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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Date of decision: 4th July, 2022**

+ CS(OS) 161/2022 & I.A. Nos. 4258-60/2022

SH AWANEESH CHANDRA JHA ..... Plaintiff

Through: Mr. Arvind Nigam, Senior Advocate  
with Mr. Ravi Gupta, Senior  
Advocate and Mr. Vaibhav  
Kharbanda, Advocate.

versus

ANIL PRASAD NANDA ..... Defendant

Through: Mr. Pawanjit Singh Bindra, Senior  
Advocate with Ms. Rishika Arora,  
Advocate for defendant.  
Mr. Akhil Sibal, Senior Advocate for  
impleadment applicant-M/s Apogee  
Enterprises with Ms. Deboshree  
Mukherjee, Mr. Anirudh Wadhwa,  
Mr. Keshav Gulati & Mr. Abhishek  
Kumar, Advocates.

**CORAM:**  
**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

## **J U D G M E N T**

**ANUP JAIRAM BHAMBHANI J.**

**I.A. 6700/2022 (for impleadment) & I.A. 5376/2022 (for withdrawal)**

### **Background**

The present suit was filed by the plaintiff claiming to be the intending purchaser of property bearing No. 12-C Friends Colony

(West), New Delhi admeasuring 1870 square yards ('subject property' for short) from the defendant *vidé* Agreement to Sell dated 10.05.2021 for a sale consideration of Rs.38.5 crores. In the plaint it was claimed that "... *the plaintiff had fulfilled the entire transaction on 10<sup>th</sup> May 2021, and the possession of the property was taken by the plaintiff.*" The case sought to be made-out was that the defendant was avoiding the execution of the sale deed in respect of the subject property in the plaintiff's favour and was trying to sell it to a third party. It was further stated in the plaint that the plaintiff had filed an earlier suit bearing CS(OS) No.122/2022, which was listed before a Co-ordinate Bench of this court on 28.02.2022; on which date the plaintiff was permitted to file the deficient court fee and the matter was posted to 07.03.2022. It was further the plaintiff's case that consequent upon filing of CS(OS) No.122/2022 the defendant approached the plaintiff; and the parties entered into Memorandum of Understanding dated 03.03.2022 ('MoU' for short), whereby the defendant sought extension of time for getting the sale deed registered in favour of the plaintiff.

2. Subsequently, it is the plaintiff's case, that based upon the MoU he withdrew CS(OS) No.122/2022 as recorded in order dated 07.03.2022 which reads as under :

"I.A. No.3654/2022

1. *This application has been filed praying for leave to withdraw the suit.*
2. *The application is allowed. The suit and the pending applications are dismissed as withdrawn.*
3. *As the suit has been withdrawn at the initial stage without the issuance of the summons, the Court Fee deposited by the plaintiff shall be refunded. Let the Registry prepare the Certificate of Refund in favour of the plaintiff for the said amount."*

3. It was further the plaintiff's case that the defendant also executed an Undertaking dated 07.03.2022 ('Undertaking' for short) in witness of his commitment to get the sale deed registered in favour of the plaintiff by 14.03.2022, which however did not happen.
4. When the present suit first came-up before this court on 15.03.2022, the court fee affixed on the plaint was found to be deficient and it was also observed that there was no averment in the plaint as to the readiness and willingness of the plaintiff to perform his part of the contract as mandated under section 16(c) of the Specific Relief Act, 1963 ('Specific Relief Act' for short). The plaintiff was accordingly directed to make-up the deficiency in court fee and to also file an affidavit in compliance of section 16(c) of the Specific Relief Act.
5. On 22.03.2022, the court was informed that the plaintiff had remitted the deficient *ad-valorem* court fee and had also placed on record an affidavit dated 21.03.2022 making requisite averments in line with section 16(c) of the Specific Relief Act.
6. It then transpired that the specific performance suit was in fact premised, not on Agreement to Sell dated 10.05.2021, but on MoU dated 03.03.2022. However, the copy of the MoU placed on record was found to be incomplete since some pages of the MoU were missing.
7. On the next date of hearing in the matter *i.e.*, 23.03.2022, the original MoU dated 03.03.2022 and Undertaking dated 07.03.2022 were handed-up in court; and the same were retained to be placed on the physical file and to be added to the electronic copy of the court file.

