IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	**28.08.2025**
Pronounced on	**25.09.2025**

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

C.S. Nos.200 of 2006 and 965 of 2008

C.S. No.200 of 2006
Mr.Dharmendra Bafna
Son of Manakchand Bafna
No.9/A, Letangs Road, I Floor
Vepery, Chennai – 600 007. ... Plaintiff

Vs.

C.Kishan Lal
S/o.Champalal Khabiya
No.41, Kutchery Road
Mylapore, Chennai 600 004. ... Defendant

Prayer : Plaint filed under Order VII Rule 1 C.P.C. Read with Order IV Rule 1 of Original Side Rules, praying to grant a Judgment and Decree against the defendant:

a) directing the defendant pay a sum of Rs.1,83,72,162/- together with interest at the rate of 12% per annum from the date of plaint until the date of payment ;

b) the cost of the suit; and

c) to pass such further other orders as this Court may deem fit and proper.

For Plaintiff : Mr.K.Harishankar
for M/s. K.Surendar

For Defendant : Mr.R.Thiagarajan &
Ms.Vasudha Thiagarajan

C.S. No.965 of 2008

C.Kishan Lal
S/o.Champalal Khabiya
No.41, Kutchery Road
Mylapore, Chennai 600 004. ... Plaintiff

Vs.

1.M/s.Surana Corporation Limited
Rep. by its Liquidator
C.Ramasubramaniam
having his office at
No."RAJI" 3B1, Gaiety Palace

1-L, Blackers Road, Mount Road,
Chennai – 600 002.

(Amended as per order dated 24.09.2020
made in Application No.1908 of 2020)

2.Gowthamraj Surana
3.Vijayraj Surana
4.Shantilal Surana
5.Dineshchand Surana
(Defendants 1 to 5 are deleted from the array of parties
as per the order dated 13.03.2024)
6.Dharmendra Bafna
7.Lakshmichand Bafna
8.Mahendra Bafna
9.Rajesh Bafna
10.Maran ... Defendants

Prayer : Plaint filed under Order IV Rule 1 of Original Side Rules and Order VII Rule 1 of CPC, praying to grant a Judgment and Decree against the defendants:

a) directing the defendants to pay the principal sum of Rs.4,95,00,000/- and Rs.3,33,30,000/- being the interest calculated at the rate of 24% per annum from 02.12.2005 to 22.09.2008 and further interest till date of payment;

b) to award the cost of the suit;

c) to pass such further other orders as this Court may deem fit and necessary.

For Plaintiff : Mr.R.Thiagarajan & Ms.Vasudha Thiagarajan

For Defendant No.6 : Mr.K.Harishankar for M/s. K.Surendar

COMMON JUDGMENT

Dharmendra Bafna filed C.S. No.200 of 2006 against C. Kishan Lal (Kishan Lal) for recovery of a sum of Rs.1,83,72,162/- with interest at the rate of 12% per annum from the date of plaint until realisation. Kishan Lal filed C.S. No.965 of 2008 against Surana Corporation Limited (Surana Corporation) and nine others, including Dharmendra Bafna, for recovery of a principal sum of Rs.4,95,00,000/- and a sum of Rs.3,33,30,000/- towards interest at the rate of 24% per annum from 02.12.2005 to 22.09.2008 and further interest until the date of payment. By order dated 13.03.2024, defendants 1 to 5 were deleted from the array of parties in C.S. No.965 of 2008, and defendants 7 to 10 were set *ex parte* by order dated 20.06.2024. In effect, the said suit is being prosecuted only against the sixth defendant, who is the plaintiff in the other suit.

Pleadings, issues and evidence:

2. In the plaint in C.S. No. 200 of 2006, Dharmendra Bafna states that he is carrying on jewellery business under the name and style of "R.B. Jewellers". With the intention to participate in trading activities in gold and silver bullion, he states that Kishan Lal handed over a sum of Rs.7,00,000/- on 05.10.2005 to undertake such trading. According to Dharmendra Bafna, Kishan Lal expressed the desire to trade through Surana Corporation because Dharmendra Bafna was also trading through Surana Corporation. Therefore, Dharmendra Bafna states that he deposited a sum of Rs.7,00,000/- with Surana Corporation on behalf of the defendant and opened an account on 05.10.2005 in the name of "Megha GG".

3. Dharmendra Bafna states further that Kishan Lal issued instructions from time to time to purchase lots of gold or silver bullion on payment of margin money. As and when margin money was required to

regularise Kishan Lal's account, it is stated that he would inform Kishan Lal about the same and Kishan Lal would remit the requisite amounts. In this manner, Dharmendra Bafna states that Kishan Lal remitted a total sum of Rs. 4.65 crore towards margin money up to 17.11.2005.

4. After providing details of sell orders issued by Kishan Lal between 09.11.2005 and 18.11.2005, Dharmendra Bafna states that he called upon Kishan Lal to remit further sums towards margin money. Because Kishan Lal expressed his inability to immediately remit such amounts and instead requested Dharmendra Bafna to do so, Dharmendra Bafna states that he remitted a sum of Rs.1.45 crore on behalf of Kishan Lal with Surana Corporation between 02.12.2005 and 07.12.2005. According to Dharmendra Bafna, on account of the unprecedented spurt in the prices of gold and silver, Kishan Lal's total investment of Rs.4.65 crore and the additional margin money of Rs.1.45 crore, which was paid on behalf of Kishan Lal by Dharmendra Bafna, was liquidated. After taking into account the investment and losses sustained, it is stated that Kishan Lal is liable to pay Dharmendra Bafna a sum of Rs.1,83,72,162/-. In spite of making a demand for this

amount, including by lawyer's notice dated 04.03.2006, he states that Kishan Lal failed to pay the same. Hence the suit.

