



Judgment

226 cra92.19 & 22.21

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

**CIVIL REVISION APPLICATION NO.92/2019
WITH
CIVIL REVISION APPLICATION NO.22/2021**

CIVIL REVISION APPLICATION NO.92/2019

Praharsh Corporation Pvt. Ltd.,
formerly known as Praharsh
Investments Pvt. Ltd., a 'company' as
defined under the Companies Act, 2013,
having its registered office at Tanna House,
2nd Floor, 11/A, Nathalal Parekh
Marg, Mumbai – 400 039.
(original defendant No.1.).

..... **Applicant.**

:: VERSUS ::

1. International Asset Reconstruction
Company Private Limited, a 'company'
as defined under the Companies Act,
2013 having its registered office at 701,
7th Floor, Ansal Bhawan 16, Kasturba
Gandhi Marg, New Delhi – 110001 and
Corporate Office at A-601/602/605, 6th
Floor, 215 Atrium, Kanakia Spaces,
Andheri Kurla Road, Andheri (East),
Mumbai – 400 093, acting in its capacity
as Trustee of IARF-I Trust Scheme 1.

2. Madhav Vidarbha Estate Pvt. Limited, a
'company' as defined under the
Companies Act, 2013 having its

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registered office at plot No.169, Ward No.66, Ravindranath Tagore Marg, Civil Lines, Nagpur - 440 001 and **also at** 6th Floor, “Gupta House”, 1, Ravindranath Tagore Marg, Civil Lines, Nagpur – 440 001.
(original plaintiffs).

3. Riddhi Investment and Properties Pvt. Ltd., a ‘company’ as defined under the Companies Act, 2013 having its registered office at 202/A-B Vyavasae, 2nd Floor, Near Verai Mata Mandir, Urmi Dinesh Mill Road, Akota, Vadodara and **also at** :
63-A, Kashi-Vishweshwar Township, Opp. Bank of Baroda, Jetalpur Road, Vadodara, Gujrat – 390 005.
(original defendant no.2).

4. Mr. Sawan Nandkumar Bhatewara, R/o 1101, Court Royal Khare Town, Behind Batukbhai Jewelers, Dharampeth, Nagpur.
(Original Defendant no.3)

..... **Non-applicants.**

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Shri M.G.Bhangde, Senior Counsel assisted by Shri R.M.Bhangde, Advocate for the Applicant.
Dr. (Shri) Anjan De, Counsel for Non-applicant Nos.1 & 2.
Shri C.J.Dhumane, Counsel & Shri S.V.Purohit, Advocate for Non-applicant No.4.

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CIVIL REVISION APPLICATION NO.22/2021

Shri Sawan Nandkumar Bhatewara,
R/o 1101, Court Royal, Khare Town,

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Behind Batukbhai Jewelers,
Dharampeth, Nagpur 440010.
(original defendant No.3.).

..... **Applicant.**

:: VERSUS ::

1. International Asset Reconstruction
Company Private Limited, a
'company' as defined under the
Companies Act, 2013 having its
registered office at 701, 7th Floor,
Ansal Bhawan 16, Kasturba Gandhi
Marg, New Delhi – 110001 and
Corporate Office at A-601/602/605,
6th Floor, 215 Atrium, Kanakia Spaces,
Andheri Kurla Road, Andheri (East),
Mumbai – 400 093, acting in its capacity
as Trustee of IARF-I Trust Scheme 1.

2. Madhav Vidarbha Estate Pvt.
Limited, a 'company' as defined
under the Companies Act, 2013 having
its registered office at plot No.169,
Ward No.66, Ravindranath Tagore
Marg, Civil Lines, Nagpur - 440 001 and
also at 6th Floor, "Gupta House", 1,
Ravindranath Tagore Marg, Civil Lines,
Nagpur – 440 001.
(original plaintiffs).

3. Riddhi Investment and Properties
Pvt. Ltd., a 'company' as defined
under the Companies act, 2013 having
its registered office at 202/A-B
Vyavasae, 2nd Floor, Near Verai Mata
Mandir, Urmi Dinesh Mill Road, Akota,
Vadodara
and **also at** :

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63-A, Kashi-Vishweshwar Township,
Opp. Bank of Baroda, Jetalpur Road,
Vadodara, Gujrat – 390 005.
(original defendant no.2).

4. Praharsh Corporation Pvt. Ltd.,
formerly known as Praharsh
Investments Pvt. Ltd., a ‘company’ as
defined under the Companies Act,
2013, having its registered office at
Tanna House, 2nd Floor, 11/A,
Nathalal Parekh Marg, Mumbai.
(original defendant No.1.).

. **Non-applicants.**

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Shri C.J.Dhumane, Counsel & Shri S.V.Purohit, Advocate for
the Applicant.

Dr. (Shri) Anjan De, Counsel for Non-applicant Nos.1 & 2.
Shri M.G.Bhangde, Senior Counsel assisted by Shri
R.M.Bhangde, Advocate for Non-applicant No.4.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 17/04/2024

PRONOUNCED ON : 08/05/2024

COMMON JUDGMENT

1. Heard learned Senior Counsel Shri M.G.Bhangde for
Praharsh Corporation Private Limited (applicant in Civil
Revision Application No.92/2019 and non-applicant No.4 in
Civil Revision Application No.22/2021); learned counsel Dr.
(Shri) Anjan De for International Asset Reconstruction

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Company Private Limited and Madhav Vidarbha Estate Pvt. Limited (non-applicant Nos.1 and 2 in both Civil Revision Applications), and learned counsel Shri S.V.Purohit for Mr. Sawan Nandkumar Bhatewara (applicant No.4 in Civil Revision Application No.92/2019 and applicant in Civil Revision Application No.22/2021).

2. **Rule.**

3. By these Civil Revision Applications, applicants have challenged order dated 8.4.2019 passed below Exhibits-20 and 38 by learned 18th Joint Civil Judge Senior Division, Nagpur in Special Civil Suit No.408/2017 whereby the said applications under Order VII Rule 11 of the Code of Civil Procedure have been rejected.

4. Relevant facts necessary for disposal of civil revision applications are as under:

Non-applicant No.1 – International Asset
Reconstruction Company Private Limited (hereinafter

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referred to as “**IARCPL**”) and non-applicant No.2 - Madhav Vidarbha Estate Private Limited (hereinafter referred to as “**MVEPL**”), original plaintiffs, have preferred a civil suit bearing Special Civil Suit No.408/2017. IARCPL is a company registered under the Companies Act, 2013. City Survey No.1757, Sheet No.60 of Mouza Sitabuldi together with single storied house bearing No.169 having built up area 255.82 square meters, situated at Ravindranath Tagore Marg, Civil Lines, Ward No.66, Nagpur, is the subject matter of the dispute. The above said suit property was originally owned by Shri Manohar Puranik and other Puranik family members. Puranik family vide sale deeds dated 9.3.1990 and 1.9.1990 sold the suit property along with its structure to Smt.Punam Anand Agarwal and Smt.Savita Chandra Agarwal. Smt.Punam Anand Agarwal and Smt.Savita Chandra Agarwal executed sale deed on 21.9.1993 in favour of Jyoti and Surendra Developers Private Limited, Nagpur. As per the said sale deed dated 21.9.1993, the parties had filed statement in Form No.37-I under Section 269 UC of the

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Income Tax Act, 1961 with the Income Tax Authorities. The Income Tax Authorities at Ahmedabad vide its order dated 31.12.1993 held that it was a fit case for pre-emptive purchase order under Section 269 UD(1) of the Income Tax Act and obtained possession of the suit property. The said order of the Income Tax Authorities was challenged by Jyoti and Surendra Developers Private Limited before this court by filing Writ Petition No.327/1994. During the pendency of the said writ petition, the Income Tax Department held an auction of the suit property on 19.9.1995. In the said auction, non-applicant No.3 - Riddhi Investment and Properties Private Limited was the highest bidder and, therefore, the bid was accepted and sale was confirmed in favour of Riddhi Investment and Properties Private Limited on 21.9.1995 subject to the decision of Writ Petition No.327/1994. The Income Tax Department, after having accepted the bid of Riddhi Investment and Properties Private Limited, granted possession of the suit property vide letter of possession dated 25.1.1996. As per IARCPL, no sale deed

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was executed by the Income Tax Department in respect of the suit property in favour of Riddhi Investment and Properties Private Limited. Writ Petition No.327/1994 was dismissed on 30.3.2015 by observing that the writ petition filed is misconceived.

5. On 27.7.1996, Riddhi Investment and Properties Private Limited entered into an agreement of sale with Praharsh Corporation Private Limited (applicant in Civil Revision Application No.92/2019 and non-applicant No.4 in Civil Revision Application No.22/2021) for total consideration of Rs.70.00 lacs and received sum of Rs.65.00 lacs on that day itself. Riddhi Investment and Properties Private Limited again on 26.3.1997 entered into an agreement of sale with Nimish Investment Private Limited (subsequently known as “M/s.Madhyadesh Construction and Finance Private Limited”) for total consideration of Rs.1,15,00,000/- and received amount as advance of Rs.15.00 lacs. M/s.Madhyadesh Construction and Finance Private Limited filed Special Civil Suit No.242/1998 in the

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court of Civil Judge Senior Division, Nagpur against Riddhi Investment and Properties Private Limited for refund of the earnest amount. Praharsh Corporation Private Limited was defendant No.2 in the said suit. On 18.4.2002, the aforesaid Special Civil Suit No.242/1998 was compromised. As per compromise decree dated 18.4.2002, agreement dated 26.3.1997 executed between plaintiff i.e. M/s.Madhyadesh Construction and Finance Private Limited and Riddhi Investment and Properties Private Limited was cancelled. By this compromise, it was agreed that Riddhi Investment and Properties Private Limited shall pay Rs.57,50,000/- to plaintiff M/s.Madhyadesh Construction and Finance Private Limited and it was accordingly repaid. The schedule of repayment was mentioned in the compromise decree. It was further agreed that agreement dated 27.7.1996 executed in favour of Praharsh Corporation Private Limited for sale of house No.169 along with an open plot situated at ward No.66, Ravindranath Tagore Marg, Nagpur, admeasuring 1273.45 square meters with structure by Riddhi Investment

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and Properties Private Limited is valid, subsisting and binding upon Riddhi Investment and Properties Private Limited, who was defendant No.1 in the said suit. It was further agreed that defendant No.1 Riddhi Investment and Properties Private Limited confirmed that out of total consideration of Rs.70.00 lacs payable by Praharsh Corporation Private Limited to defendant No.1 Riddhi Investment and Properties Private Limited. Defendant No.1 Riddhi Investment and Properties Private Limited received Rs.65.00 lacs from time to time and Praharsh Corporation Private Limited now only is required to pay balance amount Rs.5.00 lacs at the time of execution of sale deed and on receipt of vacant possession. Riddhi Investment and Properties Private Limited, further agreed that it shall within a period of three months from the date of compromise obtain conveyance from the appropriate authority to directly execute the sale deed in favour of Praharsh Corporation Private Limited. If Riddhi Investment and Properties Private Limited fails to execute or cause appropriate authority to

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execute conveyance in favour of Praharsh Corporation Private Limited as set out, Praharsh Corporation Private Limited shall deposit balance amount of consideration of Rs.5.00 lacs in court and shall obtain the sale deed and possession of the property through court shown in Schedule-A by executing compromise decree. As per the terms and conditions of the said compromise, Riddhi Investment and Properties Private Limited agreed, undertook, and declared to the court that its title to the suit property is clear, marketable, and there is no mortgage, charge, lien or any encumbrances or any third party right in suit property and also agreed that it would not create any encumbrances in respect of the suit property. On 18.4.2002, accordingly, 2nd Joint Civil Judge Senior Division, Nagpur passed compromise decree in Special Civil Suit No.242/1998.

6. On 5.8.2005, Praharsh Corporation Private Limited filed Special Darkhast No.221/2005 to execute the compromise decree dated 18.4.2002. Prior to filing of execution proceeding, on 4.12.2004, Riddhi Investment and

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Properties Private Limited entered into Memorandum of Understanding (MoU) with Praharsh Corporation Private Limited. As per this MoU, Riddhi Investment and Properties Private Limited received Rs.65.00 lacs from Praharsh Corporation Private Limited in connection to agreement to sale. As per clause No.1 of the said MoU, Riddhi Investment and Properties Private Limited agreed in lieu of the said amount, to sale properties for total consideration of Rs.67,78,000/- against Rs.65.00 lacs payable by Riddhi Investment and Properties Private Limited to Praharsh Corporation Private Limited which were adjusted and in this connection Riddhi Investment and Properties Private Limited had executed agreement to sale in favour of Praharsh Corporation Private Limited to this effect. In view of this MoU, properties situated at Vadodara were agreed to sale to Praharsh Corporation Private Limited against amount of Rs.65.00 lacs. On 20.10.2005, the Income Tax Department executed registered sale deed in favour of Riddhi Investment and Properties Private Limited regarding the suit property.