8. Upon a first-blush scrutiny of the MoU and the Undertaking however, this court recorded the following in its order dated 23.03.2022 :

*“6. On a purely prima facie view of the matter based upon the history of the litigation; and, especially on a preliminary but close scrutiny of MoU dated 03.03.2022 and Undertaking dated 07.03.2021, presented before this court in original, this court entertains doubts as regards the claim in suit on several counts which have been indicated to counsel.”*

(emphasis supplied)

9. It may be mentioned in the passing that the original documents seen by the court, particularly the MoU and the Undertaking, were remiss and ‘odd’ in many respects; but the court refrains from making any further comments on those aspects to avoid pre-judging the documents as to their authenticity.
10. However, at that stage, the attention of this court was drawn to the statement of the defendant as recorded in the MoU, in particular the following portion thereof :

*“... I have come to know that the case is now listed before Hon’ble Justice Navin Chawla on 07.03.2022 for further proceedings. I do not want to contest this litigation for the reason that I am ready to execute the sale deed in respect of property bearing no. 12-C, Friends Colony West, New Delhi-110065 (hereinafter referred to as ‘suit property’) which is the subject matter of the suit in question as I have already received the sale consideration of the suit property way back on 06<sup>th</sup> May 2021.*

...

*b. That it is matter of record that physical possession of suit property has already been handed over to the Second Party.”*

(emphasis supplied)

11. Premised on the aforesaid, it was urged before this court that *de-hors* the apparent anomalies in the documents and other fallacies noticed, the defendant may be summonsed *if only* to ascertain his stand with regard to the claim in suit.

12. In view of such submission, as requested by the plaintiff, without registering the plaint as a suit and without issuing summons in the matter, this court issued notice to the defendant to appear or be represented by counsel, to indicate his stand in the matter; and, upon the plaintiff's insistence, it was recorded that the principle of *lis-pendens* shall apply to the subject property.
13. On 25.03.2022, the defendant Mr. Anil Prasad Nanda s/o late Mr. Hari Prasad Nanda appeared in court in-person and presented proof of his identity by way of his *Aadhaar* Card, the original of which was seen and returned. Mr. Nanda was also represented by counsel, who identified him, while seeking time to file a *vakalatnama* on record.
14. Upon being queried, Mr. Nanda clearly and cogently stated that he had indeed sold the subject property to the plaintiff; that he had received the entire sale consideration of Rs.38.5 crores and had also delivered vacant, peaceful, physical possession of the subject property in its entirety to the plaintiff. Mr. Nanda however stated that he was unable to execute the sale deed/conveyance deed in respect of the subject property in the plaintiff's favour since the property was under encumbrance with M/s Yes Bank Limited, Malcha Marg, New Delhi and certain amounts were due and payable to the bank for revoking the encumbrance.
15. Mr. Nanda stated that he was ready and willing to execute the sale deed/conveyance deed in favour of the plaintiff; however, he could do that only after the bank encumbrance was cleared; for which however, he could not give any fixed time-frame. Mr. Nanda also assured that he would not create any third-party rights, titles, interests or encumbrances in the subject property in the meantime. In view

thereof, the plaintiff requested that the matter be kept pending till such time as Mr. Nanda executes requisite documents of sale in the plaintiff's favour.

16. As recorded in order dated 25.03.2022, without delving into the merits of the matter and in an *effort only to put closure* to the matter, since both parties appeared to be *ad-idem* as to the sale transaction, the matter was re-notified to 27.07.2022. By that order Mr. Nanda was also requested to remain present in court on the next date.
17. However on 06.04.2022, an application bearing I.A. No. 5376/2022, being one of the applications under consideration, was moved in the matter, whereby the plaintiff sought to withdraw the suit, which suit otherwise stood re-notified to 27.07.2022 as mentioned above.
18. On the same date, M/s Apogee Enterprises Pvt. Ltd. (formerly Apogee Manufacturing Pvt. Ltd.) appeared at the hearing through their counsel and informed the court that the subject property was owned not by Mr. Nanda personally but by a corporate entity called M/s Joint Investments Pvt. Ltd. (of which Mr. Nanda was the majority shareholder) and, most importantly, that the subject property had several encumbrances over it. This court was also informed that there were several legal proceedings pending in relation to the subject property; and that there were orders in such proceedings restraining the defendant from dealing with it; which facts neither the plaintiff nor the defendant had brought to the attention of this court.
19. In this regard, the following judicial orders affecting the subject property were brought to the notice of this court :

