine spares for such cars. As per Letter of Intent, 6000 sq.ft. of space required for showroom and about 12000 sq.ft. of space for workshop and also required that either showroom or workshop should be owned.
- b. The defendant no.3 being aware of requirement of the plaintiff, has informed the plaintiff that:

“a. That the defendant no. 3 is developing a property of about 29 cottahs at Dag No. 260, JL

No. 51, Mouza North Nibra, NH-6, P.O. Bankra, P.S. Domjur, Sub-Registry Domjur, District Howrah (hereinafter referred to as "the said property").

b. That the defendant no. 3, through the defendant no. 1, being one of the companies controlled and managed by the said defendant No. 3 and the defendant no. 4 would purchase, develop and built a commercial space in the said property.

c. That after developing and erecting a commercial space in the said property, the said defendants shall sell 6000 square feet carpet area to the plaintiff in the said property for showroom and further grant a lease of a covered area of around 12000 square feet on the ground floor thereof for the purpose of service area of a car workshop."

- c. A Memorandum of Understanding was entered between the plaintiff and the defendant no.1 and the plaintiff agreed to pay Rs. 2.44 crores on diverse dates commensurate with different stages of construction as per the Third Schedule of the Memorandum of Understanding and as per terms and conditions of the Memorandum.
- d. The defendants requested the plaintiff to provide financial assistance on the assurance that the commercial space shall be developed within six months from the date of purchase of the property. The defendant no.1 also assured that the sum of Rs. 2.00 crores which would be lent and advanced by the plaintiff would be secured by way of mortgage of another property which belong to the defendant no.2 being a company managed and controlled by the defendant nos. 3 and 4. The defendant nos. 3

and 4 agreed to mortgage the land about 14 cottahs at Mouza Nibra, District Howrah. The plaintiff has paid the amount of Rs. 2.00 crores to the defendant no. 1 by way of cheque No. 450807 dated 11th October, 2012. On 12th October, 2012, a Mortgage Deed was entered between the plaintiff and the defendant no.1 and defendant no. 2 to enable the plaintiff to secure the said amount.

- e. The defendant no. 1 had purchased only 14.5 cottahs of land out of total 29 cottahs on 18th October, 2012. The defendant no.1 through the defendant no.3 requested the plaintiff that to expedite the construction in the property, the defendant no.1 required further funds and if the mortgaged property of the defendant no.2 is released, the said property could be utilized to arrange loan from any financial institutions by mortgaging the same as the said property fetched good rental income. The defendant no.3 further requested the plaintiff to release the mortgage property and assured that he will mortgage the portion of purchased property by depositing title deeds as security for repayment or adjustment of the amount of Rs. 2.00 crores. The plaintiff relying upon the assurance of the defendants and in order to expedite the construction of the commercial space to facilitate the requirement of the plaintiff, the plaintiff agreed to release the mortgage property. The plaintiff by way of deed of release of mortgaged property dated 21st November, 2012, released the property of defendant no. 2. On the same day, the defendant no.1 mortgaged

the portion of the property purchased by depositing the title deeds with the plaintiff to secure the repayment or adjustment of the amount of Rs. 2.00 crores.

- f. The plaintiff found that only a portion of the property measuring an area of 14.5 cottahs out of total 29 cottahs had been purchased and there was a very little progress in the development work in the purchased property was carried out. In the month of February' 2013, the defendant no.1 has informed the plaintiff that the development in the said property could not be carried out due to the order passed in L.R. Misc. Case No. 3 of 2013 under Section 8 of the West Bengal Land Reforms Act, 1955, initiated by the owner of the adjoining property against the defendant no. 1.
- g. The plaintiff being suspicious by the conduct of the defendants made enquiry and on enquiry, it was found that defendant nos.3 and 4 using the veil of the corporate entities of the defendant nos.1 and 2 and the firm being defendant no. 5 in collusion and connivance with one another and have perpetrated fraud upon the plaintiff in the following manners :
 - a. *The defendant 1 is siphoning money of the defendant no. 1 to the defendant no. 2 and the defendant no. 5 and making the defendant no. 1 a shell company and utilizing its veil to defeat creditors.*
 - b. *Such siphoning is evident from the balance sheet of the defendant no. 1 as at March 2013, inter-alia, showing that the defendant no. 1 had tangible assets of only about Rs. 1.09 crores and has advanced loans to the*

defendant no. 2 and the defendant no. 5 for about 64 lacs.

- c. In other words out of the money of Rs. 2 crores lent and advanced by the plaintiff (reflected in the balance sheet as long term borrowing and current liabilities) only a sum of Rs. 1.09 crores had been utilized to create tangible assets and the rest of the money and/or substantial part thereof has been siphoned to defendant nos. 2 and 5.*
- d. By the manner and method as above the money of the defendant no. 1 obtained to purchase land was being siphoned to the defendant no. 2 and defendant no. 5 and shown as a loan taken by the said defendants from the defendant no. 1 without any actual purchase of land.*
- e. The defendant nos. 3 and 4 have used and are using the corporate entities of the defendant no. 1 and defendant no. 2 as veils to defraud creditors like the plaintiff by routing and rerouting funds only to avoid and evade creditors.*
- f. If the corporate veils of both the defendant nos. 1 and defendant no. 2 are lifted then the defendant nos. 3 and 4 would be the actual persons behind both the entities as well as the partnership firm being the defendant no. 5.*
- g. The defendants in the manner and method as above have concealed the true state of affairs and have made representations which are not true and the said defendants knew that the same were not true and have otherwise acted in a manner to deceive and defraud creditors including the plaintiff.*
- h. Even the security of the plaintiff in respect of the portion of the said property purchased has been put into jeopardy by setting up of purported claims of pre-emption rights in respect thereof to the prejudice and detriment of the plaintiff.*