5. In the written statement, Kishan Lal states that Dharmendra Bafna posed that he is doing trading activity in gold and silver bullion through Surana Corporation and induced Kishan Lal to make investments. Kishan Lal states further that a sum of Rs.7,00,000/- was paid to Dharmendra Bafna on 06.10.2005 in the presence of G.R.Surana and Vijayaraj Surana. The assertion of Dharmendra Bafna that he had opened an account on behalf of Kishan Lal in the name and style of “Megha GG” with Surana Corporation was responded to as not known to Kishan Lal. After stating that Kishan Lal had remitted a sum of Rs.4.65 crore on various dates as admitted by Dharmendra Bafna, Kishan Lal states that a sum of Rs.30,00,000/- was shown as profits up to 02.12.2005. However, on the request of Dharmendra Bafna, Kishan Lal states that he remitted a further sum of Rs.25,00,000/- towards margin money. When he called upon Dharmendra Bafna to pay a sum of Rs.4.95 crore consisting of Rs.4.65 crore plus profit of Rs.30,00,000/-, he was informed by Dharmendra Bafna that he was only an agent of Surana Corporation and would speak to the Managing Director of

the company to settle the amount by 10.12.2005. On 10.12.2005, when Kishan Lal went to collect the sum of Rs.4.95 crore, he states that Dharmendra Bafna claimed that there was a heavy loss and that the defendant had to pay a sum of Rs.2 crore for such losses. In those circumstances, he states that he lodged a police complaint on 30.12.2005, which was registered as Crime No.60 of 2006. The alleged remittance of a sum of Rs.1.45 crore by Dharmendra Bafna on behalf of Kishan Lal towards margin money to Surana Corporation is denied by Kishan Lal. Therefore, Kishan Lal has prayed that the suit be dismissed.

6. In the plaint in C.S.No.965 of 2008, Kishan Lal states that Lakshmichand Bafna, the seventh defendant, visited the Shri Guru Ganesh Goshala, with which Kishan Lal is associated, and induced Kishan Lal to construct a compound wall for the Goshala. He also introduced Kishan Lal to Dharmendra Bafna, who is his brother's son. He was informed that Dharmendra Bafna is the son-in-law of Shantilal Surana, the founder of Surana Corporation, and that Dharmendra Bafna was trading as a sub-agent of his father-in-law. According to Kishan Lal, he made cash deposits listed in Annexure-1 of the plaint for trading in bullion and that the purchases and

sales made on his behalf by Dharmendra Bafna are listed in Annexure-II of the plaint. After instructing Dharmendra Bafna to close the account on 02.12.2005, Kishan Lal states that a total amount of Rs.4.95 crore was payable to him. Therefore, apart from lodging a police complaint, the present suit was filed for recovery of such amount along with interest at the rate of 24% per annum.

7. Before they were deleted from the array of parties, defendants 1 to 5 and 10 filed a common written statement. In such written statement, they raised the preliminary objection that there was no privity of contract between them and Kishan Lal. They further state that defendants 2 to 5 did not meet Kishan Lal on 29.09.2005 and were not introduced to him. They also denied the allegation in paragraph 4 of the plaint that a sum of Rs.7,00,000/- was paid to Dharmendra Bafna in their presence. They categorically denied the statement that Kishan Lal is a sub-agent of Surana Corporation. Consequently, they denied that they are the principals of Dharmendra Bafna.

8. In the written statement of Dharmendra Bafna, he states that trading in gold and silver bullion is not by way of physical delivery of the precious metals but by way of paper transactions in the form of futures contracts. He also states that a fraction of the total market price of such gold and silver lots ranging between 3 to 5% thereof is paid by way of margin money. After explaining buy and sell transactions, Kishan Lal states that Dharmendra Bafna had paid a total amount of Rs.3.25 crore to Kishan Lal until 02.11.2005. He initiated 53 buy transactions as on 02.11.2011 and earned a net profit of Rs.15,60,029/-. He further states that Kishan Lal had maintained a diary wherein the transactions were recorded. According to him, Kishan Lal paid a further sum of Rs.1.15 crore to him between 03.11.2005 and 08.11.2005 as margin money for further trading in bullion. He also states that, after Diwali, in the second week of November 2005, Kishan Lal changed his strategy and began entering into sale transactions. He states that, during this period, a total of 15 transactions were entered into out of which 13 were sale transactions. Dharmendra Bafna states that Kishan Lal's son, Vimal Chand, brought a separate diary on 09.11.2005 which contained the details of squaring off of transactions on 08.11.2005. By

17.11.2005, Dharmendra Bafna states that the plaintiff had squared off 56 transactions that were under 'Buy Position' and only 12 transactions that were under 'Sale Position' were pending.

9. On account of the increase in market prices of gold and silver, it is stated that Kishan Lal sustained losses in all the 12 transactions and was required to remit additional margin money. Therefore, a further sum of Rs.25,00,000/- was remitted as margin money. According to Dharmendra Bafna, out of 69 transactions entered into by Kishan Lal, Kishan Lal incurred losses in 41 transactions and that the total value of losses was Rs.7,01,94,562/- . After deducting the total margin money of Rs.4.65 crore paid by Kishan Lal and the redeployed profit of Rs.53,00,954/- from the total loss of Rs.7,01,94,562/-, Dharmendra Bafna states that the amount due and payable by Kishan Lal is a sum of Rs.1,83,93,608/-.

