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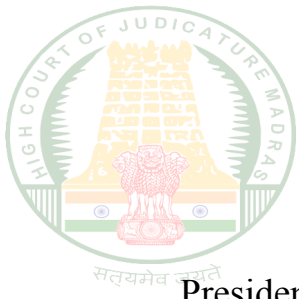


Application (IP) No. 161 of 2016
IN
I.P.No. 25 of 2014

DR.G.JAYACHANDRAN, J.
and
C.V.KARTHIKEYAN, J.

This Application has been filed by the Official Assignee seeking a Judgment and Decree against the second respondent, S.M. Lal, to pay a sum of Rs.4,72,38,000/- together with interest at 18% p.a., from 15.02.2014 till the date of realisation and for costs of the recovery proceedings.

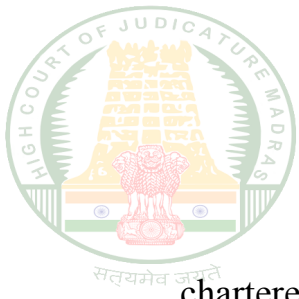
2. In the report of the Official Assignee filed in support of the Judges Summons, it had been stated that in I.P.No. 25 of 2014, an Insolvency Petition filed by Chitra Desai against the first respondent Arjunlal Sunderdas, by an order dated 21.04.2014, the first respondent was adjudicated as insolvent. This order was published as required on 18.07.2014 and thereafter all the properties of the insolvent vested with the Official Assignee. It had been stated that the insolvent should have filed the Schedule of Affairs under Section 24 of the



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Presidency Town and Insolvency Act 1909 within 30 days from the date of adjudication. However, he failed to do so. He also did not produce any books of accounts maintained by him. During the course of investigation and from the statements made by the insolvent during his examination before the Official Assignee, the insolvent disclosed some assets but not the liabilities.

3. In the meanwhile several persons filed claim applications before the Official Assignee. On the date of filing of this application, there were 257 claim petitions filed claiming a sum of Rs.117.00 crores from the estate of the insolvent, Arjunlal Sunderdas. It had been further stated that the Official Assignee took all efforts to find out the debtors and creditors to the estate of the insolvent. The auditor of the insolvent Ranga Ramanujam was requested to furnish the list of debtors and creditors from the computer generated statements available and from the bank statements. However, details of several transactions with several individuals with just debit and credit entries alone without any details of the transactions or addresses of the persons were alone forwarded. The Official Assignee therefore took the assistance of another

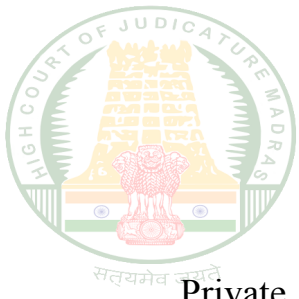


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chartered accountant, M/s. Annamalai Associates to verify the list of creditors and debtors with the computer generated statement and to furnish the correct position as on the date of adjudication.

4. It had been further stated that on examination of the statement, it was found that the second respondent S.M. Lal, who is the brother of the insolvent, had received a sum of Rs.4,72,38,000/- which was shown as outstanding and due as on 15.02.2014. There were no subsequent transactions to prove discharge of the debt. It was thus contended by the Official Assignee that the second respondent is due and payable to the estate of the insolvent the aforementioned amount.

5. It must also be stated that in the meanwhile, the insolvent died on 07.05.2018, after the filing of this application. It is relevant to point out that the insolvent and the second respondent were jointly involved in finance and real estate business. The insolvent incorporated four companies under the provisions of the Companies Act, namely, (i) Sunil Anand and Company



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Private Ltd., (ii) International Sea Food Private Ltd., (iii) Manyal Reality Private Ltd., and (iv) Manyal Foundation Private Ltd. It is also to be noted that the second respondent held 25% of the shares in all the four companies and the insolvent held the balance 75%. The auditor for the insolvent, Ranga Ramanujam was also the auditor for the second respondent and also of the companies aforementioned.