- i. *The defendant Nos. 1 to 4 in collusion and in connivance with one another has perpetrated fraud upon the plaintiff to secure release of the said mortgaged property and furnished a so-called security, which was itself shrouded with suspicion and/or had conflicting claims and/or rights in respect thereof;*
- j. *The defendant Nos. 3 and 4 were fully aware that there were claims in respect of the portion of the said property purchased, by adjoining land owners;*
- k. *The defendant Nos. 3 and 4 were fully aware that the portion of the said property purchased would not confer the said defendant No. 1 a complete title and/or such purchase would be subject to claims of purported pre-emption and/or other litigation by other adjoining owners of the land;*
- l. *Being fully aware of the aforesaid, the defendants No.3 and 4 caused the plaintiff to get the said mortgaged property released on the representation that the same would expedite the construction and development of the said property;*
- m. *The defendant no.1 has not purchased the balance portion of the said property and even the portion of the said property purchased is subjected to claims of pre-emption which the said defendants were aware.*
- n. *The representations made by the said defendants turned out to be incorrect as the said property was subjected to conflicting claims as stated hereinbefore;*
- o. *The defendants made representations which the said defendants itself did not believe to be true and/or was otherwise camouflaged in a manner with an intent to deceive the plaintiff;*
- p. *The defendants concealed the fact that there were likely claims in respect of the said property and would likely result in legal proceedings;*

- q. The defendant nos. 1 to 5 in collusion and connivance with each other caused the plaintiff to release the said mortgaged property, being aware that proceedings on the pretext of pre-emption and orders passed would jeopardize the entire development and/or otherwise acted in a manner to ensure that the security of the plaintiff in the portion of the said property becomes adversely affected and/or the rights of the plaintiff becomes seriously prejudiced.*
- h. The plaintiff has called upon the defendant no.1 to repay the amount of Rs. 2,00,00,000/- along with interest but the defendant no.1 failed to pay the said amount.
- i. In view of the breach committed by the defendant no.1 in developing the commercial structure, the plaintiff unable to comply with the space guidelines and ultimately the Letter of Intent issued by the Hyundai Motor India Limited has been cancelled and the said dealership at Howrah has been given to someone else. By the reason of termination of Letter of Intent, the security deposit of Rs. 10,00,000/- paid by the plaintiff to the Hyundai Motor India Limited has also been forfeited.
- j. The plaintiff claims that due to the reason of termination of the Letter of Intent, the plaintiff has suffered loss and damages assessed at Rs. 300 crore being the loss of profit based on the projected sales of similar showroom and workshop of Hyundai Cars of the plaintiff and also based on the figures of sales obtained

till date from the dealership at Howrah which has now been given to another firm.

3. CASE OF THE DEFENDANTS:

- a. The suit filed by the plaintiff is barred under Sections 16, 20 and 34 of the Specific Relief Act, 1963. The suit for recovery of money in not maintainable without any relief for foreclosure of the alleged mortgage or suit for sale of the alleged mortgage preventing the defendants to get the benefit of Section 60 of the Transfer of Property Act, 1882.
- b. The instant suit is not maintainable in its present form and before this Court, since the suit is based on certain agreements executed by and between the parties pertaining to the property situated in Dag No. 260, J.L. No. 51, Mouza Nibra, National Highway No.6, P.O. Bankra, Police Station – Domjur, District – Howrah, which is beyond the original jurisdiction of this Court. The Memorandum of Understanding, forming the basis of the present lis, was executed at Alipore, which is again beyond the jurisdiction of this Court, both the mortgage deeds as well as the deed of release was also executed at Alipore.
- c. The defendants submits that since no cause of action has been shown by the plaintiff, which might have occurred within the jurisdiction of this Court and it is trite law that jurisdiction cannot

be conferred upon a Court, within whose jurisdiction, no part of cause of action has ever arisen.

- d. It is also the submission of the defendants, that the present suit by the plaintiff is based on two principal heads, i.e. return of money lent and advanced and breach of an agreement related to the immovable property which is intended to be used for commercial purposes.
- e. The defendants in its contention mentioned that the present suit cannot be maintained as a Commercial Suit as described under the Commercial Courts Act, 2015 and as far as the case of money lent and advanced goes, the plaintiff is not in a business of money lending and the same has not been lent in the usual course of business of the plaintiff.
- f. The plaintiff did not disclose any cause of action nor does the plaintiff has any grievance relating to alleged cause of action pleaded in the plaint.
- g. The monetary transaction to the extent of Rs. 2.00 crores was made in consideration of Memorandum of Understanding and not by mortgaging the property by taking loan but for the purpose of selling the property to the extent indicated in the Memorandum of Understanding and to execute a lease deed in respect of property mentioned in the Memorandum of Understanding and the consideration money in advance of lease rent as well as in advance

of part payment of consideration amount for same was taken in consideration of execution and registration of Memorandum of Understanding and the amount to the extent of Rs. 75 lacs was fraudulently shown on account of loan for the execution and registration of the alleged deed of mortgage but in fact and in reality Rs. 75 lacs was also paid in part payment of consideration money for sale of property as mentioned in the Memorandum of Understanding and not for the purpose of loan. The execution and registration of the Mortgage Deed was made as co-lateral security for part payment of consideration money for sale and part payment for lease out the property in terms of Memorandum of Understanding.

- h. The defendant no.1 has not committed any breach by not developing the commercial structure and siphoning of funds and perpetration of fraud in collusion with the other defendants. The plaintiff is unable to comply with the guidelines and due to which the Letter of Intent was terminated. There was no such contract in between the defendant no.1 and the plaintiff for the purpose of assuring the business development of the plaintiff nor a single fathering was taken by the defendant no.1 for the purpose of alleged agreement assuring the plaintiff to develop its business on the other hand, it is stated that the defendant no.1 took consideration money of 2.00 crores in consideration of executing

and registering the Memorandum of Understanding and not for assuring the plaintiff to develop the business of the plaintiff.

- i. In accordance with the submissions made by the defendants, the present suit is not maintainable as the plaintiff has not sought for specific performance of the contract, nor enforcement and/or sale of the mortgaged property but has claimed for refund of money by way of circumventing the established provisions of law.
- j. From the evidences adduced as well as the examination of the plaintiff, it is evident that the plaintiff itself has admitted that the security was furnished by the defendant by way of two mortgage deeds, wherein both the mortgage deeds contained that the mortgagee, i.e., the plaintiff, was first to satisfy his claim in event of any default on part of the mortgagor, by way of enforcing the mortgage and to sale the property mortgaged and only in case of any shortfall or deficiency after receiving the sale proceeds, the mortgagee/plaintiff could have embarked on an effort to recover the deficient money from the defendants in any other lawful method, it is therefore, evident that both the parties had agreed to a specific method of dispute resolution and the plaintiff, by not adhering to that, has made this suit liable to be rejected.