10. Defendants 7 to 9 had also filed a written statement before they were set *ex parte*. They state that they are unnecessary parties to the suit and seek dismissal of the suit against them.

11. On the basis of the above pleadings, issues were framed in C.S. No.965 of 2008 on 25.08.2011. The said issues are as under:

"1. Is there any privity of contract between the plaintiff on the one hand and defendants 1 to 5 and Defendant No.10 on the other hand?

2. Whether the Defendants 1 to 5 and 10 are unnecessary parties?

3. Whether the 6th defendant acted as the agent of the Defendants 1 to 5 and 10?

4. Whether the amount paid by the plaintiff to the 6th defendant was on the understanding that the 6th defendant was the agent of the Defendants 1 to 5 and 10?

5. Whether the plaintiff can maintain the suit against the 6th defendant in the light of the pleading that he acted as agent of declared principals?

6. Whether the plaintiff did trading in bullion and silver through 6th defendant as his agent and hence, the suit filed as if it is a loan transaction is not maintainable?

7. Whether the plaintiff is entitled to a decree for the

recovery of a sum of Rs.4,95,00,000/- towards principal from all the defendants or any of the defendants?

8. Whether the claim of interest at the rate of 24% is sustainable?

9. To what other relief the parties are entitled?"

12. In C.S. No.200 of 2006, it is unclear from the record as to whether issues were framed earlier. In any event, I frame the following issues on the basis of pleadings:

1. Whether the plaintiff acted as an agent of Surana Corporation in allegedly investing Rs.1.45 crore as margin money on behalf of the defendant ?
2. Whether the plaintiff is entitled to a sum of Rs.1,83,82,162 from the defendant ?
3. Whether the plaintiff is entitled to interest at 12% per annum on the sum of Rs.1,83,82,162 from the defendant ?
4. Whether the parties are entitled to any other relief ?

13. By order dated 07.06.2018, this Court directed that a joint trial be conducted by further directing that the plaintiff in C.S. No.200 of 2006 lead

evidence first in both suits followed similarly by the evidence on behalf of Kishan Lal in both suits. Accordingly, Dharmendra Bafna adduced evidence by examining himself as PW1. He was cross-examined by learned counsel for Kishan Lal. In course of his examination-in-chief, three documents were exhibited as Exs.P1 to Ex.P3. During his cross-examination, Ex.D1 was marked. Kishan Lal examined himself as DW1. In course of his examination-in-chief, 41 documents were exhibited as Ex.D2 to Ex.D42. He was cross-examined by learned counsel for Dharmendra Bafna.

Counsel and their contentions:

14. Oral arguments on behalf of Dharmendra Bafna were advanced by Mr.K.Harishankar, learned counsel, assisted by Mr.K.Surendar, learned counsel. Oral arguments on behalf of Kishan Lal were addressed by Mr.R.Thiagarajan, learned counsel, assisted by Ms.Vasudha Thiagarajan, learned counsel. Both parties submitted written submissions thereafter.

15. The first submission of Mr.Harishankar was that Kishan Lal handed over margin money to Dharmendra Bafna over a period of time for trading in bullion. After pointing out that such trading was not in the form of

physical trading of gold and silver bullion and that only about 3 to 5 % of the actual value of gold or silver, as the case may be, was paid as margin money for these transactions, he further stated that Kishan Lal failed to make necessary further remittances towards margin money. Consequently, he submits that Dharmendra Bafna had to make good the shortfall by remitting a sum of Rs.1.45 crore on behalf of Kishan Lal. While admitting that a sum of Rs.4.65 crore was received in the aggregate from Kishan Lal as margin money, he submitted that the total suit claim of Rs.1.83 crore in C.S. No.200 of 2006 was arrived at as per the statement of account appended to the written statement in C.S. No.965 of 2008 as Annexure B (pages 118 and 122 of the convenience volume).

16. By referring to the cross-examination of Kishan Lal, learned counsel submitted that Kishan Lal was questioned about the payments made to Surana Corporation through Dharmendra Bafna. In particular, he referred to the answers to questions 14 to 21, wherein Kishan Lal admitted that payment was made to Dharmendra Bafna as a sub-agent of Surana Corporation. He also referred to the answers to questions 29 to 37 to point out that Kishan Lal admitted that he had undertaken multiple transactions

and had made entries in relation thereto in Ex.D1. He further submitted that Kishan Lal admitted that he continued to make payments to Dharmendra Bafna even after 14.11.2005 although a dispute had arisen between them on 14.11.2005. On the basis of the answers of DW1, Mr.Harishankar contended that the admitted case of Kishan Lal is that Dharmendra Bafna was a sub-agent of Surana Corporation. He also referred to paragraphs 3 and 4 of the plaint in this regard and concluded his submissions by reiterating that the suit filed by Kishan Lal is not maintainable against the agent after giving up the disclosed principal.

17. After pointing out that Kishan Lal had originally filed C.S. No.965 of 2008 against Surana Corporation, its Directors, Dharmendra Bafna and others, on the basis of the pleadings and the above evidence, he contended that Surana Corporation is the disclosed principal and that Dharmendra Bafna is the agent of the said entity. Therefore, he contended that upon the principal being given up by Kishan Lal, the suit is not maintainable against the agent as per Section 230 of the Indian Contract Act, 1872 (the Contract Act). In response to a question as to whether this would not affect C.S.No.200 of 2006, he differentiated the said suit by contending

that it was for recovery of margin money paid by Dharmendra Bafna for and on behalf of Kishan Lal and not with the actions of Dharmendra Bafna as an agent of Surana Corporation.