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On the same day i.e. on 20.10.2005 Riddhi Investment and Properties Private Limited executed the sale deed in favour of “MVEPL”. On 16.1.2015, in view of order passed by learned 6th Joint Civil Judge Senior Division, Nagpur, the Nazir executed the sale deed of the suit property in favour of Praharsh Corporation Private Limited. On 2.2.2016, a warrant of possession was executed and Praharsh Corporation Private Limited was put in possession of the suit property.

7. During pendency of the execution proceedings, IARCPL filed an application for adding it as a party dated 17.12.2014 on the ground that the aforesaid compromise decree is in collusion, which was rejected. The order of learned Civil Judge Senior Division denying to add IARCPL as a party was subject matter of Writ Petition No.2761/2014 on the ground that compromise decree is collusive. As per contentions of IARCPL, MVEPL became owner of the suit property vide registered sale deed executed by Riddhi Investment and Properties Private Limited on 20.10.2005. It

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is further contention of IARCPL, by MoU dated 4.12.2004 entered into by Prahmarsh Corporation Private Limited and Riddhi Investment and Properties Private Limited, agreement to sale between Prahmarsh Corporation Private Limited and Riddhi Investment and Properties Private Limited was cancelled. It is further contention of IARCPL that in view of the said MoU, the agreement to sale dated 27.7.1996 and compromise decree dated 18.4.2002 were cancelled. It is further contended that Riddhi Investment and Properties Private Limited and Prahmarsh Corporation Private Limited both approached to MVEPL with a request to purchase the suit property and handed over the photo copy of MoU dated 4.12.2004. Thus, compromise decree dated 18.4.2002 stood in fact cancelled on execution of MoU dated 4.12.2004. Prahmarsh Corporation Private Limited filed an execution bearing No.221/2005 on 5.8.2005 and suppressed facts from the executing court. The act of cancellation of agreement of sale dated 27.7.1996 and the compromise decree dated 18.4..2002 were also cancelled. It is further contended that

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MVEPL became owner of the suit property after purchasing from Riddhi Investment and Properties Private Limited vide registered sale deed dated 20.10.2005.

8. In fact, Gupta Metallic and Power Limited had borrowed loan of Rs.25.00 crores from the Axis Bank Limited. MVEPL had given guarantee to the said loan and mortgaged the suit property with the Axis Bank Limited for securing the due payment of the said loan. Gupta Metallic and Power Limited failed to pay defaulted amount because of which its loan account was classified as NPA. The Axis Bank Limited vide Deed of Assignment dated 30.12.2011 has unconditionally and irrevocably assigned, transferred, and released the rights in respect of suit property in favour of IARCPL as well as the debt of Gupta Metallic and Private Limited together with all the underlying securities, interests, the rights, the title of the Axis Bank Limited. IARCPL exercised its statutory rights under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (the SARFAESI Act) and took physical

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possession of the suit property being secured assets on 17.5.2012. As per contentions of IARCPL, Praharsh Corporation Private Limited filed execution proceeding on 5.8.2005 suppressing from executing court, the act of cancellation of agreement of sale dated 27.7.1996 and thereby compromise decree 18.4.2002 is cancelled. The sale deed was executed by the Income Tax Department in favour on Riddhi Investment and Properties Private Limited on 20.10.2005 and on the same day Riddhi Investment and Properties Private Limited executed the sale deed in favour of MVEPL and possession was also handed over to MVEPL. As per MoU dated 4.12.2004, the agreement to sale between Praharsh Corporation Private Limited and Riddhi Investment and Properties Private Limited in respect of suit properties is cancelled and amount received by Riddhi Investment and Properties Private Limited from Praharsh Corporation Private Limited has been adjusted against new properties at Vadodara. Praharsh Corporation Private Limited, thus, duly waived its claim and rights against the suit property. In view

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of the said MoU dated 4.12.2004, the compromise decree became unexecutable and in fact having stood satisfied, Praharsh Corporation Private Limited has no further rights to file or pursue the execution proceeding. It is further contentions of IARCPL that in execution proceeding it being necessary party was required to be permitted to intervene, but the executing court rejected the application by holding that it is not necessary party. IARCPL preferred Writ Petition No.2761/2014 before this court contending that compromise decree is collusive. It is observed by this court that remedy of IARCPL is not in execution, but elsewhere and dismissed the writ petition.

9. IARCPL has challenged the order of this court in Special Leave Petition No.34239/2014, which was also dismissed by the Honourable Apex Court on 15.12.2014. Thereafter, IARCPL filed an application on 17.12.2014 for its impleadment which was rejected on 3.8.2015. IARCPL challenged the order by preferring RCA No.461/2015 before learned District Judge at Nagpur. The said appeal was

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dismissed on 11.12.2015. Thereafter, on 20.1.2015, IARCPL filed an application for setting aside *ex parte* compromise decree which was rejected on 2.12.2016. By order dated 2.12.2016, warrant of possession issued and Praharsh Corporation Private Limited was put in possession. Thereafter, on 3.3.2016, Sawan Nandkumar Bhatewara (non-applicant No.4 in Civil Revision Application No.92/2019 and the applicant in Civil Revision Application No.22/2021) purchased the suit property from Praharsh Corporation Private Limited vide sale deed and he was put in possession of the suit property. On 5.6.2017, IARCPL filed suit bearing No.408/2017 for declaration, permanent injunction and possession of the suit property. Vide Exhibits-20 and 38, Praharsh Corporation Private Limited and Sawan Nandkumar Bhatewara preferred applications under Order VII Rule 11 of the Code for rejection of the plaint on the ground that plaint does not disclose cause of action against them and barred by law of limitation. Both these applications are rejected by learned 18th Joint Civil Judge Senior Division, Nagpur.

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10. Being aggrieved and dissatisfied with the same, the present Civil Revision Applications are filed by Praharsh Corporation Private Limited and Sawan Nandkumar Bhatewara, who are defendant Nos.1 and 3 in the above suit.

11. During pendency of Civil Revision Applications, IARCPL filed Civil Application No.20/2024 for taking action against Sawan Nandkumar Bhatewara as he has committed breach of oral *status quo* order.

12. Learned Senior Counsel Shri M.G.Bhangde appearing for Praharsh Corporation Private Limited, submitted that while considering application under Order VII Rule 11 of the Code, the trial court has not even referred to provisions of Section 47 and Order XX1 Rule 2 of the Code. Thus, there is a total lack of consideration and non-application of mind by the trial court. IARCPL and MVEPL, who are original plaintiffs in Special Civil Suit No.408/2017, are transferee *pendente lite* from the judgment debtor of decree passed on 18.4.2002. He submitted that there is no dispute that

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compromise decree was passed in view of the settlement arrived at between plaintiffs and defendants in Special Civil Suit No.242/1998 which was filed by Nimish Investment Private Limited against Riddhi Investment and Properties Private Limited and Praharsh Corporation Private Limited. By way of the said compromise decree, the agreement executed in favour of Nimish Investment Private Limited was cancelled. Riddhi Investment and Properties Private Limited agreed and confirmed that the agreement dated 27.7.1996 made between Riddhi Investment and Properties Private Limited and Praharsh Corporation Private Limited for sale of house No.169 with structure thereon is held to be valid, subsisting and binding upon Riddhi Investment and Properties Private Limited. It was further agreed that as Praharsh Corporation Private Limited has paid Rs.65.00 lacs out of Rs.70.00 lacs as a consideration amount, remaining Rs.5.00 lacs agreed to be paid at the time of execution of sale deed and on receipt of vacant possession of the said property. By way of the compromise decree, Riddhi Investment and

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Properties Private Limited further agreed to obtain conveyance from the appropriate authority under the Income Tax Act and, thereafter, execute the sale deed in favour of Praharsh Corporation Private Limited or cause the appropriate authority to directly execute the sale deed in favour of Praharsh Corporation Private Limited. In case, the appropriate authority fails to execute the sale deed, the time for execution of sale deed in favour of Praharsh Corporation Private Limited shall extend automatically. It was further agreed by this compromise that if Riddhi Investment and Properties Private Limited fails to execute the conveyance in favour of Praharsh Corporation Private Limited, Praharsh Corporation Private Limited shall deposit the balance amount in the court and shall obtain sale deed and possession of the property through the court. Riddhi Investment and Properties Private Limited further agreed that there is no encumbrance on the property and it would not create the same in future. Thus, in view of the said compromise decree, the agreement to sale is held to be valid and subsisting. As

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no sale deed was executed in favour of Praharsh Corporation Private Limited, Praharsh Corporation Private Limited preferred Special Darkhast No.221/2005 for execution of the sale deed on 5.8.2005. The learned Civil Judge Senior Division, while executing the decree through Nazir, executed the sale deed in favour of Praharsh Corporation Private Limited on 16.1.2015. The possession was also handed over by order dated 2.2.2016. Thus, it became the owner of the suit property in view of the sale deed executed in favour of Praharsh Corporation Private Limited in view of the order passed by the court.

13. Learned Senior Counsel Shri M.G.Bhangde, further submitted that notice of execution was issued to IARCPL and IARCPL filed its reply. In response to the notice, IARCPL contended that the notice itself is bad in law as the company was not party to the darkhast proceeding. The property was mortgaged with it; decree holder, judgment debtor, and one MVEPL with hand in gloves creating legal impediments in the way for disposing of the property. Learned Civil Judge Senior

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Division rejected the said contentions. The order of learned Civil Judge was challenged by IARCPL in Writ Petition No.2761/2014. While disposing of the said writ petition, this court held that there is merit in the submission of learned Senior Counsel for Praharsh Corporation Private Limited that there is no flaw or any fault in the compromise decree. If the petitioner therein has any grievances against the compromise decree, remedy lies elsewhere and not by objecting in the executing proceeding that too when the petitioner therein had not sought any intervention, but was permitted to participate at the instance of the court. It is further observed by this court that the petitioner therein being a transferee *pendente lite* may have only limited right that too by filing an independent proceeding and not to object the decree holder in an execution proceeding and dismissed the writ petition. During the pendency of the writ petition, IARCPL also filed an application before the executing court for adding it as party. The same was also rejected by learned Civil Judge Senior Division by observing that it is not

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necessary party. The order passed by learned Civil Judge Senior Division was challenged by IARCPL by preferring RCA No.461/2015. The same was also dismissed by learned District Judge by observing that the sale deed executed in favour of MVEPL is void and *ab initio* and dismissed the appeal. The said order of learned District Judge remained unchallenged and attended finality. Subsequently to the order passed by learned District Judge, by order of learned Civil Judge Senior Division, the sale deed was executed in favour of Praharsh Corporation Private Limited.

14. Learned Senior Counsel Shri M.G.Bhangde, further submitted that the suit is filed by IARCPL bearing Special Civil Suit No.408/2017. If the prayer clause of the suit is seen, compromise decree is not challenged in the said suit. However, IARCPL claimed relief of declaration that the sale deed dated 16.1.2015 be declared as *null and void*. Further declaration sought is, sale deed in favour of Sawan Nandkumar Bhatewara be declared as *null and void*. IARCPL seeks declaration that possession of Praharsh Corporation

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Private Limited as well as Sawan Nandkumar Bhatewara is illegal and obtained fraudulently and to deliver the possession. The alternative prayer of IARCPL is that Praharsh Corporation Private Limited and Riddhi Investment and Properties Private Limited shall pay amount Rs.5,06,00,000/- along with interest and damages to IARCPL. The prayer clauses show that the compromise decree is not challenged. As far as pleading of plaintiffs is concerned, it shows that it was Riddhi Investment and Properties Private Limited who executed the sale deed in favour of MVEPL on 20.10.2005 when the agreement of sale was in existence and executed in favour of Praharsh Corporation Private Limited and execution petition was pending. He submitted that now the suit is filed on ground that after compromise decree is passed, Praharsh Corporation Private Limited and Riddhi Investment and Properties Private Limited entered into MoU and agreed to adjust amount of Rs.65.00 lacs paid by Praharsh Corporation Private Limited to Riddhi Investment and Properties Private Limited and in lieu of the suit

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property, the agreement of sale, regarding other properties situated at Vadodara, is executed in favour of Praharsh Corporation Private Limited. Thus, in view of the said MoU dated 4.12.2004, Praharsh Corporation Private Limited waived its right and the compromise decree became unexecutable as it stood satisfied and Praharsh Corporation Private Limited has no further right to file or pursue the execution proceeding. It is further alleged that Praharsh Corporation Private Limited has suppressed this MoU from the executing court and got executed the decree fraudulently. He submitted that in fact this MoU was not brought on record either by IARCPL or by Riddhi Investment and Properties Private Limited. If the MoU is entered between the parties against the compromise decree, in view of Section 47 and Order XXI Rule 2 of the Code, it shall be recorded and certified before the court. A payment of adjustment, which has not been certified or recorded, as the aforesaid, shall not be recognized by any court executing the decree. He submitted that the trial court has not considered

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this aspect. Satisfaction of decree is only by executing court under Section 47 and Order XXI Rule 2 of the Code. He submitted that in view of Order XXIII Rule 3(a) of the Code, there is a bar to the suit to set aside the compromise decree and, therefore, the suit against Praharsh Corporation Private Limited is not maintainable. He submitted that there is no dispute that plaintiffs are transferees *pendente lite* and being transferees *pendente lite* it has limited right. The MoU is not recognized by any law. The sale deed is executed by the court. This court, while disposing of the writ petition filed by IARCPL, already held that there is no flaw in the compromise decree. The order passed in the writ petition was subject matter of challenge in Special Leave Petition No.34239/2014 and the same was dismissed by the Honourable Apex Court by observing that no ground for interference is made out in exercise of jurisdiction under Article 136 of the Constitution of India.