6. It is the further contention of the Official Assignee that the second respondent had three separate accounts and one of them is the “Property and Shares Account”. It was stated that on analysis of the said account for the financial years from 01.04.2011 to 31.03.2012 and from 01.04.2012 to 31.03.2013 and from 01.04.2013 to 31.03.2014, it was revealed that there was an outstanding payable by the second respondent to the insolvent a sum of Rs.4,72,38,000/-. The total amount of transactions between the insolvent and the second respondent was Rs.18,06,80,000/- in the financial year 01.04.2011 to 31.03.2012 and when that amount was carried forward, to a total sum of Rs.29,68,70,000/- for the financial year 01.04.2012 to 31.03.2013 and to a sum



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of Rs.21,07,49,000/- for the financial year 01.04.2013 to 31.03.2014. It had been contended that the second respondent was not only as brother of the insolvent but also as the business partner in the finance business and property transactions, had extensive financial transactions with the insolvent with monies being borrowed and monies being lent. The re-conciliation of the accounts showed that the second respondent was due and payable to the insolvent a total sum of Rs.4,72,38,000/- which is the sum claimed in the present application together with interests and costs.

7. A counter affidavit had been filed by the second respondent wherein he had stated that a perusal of the ledger account for the financial year 2012-2013 would reveal that the insolvent had received a total sum of Rs.8,75,00,000/- from him under the head “Advance Recd – Property” in the following manner:-

“

<i>Sl.No.</i>	<i>DATE</i>	<i>VOUCHER TYPE</i>	<i>AMOUNT (in Rs.)</i>
1.	12.09.2012	Receipt	2,25,00,000
2.	12.09.2012	Receipt	1,00,00,000
3.	17.09.2012	Receipt	3,00,00,000
4.	04.10.2012	Receipt	2,50,00,000



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”

<i>Sl.No.</i>	<i>DATE</i>	<i>VOUCHER TYPE</i>	<i>AMOUNT (in Rs.)</i>
		Total	8,75,00,000

8. It had been further stated that this amount had been brought forward and shown as opening balance in the ledger account for the financial year 2013-2014 under the head 'Loan Account – S.M.Lal'. It had been further stated that the aforesaid amounts have been paid by way of cheque and the details had also been given in the counter affidavit. It had been therefore contended that if set off is granted, then it would be evident that it was the second respondent, who was entitled to receive a sum of Rs.4,02,62,000/- from the estate of the insolvent. It was therefore contended that the application filed by the Official Assignee lacked bona fide and the Official Assignee had failed to carry out proper scrutiny of the ledger accounts by applying settled accounting principles. It had been therefore contended that it should be held that the first respondent/insolvent owes the second respondent a sum of Rs.4,02,62,000/- and therefore, it had been sought that this application should be dismissed with costs.



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9. This Court had directed evidence to be recorded in the application. Accordingly, on the side of the Official Assignee/applicant, P.Mangayarkarasi, Assistant Section Officer from the Office of the Official Assignee, was examined as PW-1. She filed her proof affidavit reiterating the facts as stated in the report of the Official Assignee.

10. She further stated that the second respondent had filed a claim petition before the Official Assignee for a sum of Rs.8,75,00,000/-, but it was not entertained by the Official Assignee, and had thereafter filed Application No. 6 of 2019 before this Court seeking to admit the claim. This Court by an order dated 07.12.2019 had dismissed the said application. Thereafter, the second respondent had filed a Special Leave Petition before the Hon'ble Supreme Court which was also dismissed by order dated 01.07.2021.

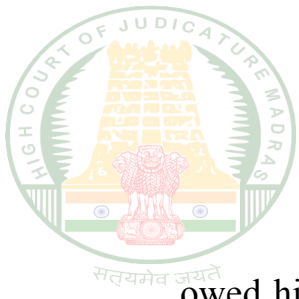
11. In the proof affidavit, the details of the transactions between the



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insolvent and the second respondent relating to 'Property and Shares Account' for the financial years 01.04.2011 to 31.03.2012 and from 01.04.2012 to 31.03.2013 and from 01.04.2013 till 31.03.2014 were also given. The witness also marked Exs. A-1 to A-11. These included the relevant pages in the report of the chartered accountant Ranga Ramanujam as Ex.A-1, the relevant pages in the report of the chartered accountant M/s. Annamalai Associates as Ex.A-2, the relevant entries in the Schedule of Affairs as Exs. A-3 and A-4 and the bank entries as Ex.A-5. The affidavit of the second respondent, S.M.Lal in C.S. 121 of 2014 was marked as Ex.A6. The notice issued to the second respondent by the Official Assignee on 24.08.2016 was marked as Ex.A-8 and the order in Application No. 6 of 2019 dated 17.12.2019 was marked as Ex.A-10 and the letter intimating dismissal of SLP was marked as Ex.A-11.