18. Mr.Thiagarajan made submissions in reply on behalf of Kishan Lal. At the outset, he stated that only six documents were filed by Dharmendra Bafna in support of averments in C.S. No.200 of 2006. He pointed out that the said six documents were the statement of accounts, complaint filed by Kishan Lal, copy of FIR, lawyer's notice, telegraphic notice and the returned cover. With regard to the lawyer's notice and the telegram issued immediately thereafter, he contended that they were issued only to lend the appearance that it was a civil dispute and thereby thwart the prosecution of criminal proceedings. Without prejudice, he contended that there is no material to support the averments of Dharmendra Bafna in paragraphs 6 and 11 of the plaint in C.S. No.200 of 2006. By contrast, he submitted that Kishan Lal filed 41 documents in support of the suit claim and also marked Ex.D1 through Dharmendra Bafna during cross-examination. He then referred to the written statement of Surana Corporation wherein it is stated that Surana Corporation did not act as the

principal and that Dharmendra Bafna was not the agent of Surana Corporation.

19. His next submission was that Dharmendra Bafna failed to produce any accounts relating to the alleged bullion transactions carried out with the money provided by Kishan Lal. By referring to the cross-examination of Dharmendra Bafna on 28.08.2019, he submitted that Dharmendra Bafna stated that he maintained a separate account for the transactions with Surana Corporation and Vinayaka Vyapar Limited (Vinayaka Vyapar). After referring to PW1's admission that he married Shantilal Surana's daughter in the year 2000, Mr.Thiagarjan referred to the questions and answers relating to the Memorandum of Understanding dated 14.10.2015. He also referred to the answers of PW1 to the effect that he maintained books of accounts in the name of Megha GG and would produce it on the adjourned date, and that he failed to do so. He emphasised that PW1 admitted that he had kept the sum of Rs.4.65 crore in cash at his office and was unsure about the date on which it was transferred to Vinayaka Vyapar. By referring to the cross-examination of DW1, Kishan Lal, on 19.09.2024, he stated that Kishan Lal confirmed

that all transactions were recorded in Ex.D1 and acknowledged by Dharmendra Bafna, except for the transaction on 14.11.2005.

20. Learned counsel next referred to Section 88 of the Indian Trusts Act 1882 (the Trusts Act) to contend that Dharmendra Bafna was in the position of a 'trustee' who received the sum of Rs.4.65 crore from Kishan Lal so as to undertake bullion trading. As a trustee, he further submitted that Dharmendra Bafna was required to put the money to use for the intended purpose and provide accounts to substantiate the deployment of funds. Because Dharmendra Bafna failed to fulfil his obligation, he submitted that he is bound to return the amount along with the profit earned thereon to Kishan Lal. In support of these contentions, he relied on the judgment of the Supreme Court in *Canbank Financial Services Ltd. v. The Custodian and others* [*2004 (8) SCC 355*]. He also relied upon the judgment of the Andhra Pradesh High Court in *Koka Sivananda Sastry v. Samasthanam Choultry* [*1968 (2) AnWR 260*]. With regard to breach of trust by a trustee or agent, he relied on the judgment of the Privy Council in *Nagendrabala Dasi and another v. Dinanath Mahis and others* (*AIR 1924 Privy Council 34*). He concluded his submissions by referring to the judgment of the Supreme

Court in *Krishna Mohan Kul v.Pratima Maity and others* [*(2004) 9 SCC 468*] with regard to the obligations of a person in a fiduciary relationship.

21. By way of rejoinder, Mr.Harishankar submitted that a telegram was issued by Dharmendra Bafna on 17.03.2006 for the limited purpose of making a correction in the lawyer's notice. After pointing out that defendants 2 to 5 were not adjudged insolvent, he contended that there is no justification to give them up. By referring to statements annexed to the written statement of Dharmendra Bafna in C.S.No.965 of 2008, he contended that the said statement shows squaring off the transactions at a loss. He also pointed out that the trial balance of Kishan Lal as on 31.03.2006 (Ex.D15), which was filed as part of his Income Tax Returns, shows the amount of Rs.4.65 crore against the name of Surana Corporation. By also referring to a short note explaining the transactions recorded in Ex.D1 illustratively, he submitted that Kishan Lal made on a profit on Transaction Nos.18 and 20, whereas he made a loss on Transaction Nos. 21 and 57. He also submitted that Ex.D1 only records 54 transactions from and out of 69 transactions, whereas the statement incorporated in paragraph 13 of the proof affidavit of Dharmendra Bafna covers all the transactions and

the net loss sustained by Kishan Lal. Based on this evidence, he contended in conclusion that the suit filed by Kishan Lal cannot be sustained.

Discussion, Analysis and Conclusion:

Issue Nos.1 to 5 in C.S.No.965 of 2008 and Issue No.1 in C.S.No.200 of 2006:

22. The first issue is whether there was privity of contract between the plaintiff on the one hand and defendants 1 to 5 and 10 on the other. The other issues relate to whether the said parties are necessary parties; whether the sum of Rs.4.65 crore was paid on the understanding that Dharmendra Bafna was an agent; and whether the suit claim in C.S. No. 965 of 2008 is maintainable against Dharmendra Bafna. In the plaint, as discussed in course of narration, Kishan Lal stated that he was introduced to Dharmendra Bafna by the seventh defendant. He stated further that Dharmendra Bafna held out that he was carrying on bullion trading as a sub-agent of his father-in-law, Mr.Shantilal Surana, through Surana Corporation. It is also stated therein

that an aggregate sum of Rs.4.65 crore was paid to Dharmendra Bafna, who stated that he was a sub-agent of Surana Corporation.