15. Learned Senior Counsel Shri M.G.Bhangde, further submitted that in the light of the above observations, a

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question arises whether cognizance of MoU can be taken into account which is not certified by the court in view of Order XXI Rule 2 of the Code. Thus, no cause of action arose against Praharsh Corporation Private Limited and, therefore, Praharsh Corporation Private Limited filed an application under Order VII Rule 11 of the Code. The compromise decree attained its finality. The argument of collusion is already rejected. As such, the order passed by learned Civil Judge Senior Division rejecting the application filed under Order VII Rule 11 of the Code deserves to be quashed and set aside.

16. Learned Senior Counsel Shri M.G.Bhangde, further submitted that as per plaintiffs IARCPL and MVEPL, when the agreement of sale was executed in favour of Praharsh Corporation Private Limited, Riddhi Investment and Properties Private Limited was not owner of the suit property and only bid was confirmed in favour of Riddhi Investment and Properties Private Limited and possession was given. Thus, Riddhi Investment and Properties Private Limited was

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not owner and was not having any right to sale the property. But, this act of Riddhi Investment and Properties Private Limited covers under Section 43 of the Transfer of Property Act and, therefore, this ground is also not available to IARCPL. For all above those grounds, revision applications deserve to be allowed.

17. In support of his contentions, learned Senior Counsel Shri M.G.Bhangde placed reliance on various decisions. The relevant decisions would be referred at relevant time of discussion.

18. Learned counsel Shri S.V.Purohit, appearing for Sawan Nandkumar Bhatewara (non-applicant No.4 in Civil Revision Application No.92/2019 and applicant in Civil Revision Application No.22/2021), adopting arguments canvassed by learned Senior Counsel Shri M.G.Bhangde, submitted that Sawan Nandkumar Bhatewara has purchased the suit property from Praharsh Corporation Private Limited after the sale deed was executed in favour of Praharsh Corporation

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Private Limited on 3.3.2017. Thus, he is a *bona fide* purchaser and no cause of action arose against him. The plaint does not disclose any cause of action against him and the suit is also barred by law of limitation. He further submitted that a civil application is filed by IARCPL alleging that Sawan Nandkumar Bhatewara disobeyed the oral order of this court directing to maintain the *status quo*. He submitted that the said oral order was communicated to Sawan Nandkumar Bhatewara. This court was pleased to orally direct not to proceed with the construction over the suit property. He had communicated the same to Sawan Nandkumar Bhatewara via mobile call around 3:30 pm.. After receipt of the referred information, Sawan Nandkumar Bhatewara informed the contractor and directed him to stop the work. However, the contractor informed that on 25.1.2024 in all four pits were dug at the site by using drilling machine. Out of these four pits, drilling of three pits was completed and digging of four pits was midway. It was further informed that drilling work could not have been

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stopped at that stage as ready mixed concrete had reached at the site which needs to be filled to avoid untoward incident and for the safety of the labourers visiting the site and boundary wall of the adjoining house owners would be at risk. So, there is no intentional disobedience by Sawan Nandkumar Bhatewara and, therefore, civil applications deserve to be rejected.

19. In support of his contentions, learned counsel Shri S.V.Purohit placed reliance on various decisions which would be referred at the relevant time of discussion.

20. Learned counsel Dr. (Shri) Anjan De appearing for IARCPL and MVEPL, submitted that pillars of Order VII Rule 1 of the Code are that; (1) only plaintiff's contents are to be considered, (2) contents are considered as correct, (3) validity of documents can not be challenged, and (4) only documents relied on in plaintiff or filed with plaintiff have to be considered as part of plaintiff. He submitted that facts in issue show that auction of property by the Income Tax Department

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was in favour of Riddhi Investment and Properties Private Limited who was higher bidder on 19.9.1995 which was subject to the decision in Writ Petition No.327/1994. Though possession was given to Riddhi Investment and Properties Private Limited, no sale deed was executed on 25.1.1996. Agreement between Riddhi Investment and Properties Private Limited and Praharsh Corporation Private Limited was executed on 27.7.1996 and consideration amount was fixed as Rs.70.00 lacs. Subsequent to the agreement with Praharsh Corporation Private Limited, Riddhi Investment and Properties Private Limited entered into an agreement with Nimish Investment Private Limited. Nimish Investment Private Limited filed suit and the said suit was compromised. The compromise is not tenable under Order XXIII Rule 3 of the Code as the agreement was not lawful. Praharsh Corporation Private Limited was not the decree holder. Agreement with Riddhi Investment and Properties Private Limited and Baldev Agriculture and Plantation Limited dated 4.4.2002 was with consent of Praharsh Corporation Private Limited. Thereafter,

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agreement of sale with MVEPL dated 25.11.2004 was entered into. MoU dated 4.12.2004 between Riddhi Investment and Properties Private Limited and Praharsh Corporation Private Limited, by which amount of Rs.65.00 lacs was adjusted, as against three properties in Vadodara, original agreement to sale between Praharsh Corporation Private Limited and Riddhi Investment and Properties Private Limited was cancelled. By the said MoU, the compromise decree is also cancelled. Praharsh Corporation Private Limited executed the compromise decree by suppressing the MoU. Whereas, MVEPL was *bona fide* purchaser in whose favour Riddhi Investment and Properties Private Limited has executed sale deed on 20.10.2005. As the decree was not passed, right to enforce the compromise does not exist. Praharsh Corporation Private Limited has waived its right and, therefore, the compromise decree became unexecutable. He submitted that in view of the observation by this court in Writ Petition No.2761/2014, IARCPL, who was petitioner therein, can put his grievance against the compromise

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decree by filing appropriate proceedings and, therefore, IARCPL and MVEPL filed the suit against Praharsh Corporation Private Limited and others to declare the sale deed executed in favour of Praharsh Corporation Private Limited be declared as *null and void*. IARCPL has also claimed the relief of possession from Praharsh Corporation Private Limited and Sawan Nandkumar Bhatewara. In the alternative, IARCPL claimed refund of the amount. He submitted that two golden Rules of Order VII Rule 11 require to be kept in mind that the plaint is to be read as a whole. Praharsh Corporation Private Limited has played a fraud and therefore, every thing is to be nullified. There should be lawful agreement between the parties. Even, the agreement to sale was executed in favour of Praharsh Corporation Private Limited when Riddhi Investment and Properties Private Limited was not owner of the property. Agreement does not create any title in favour of Praharsh Corporation Private Limited. After getting the title, Riddhi Investment and Properties Private Limited executed the sale deed in

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favour of MVEPL and it became the owner. As MVEPL stood guarantor to the loan obtained by Gupta Metallic and Power Limited and the suit property was mortgaged to the Axis Bank Limited by MVEPL, as a guarantor to the loan and Gupta Metallic and Power Limited failed to pay the loan amount, the loan account was classified as NPA. The Axis Bank Limited has unconditionally and irrevocably assigned and transferred the rights in favour of IARCPL. IARCPL exercised its statutory rights under the SARFAESI Act and took physical possession of the suit property being the secured asset on 17.5.2012. Thus, IARCPL became the owner of the suit property. The transaction entered with Praharsh Corporation Private Limited was not real transaction. The compromise decree is a fraudulent one and it was not final decree. There was no final adjudication between Praharsh Corporation Private Limited and Riddhi Investment and Properties Private Limited and, therefore, the title of IARCPL is a legal title and the sale deed executed in favour of Praharsh Corporation Private Limited is *null and void*. The

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trial court has rightly considered the legal position that the plaint cannot be rejected in part and rejected the application under Order VII Rule 11 of the Code and, therefore, no interference is called for and prays for rejection of civil revision applications.

21. Learned counsel Dr. (Shri) Anjan De, further submitted that as to the civil application filed by IARCPL to take appropriate action against Sawan Nandkumar Bhatewara for disobedience of the order, he submitted that despite of the order passed by this court, Sawan Nandkumar Bhatewara continued with digging activity and there was intentional breach of the order passed by this court and, therefore, appropriate action needs to be taken against him.

22. In support of his contentions, learned counsel Dr. (Shri) Anjan De placed reliance on various decisions. The relevant decisions would be referred at the relevant time of discussion.

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23. By preferring the suit, original plaintiffs IARCPL and MVEPL claimed following reliefs:

“i) declare that the sale deed dated 16.1.2015 executed in favour of the present Defendant No.1 by Court Nazir on behalf of the present Defendant No.2, being the outcome of the fraud played by the Defendant no.1 on the Courts and the parties, is null and void and not binding on the Plaintiffs.

I(a) declare that the sale deed 3-3-2017 executed by the Defendant No.1 Praharsh Investments Private Limited in favour of Shri Sawan Nandkumar Bhatewara is null and void and not binding on the plaintiffs.

ii) Declare that the Defendant No.1 is in illegal and unlawful possession of the suit property, and has obtained the same fraudulently.

iii) Direct the Defendant nos.1 and 2 to deliver the possession of the Suit Property to the plaintiffs.

iii(a) declare the defendant Shri Sawan Nandkumar Bhatewara is in illegal and unlawful possession of the suit property and has obtained the same mala fide and fraudulently and further direct Shri Sawan

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Nandkumar Bhatewara to deliver the possession of the suit property to the plaintiffs.

iv) In the alternative direct the Defendant nos.1 and 2 to pay the Plaintiff No.1 amount of Rs.5,06,00,000/- (Rupees Five Crores Six Lakhs Only) along with interest at the rate of 24% amount from the date of filing of the suit till the amount is received by the plaintiffs. And

v) Direct the defendants 1 to 2 to pay damages and compensation of Rs.20,00,00,000/- (Rupees Twenty Crores only) with interest at 24% per annum from date of filing of the suit till the receipt of the amount by the plaintiffs.

vi) Grant permanent injunction restraining the Defendants from dealing with the Suit Property.

vii) Grant any other relief deemed fit.”