4. On the basis of the pleadings of the parties, the following issues were framed:

- “1) Whether the suit is maintainable in its present form and whether this Court has territorial jurisdiction to try the suit?*
- 2) Whether the suit is barred under Order II Rule 2 of the Code of Civil Procedure?*
- 3) Is the suit barred by Sections 16, 20 and 34 of the Specific Relief Act as pleaded in the written statement?*
- 4) Whether the arbitration clause, if any, contained in the memorandum of understanding bars the trial of the suit in this Court?*
- 5) Whether the mortgage in question is sham transaction and whether it was intended as collateral security as a consideration for sale and/or lease?*
- 6) Is there any contract in between the plaintiff and the defendant no.1 for the purpose of assuring the business development of the plaintiff?*
- 7) Whether the plaintiff is entitled to the decree for a sum of Rs. 2,71,21,096.00 together with interest at the rate of 12% per annum?*
- 8) Is the plaintiff entitled to a decree for Rs.300 crores and interest thereon?*
- 9) Whether alternatively the plaintiff can be found entitled to an enquiry, damages, as prayed for?*
- 10) Whether the plaintiff is entitled to a sum of Rs.10 lakhs on account of forfeiture of security deposit?*

5. EVIDENCES OF THE PATIES:

a. Plaintiff has adduced two witnesses, namely:

- i). Mr. Nitin Himmatsinka, Director of the plaintiff Company.*
- ii). Mr. Amitabha Dhar, looking after the Finance and Accounts of the plaintiff company as professional.*

b. Defendant has adduced one witness namely:

i). Dev Anand Gupta, Defendant No. 3, one of the Director of the defendant no.1 company and one of the partner of the Defendant No.5 company.

6. DOCUMENTS EXHIBITED ON BEHALF OF THE PLAINTIFF:

Exhibit-A: Letter of Intent dated 01.10.2012, wherein the Hyundai Motor India had considered the application of the plaintiff company, named Frostree Exports Pvt. Ltd., and had decided to offer to establish a non exclusive Dealership at Howrah.

Exhibit-B: Memorandum of Understanding, which was executed on 04.10.2012 between M/s. Sabri Properties Private Limited (referred to as the 'First Party') and M/s Frostees Export (India) Private Limited (referred to as the 'Second Party'), wherein the 'First Party' had agreed to buy piece or parcel of land measuring about 29 Cottahs being Dag No. 260, Mouza North Nibra, NH 6, P.O. Bankra, within Police Station Domjur, District Howrah, for the purpose of facilitating and establishing of Showroom cum Office. In the said MOU, it was also agreed between the parties that the 'Second Party' requires a part of constructed covered space measuring about 6,000 sq. ft. carpet area situated on the Ground Floor and First Floor with a minimum clear height of 12 ft. from floor to the lowest ceiling beam in floor of the showroom.

Exhibit-C: Deed of Simple Mortgage dated 12.10.2012, executed between M/s Sabri Properties Private Limited and M/s Frostees Export (India) Private Limited, a mortgage was created over the property in favour of the plaintiff to enable the plaintiff to secure the said sum of Rs. 2,00,00,000/- and enforce the mortgage and cause the said mortgaged property or any portion thereof to be sold and appropriated and use the said proceeds towards satisfaction of the mortgage debt.

Exhibit-D: Deed of Release of Mortgaged Property dated 21.11.2012, executed between M/s Frotees Export India Pvt. Ltd., Sai Copper Wire Private Limited and M/s Sabri Properties Private Limited, for release of a mortgage property, situated at Dag No. 3838, under Khatian No. 3088 (Krishi) corresponding R.S. Dag No. 3801 under Khatian No. 302 of Mauja-Nibra, P.S. Domjur, District Howrah, owner by Sai Copper Wire Private Limited (herein referred to as the defendant no.2).

Exhibit-E: Deed of Mortgage Deposit of Title Deeds dated 21.11.2012, executed between M/s Sabri Properties Private Limited and M/s Frotees Export India Pvt. Ltd., wherein the M/s Sabri Properties Private Limited had mortgaged the portion of the property situated at Dag No. 260, J.L. No. 51, Mauja- Nibra in District Howrah, by depositing the title Deeds in respect thereof with the M/s Frotees Exports India Pvt. Ltd., to secure the repayment and/or adjustment of the said sum of Rs. 2,00,00,000/- together with interest.

Exhibit-F: Letter dated 11.09.2014 with postal receipts, the Plaintiff called upon the Defendant no.1, by mentioning that as per the MOU dated 4th October, 2012, the defendant no.1 is liable to purchase the total land area of 29 cattahs and only about 14.5 cattahs land had been purchased and also no constructions has been made till date, whereas, accordingly, the construction was to be done by 15th March, 2013 and since then 18 months has been lapsed. Due to default of performance and non-payment of loan amount of Rs.2,00,00,000/-, the plaintiff had called upon the defendant no.1 for payment of the same.

Exhibit-G: Certified copies of the Annual report of M/s Sabri Properties Pvt. Ltd.

Exhibit-H: Certified copies of all orders in L.R. Misc Case No. 3/2013, 4th Civil Judge, Howrah [collectively].

Exhibit-I: colour printouts of photos of performance awards.

Exhibit-J: Printouts of Bank Statement of Axis Bank.

Exhibit-K: Original 13 (thirteen) Annual Reports of Frostees Export (India) Pvt. Ltd.

Exhibit-L: Sale Deed of the property situated at District Howrah, P.S. Domjur, in Mouza Nibra, Previous Khatian Nos. 2168 and 85, L.R. Khatian Nos. 4276 and 4277, Previous Dag No. 260, L.R. Dag No. 253,

between Sabri Properties Private Limited, Sri Asit Baran Chatterjee and Sri Ajit Kumar Chatterjee.