23. In the written statement of defendants 1 to 5, they state expressly that there is no privity of contract between them and Kishan Lal. Paragraph 4 of the written statement is relevant, where they state as under:

> *“.... These defendants never declared to the plaintiff that the sixth defendant is a sub-agent of the first defendant and the plaintiff is called upon to prove the same. These defendants are not aware of any payments made by the plaintiff to the sixth defendant. In any event the plaintiff does not claim to have made any payment directly to these defendants.”*

24. In the written statement of the sixth defendant/Dharmendra Bafna, the sixth defendant refers to transactions entered into by Kishan Lal and that such transactions were recorded in a diary, which was later exhibited as Ex.D1. Significantly, in paragraph 25, in relevant part, Dharmendra Bafna states as under:

> *“ .... The assertions made in the anticipatory bail petition*

of this defendant that this defendant is the sub-agent of the first defendant and that the amounts received from the plaintiff were transferred to the first defendant were made inadvertently based on a tripartite agreement that was entered between the first defendant, M/s.Vinayaka Vyapar Ltd., and this defendant, wherein this defendant was termed as a 'sub-dealer'. However, the said agreement had nothing to do with the transactions between the plaintiff and this defendant, which was an independent transaction ....”

25. Although learned counsel for Dharmendra Bafna contended that the suit is not maintainable against Dharmendra Bafna because he acted as an agent of Surana Corporation, the above pleading is to the contrary. During the cross-examination of Dharmendra Bafna on 26.08.2019, the following questions and answers regarding the alleged sub-agency were recorded:

Q : Are you attached to any Bullion Agent?

A : Yes

Q : Can you name the person?

A : I am with Vinayaka Vyapar Limited and Surana Corporation Limited.

Q : How are you connected with them?

A : As Sub-Agent

Q : Have they issued any appointment order to you appointing you as Sub-Agent or Sub-Broker?

A : Yes

Q : When was your such appointment with those persons?

A : In the month of October, 2005.

Q : Will you be in a position to produce those appointment order before this Court?

A : No such appointment order. Witness adds: There is a Tri-Partite Agreement.

Q : Have you produced it before the Court?

A : No

26. Thus, it is also noticeable that Dharmendra Bafna has not exhibited any documents to establish that he acted as an agent of Surana Corporation while undertaking transactions on behalf of Kishan Lal. Even

the document referred to in oral evidence, i.e. the Tri-partite Agreement, was explained in paragraph 25 of his written statement as not pertaining to transactions with Kishan Lal. Learned counsel for Dharmendra Bafna relied on the trial balance of Kishan Lal as on 31.03.2006 (Ex.D15) to contend that it shows that this amount was paid to Surana Corporation. This exhibit does not advance the cause of Dharmendra Bafna because it merely shows that Kishan Lal was under the impression that Dharmendra Bafna had deployed the sum of Rs.4.65 crore as a sub-agent of Surana Corporation while preparing his books of account. This impression turned out to be mistaken in the light of the stand taken by the parties concerned subsequently. Taking into account the pleadings, lack of documentary evidence and the oral evidence, I conclude that there was no privity of contract between the plaintiff, on the one hand, and defendants 1 to 5 and 10, on the other. Consequently, I further conclude as follows: that the said defendants are not necessary parties; that the suit filed by Kishan Lal is not liable to be dismissed on account of giving up defendants 1-5; and that Dharmendra Bafna did not act as an agent of defendants 1 to 5 and 10. As a corollary, Kishan Lal is entitled to maintain the suit against Dharmendra Bafna and

Section 230 of the Contract Act does not stand in the way of the prosecution of such suit. Likewise, Section 230 of the Contract Act does not preclude the suit filed by Dharmendra Bafna against Kishan Lal. These issues are disposed of on these terms.

Issue Nos.6 and 7 in C.S. No.965 of 2018 and Issue No.2 in C.S. No.200 of 2006:

27. Before delving into the pleadings and evidence on this issue, a brief preamble is in order. From the pleadings of Dharmendra Bafna, his case is that Surana Corporation is an authorised broker and that he was a sub-broker. In course of arguments, learned counsel for Dhramendra Bafna stated that the trading was done through the Multi Commodity Exchange of India Limited (MCX) and that Dharmendra Bafna had opened a trading account in the name of GG Megha to trade on behalf of Kishan Lal. The MCX *inter alia* regulates trade in commodity derivatives through its registered brokers. Such commodity derivatives include gold and silver bullion. In relation to the above, the MCX enables registration of trading members and trading-cum-clearing members. Such members are required to

register their clients after obtaining their consent for trading in commodity derivatives. This process entails compliance with 'Know Your Customer' (KYC) requirements. It also appears from the pleadings of Dharmendra Bafna that the purported transactions were buy or sell transactions in futures contracts. By way of explanation, these are transactions to buy or sell the relevant commodity derivatives on a specified future date (expiry date) at prices prevailing on the date of transaction. The prices are benchmarked against the prices of the underlying commodity, in this case, gold or silver bullion, on the basis of rates published daily by entities such as the Commodity Exchange or the London Bullion Market Association or any other internationally reputed publisher. By way of illustration, if a buy transaction is entered into at a certain price on a certain date (booking date) as a futures contract and the price goes up on the specified future date (expiry date), the trader makes a profit, whereas, if the converse happens, such trader makes a loss. Because the price of these assets, i.e. the futures contracts, is dependent on the price of the underlying assets, in this case, gold or silver bullion, they are called derivative transactions.