Date of Order	Proceedings	Cause Title	Court	Substance of Order
27.02.2017	OMP (I) Comm No. 467/2016	Apogee Manufacturing Pvt Ltd vs. AKME Projects Limited & Ors.	Delhi High Court	Order of injunction
18.04.2018	CP No.-IB-55(ND)/2018	Mr. Hari Kishan Sharma vs. M/s AKME Projects Ltd.	NCLT, New Delhi-II	Order of moratorium
17.02.2020	CP No.-IB-514/ND/2020	M/s. Apogee Enterprises Pvt. Ltd. vs. M/s. Anil nanda	NCLT, New Delhi-VI	Order of interim moratorium
12.10.2020	WP(C) No. 7189/2020	Anil Nanda vs. Union of India & Ors	Delhi High Court	Order of restraint in respect of assets
21.05.2021	TC(C) No. 255/2020	Anil Nanda vs. Union of India & Ors	Supreme Court	IBC notification upheld; Supreme Court holds that resolution plan does not <i>ipso-facto</i> discharge a personal guarantor
14.09.2021	OMP (I) Comm No. 467/2016	Apogee Manufacturing Pvt Ltd vs. AKME Projects Limited & Ors.	Delhi High Court	Order modifying injunction
01.04.2022	OMP (I) Comm No. 467/2016	Apogee Manufacturing Pvt Ltd vs. AKME Projects Limited & Ors.	Delhi High Court	Notice in Contempt Application filed by impleadment applicant

20. Suffice it to say at this stage, that *prima-facie* the aforesaid orders show that *the defendant did not have the right to alienate the subject property in the first place and that M/s Apogee Enterprises Pvt. Ltd. had certain rights to assert in relation thereto.*
21. Based upon the above, M/s Apogee Enterprises Pvt. Ltd. sought time to file an appropriate application seeking impleadment in the matter.

It was submitted on their behalf that the averments in the plaint and the submissions made, including the statement made by Mr. Nanda himself as recorded in order dated 25.03.2022, were totally false, misleading; concealed the true status of the property; and were made in a deliberate attempt to deceive, mislead and play fraud upon the court. It was further submitted that the knowledge and connivance of the plaintiff in the entire affair also required to be looked into. It was urged that therefore, the plaintiff's attempt to withdraw the suit was not an innocent act and ought not to be permitted.

22. It was in this backdrop that I.A No.6700/2022 under Order I rule 10 of the Code of Civil Procedure, 1908 ('CPC' for short) came to be filed by M/s Apogee Enterprises Pvt. Ltd. seeking impleadment as party -defendant in the suit; on which application notice was issued on 02.05.2022, giving time to both the plaintiff and the defendant to file their reply to the application. However, no reply came to be filed by either of the parties; and on 24.05.2022, counsel appearing for the plaintiff and the defendant made statements before the court that they did not wish to file any replies; submitting instead, that since the plaintiff wanted to withdraw the suit, there was no necessity to file any reply to the impleadment application, which application would be rendered purposeless and infructuous.
23. It was argued on behalf of the plaintiff that once there was an application seeking to withdraw the suit, the withdrawal took effect immediately and automatically; and consequently there was no surviving suit in which an impleadment application could be filed. Besides, it was urged, that since the plaint had not been registered as a



suit and summons had not been issued, formally there was no 'suit' in which an impleadment application could be filed.

24. On 02.05.2022 and 24.05.2022, Mr. Nanda did not appear in court, despite directions to do so, on the pretext that he was indisposed and in hospital.
25. In the meantime, the plaintiff pressed his application seeking withdrawal of the suit, arguing that the plaintiff had an unqualified right to withdraw the suit, which right could be asserted by the mere filing of an application seeking withdrawal, and that even permission of the court was not required for such withdrawal.
26. As recorded in order dated 24.05.2022, learned counsel for the parties have been heard at-length on the withdrawal application as well as on the impleadment application, which were taken-up for hearing together. This was done since, in the opinion of this court, the impleadment-applicant was seeking to bring before the court certain facts, circumstances and documents to show how the defendant, and collusively also the plaintiff, were attempting to obtain relief from the court by misleading and deceiving the court by suppression of material facts, circumstances and even court orders, which amounted to playing fraud on the court; for which reason the plaintiff ought not to be permitted to withdraw the suit.
27. Parties were heard separately on their respective applications. However, by reason of the intrinsic connection between the withdrawal application and the impleadment application, these are being decided by this common judgment.