Exhibit-M: Termination of Letter of Intent dated 1st October, 2012 issued by Hyundai Motor India Ltd. on 31.05.2013.

Exhibit-N: Account statement issued by Central Bank of India.

Exhibit-O: Copies of Balance Sheets for the year 1998-1999 to 2015-2016.

Exhibit-P: Report on Examination of Prospective Loss of Profit from 2012-2013 to 2030-2031 dated 21.04.2018 with enclosure.

Exhibit -Q: Copy of company master data.

7. DOCUMENTS EXHIBITED ON BEHALF OF THE DEFENDANTS:

Exhibit – 1: Letter of Intent sent by Hyundai Motor India Limited, dated 1st October, 2012, in consideration to the application sent by the Frostees Exports (India) Pvt. Ltd., for establishment of a non-exclusive dealership at Howrah.

Exhibit -2: Memorandum of Understanding dated 4th October, 2012, between M/s Sabri Properties Private Limited, and M/s Frostees Export (India) Pvt. Ltd., for the purpose of buying piece or parcel of land measuring an area of about 29 Cottahs, situated at Dag No. 260, Mouza North Nibra, NH 6, P.O. Bankra, within Police Station Domjur, District Howrah,

Exhibit – 3: Deed Release of Mortgaged Property dated 21st November, 2012, between M/s Frostees Export India Pvt. Ltd., Sai Copper Wire Private Limited and M/s Sabri Properties Private Limited.

8. DECISIONS WITH REASONS:

a) Issue No.1:

Whether the suit is maintainable in its present form and whether this Court has territorial jurisdiction to try the suit?

The defendants say that, the property situated beyond the original jurisdiction of this Court and the Memorandum of Understanding executed at Alipore that is also beyond jurisdiction of this Court and no cause of action occurred within the jurisdiction of this Court. In support of his submission, Mr. Haradhan Banerjee relied upon the judgment in the case of **ABC Laminart (P) Ltd. vs. A.P. Agencies** reported in **(1989) 2 SCC 163**, **Sandeep Polymers Pvt. Ltd. Vs. Bajaj Auto Ltd.** reported in **AIR 2007 SC 2656** and **Doya Vs. Secretary of State** reported in **(1884) ILR 14 Cal 256**.

The defendants further say that the suit cannot be maintained before this Court as commercial suit as the plaintiff is not in a business of money lending and the same is not lent in the usual course of business of the plaintiff. In support of his submissions, Mr. Banerjee relied upon the judgment in the case of **Ladymoon Towers Private Limited Vs. Mahendra Investment Advisors Private Limited** reported in **2021 SCC OnLine Cal 4240**. The defendant

no.1 entered into a Memorandum of Understanding on 4th October 2012 (Exhibit B) in the said Memorandum, the address of the defendant no.1 is mentioned as “*having its registered office at 2, India Exchange Place, First Floor, Room No.11A, Kolkatta 700001*”. Admittedly, the said address of the defendant no.1 within the jurisdiction of this Court. Subsequently on 12th October, 2012, a Deed of Simple Mortgage as well as Deed of Mortgage of Title Deeds were entered between the plaintiff and the defendant no.1 (Exhibits – C & D) in both deeds also, the address of the defendant on. 1 is within the jurisdiction of this Court and the amount of Rs. 2,00,00,000/- (Rupees Two Crores only) received by the defendant no.1 in the office address of the defendant no.1 which is Exhibits B/1 and B/2). In the Memorandum of Understanding being Exhibit – B, it is categorically mentioned that the said properties required for the purpose of car show room, office and servicing centre of Hyundai Motors India Limited as per Intent Letter dated 1st October, 2012.

This Court finds that the plaintiff has not filed the case for specific performance of contract of the property mentioned in the Exhibits - B, C and D. The plaintiff has simply filed the suit for recovery of money and damages against the defendants. They entered into Memorandum of Understanding with the defendants with respect to the land for the purpose of establishment of car show room, office and servicing centre and payment was made for construction of the same, thus it cannot be said that the dispute

between the plaintiff and defendants not within the purview of the commercial dispute. This Court considered the judgment relied by the plaintiff but from the facts and circumstances of the present case, the judgments are distinguishable.

Considering the above facts and circumstances, this Court finds that the suit filed by the plaintiff is maintainable in its present form and this Court is having jurisdiction to try the suit. Issue No.1 is decided in favour of the plaintiff.

b) Issue No. 2 :

Whether the suit is barred under Order II, Rule 2 of the Code of Civil Procedure?

Order II, Rule 2 of the Code of Civil Procedure, 1908, reads as follows :

“2. Suit to include the whole claim.- (2)
Relinquishment of part of claim—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.”

The plaintiff has not prayed for leave under Order II, Rule 2 of Code of Civil Procedure, 1908. The suit filed by the plaintiff is simplicitor a money claim. The plaintiff has not prayed for any claim with regard to the immovable property in question as per the deed of the mortgage. The plaintiff has relinquished his rights arising out of

the Deed of Mortgage and only claim for return of amount which the plaintiff has paid to the defendants. The bar under sub-rule (2) of Rule 2 of Order II of the Code of Civil Procedure, 1908, would come into play only if the plaintiff subsequently filed another suit claiming in terms of the mortgage deed with respect to the selfsame cause of action. In the instant case, the plaintiff has not filed any other suit other than the present suit.

In view of the above, issue no. 2 is answered in favour of the plaintiff and against the defendant.

Issue No. 3:

Is the suit barred by Sections 16, 20 and 34 of the Specific Relief Act as pleaded in the written statement?