24. Thus, as per Praharsh Corporation Private Limited, sale deed was executed by the Income Tax Department in favour of Riddhi Investment and Properties Private Limited on 20.10.2005. On the same day, Riddhi Investment and

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Properties Private Limited executed sale deed in favour MVEPL contrary to the terms of compromise decree. As MVEPL was guarantor to the debtor Gupta Metallic and Power Limited, the said debtor Gupta Metallic and Power Limited failed to repay the loan amount of Rs.25.00 cores and the loan account became NPA. The Axis Bank Limited vide deed of assignment dated 30.12.2011 has unconditionally, irrevocably assigned, transferred, and released in favour of IARCPL the debt of Gupta Metallic and Power Limited. IARCPL exercised its statutory right, title, and interest of the Axis Bank Limited. There is no dispute that the Income Tax Department put the suit property in auction and the highest bid of Riddhi Investment and Properties Private Limited was accepted on 19.9.1995. On 21.9.1995, the Income Tax Department confirmed the auction sale subject to the decision of Writ Petition No.327/1994. The said writ petition was dismissed subsequently. On 25.1.1996, the Income Tax Department delivered the possession of the suit property to Riddhi

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Investment and Properties Private Limited. On 27.7.1996, Riddhi Investment and Properties Private Limited entered into an agreement of sale with Praharsh Corporation Private Limited for total consideration of Rs.70.00 lacs and received sum of Rs.65.00 lacs on 27.7.1996. The Riddhi Investment and Properties Private Limited also entered into an agreement of sale with Nimish Investment Private Limited which was known as M/s.Madhyadesh Construction and Finance Private Limited for total consideration of Rs.1,15,00,000/- and obtained advance of Rs.15.00 lacs on 26.3.1997. As the sale deed was not executed in favour of M/s.Madhyadesh Construction and Finance Private Limited, the suit was filed bearing Special Civil Suit No.242/1998 for refund of the earnest money. Praharsh Corporation Private Limited was party to the suit. M/s.Madhyadesh Construction and Finance Private Limited and Riddhi Investment and Properties Private Limited entered into a compromise. As per the said compromise, the agreement between them on 26.3.1997 was cancelled and Riddhi Investment and

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Properties Private Limited paid amount Rs.57,50,000/-. In view of the said compromise dated 18.4.2002, agreement dated 27.7.1996 executed in favour of Praharsh Corporation Private Limited regarding suit property was decided to be held as valid subsisting and binding on Riddhi Investment and Properties Private Limited. Accordingly, compromise decree was passed on 18.4.2002. Praharsh Corporation Private Limited filed Special Darkhast No.221/2005 to execute the compromise decree dated 18.4.2002. During the pendency of execution proceeding, the Income Tax Department executed sale deed in favour of Riddhi Investment and Properties Private Limited on 20.10.2005. Contrary to the terms of settlement and the compromise decree, Riddhi Investment and Properties Private Limited executed sale deed in favour of MVEPL. In the said compromise decree, it was agreed that Praharsh Corporation Private Limited has already paid Rs.65.00 lacs out of Rs.70.00 lacs and Rs.5.00 lacs remained to be paid which is to be paid at the time of execution of sale deed and on the

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receipt of vacant possession of the property. It was further decided that Riddhi Investment and Properties Private Limited shall obtain conveyance from the appropriate authority under the Income Tax Act and, thereafter, execute sale deed in favour of Praharsh Corporation Private Limited. It was also agreed, if Riddhi Investment and Properties Private Limited fails to execute or cause appropriate authority to execute conveyance in favour of Praharsh Corporation Private Limited, Praharsh Corporation Private Limited shall deposit the balance consideration amount of Rs.5.00 lacs in court and shall obtain sale deed and possession of the property through the court. In the said compromise decree, Riddhi Investment and Properties Private Limited further undertook that title of the suit property is clear and marketable and free from all encumbrances and will not create any encumbrances or any third party right. Thus, the sale deed appears to be executed by Riddhi Investment and Properties Private Limited during the pendency of execution proceeding i.e. the suit property

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was transferred *pendente lite* contrary to the compromise decree.

25. The facts further show that on 25.3.2008 MVEPL stood as a guarantor to the loan of Rs.25.00 crores obtained by Gupta Metallic and Power Limited and created equitable mortgage of the suit property in favour of the Axis Bank Limited. As debtor Gupta Metallic and Power Limited failed to repay the loan amount, the Axis Bank Limited executed deed of assignment in favour of IARCPL. On 17.5.2012, IARCPL exercised its rights under the SARFAESI Act and took the possession of the suit property on 17.5.2012.

26. As the compromise decree was passed in Special Civil Suit No.242/1998 by which Riddhi Investment and Properties Private Limited agreed to execute the sale deed in favour of Praharsh Corporation Private Limited, Praharsh Corporation Private Limited filed execution application bearing Special Darkhast No.221/2005 and claimed reliefs as under :

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(a) that this Hon'ble Court be pleased to construe the decree herein as a decree for specific performance under Order XXI Rule 32; decree for execution of document that is Sale Deed under Order XXI Rule 34; decree for possession of the decreetal property as contemplated under Order XXI Rule 35 and issue all necessary directions and pass all necessary orders so as to grant effectual relief to the Decree Holder in terms of the decree already passed.

(b) that the reliefs to be granted to the Decree Holder may be moulded by this Hon'ble Court in an appropriate manner as deemed just and reasonable so that the Decree Holder is able to obtain the result of the decree forthwith which has remained unexecuted for several long year because of deliberate and contemptuous conduct of the Judgment debtor amounting to Contempt of Court and breach of undertaking given to this Hon'ble Court.

(c) That the question relating to right of alleged transferees of the property pending execution proceedings may be kept open for being decided under Order 21 Rule 98 of the Code of Civil Procedure if the third party resists execution of warrant of possession when it is being executed and the claim and the contentions of the third

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party be decided at that stage when execution of warrant of possession is resisted by the third party and application under Order 21 Rule 97 is made by the Decree Holder.

(d) that this Hon'ble Court be pleased to permit substituted service of notice of draft Sale Deed by publication in newspaper with liberty to Judgment Debtor to take inspection of the Draft Sale Deed and raise objections if any within a time as may be allowed.

(e) that this Hon'ble Court be pleased to make suitable alterations in the draft Sale Deed as this Hon'ble Court deems so as to grant effectual relief in all respects to the Decree Holder;

(f) that this Hon'ble Court be pleased to appoint an officer of this Hon'ble Court or a practicing Advocate or some other fit and proper person as Receiver of the decreetale property with direction to execute the Sale Deed immediately for and on behalf of in name of the Judgment Debtor.

(g) for costs of execution proceedings and incidental thereto;

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(h) for such further and other reliefs as the nature and circumstances of the case may require.

27. As per submissions of Prahmarsh Corporation Private Limited, IARCPL filed its reply to the reliefs claimed in the execution application stating that the reliefs claimed by the decree holder if granted, it would be intervention in the jurisdiction of the Debt Recovery Tribunal. The property in question has been mortgaged with it under an assignment from the Axis Bank Limited. The decree holder was not at all interested to get the alleged compromise decree executed from the court in spite of the fact that they were aware that the judgment debtor has sold and transferred the said property to MVEPL. Thus, in the reply, IARCPL nowhere stated that the agreement in favour of Prahmarsh Corporation Private Limited is cancelled in view of MoU dated 4.12.2004 and thereby waived its right. The application filed by IARCPL for impleading it as a party in execution vide Exhibit-19 was rejected on 30.12.2013. Prior to that, the order passed by the executing court in favour of decree holder in

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favour of Praharsh Corporation Private Limited was challenged by IARCPL in Writ Petition No.2761/2014. The said writ petition was also dismissed by observing that there is no flaw or any fault in the compromise decree. If the petitioner therein has any grievances against the compromise decree, remedy lies elsewhere and not by objecting in the executing proceeding that too when the petitioner therein had not sought any intervention, but was permitted to participate at the instance of the court. It was further observed by this court that the petitioner therein being a transferee *pendente lite* may have only limited right that too by filing an independent proceeding and not to object the decree holder in an execution proceeding and dismissed the writ petition. Special Leave Petition No.34239/2014 filed by IARCPL was also dismissed by the Honourable Apex Court on 15.12.2014. The application filed by IARCPL for adding it as a party was also rejected by the executing court by order dated 3.8.2015. In the said application also, there was no reference of MoU dated 4.12.2004 by IARCPL. The order of

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learned Civil Judge Senior Division was challenged in RCA No.461/2015. Learned District Judge, while dismissing the appeal, observed that the compromise decree was already passed and, therefore, the sale deed executed in favour of MVEPL is *void ab initio*. It is further observed by learned District Judge that it is hit by Section 52 of the Transfer of Property Act.

28. After dismissal of the writ petition by this court, decree holder Praharsh Corporation Private Limited filed an application for possession of immovable property i.e. the suit property under Order XXI Rule 35(1) and 35(3) of the Code. IARCPL also filed an application for setting aside the compromise decree vide Exhibit-103 wherein first time IARCPL came with the case of MoU and contented that in view of the MoU executed subsequent to the compromise decree, Praharsh Corporation Private Limited waived its claim and the agreement of sale executed in favour of Praharsh Corporation Private Limited is cancelled. The application filed by IARCPL was rejected holding that a *lis*

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pendens transferee cannot agitate for direction to the decree holder as *lis pendens* transferee has no right to challenge the decree and rejected the application. By the common order, possession warrant claimed by Prahmarsh Corporation Private Limited was issued under Order XXI Rule 35(1) and Rule 35(3) of the Code for possession of the property in question. As observed earlier, by passing of judgment in RCA No.461/2015, the district court observed that the sale deed executed in favour of MVEPL is *void ab initio* and was not challenged further. The order passed below Exhibit-103 for setting aside compromise decree was also not challenged. Thus, finding of the district court that the sale deed executed in favour of MVEPL is *void ab initio* and remained unchallenged and became final.

29. In view of the order passed by learned Civil Judge Senior Division below Exhibit-102, possession warrant was issued and Prahmarsh Corporation Private Limited was put in possession. On 16.1.2015, as per the order of the court, Nazir of learned Civil Judge Senior Division executed sale

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deed of the suit property in favour of Praharsh Corporation Private Limited. Thereafter, Special Civil Suit No.408/2017 is filed by IARCPL as plaintiff No.1 and MVEPL as plaintiff No.2 on the ground that MoU dated 4.12.2004 was not brought to the notice of executing court and Praharsh Corporation Private Limited has played fraud with the executing court. It is further alleged that by way of the said MoU, Praharsh Corporation Private Limited has waived its right and settled its claim by adjusting the same against other properties at Vadodara. Thus, Praharsh Corporation Private Limited has abandoned all its claims and right against the suit property. In view of the said MoU dated 4.12.2004 executed between Praharsh Corporation Private Limited and Riddhi Investment and Properties Private Limited, the compromise decree was unexecutable and in fact having stood satisfied. Therefore, Riddhi Investment and Properties Private Limited has no further right to pursue the execution proceeding and claimed relief of declaration that the sale deed dated 16.1.2015 executed in favour of Riddhi

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Investment and Properties Private Limited by court Nazir being the outcome of fraud played by Riddhi Investment and Properties Private Limited with the court be declared as *null and void*. It is further claimed that sale deed executed in favour of Sawan Bhatewara by Praharsh Corporation Private Limited be declared as *null and void* and claimed the possession from it. Admittedly, the alleged MoU was subsequent to the compromise decree.

30. After going through the relevant facts and documents on record, the entire issue revolves around the compromise decree and the sale deed executed in favour of Praharsh Corporation Private Limited. IARCPL filed suit on the ground that subsequent to the compromise decree dated 18.4.2002, Praharsh Corporation Private Limited and Riddhi Investment and Properties Private Limited entered into MoU by which amount paid by Praharsh Corporation Private Limited Rs.65.00 lacs is adjusted against the other properties situated at Vadodara. By the said MoU, agreement to sale executed in favour of Praharsh Corporation Private Limited is

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cancelled. In view of the said MoU, the compromise decree became unexecutable as Praharsh Corporation Private Limited duly waived its claim and rights against the suit property.

31. Questions for determination arises are as under:

1. Whether cognizance of MoU can be taken?
2. Whether the plaint can be rejected against some of defendants: and
3. Whether the plaint does not disclose cause of action against Praharsh Corporation Private Limited and Sawan Bhatewara and barred by limitation warranting rejection against them in terms of Order VII Rule 11(a) and (d) of the Code?

32. The first limb of submissions of learned Senior counsel Shri M.G.Bhangde is that the suit is barred by Section 47 of the Code. He submitted that the compromise decree is passed in favour of Praharsh Corporation Private Limited and according to IARCPL, the agreement executed in favour of Praharsh Corporation Private Limited stood

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cancelled, settled and satisfied on the execution of MoU. He submitted that the compromise decree is passed on 18.4.2002 by which judgment debtor Riddhi Investment and Properties Private Limited agreed to execute the sale deed in favour of Praharsh Corporation Private Limited after the competent authority of the Income Tax Department executes conveyance in it favour. The judgment debtor further agreed that the agreement to sale executed in favour of Praharsh Corporation Private Limited is subsisting, valid, and legal. He undertook that if he fails to execute the sale deed, decree holder Praharsh Corporation Private Limited shall get it executed through the court by depositing remaining consideration amount of Rs.5.00 lacs. The judgment debtor Riddhi Investment and Properties Private Limited further agreed that he would keep the suit property free from all encumbrances. Now, the suit is filed on the ground that in view of MoU dated 4.12.2004, the agreement between Praharsh Corporation Private Limited and Riddhi Investment and Properties Private Limited stood cancelled as the decree

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is satisfied by adjusting the amount paid by Praharsh Corporation Private Limited. The said MoU dated 4.12.2004 was executed subsequent to passing of the compromise decree. Admittedly, Praharsh Corporation Private Limited had filed execution proceeding bearing Special Darkhast No.221/2005 to execute the compromise decree on 5.8.2005. Thus, after passing of the compromise decree and before filing execution proceeding, the alleged MoU dated 4.12.2004 was executed. Subsequent to filing of execution proceeding on 5.8.2005, the Income Tax Department executed sale deed in favour of judgment debtor on 20.10.2005. On the same day, contrary to the terms of the compromise decree, the sale deed was executed by judgment debtor in favour of MVEPL. He raised the question whether the cognizance of such MoU can be taken and referred Section 47 and Order XXI Rule 2 of the Code and submitted that adjustment against the decree, which is not certified, cannot be taken into consideration.