12. Thereafter, the second respondent grazed the witness box. He had filed his proof affidavit again raising the issue of set off of the amount claimed in the application with the amount due according to him from the estate of the insolvent and claimed that after set off it was the first respondent/insolvent, who



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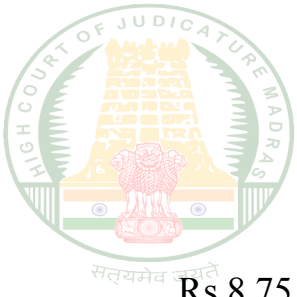
owed him a sum of Rs.4,02,62,000/-. To establish this, the second respondent filed the statements of account issued by the Indian Bank, Ethiraj Salai Branch, for the period from 01.04.2011 to 31.03.2012 as Ex.R1 and the statement of account of the second respondent issued by Indian Bank, Ethiraj Salai Branch for the period between 01.04.2012 to 05.02.2018 as Ex.R-2.

13. Both the witnesses were cross examined on the evidence tendered by them.

14. The points to be decided in this application are:-

(i) whether the applicant is entitled for a decree against the second respondent for a sum of Rs.4,72,38,000/- together with interest at 18% p.a., from 21.04.2014 till the date of realisation?;

(ii) whether the contention of the second respondent that a sum of



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Rs.8,75,00,000/- was due and payable from the estate of the first respondent stood established?; and

(iii) whether the second respondent is entitled to set off the amount claimed by the Official Assignee with the aforesaid amount? and therefore, whether the second respondent is entitled to receive a sum of Rs.4,02,62,000/- together with interest at 18% p.a., from the estate of the insolvent?.

15. Heard arguments advanced by Mr.K.V.Ananthakrushnan, learned counsel for the applicant and Mr. R.Venkatraman, learned counsel for the second respondent.

16. Mr.K.V.Ananthakrushnan, learned counsel for the applicant/Official Assignee took the Court through the facts of the case and pointed out that the second respondent, who is the brother of the first respondent/insolvent had a continuous series of monetary transactions during the financial years 2011-2012, 2012-2013 and 2013-2014 to a total sum of more than Rs.20/- crores and they were also both jointly involved in the businesses of finance and real estate.



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The learned counsel further pointed out that the second respondent had three separate accounts and one of them was the 'Property and Shares Account'. He contended that the entire statement of accounts had been produced as a document before this Court. The learned counsel strongly disputed the claim of the second respondent that he had advanced a sum of Rs.8,75,00,000/- to the insolvent and that therefore, the second respondent, after set off of the amount now claimed, is receivable to a sum of Rs.4,02,62,000/-. The learned counsel very strongly disputed the said claim. The learned counsel further pointed out that this contention had been advanced even earlier by the second respondent, and would also imply a direct admission by the second respondent that he was due and payable to the insolvent a sum of Rs.4,72,38,000/-. The learned counsel stated that therefore, unless the second defendant establishes that the amount of Rs.8,75,00,000/- was a loan advanced by him to the insolvent without any quid pro quo only then could he seek to set off that amount with the amount claimed in this application.

17. The learned counsel stated that the second respondent had filed a



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Claim Petition for a sum of Rs.8,75,00,000/- which was not entertained by the Official Assignee and later Application No. 6 of 2019 which had been filed before this Court had been dismissed by this Court which order had been upheld by the Hon'ble Supreme Court. It was thus contended that the second respondent can never state that he had lent a sum of Rs.8,75,00,000/- to the insolvent. It was contended by the learned counsel that the claim in this application is based on the statement of accounts as forwarded by the auditor Ranga Ramanujam, who was the Chartered Accountant for both the insolvent and the second respondent. The learned counsel stated that a careful perusal of the statements of account would show that there were numerous transactions between the second respondent and the insolvent. He further argued that the statement of the second respondent that he had lent a sum of Rs.8,75,00,000/- was not supported by any documentary evidence and therefore denied and disputed such a claim. The learned counsel therefore argued that the application should be allowed and a judgment and decree be passed.