As per the case of the plaintiff the defendant no. 3 and 4 used the corporate entities of the defendant no.1 and defendant no.2 as veils to defraud creditors like the plaintiff by routing and rerouting funds only to avoid and evade creditors. Defendants denied that the defendant nos. 3 and 4 had been using corporate entities of the defendant no.1 and the defendant no.2 as veils to defraud the creditors like plaintiff. The defendants have made out a case that the defendant no.1 agreed to sale the developed property and further agreed to grant lease in favour of the plaintiff but the plaintiff was not willing to perform its part of the contract and thus the suit is hit by Sections 16, 20 and 34 of the Specific Relief Act, 1963. It is the

specific case of the plaintiff that the plaintiff has received a Letter of Intent from Hyundai Motor India Limited offering the plaintiff to establish a dealership at Howrah for sale of passenger range of cars and to provide after sale services and sale of genuine spares for such cars for which the plaintiff required 6000 sa.ft. of space for show room and 12000 sq.ft. for workshop and either show room or workshop should be owned by plaintiff. On receipt of Letter of Intent dated 1st October, 2012, the plaintiff has entered into a Memorandum of Understanding with the defendant no. 1 on 4th October, 2012 wherein it is categorically mentioned that "First Party" (defendant no.1 herein) shall sell 6000 sq.ft. carpet area of showroom and grant lease in respect of the said unit being covered area of 12000 sq.ft. on the ground floor for service area. The Memorandum of Understanding entered between the defendant no.1 and plaintiff is not in dispute. The Memorandum of Understanding is marked as Exhibit - B. In contrary, the defendants in written statement have denied the fact that the defendant no.1 was not known about the Letter of Intent which is not believable as in the Memorandum of Understanding, it categorically mentioned that for the purpose of facilitating and establishing a show room cum office and for service centre the said area is required to the plaintiff. The defendants inspite of entering into a Memorandum of Understanding as well as well as deed of mortgage failed to construct the premises suitable to establish office cum show room and service centre by the plaintiff within the stipulated time and accordingly, the Hyundai Motors India

Limited by a letter dated 31st May, 2013, terminated the Letter of Intent dated 1st October, 2012 and the said letter is duly proved and marked as Exhibit –M. On cancellation of Letter of Intent by the Hyundai Motors India Limited, the plaintiff has issued notice upon the defendants calling upon the defendant No.1 that even after the lapse of period of more than 18 months, the defendant no.1 neither purchased remaining portion of land of 14.5 cottahs nor made any construction on the said land and the defendant no.1 failed to perform his part to raise construction on the property and to hand over the property to the plaintiff as per the object of the Memorandum of Understanding and mortgage deed due to which the plaintiff has suffered loss of business, loss of profit, loss of interest, loss of employment and as per Clause 20 of the Memorandum of Understanding, the defendant is liable to indemnify the same to the plaintiff and called upon the defendant to pay the amount of Rs.2,00,00,000/- along with interest and damages of Rs. 2,00,00,000/-. The notice is marked as Exhibit- F collectively. The defendant has received the notice but has not given any reply to the said notice.

It is also the case of the plaintiff that on enquiries made by the plaintiff, the plaintiff came to know that the defendant nos. 3 and 4 using the veil of the corporate entities of the defendant nos.1 and 2 and the firm being defendant no. 5 in collusion with each other and have committed fraud upon the plaintiff and the plaintiff has

described the fraud committed by the defendants in paragraphs 17 (a) to 17 (r) of the plaint. The Plaintiff witness No. 1, during his examination has categorically stated about the transferred amount of Rs. 2,00,00,000/- from the account of the plaintiff to the account of defendant no.1 and how the amount has been siphoned off by the defendant no.1 to defendant nos. 2 to 5 in question nos. 59 to 63.

In Clause 9 of the Memorandum of Understanding, the first party i.e. the defendant no.1 through the defendant no.3 agreed to complete all civil and construction works and deliver the premises to the second party, the plaintiff herein by 31st March 2013 as described in "Schedule Three" to enable the plaintiff to convert the area as per specification by Hyundai Motors India Limited and make it ready for commercial operation.

Since the defendant failed to construct office cum showroom and service centre and to hand over the said property to the plaintiff to establish Hyundai Car Showroom cum after sale service centre, the Hyundai Company has cancelled the Letter of Intent. The plaintiff has also proved that the defendant no.1 has siphoned off the part money of the plaintiff. The plaintiff has filed the suit for return of the amount of Rs. 2,00,00,000/- along with interest and damages. By the notice dated 11th September 2014, the plaintiff has rescinded the Memorandum of Understanding dated 4th October 2012 and thus the suit is not barred by Section 16, 20 and 34 of the Specific Relief Act.

In view of the above, Issue No.3 is decided in favour of plaintiff, against the defendants.

c) Issue No. 4 :

Whether the arbitration clause, if any, contained in the Memorandum of understanding bars the trial of the suit in this Court?

Section 8 of the Arbitration and Conciliation Act, 1996 does not bar the trial of any suit or for that matter any suit itself. In terms of Section 8 of the 1996 Act, the judicial authority before whom an action is brought, has the power to refer the parties to arbitration, if the condition precedent mentioned in the Section has been complied with. In other words, an application not later than the date of submitting the first statement on the substance of the dispute has to be filed. Admittedly, no application under Section 8 of the Act of 1996 was filed by the defendant. The Memorandum of Understanding was entered between the plaintiff and the defendant no. 1 but the plaintiff has filed the suit against the defendant no. 1 as well as the other defendants being defendant nos. 2 to 5. The plaintiff has made the defendant nos. 2 to 5 as party to the suit on the ground of fraud committed upon the plaintiff and the defendant nos. 2 to 5 are not the parties to the Memorandum of Understanding. As per the case made out by the plaintiff, the cause of action arose out of series of transactions to perpetrate fraud and thus the claim of the plaintiff cannot be bifurcated amongst the defendant no. 1 and the defendant nos. 2 to 5.

In view of the above, the issue no. 4 is decided in favour of the plaintiff and against the defendants.

d) Issue Nos. 5 and 6 taken up together for consideration:

Issue Nos. 5 & 6:

Whether the mortgage in question is sham transaction and whether it was intended as collateral security as a consideration for sale and/or lease?

And,

Is there any contract in between the plaintiff and the defendant no.1 for the purpose of assuring the business development of the plaintiff?