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33. Before considering the submissions, it is necessary to refer relevant Section 47 and Order XXI Rule 2 of the Code, which reproduced for reference:

47. Questions to be determined by the Court executing decree .-

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

[* * *]

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

[Explanation I .-For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II .-(a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

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(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.]

Order XXI Rule 2:

Payment out of Court to decree-holder.

(1) Where any money payable under a decree of any kind is paid out of Court. [or decree of any kind is otherwise adjusted] in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

(2) The judgment-debtor [or any person who has become surety for the judgment-debtor] also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree- holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court record the same accordingly.

(2A) No payment or adjustment shall be recorded at the instance of the judgment- debtor unless-

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(a) the payment is made in the manner provided in rule 1; or

(b) the payment or adjustment is proved by documentary evidence; or

(c) the payment or adjustment is admitted by, or on behalf of, the decree-holder in his reply to the notice given under sub-rule (2) of rule 1, on before the Court.

(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognized by any Court executing the decree.

34. Learned Senior Counsel Shri M.G.Bhangde, submitted that the alleged MoU dated 4.12.2004 has not been certified by the court and, therefore, it cannot be recognized in the court of law in view of the mandatory provisions. Admittedly, MoU dated 4.12.2004 is neither got certified by the decree holder nor by the judgment debtor. Though IARCPL served with a notice, after filing of executing proceeding, though it was not party to the original proceeding by court *suo motu*, IARCPL, who was in possession of the suit property, has not raised plea in its reply

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to the notice issued by the court. On the contrary, before the executing court, in response to the notice, IARCPL came with a case that the notice issued to it is bad in law as the company was not party to the original proceeding. It is further contended before the executing court that the property was mortgaged with the company and the decree holder, judgment debtor, and MVEPL with hand in gloves created legal impediments. The said contentions were rejected by learned Civil Judge Senior Division as well as this court in Writ Petition No.2761/2014. The order of this court was challenged before the the Honourable Apex Court in Special Leave Petition No.34239/2014 which was also rejected. Thus, the issue, raised that by the MoU dated 4.12.2004 agreement executed in favour of Praharsh Corporation Private Limited was cancelled, was not raised at earlier point of time. It was firstly raised when IARCPL filed an application vide Exhibit-103 for setting aside the compromise decree, but not applied for certification of the said adjustment. Learned Senior Counsel submitted that

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adjustment/satisfaction of the decree, which is not certified in accordance with provisions of Order XXI Rule 2(3) of the Code, cannot be recognized in the court of law. Since the suit of plaintiffs is based on the MoU, which is not certified, the suit is barred by law. He further submitted that in view of Article 125 of the Limitation Act, within 30 days, concerned party shall apply to the court to certify out of court settlement and, therefore, sole basis which is MoU for filing the suit, which is not recognized in law, cannot be acted upon.

35. In support of his contentions, learned Senior Counsel Shri M.G.Bhangde placed reliance on the decision of the Honourable Apex Court in the case of **Gangabai Gopaldas Mohta vs. Fulchand and ors**¹ wherein in paragraph No.8 it is held that Section 47 of the Code is couched in a very wide language. The very object is to avert another suit concerning the decree under execution. Sub-section (i) has made it clear that dispute between a party to the suit and another claiming

¹ (1997)10 SCC 387

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to be his representative have to be resolved in execution proceedings i.e. fortified in view of sub-section (3) which states that where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the executing court. It is further held that even a transferee *pendente lite* is representative of his transferor within the meaning of sub-section (3) of Section 47, one who claims to be transferee by operation of law would as well be a representative and if his claim to be a representative is disputed either by the opposite party or by the party under whom he claims, such dispute must also be resolved by the executing court itself. The word "representative" used in Section 47 is obviously much wider than the words "legal representative" as used in Section 50 of the Code.

36. Learned Senior Counsel Shri M.G.Bhangde, further placed reliance on the decisions of the Honourable Apex Court in the cases of **Sultana Begum vs. Prem Chand Jain**²;

² (1997)1 SCC 373

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Laxmi Narayanan vs. S.S.Pandian³, and Badamo Devi and ors vs. Sagar Sharma⁴.

37. *Per contra*, learned counsel Dr. (Shri) Anjan De submitted that Praharsh Corporation Private Limited waived its right claimed against the suit property. In the light of the MoU, the compromise decree became unexecutable. In fact, the compromise decree stood satisfied.

38. In support of his contentions, learned counsel Dr. (Shri) Anjan De also placed reliance on the decision of the Honourable Apex Court in the case of **Badamo Devi and ors vs. Sagar Sharma** *supra*.

39. Thus, in the light of catena of decisions, learned Senior Counsel Shri M.G.Bhangde submitted that settled legal position is that an uncertified adjustment of decree out of the court held cannot be entertained by the executing court. Order XXI Rule 2 of the Code applies to a specific set of circumstances. If any money is payable under a decree,

³ (2000)7 SCC 240

⁴ (1999)6 SCC 30

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irrespective of the nature of decree and such money is paid out of the court, decree holder has to certify such payment before the court.

40. Thus, the Honourable Apex Court in the case of **Sultana Begum vs. Prem Chand Jain** *supra*, as relied upon by learned Senior Counsel Shri M.G.Bhangde, settles legal position by observing in paragraph Nos.19, 20, 21, 22, and 23, which are as under:

“19. Order XXI Rule 2 applies to a specific set of circumstances. If any money is payable under a decree, irrespective of the nature of decree, and such money is paid out of court, the decree-holder has to certify such payment to the court whose duty is to execute the decree and that court has to record the same accordingly. Similarly if a decree, irrespective of its nature, is adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder has to certify such adjustment to that court which has to record the adjustment accordingly. If the payment or adjustment is not reported by the decree-holder, the judgment-debtor has been given the right to inform the court of such payment or adjustment and to apply

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to that court for certifying that payment or adjustment after notice to the decree-holder. Then comes Sub-rule (3) which provides that a payment or adjustment which has not been certified or recorded under Sub-rule (1) or (2), shall not be recognised by the court executing the decree.

20. The words "or the decree of any kind is otherwise adjusted" are of wide amplitude. It is open to the parties namely, the decree-holder and the judgment-debtor to enter into a contract or compromise in regard to their rights and obligations under the decree. If such contract or compromise amounts to an adjustment of the decree, it has to be recorded by the court under Rule 2 of Order XXI. It may be pointed out that an agreement, contract or compromise which has the effect of extinguishing the decree in whole or in part on account of decree being satisfied to that extent will amount to an adjustment of the decree within the meaning of this Rule and the Court, if approached, will issue the certificate of adjustment. An uncertified payment of money or adjustment which is not recorded by the court under Order XXI Rule 2 cannot be recognised by the executing court. In a situation like this, the only enquiry that the executing court can do is to find out whether the plea taken on

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its face value, amounts to adjustment or satisfaction of decree, wholly or in part, and whether such adjustment or satisfaction had the effect of extinguishing the decree to that extent. If the executing court comes to the conclusion that the decree was adjusted wholly or in part but the compromise or adjustment or satisfaction was not recorded and/or certified by the court, the executing court would not recognize them and will proceed to execute the decree.

21. The problem can be looked into from another angle on the basis of the maxim "generalia specialibus non derogant."

22. Section 47, as pointed out earlier, gives full jurisdiction and power to the executing court to decide all questions relating to execution, discharge and satisfaction of the decree. Order XXI Rule 3, however, places a restraint on the exercise of that power by providing that the executing court shall not recognize or look into any uncertified payment of money or any adjustment of decree. If any such adjustment or payment is pleaded by the judgment- debtor before the executing court, the latter, in view of the legislative mandate, has to ignore it if it has not been certified or recorded by the court.

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23. The general power of deciding questions relating to execution, discharge or satisfaction of decree under Section 47 can thus be exercised subject to the restriction placed by Order XXI Rule 2 including Sub-rule (3) which contain special provisions regulating payment or money due under a decree outside the court or in any other manner adjusting the decree. The general provision under Section 47 has, therefore, to yield to that extent to the special provisions contained in Order XXI Rule 2 which have been enacted to prevent a judgment-debtor from setting up false, or cooked- up pleas so as to prolong or delay the execution proceedings.”

41. In the case of **Laxmi Narayanan vs. S.S.Pandian** *supra* also the Honourable Apex Court held that after the rights of the parties are crystallized on passing of a decree by a competent court, in law they are not precluded from settling their disputes outside the court. But, to have the compromise recognised by a court, it has to be recorded under Rule 2 of Order XXI of the Code. The consequence of not having it so recorded is contained in Rule 3 of Order XXI of the code

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which prohibits every Court executing the decree from recognizing a payment or adjustment which has not been certified or recorded by the Court.

42. In the case of **Badamo Devi and ors vs. Sagar Sharma** *supra*, also the Honourable Apex Court held that any payment made under a decree made out of court or any adjustment of a decree has to be certified under Order XXI Rule 2 of the Code, failing which the same would not be recognized by the executing court.

43. Thus, an uncertified payment of money or adjustment which is not recorded by the court under Order XXI Rule 2 of the Code cannot be recognized by the executing court.

44. In a situation like this, the only enquiry that the executing court can do is to find out whether the plea taken on its face value, amounts to adjustment or satisfaction of decree, wholly or in part, and whether such adjustment or satisfaction had the effect of extinguishing the decree to that extent. If the executing court comes to the conclusion that

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the decree was adjusted wholly or in part but the compromise or adjustment or satisfaction was not recorded and/or certified by the court, the executing court would not recognize them and will proceed to execute the decree.

45. The expression "or the decree of any kind is otherwise adjusted" are of wide amplitude. It is open to the parties namely, the decree-holder and the judgment-debtor to enter into a contract or compromise in regard to their rights and obligations under the decree. If such contract or compromise amounts to an adjustment of the decree, it has to be recorded by the court under Rule 2 of Order XXI. an agreement, contract or compromise which has the effect of extinguishing the decree in whole or in part on account of decree being satisfied to that extent will amount to an adjustment of the decree within the meaning of this Rule and the Court, if approached, will issue the certificate of adjustment. An uncertified payment of money or adjustment which is not recorded by the court under Order XXI Rule 2 cannot be recognised by the executing court. In a situation like this, the

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only enquiry that the executing court can do is to find out whether the plea taken on its face value, amounts to adjustment or satisfaction of decree, wholly or in part, and whether such adjustment or satisfaction had the effect of extinguishing the decree to that extent. If the executing court comes to the conclusion that the decree was adjusted wholly or in part but the compromise or adjustment or satisfaction was not recorded and/or certified by the court, the executing court would not recognize them and will proceed to execute the decree.

46. The general power of deciding questions relating to execution, discharge or satisfaction of decree under Section 47 can thus be exercised subject to the restriction placed by Order XXI Rule 2 including Sub-rule (3) which contain special provisions regulating payment or money due under a decree outside the court or in any other manner adjusting the decree.

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47. As seen from the above, Rule 2 of Order XXI of the Code places emphasis not on the decree being satisfied, but on the same being adjusted. The term ‘adjusted’ is obviously wider than the terms “satisfied”. There may be an agreement which merely satisfies the decree and nothing more. Whereas, there may be another agreement which apart from satisfying the decree as it stands, does something in addition to it.

48. Thus, it is well settled that the adjustment to fall within the ambit of Order XXI Rule 2 of the Code does not necessarily have to be in respect of the entire decree. The parties are at liberty to adjust some and not all aspects of the decree. But, the uncertified payment of money or adjustment which is not recorded by the court under Order XXI Rule 2 of the Code cannot be recognized by the executing court. If the adjustment or satisfaction was not recorded or certified by the court, the only option remain with the executing court is to proceed with the execution of the decree.

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49. In the present cases, admittedly, the alleged adjustment by way of the MoU was neither certified by the executing court nor it is brought before the executing court to find out whether the plea taken on its face value amounts to adjustment or satisfaction of a decree wholly or in part.