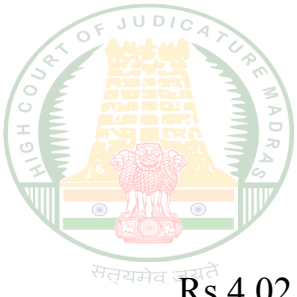
18. Mr. R.Venkatraman, learned counsel for the second respondent



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however pointed out that the fact that the second respondent had lent a total sum of Rs.8,75,00,000/- to the insolvent stood established by a perusal of the statement of accounts as produced under Exs. R-1 and R-2. The learned counsel contended that the entire claim of the Official Assignee is based on presumptions and conjunctures. He also stated that the second respondent had produced sufficient documents to show the passage of money from the second respondent to the insolvent to a total sum of Rs.8,75,00,000/- and therefore contended that it was the estate of the insolvent which was liable to repay to the second respondent a sum of Rs.4,02,62,000/- together with interest.

19. With respect to the order of this Court in Application No. 6 of 2019, the learned counsel contended that the contentions raised now had also been raised earlier but had not been answered by the Court. He stated that a plain reading of the order would show that the application had been dismissed on technical grounds and not on merits by holding that the applicant had come to Court not with clean hands but with a ring of falsity. The learned counsel contended that it was the second respondent, who has to receive a sum of



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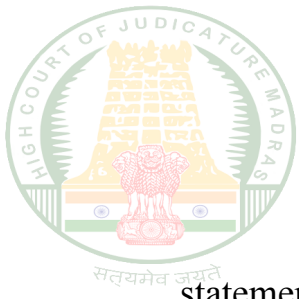
Rs.4,02,62,000/- and claimed that the said amount should be paid together with interest to the second respondent. The learned counsel therefore contended that the application should be dismissed and rather a decree should be passed in favour of the second respondent for the above sum.

20. The learned counsel also filed his written arguments.

21. We have carefully considered the arguments advanced and perused the materials available on record.

22. This application has been filed by the Official Assignee against the second respondent S.M.Lal with respect to one specific account held by the second respondent called 'Property and Shares Account' seeking recovery of a sum of Rs.4,72,38,000/- together with interest at 18% p.a, till date of realisation and for costs.

23. This application is based on the facts revealed on examination of the



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statement of accounts produced by the auditor of the insolvent Arjunlal Sunderdas for the financial years 2011-2012, 2012-2013 and 2013-2014. It had been noted that the aforementioned sum was due and payable by the second respondent. There had been no transaction showing discharge of the said sum.

24. Even before examining further, it would only be prudent that a few background facts are narrated.

25. On an Insolvency Petition in I.P.No. 25 of 2014 filed by one Chitra Desai against Arjunlal Sunderdas, an order adjudicating him as insolvent was passed on 21.04.2014. The property of the insolvent came to be vested with the Official Assignee. However, the insolvent did not come forward to give complete details about the debits and credits due and payable to the estate. The Official Assignee therefore had to make further investigation. The insolvent filed his Schedule of Affairs very belatedly.

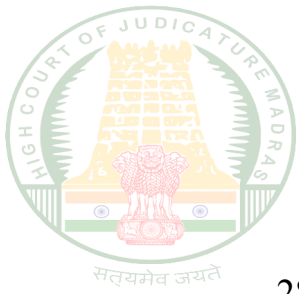
26. It was also noted that the insolvent and the second respondent were



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involved in a partnership firm 'Arjunlal Sunderdas' and in four separate companies incorporated by the insolvent. The second respondent S.M. Lal held 25% shares in all the companies. The insolvent held the balance 75%. These facts will clearly show the close finance and business relationship between the insolvent and the second respondent quite apart from their blood relationship.

27. The fact that these four companies have been incorporated and the further allegation in the report of the Official Assignee that in each one of the four companies, the second respondent held 25% of the shares were not denied or disputed in the counter affidavit filed by the second respondent. It had also been stated that both the insolvent and the second respondent had a common auditor Ranga Ramanujam. He had maintained their accounts. The Official Assignee had also produced as Ex.A-5, the statement of accounts in Indian Bank, Ethiraj Salai Branch of account No. 422156084 of the insolvent Arjunlal Sunderdas for the period from 01.01.2011 till 31.03.2014. A perusal of the statement shows that in the financial year 01.04.2011 till 31.03.2012, the total value of the transactions was Rs.18,06,80,000/-.