As per the case made out by the plaintiff that the defendant no.3 had the knowledge about the requirement of the plaintiff in terms of the Memorandum of Understanding entered between the plaintiff and the defendant no.1 through the defendant no.3 in respect of developing a property of about 29 cottahs Dag No. 260, J.L. No. 51, Mouza - North Nibra and after development and erection of commercial space in the said property, the defendants shall sell 6000 sq.ft carpet area to the plaintiff in the said property for showroom and further grant a lease of a covered area of around 12000 sq.ft. on the ground floor for the purpose of service area of a car workshop. It is unfortunate that the defendants have denied the said contention of the plaintiff though the defendants has not denied the Memorandum

of Understanding entered between the defendant no.1 and the plaintiff dated 4th October, 2012, which is an admitted document by both the parties. The Memorandum of Understanding is executed by the defendant no. 3 on behalf of the defendant no.1 and thus the defence of the defendants that the defendant no.3 not aware of the requirement of the plaintiff is not sustainable. From question nos. 10 to 14 of P.W.1, the Memorandum of Understanding is proved and exhibited is marked as Exhibit-B. During the cross examination of P.W.1, several questions were put to the witness with respect to Memorandum of Understanding but there is no denial about the execution of Exhibit-B. In question no.143, during cross-examination of P.W-1 specific question was put to P.W.1 and P.W.1 has given answer in positive by saying "Yes." From the cross examination of P.W.1, it is also established that all along either at the time of discussion or at the time of inspection of the site by the Hyundai personnel or at the time of execution of Memorandum of Understanding, the defendant no.3 was present and was aware for which purpose the plaintiff is entering into Memorandum of Understanding with the defendant no.1.

After entering into Memorandum of Understanding between the plaintiff and defendant no.1, Deed of Simple Mortgage was entered between the plaintiff and defendant no.1 through the defendant no.3 on 12th October, 2012 wherein it was agreed by the defendant no.1 that the plaintiff will lent and advance an amount of Rs.

2,00,00,000/- to the defendant no.1 through defendant no.3 and the defendant no.1 grant and create mortgage on the property “without possession” to the plaintiff and assure the same by way of security for the repayment or by means of other adjustment of the said sum of Rs.2,00,00,000/- together with interest thereof out of which Rs. 75,00,000/- will carry an interest @12% per annum equivalent to 1% per month. The Deed of Simple Mortgage dated 12th October, 2012, is marked as Exhibit –C.

Subsequently the Deed of Simple Mortgage was released by registered Deed of Release dated 21st November, 2012, which is marked as Exhibit –D. On the same day, another Deed of Mortgage was entered between the plaintiff and defendant with another property with the same terms and conditions and the same are marked as Exhibit-E.

Relevant Clause of Exhibit – E reads as follows:

“That in consideration of a sum of Rs. 2 crores (Rupees Two Crores) lent and advanced to the Mortgagor by the Mortgage the receipt whereof the Mortgagor/Developer has acknowledged and also hereunder admits and confirms, the said SABRI PROPERTIES PRIVATE LIMITED (MORTGAGOR) does hereby grant and create mortgage on the property described hereto in the schedule without possession unto and in favour of Frostees Export (India) Private Limited (the MORTGAGEE) and assure the same by way of security for the repayment or by means of other adjustment of the said sum of Rs. 2 crores together with interest thereon out of which Rs. 75 Lacs will carry an Interest @ 12% p.a. equivalent to 1% per month.

AND THE Mortgagor/Developer does hereby agree and covenant with the MORTGAGEE to pay or cause to be paid to the MORTGAGEE the principal sum aforesaid together with interest thereon on or before completion of eleven months from the date of payment without any delay or default AND THIS DEED further witnesseth and it is hereby agreed and declared by and between the parties that in case the said sum of Rs. 2 crores with interest thereon at the stipulated rate is not paid within the time and in the manner as aforesaid it shall be lawful for the MORTGAGEE to enforce this MORTGAGE and to cause the property or any portion thereof to be sold and appropriated, use such sale proceeds towards satisfaction of the MORTGAGE debt.

HOWEVER that in the event of any short fall or deficiency should the claim be not satisfied from the sale proceeds as above the MORTGAGEE shall be entitled to recover the unrealized balance amount separately from the Mortgagor/Developer to which the MORTGEGOR/DEVELOPER doth hereby agree.”

Exhibits - C, D and E all are registered documents. None of the parties have denied the existence of the said documents. The defendants have not filed any counter claim for cancellation of the said deeds. The plaintiff was interested to purchase some property and to take on lease some of the property for the purpose of setting up Hyundai car showroom and service centre. Admittedly, the property was not handed over to the plaintiff as per the specified time for which the Letter of Intent issued by the Hyundai Motors India Limited has cancelled. The purpose for which the plaintiff has entered into the Memorandum of Understanding and the mortgaged deed got frustrated as no portion of the land was handed over to the plaintiff. As per Exhibit –E, the defendant declared that in case the

said amount of Rs.2,00,00,000/- with interest thereon at the stipulated rate is not paid within the time and in the manner as aforesaid, it shall be lawfull for the mortgagee to enforce this mortgage and to cause the property or any portion thereof to be sold and appropriated, use sale proceeds towards satisfaction of the mortgage debt.

The plaintiff has filed the present suit for recovery of the principal amount of Rs. 2,00,00,000/- along with interest and damages.

Considering the above, Issue Nos. 5 and 6 are decided in favour of plaintiff and against the defendants.

e) Issue Nos. 8 and 9 are taken up together:

Issue nos. 8 and 9:

Is the plaintiff entitled to a decree for Rs.300 crores and interest thereon?

And,

Whether alternatively the plaintiff can be found entitled to an enquiry, damages, as prayed for?

The plaintiff has claimed Rs. 300 crores alongwith interest being the damages and loss caused to the plaintiff for cancellation of Letter of Intent for which the plaintiff failed to establish his business of Hyundai Car show room and servicing centre as the defendants

failed to hand over the property in terms of Memorandum of Understanding entered between the plaintiff and the defendants.

The plaintiff to justify the claim made by the plaintiff, the P.W.1 during his evidence in question no. 120 deposed before this Court that the basis of such claim is the past performance being the dealers of Hyundai Motors India Limited as well as the fact that the plaintiff got an external person who is Chartered Accountant and who has extrapolated all the data to reach the said figure. He further deposed that the records consists of balance sheets as well as the sales figures which the plaintiff has submitted to the Hyundai Motors India Limited at the time of signing of Letter of Intent.