28. Each time a trader executes a trade, the money required for such purpose (margin money or the entire amount, as the case may be) is debited from the bank account towards such transaction and the broker issues a contract note to the trader. The exchange would also provide details of such trades. On the expiry date, there would be a credit or debit depending on whether the transaction resulted in a profit or loss to the trader concerned. There are further nuances to such trade, but a discussion thereon is unnecessary in the context of this case. In addition, the broker would also provide a statement recording the trades over specific periods. Whether Dharmendra Bafna placed on record evidence regarding such trading in the GG Megha account warrants consideration next.

29. On perusal of the plaint and the written statement of Dharmendra Bafna, it is evident that a sum of Rs.4.65 crore was paid in cash by Kishan Lal to Dharmendra Bafna for purposes of engaging in bullion trading. Both in the plaint in C.S.No.200 of 2006 and in the written statement in C.S.No.965 of 2008, Dharmendra Bafna admits that he received a sum of Rs.4.65 crore from Kishan Lal. It is sufficient to set out the following

averments from the plaint in C.S. No.200 of 2006:

> *"5. .... the plaintiff states that the defendant had in all remitted a sum of Rs.4.65 crore towards margin money upto 17.11.2005."*

30. Having acknowledged receipt of the sum of Rs.4.65 crore from Kishan Lal for bullion trading, it was incumbent on Dharmendra Bafna to plead and establish that this money was deployed by him in bullion trading for and on behalf of Kishan Lal. By way of pleading, in paragraph 12 of the written statement in C.S. No.965 of 2008, Dharmendra Bafna states that 69 transactions, including 56 'Buy Transactions' and 13 'Sale Transactions', were entered into on behalf of Kishan Lal and that a total of 227 lots of gold and silver (142 lots of gold and 85 lots of silver) were traded. The purported transactions are listed as annexures to the written statement of Dharmendra Bafna and in paragraph 13 of his proof affidavit. Details of most of these purported transactions are also recorded in Ex.D1, which is the diary in which entries were made by Kishan Lal and acknowledged by Dharmendra Bafna. This, however, is insufficient because it is a private record between the parties and does not *per se* establish that the money was deployed in

bullion trading. In addition, the pleaded case of Dharmendra Bafna is that Ex.D1 captures only 54 out of 69 transactions.

31. Thus, Dharmendra Bafna states that this money was deployed in a trading account maintained by him and called as the GG Megha account through Surana Corporation, which purportedly was an authorised broker of the MCX. In the written statement of defendants 1-5 and 10, it was expressly denied that Dharmendra Bafna was a sub-agent of Surana Corporation. Even assuming that the Megha GG account was a client account opened by Dharmendra Bafna for and on behalf of Kishan Lal, contract notes would have been issued by MCX in respect of these transactions. However, Dharmendra Bafna has not filed relevant contract notes or the statement of transactions in the trading account or any evidence that the money received in installments from Kishan Lal was remitted into the bank account of Dharmendra Bafna linked to the GG Megha trading account and thereafter debited towards transactions in bullion trading carried out for and on behalf of Kishan Lal. In short, there is no evidence whatsoever about the money trail. In the absence of credible documentary evidence, I turn to the oral

evidence to examine whether it establishes Dharmendra Bafna's claim.

32. During the cross-examination of Dharmendra Bafna on 26.08.2019, *inter alia*, the following questions and answers were recorded:

Q : Have you filed any document before this Court to show the quantum of profit or loss earned in the effected transaction moreso with the defendant?

A : I do not remember

Q : How much the defendant park with you for effecting trading activities in gold, bullion and silver?

A : The defendant parted around Rs.4,65,00,000/- with me as margin money.

Q : In which bank you have been operating your jewellery account and trading account?

A : My jewellery account is in Syndicate Bank and trading account by cash.

Q : Do you maintain books of accounts separately for jewellery account and also a separate account for yourself and also a separate account with regard to a transaction you had with Surana Corporation Limited and Vinayaka Vyapar Limited?

A : Yes.

Q : Will you be in a position to produce all the accounts in the afternoon or on the adjourned date?

A : It is not possible for me to produce in the afternoon. I will produce on the adjourned date.

33. During further cross-examination that afternoon, the following questions *inter alia* were put to him:

Q : Do you maintain any books of accounts or bank account in the name of Megha G.G.?

A : I used to maintain books of accounts in the name of Megha G.G.

Q : Will you produce it on the adjourned date?

A : Yes.

Q : Can you tell this Court how may transactions you have effected in the name of Megha G.G. on behalf of your customers if so can you name them?

A : I have done transaction for only one customer

34. On 03.10.2019, *inter alia,* the following questions and answers were recorded in course of further cross-examination of Dharmendra Bafna:

Q : Did Mr. Kishan Lal instruct you to open a separate account in his name?

A : He instructed me to open trade account in the name of Guru Ganesh along with Megha

Q : Who opened that account?

A : Myself

Q : Did you open a separate bank account?

Q : No.

Q : How many accounts you opened like Megha GG on behalf of your customers?

A : Only one account that is Megha GG.

Q : In which bank you opened the account in the name of Megha GG

A : I have not opened any bank account.

35. In course of the cross-examination of Kishan Lal, the following questions were asked of him with regard to the documentary evidence of bullion trading:

Q17 : (Ex.D1 is shown to witness) Is it correct to state that Ex.D1 is the only document to show that you had entered into bullion trading?

A : This is the document filed by me. I handed over the cash to Mr. Dharmendra Bafna to put up the compound wall for Goshala from the moneys that I will earn as profit from the sale of gold and silver to be done him at the rate mentioned by him in the diary.