50. The application filed by Praharsh Corporation Private Limited before the trial court under Order VII Rule 11 of the Code, on the ground that the suit is barred by law of limitation and, therefore, in view of Order VII Rule 11(d) of the Code, the plaint deserves to be rejected. Learned Senior Counsel Shri M.G.Bhangde, submitted that cause of action shown is illusory. Articles 58 and 59 of the Limitation Act provide limitation for declaration of suit is of three years. The suit for declaration is to be filed within three years under Article 58 when the cause of action first arose. In case of Article 59, a suit, challenging decree, has to be filed within three years from the date when the facts entitling plaintiff to have instrument or decree cancelled or set aside or the contract resented first became known to plaintiff. IARCPL

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got knowledge of the compromise decree on 10.9.2012 as IARCPL filed an application under Order XXII Rule 10 of the Code wherein IARCPL pleaded that the executing court *suo motu* issued show cause notice dated 6.9.2012 to IARCPL to show cause against the execution application. This show cause notice was issued on 10.9.2012 and IARCPL placed appearance through counsel and filed reply Exhibit-45 and opposed the execution proceeding as well as relief claimed in Exhibit-26. Thus, IARCPL was having knowledge on 10.9.2012. Whereas, MVEPL got knowledge of compromise decree on 20.10.2005. He further submitted that the pleading of the plaintiffs itself shows that Praharsh Corporation Private Limited and Riddhi Investment and Properties Private Limited approached MVEPL with a request that it should purchase the suit property for valuable consideration and handed over the photocopy of MoU dated 4.12.2004. Praharsh Corporation Private Limited and Riddhi Investment and Properties Private Limited informed MVEPL that it would be necessary to cancel the compromise

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decree and for that purpose they would be required original MoU. Thus, MVEPL was knowing about the MoU prior to execution of the sale deed in its favour as well as about the compromise decree, but the suit is not filed within three years either from 10.9.2012 or from 20.10.2005.

51. In support of his contentions, learned Senior Counsel Shri M.G.Bhangde placed reliance on the decision of the Honourable Apex Court in the case of **Zee Telefilms Limited (now known as Zee Entertainment Enterprises Limited vs. Suresh Production and ors⁵** and on the decision of this court in the case of **Jahangir @ Jawahar Kaikashrao Karanjia (since deceased) Smt.Mehbi Karanjia and ors vs. Maureen De Sequeira⁶**.

52. *Per contra*, learned counsel Dr. (Shri) Anjan De submitted that the suit is within limitation as cause of action arose in the year 2016 when the Praharsh Corporation Private Limited obtained possession of the suit fraudulently.

⁵ (2020)5 SCC 353

⁶ 2017(6) Mh.L.J. 270

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He submitted that the possession of the suit property was handed over to Praharsh Corporation Private Limited on 2.2.2016 when warrant of possession was executed and Praharsh Corporation Private Limited was put in possession. IARCPL filed the suit on 5.6.2017, which was within limitation.

53. There is no dispute as to fact that Praharsh Corporation Private Limited filed Special Darkhast No.221/2005 to execute compromise decree dated 18.4.2002. In the execution, Praharsh Corporation Private Limited had claimed relief of possession of the suit property. Admittedly, the possession was handed over by way of possession warrant on 2.2.2016. The pleading of IARCPL shows that it has filed an application under Order XXII Rule 10 of the Code for adding it as a party. In the said application, IARCPL claimed that it received the notice of the execution. The fact that IARCPL put its appearance in the execution application and filed an application under Order XXII Rule 10 and admitted about the notice received from the

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executing court indicates that it had a knowledge of compromise decree on 10.9.2012, whereas the suit is filed on 5.6.2017.

54. The Honourable Apex Court, in the case of **Zee Telefilms Limited (now known as Zee Entertainment Enterprises Limited vs. Suresh Production and ors *supra***, as relied by learned Senior Counsel Shri M.G.Bhangde, in paragraph No.19 has held that cause of action to a plaintiff to file a suit accrues when there is a clear and unequivocal threat to infringe a right. The Honourable Apex Court, by referring the decision in the case of **Privy Council in Bolo vs. Koklan**⁷, observed that there can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.

55. This Court, in the case of **Jahangir @ Jawahar Kaikashrau Karanjia (since deceased) Smt.Mehbi Karanjia**

7 AIR 1930 PC 270

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and ors vs. Maureen De Sequeira *supra*, has also dealt the issue of right to sue and held that starting point of limitation for filing a suit for declaration under Article 58 of the Limitation Act is when the right to sue “first accrues”. The expression “right to sue” has not been defined in the Act, but the said expression has been considered in several cases by the Honourable Apex Court. In the decision of **State of Punjab vs. Gurdev Singh**⁸, the said expression was explained as, the words "right to sue" ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. This Court further referred the decision of **Daya singh and another vs. Gurdev Singh (Dead) by Lrs and ors**⁹ and reproduced paragraph Nos.13 and 14 of the judgment.

⁸ (1991)4 SCC 1

⁹ (2010)2 SCC 194

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The said praragraph Nos.13 and 14 are reproduced for reference:

13. Let us, therefore, consider whether the suit was barred by limitation in view of Article 58 of the Act in the background of the facts stated in the plaint FA No. 21/2006 itself. Part III of the Schedule which has prescribed the period of limitation relates to suits concerning declarations. Article 58 of the Act clearly says that to obtain any other declaration, the limitation would be three years from the date when the right to sue first accrues.

14. In support of the contention that the suit was filed within the period of limitation, the learned Senior Counsel appearing for the appellant-plaintiffs before us submitted that there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. In support of this contention the learned Senior Counsel strongly relied on a decision of the Privy Council in reported in AIR 1930 PC 270, Bolo Vs. Koklan. In this decision Their Lordships of the Privy Council observed as follows:

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“There can be no right to sue until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.”

It can thus be seen that the cause of action for the purposes of Article 58 of the Limitation Act, accrues only when FA No. 21/2006 the right asserted in the suit is infringed, or at least when there is a clear and unequivocal threat to that right (see the case of C.Mohammad Yunus vs. Syed Unnissa, AIR 1961 SC 808).

56. The Honourable Apex Court in the case of **State of Madhya Pradesh vs. Bhailal Bhai and ors**¹⁰ observed that the maximum period fixed by the legislature as the time within which relief by a suit in a Civil Court must be claimed may ordinarily be taken to be a reasonable standard. Thus, it is well settled that in view of Article 59, the suit for cancellation or setting aside an instrument, limitation would not be more than three years.

¹⁰ AIR 1964 SC 1006

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57. In the suit, though IARCPL has not pleaded about the notice issued by the executing court *suo motu*, it pleaded that it filed application on 17.12.2014 under Order XXII Rule 10 of the Code seeking impleadment as party to execution proceedings bearing Special Darkhast No.221/2005 and Special Civil Suit No.242/1998 and relied upon various documents.

58. Under Order VII Rule 11 of the Code, a duty cast on the court is to determine whether the cause of action is disclosed in the plaint.

59. The Honourable Apex Court in the case of **Dahiben vs. Arvinbhai Kalyanji Bhanusali (Gajra)(D) thr. LRS and ors¹¹**, as relied upon by learned Senior Counsel Shri M.G.Bhangde and learned counsel Dr. (Shri) Anjan De, in paragraph No.23.6, observed that, “under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint,”

11 (2020)7 SCC 366

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read in conjunction with the documents relied upon, or whether the suit is barred by any law.

60. In the case of **I.T.C.Limited vs. The Debts Recovery Appellate Tribunal and ors**¹², the Honourable Apex Court held that law cannot permit clever drafting which creates illusions of a cause of action. If, however, by clever drafting of the plaint, it has created the illusion of cause of action, the Honourable Apex Court in the case of **Madanuri Sri Rama Chandra Murthy vs. Syed Jalal**¹³ held that it should be nipped in the bud so that bogus litigation will end at early stage.

61. In the case of **Liverpool and London S.P. & I Association Limited vs. M.V.Sea Success and anr**¹⁴, as relied upon by learned counsel Shri S.V.Purohit, the Honourable Apex Court by referring Order VII Rule 4 of the Code observed in paragraph No.142, thus:

“In the instant case the 'Club' not only annexed certain documents with the plaint but also filed a

¹² (1998)2 SCC 170

¹³ (2017)13 SCC 174

¹⁴ (2004)9 SCC 512

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large number of documents therewith. Those documents having regard to Order 7 Rule 14 of the Code of Civil Procedure are required to be taken into consideration for the purpose of disposal of application under Order 7 Rule 11(a) of the Code of Civil Procedure.”

62. The decisions in the cases of **Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra)(D) thr. LRS and ors** *supra* and **Liverpool and London S.P. & I Association Limited vs. M.V.Sea Success and anr** *supra* indicate that while considering an application under Order VII Rule 11 of the Code of Civil Procedure, it is not only the plaint averments, but also the documents annexed with the plaint, can be looked into for the purpose of determining whether requirements under Order VII Rule 11 of the Code of Civil Procedure are satisfied. The logic on which it is based, appears to be that the documents annexed with the plaint are relied upon by the plaintiff for the purpose of the plaint averments and thus form an integral part of the plaint. The matter, therefore, has to be viewed in the light of the above legal proposition.

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63. In the instant case, IARCPL also pleaded that it had filed an application under Order XXII Rule 10 of the Code before the executing court seeking impleadment as party. The copy of the said application shows that there was pleading in the said application that it had received notice from the executing court which was replied by placing appearance. Though the notice received is not pleaded, documents filed and pleading in the said application under Order XXII Rule 10 of the Code show that such notice was received. If the averments of the plaint are read in conjunction with documents filed, it shows that knowledge of compromise decree was got by IARCPL on 10.9.2012 and suit is filed on 5.6.2017. Thus, the suit apparently is not within limitation of three years from the date of knowledge in the light of the mandate of Article 59 of the Limitation Act on account of which it can safely be said that the requirement of Order VII Rule 11(d) of the Code stands satisfied and the plaint deserves to be rejected under Order VII Rule 11(d) of the Code being barred by limitation.

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64. Whether the plaint can be rejected, against both Praharsh Corporation Private Limited and Sawan Nandkumar Bhatewara, also a question which is required to be answered.

65. IARCPL filed suit for declaration, permanent injunction, and possession of the suit property mainly on the ground that Praharsh Corporation Private Limited suppressed the MoU. As observed earlier, adjustment through the MoU is not certified and, therefore, the said MoU cannot be recognized in law.

66. It is well settled that an uncertified payment of money or adjustment, which is not certified by the court under Order XXI Rule 2 of the Code, cannot be recognized by the executing court. If the executing court comes to the conclusion that decree was adjusted wholly or in part, but the compromise of adjustment or the satisfaction was not recorded or certified by the court, the executing court would not recognize them and would proceed to execute the decree.

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67. The contention of learned counsel Dr. (Shri) Anjan De is that the compromise decree is unexecutable in view of the MoU and, therefore, the sale deed is executed and it is fraud and, therefore, cause of action arose against Praharsh Corporation Private Limited and Sawan Nandkumar Bhatewara. It is further submitted that Praharsh Corporation Private Limited got executed the sale deed in his favour fraudulently by suppressing the MoU. Moreover, Praharsh Corporation Private Limited is not a decree holder. In fact, decree is obtained in collusion.

68. In support of his contentions, learned counsel Dr. (Shri) Anjan De placed reliance on catena of decisions, as follows:

1. S.P.Chengalvaraya Naidu vs. Jagannath¹⁵;

2. Shakti Bhog Food Industries Limited vs. Central Bank of India and anr¹⁶;

3. Kamala vs. K.T.Eshwara SA¹⁷, and

¹⁵ 1993 LawSuit (SC) 908

¹⁶ 2020(17) SCC 260

¹⁷ 2008 LawSuit (SC) 653

84**4. Shrihari Hanumandas Totala vs. Hemant Vithal Kamat and ors¹⁸.**

69. In the case of **Shrihari Hanumandas Totala vs. Hemant Vithal Kamat and ors** *supra*, the Honourable Apex Court laid down guiding principles of deciding an application under Order VII Rule 11(d) of the Code. Whereas, in the rest of the decisions, the principles to be considered while deciding an application under Order VII Rule 11 are laid down. It is laid down that while deciding an application under Order VII Rule 11 of the Code, few lines or passage from the plaint should not be read in isolation and pleadings ought to be read as a whole to ascertain its true import.

70. Thus, relative scope and applicability, as laid down by the Honourable Apex Court, is that where a plaint as a whole did not disclose cause of action, Order VII Rule 11(a) of the Code is applicable and it stops continuation of suit. If the conditions mentioned under Order VII Rule 11 are fulfilled, the entire plaint has to be rejected.

¹⁸ (2021)9 SCC 99

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71. There is no dispute as far as the legal position is concerned. The facts on record show that when the compromise decree was passed on 18.4.2002, IARCPL and MVEPL were not in picture. As regards the allegation that the compromise decree is obtained by fraud, this court in Writ Petition No.2761/2014 observed that there is no flaw or any fault in the compromise decree. It is specifically observed that the petitioner therein (IARCPL) being a transferee *pendente lite* may have only limited right that too by filing an independent proceeding. This finding is maintained by the Honourable Apex Court as the Special Leave Petition filed by IARCPL was dismissed.