**Application under Order XXIII Rule 1 CPC seeking withdrawal**

28. Mr Arvind Nigam, learned senior counsel appearing for the plaintiff contended that the plaintiff has an unqualified right to withdraw the suit, especially when the plaint has not even been registered as a suit and summons have not been issued. Learned senior counsel also contended that the plaintiff is *dominus litus* and is entitled to decide who to implead as defendant, especially in a suit for specific performance founded upon an Agreement to Sell/MoU.
29. It was contended that in fact, such withdrawal would follow *automatically* upon the mere filing of an application seeking withdrawal; and that the plaintiff could even just abandon the proceedings, leaving no option for the court but to allow the withdrawal. This court was urged to consider the fruitlessness of the proceedings, if the plaintiff was to simply ‘walk away’. While denying any collusion with the defendant or fraud upon the court, it was stressed that the only recourse for a court in the present circumstances could be to impose costs and restrain the plaintiff from filing afresh on the same cause of action; and at best, the ‘remedy’ for the impleadment-applicant would be by way of separate proceedings for contempt or perjury, or both, in the concerned court, if so advised; stressing however, that if the plaintiff chooses to non-suit himself by withdrawing the suit, nothing would survive in the present proceedings.
30. Attention was drawn to the relevant portion of Order XXIII CPC, which reads as under :

## ORDER XXIII

### WITHDRAWAL AND ADJUSTMENT OF SUITS

**“1. *Withdrawal of suit or abandonment of part of claim.*—(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:**

*Provided that where the plaintiff is a minor or other person to whom the provisions contained in Rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.*

*(2) An Application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other, person.*

*(3) Where the Court is satisfied,—*

*(a) that a suit must fail by reason of some formal defect, or*

*(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,*

*it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.*

*(4) Where the plaintiff—*

*(a) abandons any suit or part of claim under sub-rule (1), or*

*(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),*

*he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.*

*(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs.*

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31. The plaintiff supported his contentions with the following judicial precedents :

- i. ***Anil Kumar Singh vs. Vijay Pal Singh***,<sup>1</sup> to say that the only consequence of a withdrawal under Order XXIII Rule 1 could be costs and restraint from filing afresh on the same subject matter or part thereof;
  - ii. ***Mumbai International Airport Pvt. Ltd. vs. Regency Convention Centre & Hotels Pvt. Ltd. & Ors***,<sup>2</sup> to say that the plaintiff being *dominus litis*, cannot be compelled to sue a person against whom he does not seek any relief; and to stress that the impleadment-applicant is neither a necessary nor a proper party;
  - iii. ***Bhavna Gupta vs. Gulshan Kumar & Anr***,<sup>3</sup> to say that a person claiming adversely to the seller is not a necessary or proper party in a suit for specific performance;
  - iv. ***Anil Dinmani vs. Chief Officer***,<sup>4</sup> to say that withdrawal is *complete* as soon as the plaintiff files an application for withdrawal.
32. For evidently self-serving reasons, the plaintiff has sought to canvass a very simplistic interpretation of Order XXIII Rule 1 (1) CPC, to assert that not only is there no provision of law that can prevent the plaintiff from withdrawing the suit which he had filed voluntarily in court, but there is also no impediment in him doing so. The plaintiff asserts an absolutist view, both in relation to him being *dominus litis*;

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<sup>1</sup> (2018) 12 SCC 584

<sup>2</sup> (2010) 7 SCC 417

<sup>3</sup> 2020 LAWPACK(Del) 75380

<sup>4</sup> MANU/MH/0010/2003

as also being entitled to withdraw the suit as and when and how he pleases.

33. Mr. Pawanjeet Bindra, learned senior counsel appearing for the defendant essentially supported the submissions made on behalf of the plaintiff.