The plaintiff has examined P.W.2, who is the Chartered Accountant by profession. During his examination, the P.W.2 has provided justification to the claim of the plaintiff from question Nos. 14 to 24 of his examination-in-chief. Exhibit - P is the data taken for the Financial Year 2013-14 to 2019-20 and the P.W.2 had explained how the figures have been calculated. P.W.2 had explained that in Kolkata the plaintiff sells 270 cars from three showrooms which average 90 cars per show rooms in a month. P.W.2 says that the balance sheet of the plaintiff is consolidated balance sheet of Kolkata and Gauhati. As per the evidence of the P.W.2 for each year, the calculation has been done and total prospective loss for the period of 18 years is 4967.61 lacs. In cross-examination of the P.W.2 in question No. 44, a specific question was put to the witness "What is

the average turn over at Kolkata dealership” and in answer to the said question, P.W.2 has stated that Rs. 210 Crores. In answer to Question no. 45 in the cross-examination, the P.W.2 has stated that for the last five years, the net profit earned by the plaintiff company is Rs. 6 to 8 crores. As per the evidence of P.W.2, the plaintiff has been deprived of a prospective loss of Rs. 44,00,00,000/- and for the last five years, the net profit earn by the plaintiff is Rs. 6 to 8 crores.

Considering the above, this Court finds that the plaintiff has already examined the Chartered Accountant and has produced report on examination of prospective loss of profit period from 2012-2013 to 2030-2031 which is marked as Exhibit- P, thus there is no necessity for further enquiry and this Court decided the awarded amount of Rs. 2,00,00,000/- as damages and compensation.

In view of the above Issue Nos. 8 and 9 are decided accordingly.

f) Issue No. 10.

Whether the plaintiff is entitled to a sum of Rs.10 lakhs on account of forfeiture of security deposit?

On 1st October, 2012, Hyundai Motors India Limited issued a Letter of Intent to the plaintiff for dealership of Hyundai Motors India Limited at Howrah for sale and for providing after sales services and sale of genuine spares for the passengers cars. Letter of Intent is Marked as Exhibit-A. In Exhibit-A under Clause -4 space guidelines is given which are as follows:

“4) SPACE GUIDELINES

HMI will not accept the Dealership operations at the location unless the premises and the facilities are substantially in compliance with the following agreed space guidelines which HMI currently expects will be consistent with the new Dealership Location

Facility	Agreed upon sizes				Location	Remarks
	Front. (Ft.)	Depth (Ft.)	Height (Ft.)	Total (Sq. ft.)		
Showroom for sale of products * (GF & FF)	GF 70 FF 70	GF 45 FF 45	12 Each	6300	Nh-6 District Howrah (WB) Pin Code - 711403	Total Area 17900 Sq. Ft.
Workshop Area (GF)	70	155	18	10850		
Advantage	To be in separate premises or behind the showroom with separate entry			750		
Please note that either Showroom or Workshop should be owned.						

You shall provide separate specie in the Dealership Location for sale of Used Cars as per the Space guidelines mentioned above. You agree that Used Car Business will also include sale of competitors' vehicles and hence, you shall not display the competitors' cars in the Showroom earmarked for sale of the PRODUCTS and the Used Cars should be parked/displayed only at the HMI approved area earmarked for Used Car Business. HMI shall provide to you a Manual on "Hyundai Advantage" Used Car Business Activity, which shall be strictly adhered to by you.

These space guidelines should be treated as a minimum for the initial stage of Dealership operations. The space guidelines are based on HMI's current estimate of the space necessary to serve HMI and its customers in the existing marketplace. Therefore, your construction plans should be capable of accommodating future expansion plans also. Nothing in this LOI, including HMI agreed space guidelines or

HMI approval of facility plans, shall create or impose upon HMI any obligations or liabilities with respect to the Dealership premises and / or facility.”

As per Clause 21 of Letter of Intent, an amount of Rs. 10,00,000/- was deposited by the plaintiff as sincerity deposit in favour of Hyundai Motors India Limited on 19th October, 2012, which is also duly proved through Exhibit-N.

Clause 21 of the Letter of Intent reads as follows:

“21) SINCERITY DEPOSIT

*You shall deposit with HMI a sum of **Rs. 10,00,000/- (Rupees Ten Lakhs only) as Sincerity Deposit** within five days from the date of signing of this LOI by way of Demand Draft favouring Hyundai Motor India Ltd., payable at Chennai. You will be paid interest on the Sincerity Deposit from the date of credit into HMI account and the rate of interest will be State Bank of India's prevailing one-year time deposit rate. The interest will be paid after deducting the applicable taxes for each year. The payment of interest will be effected within 30 days from the date of the financial year closing of HMI.*

You agree and understand that the refund of the Sincerity Deposit of Rs. 10,00,000/- shall be governed by Clause 27 of this LOI.

The utilisation of the above deposit amount will be at the sole discretion of HMIL.”

As the defendants have not completed the construction work and also not handed over the physical possession of the land to the plaintiff in terms of the Memorandum of Understanding within the

stipulated time and by a communication dated 31st May, 2013, (Exhibit-M), the Hyundai Motors India Limited has terminated Letter of Intent dated 1st October, 2012, issued in favour of plaintiff. By terminating the Letter of Intent, the Hyundai Motors India Limited has also forfeited the Sincerity Deposit of Rs. 10,00,000/- of the plaintiff by invoking Clause 27 of the Letter of Intent which reads as follows:

“27) TERMINATION

HMI is entitled to terminate this LOI forthwith and the Sincerity Deposit paid by you will be forfeited in the event if you:

- a. Fail to buy/take on lease the property, obtain approvals, licenses etc. for the Dealership operations or fail to complete the construction of the building in all respects at the site for Dealership operations within 60 days from the date of acceptance of this LOI as committed in the Activity Schedule to be submitted by you.*
- b. Fail to make the dealership operational within the period specified in Clause 1 above.*
- c. Deal in any other business other than HMI's Dealership Operations at the Location specified under the heading 'SPACE GUIDELINES' in Clause-4 above.*
- d. Breach any of the terms of this LOI and such breach is not rectified to the satisfaction of HMI within 30 days of receipt of notice from HMI to that effect.”*

In terms of the said guidelines, the plaintiff has entered into a Memorandum of Understanding with the defendant on 4th October, 2012 (Exhibit-B) but the defendants failed to construct and hand

over possession of the land to the plaintiff for which the plaintiff could not fulfil the conditions of the Letter of Intent issued by Hyundai Motors India Limited and the Letter of Intent is cancelled and the sincerity amount of Rs. 10,00,000/- deposited by the plaintiff is forfeited.