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28. It is the contention of the second respondent that a sum of Rs.8.75/- crores in four installments had been paid by the second respondent to the insolvent in the year 2012. It had been contended that these payments were made by cheque. On 12.09.2012, two cheques had been issued for sums of Rs.2,25,00,000/- and Rs.1,00,00,000/- and on 17.09.2012, a further cheque had been issued for a sum of Rs.3,00,00,000/- and further on 04.10.2012, the fourth cheques had been issued for a sum of Rs.2,50,00,000/- totalling in all to Rs.8.75/- crores. It had been contended that a certificate had been issued by the Indian Bank, Ethiraj Salai Branch, in Ex.A-5 which had been marked in Application No. 6 of 2019 in I.P.No. 25 of 2014 that the amount had been transferred to the account of the first respondent/insolvent. The learned counsel for the second respondent therefore contended that since there has been flow of the aforementioned amount from the account of the second respondent to the account of the first respondent, the said amount must be set off with the amount claimed by the Official Assignee in this application, namely, the sum of Rs.4,72,38,000/-. The learned counsel further contended that if there is set off then it would be evident on the face of the record that the estate of the insolvent



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must pay to the second respondent a sum of Rs.4,02,62,000/- and claimed that therefore the application will necessarily have to be dismissed.

29. The learned counsel further relied on the ledger statement for the financial year 2012-2013 in the 'Advance Recd-Property (Unsecured Loans)' Account wherein the aforementioned four transactions have been reflected and there was a closing balance of 8.75/- crores. It had been further argued that in the ledger for the financial year 2013-2014, the said amount of Rs.8.75/- crores was carried forward as the opening balance. The learned counsel stated that the Official Assignee had placed reliance on one ledger account namely 'Properties and Shares Account' but had not considered the balance in the other account of the second respondent, namely Advance Recd-Property (Unsecured Loans) Account.

30. The learned counsel for the second respondent further claimed that though the second respondent had filed application No. 6 of 2019 challenging the rejection of his Claim Petition filed for the said amount of Rs.8.75/- crores,



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this issue of transfer of money from the account of the second respondent to the first respondent have not been examined either by this Court or by the Hon'ble Supreme Court and the said application had been dismissed only on the ground of fraud on technical grounds and therefore, urged that this Court should revisit and re-examine the said issue again. It was contended that the delay in filing the Claim Petition alone come up for consideration and the core issues have not been answered by the Court.

31. The learned counsel had placed reliance on the Judgment reported in ***[1993 Supp (1) SCC 499] (Punjab National Bank and Ors Vs. Surendra Prasad Sinha)*** wherein it had been held as follows in paragraph No. 5:

“5. .. The rules of limitation are not meant to destroy the rights of the parties. Section 3 of the Limitation Act 36 of 1963, for short “the Act” only bars the remedy, but does not destroy the right which the remedy relates to. The right to the debt continues to exist notwithstanding the remedy is barred by the limitation.



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Though the right to enforce the debt by judicial process is barred under Section 3 read with the relevant article in the schedule, the right to debt remains. The time barred debt does not cease to exist by reason of Section 3. That right can be exercised in any other manner than by means of a suit. The debt is not extinguished, but the remedy to enforce the liability is destroyed. What Section 3 refers is only to the remedy but not to the right of the creditors. Such debt continues to subsist so long as it is not paid. It is not obligatory to file a suit to recover the debt. It is settled law that the creditor would be entitled to adjust, from the payment of a sum by a debtor, towards the time barred debt ”

32. The learned counsel had further placed reliance on the Judgment of the Hon'ble Supreme Court reported in ***AIR 1958 SC 328 [Bombay Dyeing and Manufacturing Co Ltd., Vs. the State of Bombay and Ors]***, wherein it had been held as follows in paragraph No. 29:-

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“29. The following passages in Anson's Law of Contract, 19th Edition, page 383, are directly in point:

" At Common Law lapse of time does not affect contractual rights. Such a right is of a permanent and indestructible character, unless either from the nature of the contract, or from its terms, it be limited in point of duration.

"But though the right possesses this permanent character, the remedies arising from its violation are withdrawn after a certain lapse of time; interest reipub- licae ut sit finis litium. The remedies are barred, though the right is not extinguished."