72. There is no dispute as to the fact that Riddhi Investment and Properties Private Limited entered into an agreement of sale with Praharsh Corporation Private Limited on 27.7.1996. Subsequent to the said agreement of sale, it further entered into an agreement of sale in favour of Nimish Investment Private Limited. Nimish Investment Private Limited filed a suit for refund of the amount wherein the

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compromise decree was passed. As per the said compromise decree, the agreement to sale executed in favour of Praharsh Corporation Private Limited is held to be valid, in existence and Riddhi Investment and Properties Private Limited agreed to execute sale deed in favour of Praharsh Corporation Private Limited after conveyance is executed by the Income Tax Department in its favour. As per the terms of the said compromise decree, if Riddhi Investment and Properties Private Limited fails to execute the sale deed, Praharsh Corporation Private Limited is at liberty to get it executed through the court. Riddhi Investment and Properties Private Limited further agreed to keep the said property encumbrances free. Contrary to the terms and conditions of the compromise decree, the sale deed was executed by Riddhi Investment and Properties Private Limited in favour of MVEPL on 20.10.2005 when Special Darkhast No.221/2005 filed by Praharsh Corporation Private Limited on 5.8.2005 was pending. MVEPL was the transferee *pendente lite*. The IARCPL received possession of the suit

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property as MVEPL mortgaged the suit property to the Axis Bank Limited and the Axis Bank Limited assigned the right of the debts to IARCPL. Thus, the sale deed was executed during the pendency of the execution proceeding and was clearly hit by Section 52 of the Transfer of Property Act.

73. In the cases of **Usha Sinha vs. Dina Ram and ors**¹⁹ and **Silverline Forum Private Limited vs. Rajiv Trust and anr**²⁰, it is laid down that person purchasing property from the judgment debtor during the pendency of suit has no independent right to property to resist. It is further laid down that such purchasers were presumed to be aware of pending litigation in the competent court and they could not said to be purchasers without notice.

74. Thus, IARCPL MVEPL being transferees *pendente lite* have limited rights and its claim is hit by Section 52 of the Transfer of Property Act.

¹⁹ (2008)7 SCC 144

²⁰ (1998)3 SCC 723

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75. Another limb of submissions of learned counsel Dr. (Shri) Anjan De is that when the agreement of sale is executed in favour of Praharsh Corporation Private Limited by Riddhi Investment and Properties Private Limited, Riddhi Investment and Properties Private Limited has no title and right to sale the property. He submitted that the Income Tax Department executed the sale deed in favour of Riddhi Investment and Properties Private Limited on 20.10.2005. Thus, on the date of agreement i.e. 27.7.1996, Riddhi Investment and Properties Private Limited has no right in the property to execute agreement to sale. Thus, the said agreement is executed by Riddhi Investment and Properties Private Limited without having any title.

76. On the contrary, learned Senior Counsel Shri M.G.Bhangde submitted that in view of Section 43 of the Transfer of Property Act, where a person fraudulently or erroneously represents that he is authorized to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option

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of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists. Thus, if, at the time of transfer, the vendor/transferor might have a defective title or have no title or no right or interest, however subsequently the transferor acquires the right, title or interest, and the contract of transfer subsists, in that case, at the action of the transferee, such transfer is valid. In such a situation, the transferor cannot be permitted to challenge the transfer.

77. Undisputedly, the said suit property was originally owned by Shri Manohar Puranik and other Puranik family members. Puranik family vide sale deeds dated 9.3.1990 and 1.9.1990 sold the suit property along with its structure to Smt.Punam Anand Agarwal and Smt.Savita Chandra Agarwal. Smt.Punam Anand Agarwal and Smt.Savita Chandra Agarwal executed sale deed on 21.9.1993 in favour of Jyoti and Surendra Developers Private Limited, Nagpur. However, there was no compliance and the Income Tax Authorities vide order dated 31.12.1993 held that it was a fit

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case for pre-emptive purchase order under Section 269 UD(1) of the Income Tax Act and obtained possession of the suit property. The said order of the Income Tax Authorities was challenged by Jyoti and Surendra Developers Private Limited before this court by filing Writ Petition No.327/1994. During the pendency of the said writ petition, the Income Tax Department held an auction of the suit property on 19.9.1995. In the said auction, Riddhi Investment and Properties Private Limited was the highest bidder and, therefore, the bid was accepted and sale was confirmed in favour of Riddhi Investment and Properties Private Limited on 21.9.1995 subject to the decision of Writ Petition No.327/1994. The Income Tax Department, after having accepted the bid of Riddhi Investment and Properties Private Limited, granted possession of the suit property vide letter of possession dated 25.1.1996. Thus, though the sale deed was not executed in favour of Riddhi Investment and Properties Private Limited by the Income Tax Department, the bid was

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confirmed and possession was handed over to Riddhi Investment and Properties Private Limited.

78. It is to be noted that the relevant words of Section 43 of the Transfer of Property Act are, “where a person fraudulently or erroneously represents” and that emphasizes for the purpose of the Section that it matters not whether the transferor acted fraudulently or innocently in making the representation and what is material is that he did make a representation and the transferee has acted on it. Where the transferee knew the fact that the transferor did not possess the title, he cannot be said to have acted on it when taking a transfer.

79. The Honourable Apex Court in the case of **Tanu Ram Bora vs. Pramod Ch.Das**²¹ dealt with this issue and held that intention and objects behind Section 43 of the T.P. Act seems to be based on the principle of estoppel as well as the equity. The intention and objects seems to be that after procuring the money (sale consideration) and transferring the land,

²¹ 2020(1) Mh.L.J. 163

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thereafter the transferor is estopped from saying that though he has sold/transferred the property/land on payment of sale consideration, still the transfer is not binding to him. That is why Section 43 of the T.P. Act gives an option to the transferee and not the transferor. The intention of Section 43 of the Act seems to be that nobody can be permitted to take the benefits of his own wrong. In the facts and circumstances of the case, Section 43 of the Act would come into play and protect the rights of Praharsh Corporation Private Limited.

It is further held that where the transferee does act on the representation, there is no reason why he should not have the benefit of the equitable doctrine embodied in Section 43, however fraudulent the act of the transferor might have been.

80. Section 43 of the Act contemplates a transfer. An Agreement of Sale is not a transfer.

81. Admittedly, on 20.10.2005, the Income Tax Department executed registered sale deed in favour of Riddhi

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Investment and Properties Private Limited regarding the suit property. Prior to that, bid was confirmed in favour of Riddhi Investment and Properties Private Limited and possession was handed over to Riddhi Investment and Properties Private Limited. Riddhi Investment and Properties Private Limited executed sale deed in favour of Praharsh Corporation Private Limited as per order of court on 16.1.2015.

82. The entire contentions of learned counsel Dr. (Shri) Anjan De are that, while considering an application under Order VII Rule 11 of the Code, (1) only plaintiff's contents are to be considered; (2) contents are to be considered as correct; (3) validity of the documents cannot be challenged, and (4) only documents relied and filed with plaintiff have to be considered as part of the plaintiff. He further submitted that the plaintiff cannot be rejected against some of defendants. A plaintiff can only be rejected as a whole against all defendants and not against some of defendants.

83. On the contrary, it is submitted by learned Senior Counsel Shri M.G.Bhangde that the suit is filed for declaration wherein the compromise decree is not challenged. There was no privity of contract between

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Praharsh Corporation Private Limited and IARCPL and, therefore, no cause of action arose against Praharsh Corporation Private Limited. The entire suit revolves around the MoU which is not certified or the satisfaction is not certified before the executing court and, therefore, it cannot be recognized. It is further submitted that there is no legal impediment in rejecting a plaint against some of defendants.

84. Considering the rival submissions, Order VII Rule 11 of the Code deals with circumstances under which a plaint can be rejected. The plaint can be rejected when no cause of action is disclosed in the plaint. Praharsh Corporation Private Limited raised ground that as no cause of action arose, the suit is barred by law of limitation.

85. Learned counsel Dr. (Shri) Anjan De, placed reliance on various decisions wherein the settled principles are reiterated that a plaint has to be read as a whole to find out whether it discloses a cause of action or whether suit is barred under any law.

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86. At the stage of exercising powers under Order VII Rule 11 of the Code, the stand of defendants in the written statements or in the applications for rejection of the plaint is wholly immaterial.

87. Learned counsel Dr. (Shri) Anjan De, with the help of catena of decisions referred above, submitted that guiding principles for deciding application are laid down in the decisions *supra* and it shows that plaint has to be read as a whole and cannot be rejected against some of defendants.

88. Learned Senior Counsel Shri M.G.Bhangde, placed reliance on following decisions:

1. Suresh Kumar Dagla vs. Sarwan and anr²²;

2. Jahangir @ Jawahar Kaikashrao Karanjia (since deceased) Smt.Mehbi Karanjia and ors vs. Maureen De Sequeira *supra*;

3. Chetana Shankar Manapure vs. Bandu s/o Tanaji Barapatre²³;

²² (2014)14 SCC 254

²³ 2020(4) Mh.L.J. 481

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4. Sheela Ram Vidhani and anr vs. M/s.S.K.Trading Company & ors²⁴.

He submitted that in the decisions referred above, it is held that there is no legal embargo on rejecting the plaint as a whole against some of defendants.

89. Learned counsel Shri S.V.Purohit, also placed reliance on the decision of the Honourable Apex Court in the case of **Rajendra Bajoria and ors vs. Hemant Kumar Jalan and ors²⁵** wherein it is held that reliefs sought in plaint cannot be granted and only option available to a court is to reject the plaint.

He further placed reliance on the decision of the Honourable Apex Court in the case of **Liverpool and London S.P. & I Association Limited vs. M.V.Sea Success and anr *supra*** wherein it is held that a cause of action is a bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. For the

²⁴ AIR OnLine 2021 BOM 1682

²⁵ (2022)12 SCC 641

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aforementioned purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence.

90. As regards learned counsel Dr. (Shri) Anjan De who placed reliance on various decisions of the Honourable Apex Court including in the cases of **Sejal Glass Limited vs. Navilan Merchants Private Limited**²⁶ and **Madhav Prasad Aggarwal and anr vs. Axis Bank Limited and anr**²⁷ wherein the Honourable Apex Court held that it is not permissible to reject a plaint *qua* any particular portion of a plaint including some of defendants and continued the same against the others. Learned Senior Counsel Shri M.G.Bhangde placed reliance on the decision in the case of **Sheela Ram Vidhani and anr vs. M/s.S.K.Trading Company & ors** *supra* wherein the Division Bench of this Court placed reliance on the decision in the case of **The Church of Christ Charitable Trust & Educational Charitable Society,**

²⁶ (2018)11 SCC 780

²⁷ (2019)7 SCC 158

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represented by its Chairman vs. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee which is prior decision of **Madhav Prasad Aggarwal and anr vs. Axis Bank Limited and anr** *supra* case wherein the Honourable Apex Court had ruled that a plaint as a whole can be rejected against some of defendants in terms of Order VII Rule 11 of the Code.

91. I have gone through the decision in the case of **The Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman vs. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee** *supra* wherein it is ruled that a plaint as a whole can be rejected against some of defendants. The said decision was rendered by two judges bench of the Honourable Apex Court. The later decision of **Madhav Prasad Aggarwal and anr vs. Axis Bank Limited and anr** *supra* is also rendered by two judges bench of the Honourable Apex Court wherein the earlier decision in the case of **The Church of Christ Charitable Trust & Educational Charitable Society, represented by its**

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Chairman vs. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee *supra* was not considered. In this context, the Honourable Apex Court in the case of **Sundeeep Kumar Bafna vs. State of Maharashtra**²⁸ observed that the decision rendered by a co-equal bench or a larger bench, earlier in time, would prevail. The relevant observation in this regard, are as follows:

"17. The Constitution Bench in *Union of India vs. Raghubir Singh*, (1989) 2 SCC 754 has come to the conclusion extracted below : (SC pp 777-78, para 27)

"27.....It is in order to guard against the possibility of inconsistent decisions on points of law by different Division Benches that the rule has been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. This principle has been followed in India by several generations of Judges."

92. In view of the foregoing settled position of law, I am of view that earlier decision rendered by the Honourable

²⁸ (2014)16 SCC 623

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Apex Court **The Church of Christ Charitable Trust & Educational Charitable Society**, represented by its Chairman **vs. M/s Ponniamman Educational Trust** represented by its **Chairperson/Managing Trustee** *supra* needs to be followed which has laid down that the plaint as a whole can be rejected against some of defendants. In fact, this position has also been considered by the Division Bench of this Court in the case of **Sheela Ram Vidhani and anr vs. M/s.S.K.Trading Company & ors** *supra*.