In view of the above, Issue No. 10 is decided in favour of plaintiff and against the defendants.

g) Issue No. 7 :

Whether the plaintiff is entitled to the decree for a sum of Rs. 2,71,21,096.00 together with interest at the rate of 12% per annum?

As per evidence available on record, the plaintiff has paid Rs. 2,00,00,000/- to the defendant which is proved in Exhibit-G. Defendant's witness no.1 also admitted in his examination at question No. 37 that the defendants received an amount of Rs. 2,00,00,000/- from plaintiff. P.W.1 in answer to question nos. 58 to 63 has explained how the amount of Rs. 2,00,00,000/- was reflected in the balance sheet i.e. Rs. 1,25,00,000/- and Rs. 75,00,000/-. D.W.1 who is the defendant no.3 has admitted in his cross-examination in question Nos. 140, 141 and 142 that the defendants no.3 and 4 are 100% shareholders of both the defendant nos.1 and 2. D.W.1 further admitted that both the defendant nos. 3 and 4 are the partners in defendant no.5 and on confronted with balance sheet of the defendant no.1 and the entries, D.W.1 has admitted that the receipt and reflection of Rs. 1,25,00,000/- and Rs.75,00,000/-.

D.W.1 has admitted in question Nos. 149 and 150 that the rate of interest for Rs. 75,00,00,000/- was 12%. He also stated that about the remaining amount of Rs.1,25,00,00,00/- rate of interest was not fixed because it was part payment against purchase of showroom.

“In question No. 312, a specific suggestion was given to D.W.1 that the amount of Rs. 63 Crores and odd have not been returned by the defendant no.2 and defendant no.5 to the defendant no.1, what do you say? Yes, it has been invested”. From the balance sheet of the defendant no. 1, it is established that money of the plaintiff which was given to defendant no.1 has been transferred to defendant no.2 and thereafter defendant no. 5 and the defendant nos. 3 and 4 are the persons behind the all three entities. The defendant no.3 and defendant no.4 are the actual persons behind the defendant no.1 and 2 and if answer to question nos. 139 to 142 of D.W.1 are read together, veils of the defendant no.3 and 4 are lifted. It is proved that the defendant no.3 and 4 are the actual persons behind both the entities and also behind the partnership firm, i.e. the defendant no.5. It is also proved that defendant nos. 3 and 4 are utilizing the corporate entities and the partnership firm to defraud creditors by siphoning of funds from defendant no.1 to defendant nos. 2 and 5. In the case of ***Life Insurance Corporation of India Vs. Escort Ltd. and Others*** reported in ***(1986) 1 SCC 264***, the Hon’ble Supreme Court held that the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is

intended to be prevented, or a taxing statute or a beneficial statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern.

In the case of ***Delhi Development Authority Vs. Skipper Construction Co. (P) Ltd. and Others*** reported in **(1996) 4 SCC 622**, the Hon'ble Supreme Court held that :

“28. The concept of corporate entity was evolved to encourage and promote trade and commerce: but not to commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned. The fact that Tejwant Singh and members of his family have created several corporate bodies does not prevent this Court from treating all of them as one entity belonging to and controlled by Tejwant Singh and family if it is found that these corporate bodies are merely cloaks behind which lurks Tejwant Singh and/or members of his family and that the device of incorporation was really a ploy adopted for committing illegalities and/or to defraud people.”

In the present case, it is proved that the defendant nos. 3 and 4 are the persons behind all the entities and thus corporate veil of the defendant nos.1 and 2 is lifted.

P.W.1 in question No. 116 specially stated that “your attention is drawn to the pleading where the plaintiff has stated that Hyundai Motors has cancelled the letter of intent and “has given to someone else”. Can you indicate who is this someone else?/ Interestingly when

the land went into jeopardy the defendant no.1 did not offer any solution to the plaintiff. However, a few months later another company by the name of Harshit Hyundai was given a property owned by defendant no.2 for the same purpose that is to set up a Hyundai Dealership in Howrah. Thus the defendant no. 2 has clearly colluded with Harshit Hyundai and could have orally offered the same property when things went into a legal tussle in the original land.”. The said portion of evidence was not challenged by making any cross examination by the defendants. So it is admitted that the defendants have given the said property to Harshit Hyundai for the purpose of setting up Hyundai showroom.

Considering the above, Issue No.7 is decided in favour of plaintiff and against the defendants.

9. CONSLUSION:

Considering the facts and circumstances mentioned herein above, this Court finds that the plaintiff is entitled to get an amount of Rs. 2,00,00,000/- (Rupees Two Crores Only) being the principal amount along with interest at the rate of 12% per annum from 12th October, 2012 till the realisation of the total amount. The plaintiff is also entitled to get an amount of Rs. 2,00,00,000/- (Rupees Two Crores Only) being the damages. The plaintiff is also entitled to get Rs. 10,00,000/- (Rupees Ten Lacs Only) being the amount forfeited by the Hyundai Motors India Limited. As the suit is commercial in nature, the plaintiff is also entitled to get cost assessed at Rs. 1,00,000/- (Rupees One Lac

only). The Defendants are directed to pay the aforesaid amount to the plaintiff within 60 days from this date. It is made clear that if the defendants failed to pay the aforementioned amount within the time stipulated above, the amount of Rs. 2,00,00,000/- being the damages and the amount of Rs. 10,00,000/- shall also carry interest at the rate of 12% per annum from the date of this judgment till realisation of total amount.02

- 10. CS-COM 741 of 2024 [(Old No. CS 276 of 2015), (Old No. CS 44 of 2024), (Old No. CS-COM 67 of 2024)] along with GA 8 of 2023 are disposed of.** Decree be drawn accordingly.

(Krishna Rao, J.)