**Application under Order I Rule 10 CPC seeking impleadment**

34. On the other hand, Mr. Akhil Sibal, learned senior counsel appearing for the impleadment-applicant argued that an adversarial system is premised on a *bona-fidé lis* which requires that there are two parties with *opposing* claims and *rival* contentions. However, where adversarial proceedings become collusive, it becomes necessary for the court to hear a party seeking to be impleaded *if* the court finds that the parties to the so-called adversarial *lis* are in fact conniving to conceal true facts to fraudulently extract relief from the court.
35. Learned senior counsel submitted that in the present case, there is in fact a subsisting injunction in relation to the subject property *vidé* order dated 27.02.2017 made in OMP (I)(COMM) No. 467/2016 titled '*Apogee Manufacturing Pvt Ltd vs. AKME Projects Limited & Ors.*' the relevant portion of which reads as under :

*"5. Accordingly, order dated 06.12.2016 is modified and the respondent **is restrained from subletting, assigning, encumbering or in any manner alienating, parting with possession in favour of a third party or creating any third party interests in the premises situated at 12C, Friends Colony (west), New Delhi-110065 except on making a deposit of the sum of ₹3,79,58,399/ with the Registrar General of this Court.** In the event, the respondents are desirous of selling/transferring/encumbering/alienating the aforesaid property, they may do so subject to depositing the aforesaid sum with the Registry of this court."*

(emphasis supplied)

36. It is submitted that order dated 27.02.2017 aforesaid was subsequently modified *vidé* order dated 14.09.2021, the relevant portion of which reads as under:

“18. Accordingly, the *order dated 27<sup>th</sup> February, 2017 is modified and it is directed that subject to the Respondent furnishing a bank guarantee for an amount of Rs. 11,53,42,124/- in the name of Registrar General of this Court, the restraint qua the suit property being 12C, Friends Colony (West), New Delhi-110065 shall stand vacated.*”

(emphasis supplied)

To be sure, it is submitted that the defendant has not made any deposit nor furnished any bank guarantee in fulfilment of the condition imposed *vidé* the above orders; and the defendant is therefore not entitled to alienate the subject property.

37. It is contended that it requires to be noted that the withdrawal application came to be filed on 04.04.2022, *immediately* after a contempt application bearing I.A No. 5061/2022 under Order XXXIX Rule 2A CPC read with sections 12 and 14 of the Contempt of Courts Act, 1971 read with section 340 of the Code of Criminal Procedure, 1973 (‘CrPC’ for short) was filed in OMP (I) (COMM) No. 467/2016 and the defendant was served an advance copy thereof on 31.03.2022.

38. For clarity, it is submitted that the contempt application was filed by M/s Apogee Enterprises Pvt. Ltd. on being approached by a third party, who informed the company that he (the third party) was in the process of purchasing the subject property from the defendant.

39. Mr. Sibal contended that the defendant was a named party-respondent in OMP (I)(COMM) No. 467/2016 and could not have made the statement that he did on 25.03.2022 in the present proceedings, had he acted honestly. What is even more telling, it is submitted, is that the

plaintiff would never have sought to hastily withdraw the suit, had the plaintiff not been acting collusively with the defendant. It is argued that had the plaintiff been a *bona-fidé* litigant, he would have pressed-on with his claim for specific performance or for other appropriate relief, once he discovered that defendant had no right to sell the subject property. The plaintiff's conduct in attempting to quickly and quietly withdraw the suit, points to the collusive guilt of the plaintiff and the defendant. Mr. Sibal submitted that such action on the part of the plaintiff and the defendant exposes them to possible proceedings under section 209 of Indian Penal Code, 1860 ('IPC' for short) for making a 'false claim' in court; to proceedings for perjury under section 340 of the CrPC; as also to possible proceedings for contempt of court. However, it is argued, that evidently the plaintiff does not consider the defendant's actions as fraudulent, since the plaintiff and the defendant are acting dishonestly, in-tandem to unlawfully obtain orders from this court.

40. In support of his submissions, the impleadment-applicant has cited the following judicial precedents :
- i. *Anil Kumar Singh* (supra), to argue that permission of court is required even for mere withdrawal of a suit;
  - ii. *Abha Arora vs. Angela Sharma & Anr*,<sup>5</sup> to buttress the submission that for withdrawal/abandonment, permission of the court is required;

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<sup>5</sup> 2008 (148) DLT 506