Q18 : Have all the transactions done by you been recorded in Ex.D1 and acknowledged by Mr. Dharmendra Bafna?

A : Yes. All the transactions have been recorded but the transactions dated 14.11.2005 have not been acknowledged.

36. Evidence on the deployment of the sum of Rs.4.65 crore from Kishan Lal was only available with Dharmendra Bafna and, therefore, it bears repetition that he was required to adduce evidence that he had deployed this amount in bullion trading for and on behalf of Kishan Lal and that it resulted in a net loss of Rs.1,83,93,608/-. Considering that the purported transactions related to commodity derivatives, off-market transactions are not permissible under the Securities Contracts (Regulation) Act, 1956, except where permitted by notification. Even assuming that these were off-market transactions, at a minimum, the money trail should have been established by Dharmendra Bafna. In the absence of any evidence that the sum of Rs.4.65 crore was actually deployed in bullion trading and that such trading resulted in the above-mentioned net loss, as contended by learned counsel for Kishan Lal, Section 88 of the Trusts Act becomes applicable. The said provision prescribes that any pecuniary advantage

gained by a person bound in a fiduciary character to another should be held for the benefit of such person. As a consequence, Dharmendra Bafna becomes liable to restore the sum of Rs.4.65 crore to Kishan Lal. Likewise, Dharmendra Bafna is not entitled to his suit claim.

37. As regards the claim of Rs.30,00,000/- towards profits, the burden of proof was on Kishan Lal. Just as Dharmendra Bafna has failed to prove that the sum of Rs.4.65 crore was indeed deployed in bullion trading, Kishan Lal failed to prove that such bullion trading resulted in a profit of Rs.30,00,000/-. In the absence of any evidence of such profit, the claim for the sum of Rs.30,00,000/- is not sustainable. Issue Nos.6 and 7 in C.S. No.965 of 2008 and Issue No. 2 in C.S. No.200 of 2006 are disposed of on these terms.

Issue No.8 in C.S. No.965 of 2008 and Issue No.3 in C.S. No.200 of 2006:

38. These issues relate to whether Kishan Lal is entitled to interest at 24% per annum and whether Dharmendra Bafna is entitled to interest on his suit claim. The parties did not agree upon any rate of interest in relation to

these transactions. Because it was concluded that Dharmendra Bafna is not entitled to his suit claim, it is needless to say that he is not entitled to interest thereon. As regards Kishan Lal, he evidently entered into high risk transactions in derivative contracts relating to bullion. Towards these transactions, Kishan Lal appears to have parted with a sum of Rs.4.65 crore in cash in several installments. Considering the speculative nature of transactions, while Kishan Lal is entitled to restitution of the money paid by him to Dharmendra Bafna, he is only entitled to interest at 6% per annum thereon.

39. As the partly successful party, Kishan Lal is entitled to proportionate costs. Kishan Lal had paid a sum of Rs.8,31,900/- as court fees. He is entitled to a sum of Rs.6,00,000/- towards court fees along with reasonable lawyer's fees and other expenses. In the aggregate, Dharmendra Bafna shall pay a sum of Rs.10,00,000/- as costs to Kishan Lal.

40. In the result, these suits are decreed on the following terms:

(i) C.S.No.200 of 2006 is dismissed.

(ii) C.S.No.965 of 2008 is decreed by directing Dharmendra Bafna to pay Kishan Lal a sum of Rs.4.65 crore with interest thereon at 6% per annum from 02.12.2005 until realisation; and

(iii) Dharmendra Bafna is further directed to pay a sum of Rs.10,00,000/- as costs towards court fee, lawyer's fees and other expenses.

25.09.2025

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
PKN

Dharmendra Bafna's witness:

P.W.1 – Mr.Dharmendra Bafna

Kishan Lal's witness:

D.W.1 – Mr.Kishan Lal

Documents exhibited by Dharmendra Bafna:

Exhibits	***Documents***
Ex.P1	Office copy of legal notice sent by counsel for plaintiff in C.S.No.200 of 2006 to Kishan Lal dated 04.03.2006.
Ex.P2	Copy of telegraphic notice with original receipt sent by counsel for plaintiff in C.S.No.200 of 2006 to Kishan Lal dated 07.03.2006.
Ex.P3	Series are original returned cover with acknowledgement card and its contents sent to Kishan Lal dated 04.03.2006.

Documents exhibited by Kishan Lal:

Exhibits	*Documents*
Ex.D1	Diary produced by the police before the Metropolitan Magistrate
Ex.D2	Single Anticipatory Bail application filed by the Defendants in Crl.O.P.No.1481 of 2006 before the High Court, Madras
Ex.D3	Order in Crl.O.P.No.1481 of 2006 before the High Court, Madras
Ex.D4	Order of Modification petition in Cr.MP No.3134/2006 in Crl.O.P.No.1481 of 2006 before the High Court, Madras
Ex.D5	Photocopy of the trust deed dated 18.01.2002. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D6	Photocopy of the certificate issued by Animal Welfare Board of India in favour of the trust dated 07.03.2008. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D7	Photocopy of the exemption certificate issued by IT Department under Sec. 80G dated 20.07.2004. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D8	(Series) (6 Nos) are the carbon copy of the receipts issued by the plaintiff for leasing out the agricultural land to various parties and loan received from 07.10.2005 to 19.10.2005. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a carbon copy.)
Ex.D9	(Series) (14 Nos) are the original declaration - Deposit of Gold Ornaments, Diamonds, Silver and other articles by the other parties to the plaintiff from 28.09.2010 to 10.10.2005.