33. It had been thus contended by the learned counsel for the second respondent that the right to the debt continues to exist even though the remedy is barred by limitation. It was contended that the second respondent is not

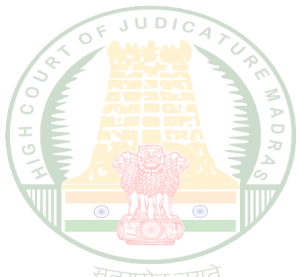


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claiming the sum of Rs.8.75/- crores but rather claiming the right of set off and therefore claiming a sum of Rs.4,02,68,000/-. It was thus contended that the application filed by the Official Assignee for a sum of Rs.4,72,38,000/- is not sustainable and therefore has to be dismissed.

34. To further examine, the contentions raised, it must also be mentioned that the applicant herein had earlier filed Application No. 6 of 2019 seeking a direction against the Official Assignee to accept the Claim Petition preferred by the second respondent dated 20.12.2018. That Claim Petition had been filed seeking a sum of Rs.8,75,00,000/- from the estate of the insolvent on the basis of the four transactions mentioned above and the flow of money from the account of the second respondent to the account of the first respondent.

35. It must be pointed out that the second respondent maintained separate accounts. That flow of money was from a separate account maintained by the second respondent and termed as “Advance recd-Property (Unsecured



Loans) Account”.
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36. This Court by an order dated 17.12.2019 had dismissed the said application by placing reliance on the Judgment of the Hon'ble Supreme Court reported in **2005 6 SCC 149 [State of A.P., and another Vs. T.Suryachandra Rao]**, with specific reference to the following:-

*“9. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See **S.P. Changalvaraya Naidu v. Jagannath (1994 (1) SCC 1)**).*

10. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed,



*innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (See **Ram Chandra Singh v. Savitri Devi and Ors. (2003 (8) SCC 319)**).*

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14. Suppression of a material document would



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also amount to a fraud on the court. (see **Gowrishankar v. Joshi Amba Shankar Family Trust (1996 (3) SCC 310)** and **S.P. Chengalvaraya Naidu's case (supra)**).

15. "Fraud" is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in **Ram Preeti Yadav's case (supra)**.

16. In **Lazarus Estate Ltd. v. Beasley (1956) 1 QB 702**, : Lord Denning observed at pages 712 & 713, "No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

In the same judgment Lord Parker LJ observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. “

[Emphasis Supplied]

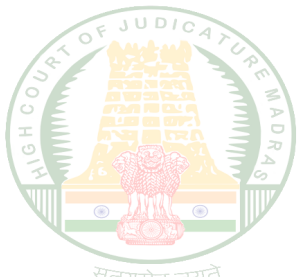
37. A categorical finding was returned by this Court that the second respondent herein had sworn to a false affidavit. This order of this Court had



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been put to test before the Hon'ble Supreme Court and the Appeal therein had been dismissed on 01.07.2021 in SLP (Civil) No. 2481 of 2021.

38. Thus, the rejection of the claim of the second respondent to the sum of Rs.8.75 crores had attained finality. The applicant can never seek to reopen that issue again. Even otherwise, it must be mentioned that the second respondent had a series of transactions with the insolvent. He was his brother and also a co-partners in the firm 'Arjunlal Sunderdas' and also the co-Director in the four companies which had been incorporated and also had 25% share in the said companies. As pointed out, the total value of transactions between the two brothers were extensive in nature. They had different transactions between them. Their transactions related to sale of property. Their transactions related to purchase and sale of shares. They also had transactions relating to money lending. Each one of the transactions were distinct and based on separate accounts. The amount of Rs.8.75/- crores referred repeatedly by the learned counsel for the second respondent had been admitted by the second respondent as being part sale consideration paid to the first respondent/insolvent for sale of



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a property to one Amarnath Reddy.

39. The issue which had been already settled in Application No. 6 of 2019 and confirmed by the Hon'ble Supreme Court is now sought to be reopened and reagitated by the second respondent. The learned counsel claims that the right to the debt subsists but the remedy alone is barred.