93. The next point for determination is, whether the plaint does not disclose any cause of action against **Praharsh Corporation Private Limited** and **Sawan Nandkumar Bhatewara**. IARCPL filed a suit for declaration and injunction and prayed that the sale deed executed in favour of **Praharsh Corporation Private Limited** and subsequently in favour **Sawan Nandkumar Bhatewara** by **Praharsh Corporation Private Limited** be declared as *null and void*. The entire suit revolves around the MoU which is admittedly subsequent to the compromise decree dated 18.4.2002. The

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execution proceeding was filed bearing Special Darkhast No.221/2005 wherein the said MoU was neither produced nor certified from the court being adjusted. Thus, the adjustment which was allegedly between Praharsh Corporation Private Limited and Riddhi Investment and Properties Private Limited was not certified before the executing court. The settled law regarding the same is already discussed which shows that an uncertified adjustment or a compromise cannot be recognized by the executing court and, therefore, the executing court has only an option to proceed to execute the decree.

94. Whether the plaintiffs can claim the reliefs without challenging the compromise decree, regarding the same, as IARCPL and MVEPL, admittedly, have not challenged the compromise decree in pursuance of which the sale deed was executed in favour of Praharsh Corporation Private Limited and only declaration is claimed. The executing court cannot go beyond the decree. In a suit also, unless consent decree is

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set aside, the relief of setting aside sale deed cannot be granted.

95. The Honourable Apex Court, in the case of **Edukanti Kistamma and ors vs. Venkatareddynad ors**²⁹, as relied upon by learned Senior Counsel Shri M.G.Bhangde, held that it is legal obligation on the part of the party to challenge the basic order and only if the same is found to be wrong, consequential order may be examined.

96. As observed by this court in Writ Petition No.2761/2014 already held that there is no flaw or fault in the compromise decree, in the light of Order XXIII rule 3 of the Code, no appeal is maintainable against the consent decree having regard to the specific bar contained in Section 96(3) of the Code. No appeal is maintainable against the order of the court recording the compromise (or refusing to record compromise) in view of deletion of Clause (m) Rule 1 Order XLIII. No independent suit can be filed for setting aside a compromise decree on the ground that the

29 (2010)1 SCC 756

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compromise was not lawful in view of the bar contained in Rule 3(a) of the Code. The consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree by an order on an application under proviso to Rule 3 of Order XXIII.

97. The Honourable Apex Court, in the case of **Basavaraj vs. Indira and ors**³⁰, held that the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree, is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made.

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98. It requires to be noted that Praharsh Corporation Private Limited and Sawan Nandkumar Bhatewara only have resorted to Order VII Rule 11 of the Code. After noting the above, it reveals that only Praharsh Corporation Private Limited and Sawan Nandkumar Bhatewara filed applications vide Exhibits-20 and 38 on the ground that no cause of action arose against them and the suit is barred by law of limitation. As per their contentions, from the plaint, the entire case of plaintiffs is based on alleged fabricated MoU dated 4.12.2004 which was allegedly suppressed from the executing court. The facts and contentions are that the adjustment or satisfaction or cancellation of decree needs to be certified before the executing court. As observed earlier that an uncertified payment of money or adjustment, which is not recorded by the court under Order XXI Rule 2 of the Code, cannot be recognized by the executing court, admittedly, the said MoU was not certified either by Riddhi Investment and Properties Private Limited or by MVEPL though it was aware about the execution of the MoU between

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Praharsh Corporation Private Limited and Riddhi Investment and Properties Private Limited.

99. Thus, the compromise or adjustment or satisfaction, which is not recorded or certified by the court and cannot be recognized in law, cause of action referred by the plaintiffs is frustrated.

100. It is true that only on the basis of the averments made in the plaint, it could be ascertained as to whether cause of action is made out or not. It is equally true that for finding out the same, the entire pleadings in the plaint will have to be read and that too at its face value and defence taken by the defendants cannot be looked into. It could thus be seen that the court has to find out as to whether in the background of facts, the reliefs as claimed in the plaint can be granted to the plaintiffs. It has been consistently held that if the court finds that none of reliefs sought in the plaint can be granted to the plaintiffs under the law, question then arises as to whether such a suit is to be allowed to continue

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and go for trial. The Honourable Apex Court answered the said question by holding that such a suit should be thrown out at the threshold. The position is also considered by the Honourable Apex Court in the case of **Anathula Sudhakar vs. P.Buchi Reddy (dead) by LRs and ors**³¹.

101. Admittedly, the power conferred on the court to terminate civil action is a drastic one and the conditions enumerated under Order VII Rule 11 of the Code are required to be strictly adhered to. However, under Order VII Rule 11, duty is cast upon the court is to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint and read in conjunction with documents relied upon or whether the suit is barred by any law. Underlying object of Orders VII Rule 11 of the Code is that when a plaint does not disclose a cause of action, the court would not permit plaintiff to unnecessarily protract proceedings. It has been held that in such a case, it will be

31 AIR 2008 SC 2033

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necessary to put an end the litigation so that further judicial time is not wasted.

102. The remedy under Order VII Rule 11 of the Code is independent and special remedy wherein the court is empowered to summarily dismiss a suit at the threshold without proceeding to record evidence and conducting a trial if it is satisfied that action should be terminated on any of grounds contained therein. The underlying object of Order VII Rule R11(a) is that if in a suit no cause of action discloses or suit is barred by limitation under clause (d), the court would not permit a plaintiff to unnecessarily protract proceedings in the suit. A duty cast on the court is to determine whether a plaint discloses a cause of action by scrutinizing the averments in plaint read with documents relied on or whether the suit is barred by law. A cause of action, thus, means every fact which if is traversed, would be necessary for plaintiff to prove in order to support his right. It is a bundle of facts taken with the law applicable to them which gives the plaintiff a right to relief against the

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defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded.

103. The words “right to sue” ordinarily mean the right to seek relief by means of legal proceedings. “The right to sue” accrues only when the cause of action arises. In a suit for declaration, starting point of limitation is when “right to sue” accrues. The cause of action for purposes of Article 59 of the Limitation Act accrues only when right asserted in a suit is infringed.

104. In the light of the above well settled law, knowledge of the compromise decree came to IARCPL on 10.9.2012 and knowledge to MVEPL on 20.10.2005 when sale deed is executed in his favour.

105. Admittedly, the plaint claims to disclose cause of action against Praharsh Corporation Private Limited on the

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basis of the MoU. The adjustment through the MoU is neither certified nor recorded. IARCPL and MVEPL are transferees *pendente lite* who have limited rights. Whereas, the sale deed executed in favour of Praharsh Corporation Private Limited is on the basis of the compromise decree. The payment or adjustment made outside the court, which is not certified, will not give rise to the cause of action for possession under guise of sale deed which is executed during the pendency of the execution proceeding.

106. It is well settled that the rights of the transferee *pendente lite* are limited rights. As far as alternate relief claimed by plaintiffs for refund of earnest amount is concerned, the same is against Riddhi Investment and Properties Private Limited as payment was made by MVEPL to Riddhi Investment and Properties Private Limited and, therefore, the plaint can be rejected as a whole against Praharsh Corporation Private Limited and Sawan Nandkumar Bhatewara, who are subsequent purchasers. Insofar as Riddhi Investment and Properties Private Limited is

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concerned, there are sufficient averments against it disclosing cause of action and the suit ought to be continued against it.

107. During the pendency of the suit, IARCPL filed Civil Application No.20/2024 for taking action against Sawan Nandkumar Bhatewara as he has committed breach of oral *status quo* order of this court. It is contended that on 25.1.2024 this court had orally directed Sawan Nandkumar Bhatewara not to continue with any construction activity. In spite of order of this court, at about 1:00 pm, Sawan Nandkumar Bhatewara continued with digging activity and there was breach of order passed by this court. It is contended that action of contempt of court deserves to be taken against Sawan Nandkumar Bhatewara and his defence is to be struck down and the application filed by it deserves to be rejected. The said application is strongly opposed by Sawan Nandkumar Bhatewara by contending that this court orally directed it not to proceed with the construction over the suit property. The counsel informed him through a

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phone call around 3:30 pm.. After receipt of the referred information, the same was communicated to the contractor. The contractor informed that till that time, in all four pits were dug at the site by using drilling machine. Out of these four pits, drilling of three pits was completed and digging of four pits was midway. He also communicated that if the said pits were kept open as it is, there is an apprehension of damage to the property of applicant's neighbour as well as apprehension of danger to the safety of labourers working therein.

108. After hearing both sides on this issue, it is required to be seen whether there is any wilful disobedience or mere disobedience. For finding a person guilty of wilful disobedience under Order XXXIX Rule 2(a) of the Code, not only there has to be mere disobedience but also it should be wilful disobedience. The allegation of wilful disobedience has to be proved to the sanction of the court that the disobedience was not mere disobedience, but a wilful disobedience.

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109. Insofar as the civil application is concerned, Sawan Nandkumar Bhatewara has admitted that the order was communicated to him and he has communicated the same to the contractor, but the contractor filled the said pits considering the apprehension of causing damage to the other properties and considering the safety of labourers. The said pits are filled. There is no evidence on record to show that it was a wilful disobedience.

110. The Honourable Apex Court in the case of **U.C.Surendranath vs. Mambally's Bakery**³² held that allegation of willful disobedience being in the nature of criminal liability, the same has to be proved to the satisfaction of the court that the disobedience was not mere “disobedience” but a “willful disobedience.

111. As such, the explanation given by Sawan Nandkumar Bhatewara is acceptable one.

32 (2019)20 SCC 666

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112. As noted above, the entire suit of IARCPL and MVEPL is revolving around the MoU, which is uncertified and not recorded before the executing court and thus cannot be recognized. The sale deed executed in favour of Praharsh Corporation Private Limited by the court order is on the basis of the consent decree which is not challenged. IARCPL and MVEPL being transferees *pendente lite* have the limited rights.

113. As observed earlier that the consent decree is not challenged in the suit and the consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, the only remedy available to the party to consent decree is to avoid such consent decree to approach the court which recorded the compromise and established that there was no compromise. As the said consent decree is not challenged by the parties, the consequential reliefs claimed by IARCPL and MVEPL would not be tenable. Moreover, the suit filed against both

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Praharsh Corporation Private Limited and Sawan Nandkumar Bhatewara is beyond limitation.

114. The law laid down by the Honourable Apex Court applies to the facts of the present case and the reliefs sought by applicants Praharsh Corporation Private Limited and Sawan Nandkumar Bhatewara for rejection of the plaint as against them deserve to be granted.

115. It is significant that applicants Praharsh Corporation Private Limited and Sawan Nandkumar Bhatewara are not seeking rejection of plaint *qua* particular portion of the plaint or *qua* any relief sought in the plaint, but they are seeking rejection of plaint as a whole as against them.

116. It is significant to note that in the plaint, IARCPL and MVEPL have sought relief of declaration on the basis of the MoU which is neither recorded nor registered before the executing court.

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117. As noted above, applying the law laid down by the Honourable Apex Court in the case of **The Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman vs. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee** *supra* to the facts of the present cases, accepting the contentions raised on behalf of Praharsh Corporation Private Limited and Sawan Nandkumar Bhatewara, amounts to rejection of plaint as a whole against them and it cannot be said that the plaint is being split and that only a part of plaint is being rejected which is not permitted.

118. In the light of the above, the Civil Revision Applications deserve to be allowed and the same are **allowed**. The orders dated 8.4.2019 passed below Exhibits-20 and 38 by learned 18th Joint Civil Judge Senior Division, Nagpur in Special Civil Suit No.408/2017 whereby applications under Order VII Rule 11 of the Code have been rejected, are hereby quashed and set aside. Consequently, the plaint is rejected as against defendant No.1 Praharsh Corporation Private Limited

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and defendant No.3 Sawan Nandkumar Bhatewara, who filed applications Exhibits-20 and 38 before the court below.

The Civil Revision Applications stand **disposed of**. Rule is made absolute in the aforesaid terms. However, there shall be no order as to costs.

In view of disposal of Civil Revision Applications, Civil Application(s) pending, if any, also stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

1. Learned counsel Dr. (Shri) Anjan De, submits that on the suit property construction is going on. If the construction is completed, the entire object of filing of the suit would be frustrated and there would be multiplication of proceedings. As such, he prays that implementation of this order be stayed for a further period of six weeks so as to enable him to approach the Honourable Supreme Court in appeal.

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2. Learned Senior Counsel Shri M.G.Bhangde, opposes the prayer made by learned counsel Dr. (Shri) Anjan De.

3. Till further period of six weeks from today, the parties shall maintain *status quo* as on today and the same shall cease to operate automatically thereafter.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!