Exhibits	***Documents***
Ex.D10	True copy of the statements of source of funds received from various parties from 19.09.2005 to 03.11.2005. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D11	(Series) (2 Nos) are the photocopy of the confirmation of amount received for sale of agricultural land by C. Kamalchand and Kalyanmal dated 31.03.2006. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D12	Original statement of account of B.K. Vimalchand for having received loan by the plaintiff dated 31.03.2006.
Ex.D13	Photocopy of the confirmation letter by S. Sivaraja to Kishnlal for having received the sale advance amount for agricultural land dated 31.03.2006. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D14	Certified true copyof the telegram issued by Kishanlal to the commissioner of police dated 05.05.2006.
Ex.D15	Certified true copy of the Form 2D, Saral statement for the assessment year 2006-2007 dasted 08.05.2007.
Ex.D16	Photocopy of the order of the XI Metropolitan Magistrate Court, Saidapet, in Crl.M.P.No.5063/2014 in CC.No.734/2011 dated 27.04.2015. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D17	Photocopy of the counter filed by Inspector of Police, CBCID, Metro Wing, Chennai 8 in Crl.RC.No.36/2015 in Crl.MP.No.7934/2015 in CC.No.734/2044 before the Principal District and Sessions Judge, Chennai. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D18	Photocopy of the order of the City Civil Court, Chennai in Crl.RC.No.36/2015 dated 22.08.2017. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a

Exhibits	***Documents***
	photocopy.)
Ex.D19	Photocopy of the receipt of payment duly acknowledged by some of the defendants from 06.10.2005 to 02.12.2005. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D20	Photocopy of the purchase and sale of Gold / Silver bullion rates duly acknowledged by Mr. Dharmendra Bafna from 10.10.2005 to 04.11.2005. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D21	Photocopy of the plaintiff filed a complaint to the Commissioner of Police, Chennai Police, Egmore, Chennai - 8 dated 30.12.2005. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D22	Photocopy of the single anticipatory bail application filed by the defendants in Crl.OP.No.1481/2006 before Hon'ble High Court of Madras dated 12.01.2006. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D23	Photocopy of the first information report in Central Crime Branch, Chennai station Cr.No.60/2006 registered against all the defendants dated 22.01.2006. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D24	Photocopy of the documents of MCX graphs, bullion rates and statement of plaintiff's account filed in Crl.OP.No.1481/2006 by all the defendants before Hon'ble High Court of Madras dated 27.01.2006. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D25	Photocopy of the counter affidavit of the invest officer in X Crl.No.60/2006 filed before Hon'ble High Court of Madras in Crl.OP.No.1481/2006 dated 04.02.2006. (The counsel for the

Exhibits	***Documents***
	plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D26	Photocopy of the letter addressed to the investigating officer by the Director of Multi Commodity Exchange, Mr. Deepaksha dated 09.02.2006. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D27	Photocopy of the plaint in CS.No.200/2006 filed by the 7th defendant before Hon'ble High Court of Madras dated 08.03.2006. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D28	Photocopy of the the letter of Registrar of Companies, Chennai - 6 addressed to Surana Corporation Limited dated 25.05.2006. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D29	Photocopy of the CSR No.208/CSR E1/06, dated 18.06.2006 registered by the Inspector of Police, E – 1, Mylapore Police Station on the complaint of the plaintiff dated 18.06.2006. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D30	Photocopy of the CSR No.97/CSR/E1/2006, dated 29.11.2006 registered by the Inspector of Police, Flower Bazar Police Station on the complaint of the plaintiff. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D31	Photocopy of the Surana Corporation Limited sent letter to Hon'ble Chief Minister of Tamil Nadu Cell and various authorities dated 22.01.2007. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D32	Photocopy of the order of III Metropolitan Magistrate, Egmore, Chennai on the petition filed u/s. 173(8) C.P.C by the plaintiff dated 13.05.2008. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)

Exhibits	***Documents***
Ex.D33	Office copy of the legal notice to the defendants 1 to 7 sent by the plaintiff dated 02.05.2008.
Ex.D34	Photocopy of the acknowledged copy of the receipt of the legal notice by the defendant No.1 dated 03.06.2008. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D35	Photocopy of the acknowledged copy of the receipt of the legal notice by the defendant No.4 dated 03.06.2008. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D36	Photocopy of the acknowledged copy of the receipt of the legal notice by the defendant No.3 dated 04.06.2008. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D37	Photocopy of the acknowledged copy of the receipt of the legal notice by the defendant No.5 dated 04.06.2008. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D38	Photocopy of the return cover of legal notice sent to the defendant No.7 dated 05.06.2008. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D39	Photocopy of the legal notice sent again to the defendant No.7 by the plaintiff dated 06.08.2008. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D40	Photocopy of the postal receipt of the legal notice sent to the defendant No.6 with Advocate's letter to the postmaster High Court Post Office to confirm delivery of letter dated 22.08.2008. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D41	Photocopy of the acknowledged copy of the receipt of the legal

Exhibits	***Documents***
	notice by the defendant No.7 dated 04.06.2008. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)
Ex.D42	Photocopy of the letter issued by the Senior Superintendent of Post, Chennai City North dated 18.09.2008 reply to the complaint raised by the erstwhile counsel for the plaintiff. (The counsel for the plaintiff in CS.No.200/2006 objects on the ground that it is a photocopy.)

25.09.2025

PKN

SENTHILKUMAR RAMAMOORTHY J.

PKN

Pre-delivery judgment made in
C.S.Nos.200 of 2006 and 965 of 2008

25.09.2025