40. But however the Court cannot examine the same issue again and again. In *(1998) 3 SCC 573 [K.K.Modi Vs. K.N.Modi and Others]*, the Hon'ble Supreme Court had examined the issue of reagitating the same issue after it had been finally decided. It had been held as follows in paragraph No. 44:-

“44. One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as res judicata. But if the same issue is sought to be reagitated, it also



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*amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. **The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted.** Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding. ”*

[Emphasis Supplied]

41. In (1994) 1 SCC 1 [**S.P.Chengalvaraya Niadu (dead) by LRS., Vs. Jagannath (dead) by LRS and others**], the Hon'ble Supreme Court had



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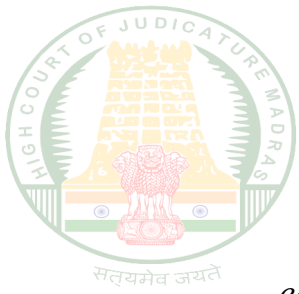
examined the question of fraud and had widened the scope to also include non disclosure of relevant and material documents/facts. It had been held as follows in para 5 and 6:-

“5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that “there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence”. The principle of “finality of litigation” cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say



that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have



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easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party. ”

42. In the instant case, the second respondent had clearly suppressed that he was maintaining two separate distinct accounts with the first respondent/insolvent. The claim of the Official Assignee is based on the balance payable in the 'Property and Shares Account', whereas the second respondent is relying on the balance in the 'Advance Recd-Property (Unsecured Loan) Account. The claim under the second account had been negated by this Court. The claim by the Official Assignee in this application is under the first account. The fact that the two accounts are distinct and do not overlap and relate to separate set of transactions had been deliberately suppressed and infact



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misrepresented before this Court. The second respondent had already been non suited in Application No. 6 of 2001 on the issue of fraud which finding has attained finality. In paragraph 6 of the said order we had held as follows:-

“6. Under Section 48 of the Presidency Town Insolvency Act, read with second schedule, Order 10, Form No. 42 and Form No. 43-A of Insolvency Rules 1958, the creditors should file a claim within 90 days from the date of notice of adjudication. It is seen that the applicant herein is the brother of the insolvent. He was not just a brother but also a co-director in four companies, namely, (a) Sunil Anand & Co. (P) Ltd., (b) International Sea Food (P) Ltd., © Manyal Reality (P) Ltd., and (d) Manyal Foundation (P) Ltd. He had subsequently relinquished his shares in favour of the insolvent, but in further proceedings when the properties were sought to be brought on sale, he however participated in the proceedings and claimed a share in the properties. It is clear that the petitioner had sworn to a false affidavit disclaiming knowledge of the insolvency proceedings. He cannot plead ignorance and innocence and seek indulgence from this Court.”

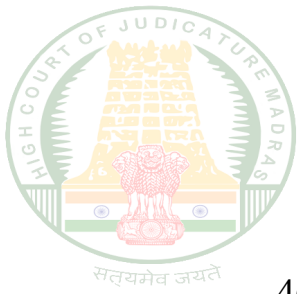


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43. We are convinced that the claim of the second respondent to set off necessarily has to be rejected since the claim for the amount with which he claims set off has infact been rejected in the earlier order of this Court and confirmed by the Hon'ble Supreme Court.

44. We hold that the Official Assignee has proved the debt by cogent and by credible evidence. The statements of accounts had been produced. The witness had been examined in support of the statements produced. There is an outstanding balance of Rs.4,72,38,000/-. The statements have been based on the extract on the bank statements and therefore, there cannot be any dispute or denial of the same. As a matter of fact, the counter of the second respondent claiming set off would only indicate that he admits to this liability and therefore on that very admission, quite apart from the evidence produced, we hold that the Official Assignee is entitled for a decree and Judgment as prayed for.

45. In the result, this Application stands allowed with costs.



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46. A Judgment and Decree is passed holding that the Applicant is entitled for recovery of a sum of Rs.4,72,38,000/- from the second respondent, S.M.Lal, together with interest at 18% p.a., from 21.04.2014, the date of adjudication of the first respondent as insolvent till date of realisation and for costs of the recovery proceedings.

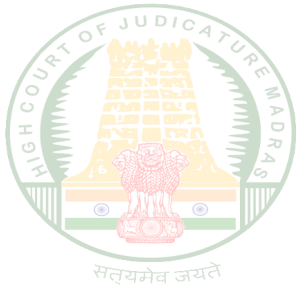
(DR.G.J.J.) & (C.V.K.J.)
23 .07.2025

vsg

DR.G.JAYACHANDRAN, J.
and
C.V.KARTHIKEYAN, J.

vsg

Pre-Delivery Order made in
Application (IP) No. 161 of 2016
IN
I.P.No. 25 of 2014



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23.07.2025