- iii. ***HS Bedi vs. National Highway Authority of India***,<sup>6</sup> to say that the principles laid-down in the context of frivolous litigation, apply with even greater force in a case of fraudulent litigation;
- iv. ***Praveen Saini vs. Reetu Kapur & Anr***,<sup>7</sup> to say that when faced with a similar situation of fraud being played on it, even a civil court has powers envisaged by penal statutes e.g. section 209 IPC;
- v. ***T Arivandandam vs. TV Satyapal***,<sup>8</sup> to say that the court must act strictly when faced with parties such as the present plaintiff and defendant;
- vi. ***Maria Margadia Sequeria vs. Erasmo Jack de Sequeria***,<sup>9</sup> to say that false claims and defences must be viewed strictly;
- vii. ***Mumbai International Airport Pvt. Ltd.*** (supra), to say that the impleadment-applicant is a proper party in the present matter;
- viii. ***State Bank of India vs. Firm Jamuna Prasad Jaiswal & Sons***,<sup>10</sup> to say that fraud vitiates all acts; and that the argument that withdrawal is complete the moment an application seeking withdrawal is filed, has been rejected; and that an application for *recall* of withdrawal was permitted in case of fraud;

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<sup>6</sup> (227) 2016 DLT 129

<sup>7</sup> (246) 2018 DLT 709

<sup>8</sup> (1977) 4 SCC 477

<sup>9</sup> (2012) 5 SCC 370

<sup>10</sup> AIR 2003 All 337



- ix. *United India Insurance Co. Ltd. vs. Rajendra Singh & Ors*,<sup>11</sup> to say that fraud and justice never dwell together and that courts cannot be, and are not, left powerless in situations where fraud has been committed upon the court; and
- x. *Shiv Prasad vs. Durga Prasad*,<sup>12</sup> to say that the High Court had erroneously applied this judgment in *Anil Dinmani Shankar Joshi* (supra), inasmuch as the *Shiv Prasad* decision was rendered in a separate context and pertained only to withdrawal of an application to set-aside sale as under Order XXI Rules 89 and 90.

### **Discussion & Conclusions**

41. On a plain reading of the provision, it is seen that the following scenarios are contemplated in the various rules of Order XXIII CPC:
- i. The *first scenario envisaged in Rule 1(1) and 1(2)* of Order XXIII CPC is where the plaintiff wishes to abandon the whole or part of his claim against all or any of the defendants. In such case, the law *permits* the plaintiff to do so; except when the plaintiff is a minor or other person to whom Order XXXII Rules 1 to 14 CPC apply, in which case such abandonment is only permitted with leave of the court;
  - ii. The *second scenario envisaged in Rule 1(3)* is when the court is satisfied that a suit must fail by reason of some formal defect; or if there are sufficient grounds for allowing the plaintiff to

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<sup>11</sup> AIR 2000 SC 1165

<sup>12</sup> (1975) 3 SCR 526

file a fresh suit for whole or part of the claim. In such case, the plaintiff *requires permission* of the court to withdraw the suit, which permission may be granted subject to such terms as the court thinks fit.

iii. A *third scenario contemplated in Rule 1(4)* is where a plaintiff abandons or withdraws from a suit or part of a claim *without the permission* of the court as required sub-rule (3), in which case the plaintiff is liable for costs and is precluded from instituting any fresh suit in respect of the same cause of action.

42. However, in the opinion of this court, the present case cannot be decided based on any of the aforesaid three scenarios but on an overarching and inexorable principle that must inform even a pedantic interpretation of Order XXIII CPC: namely, that *fraud vitiates and nullifies any right to judicial relief*. How this principle applies to the present case is discussed below.

43. The brazenness with which the plaintiff submitted that since he is the ‘MASTER’ of his own suit – *dominus litus*, as he would argue – the court *cannot* stop him from withdrawing from the proceedings or abandoning his claim, set the court thinking as to the soundness of this proposition cast by the plaintiff in *absolute* and *audacious* terms.

44. If accepted, the proposition would imply that the right to legal remedy is an unqualified, unbridled and unguarded right whereby a litigant may *file* legal proceedings and *withdraw* or *abandon* legal proceedings, *as and when*, the litigant pleases, regardless of the motives, intention and conduct of the litigant. Such a right would imply that a court of law is a place where a litigant may approach without much cogitation, with a purported claim, whether *bona-fidé*

or otherwise, substantiated or not, to *take a chance* and play a gambit; and if found floundering or failing, a litigant could *simply walk-away*, as a matter of absolute right, without the court having any say whatsoever in the matter. In the opinion of this court, that is not the position.

45. A court is *not* a casino for a litigant to place a bet masquerading as a legal claim; and to later withdraw from the proceedings if he finds he has a losing-hand. No legal proceedings may be initiated by a litigant by way merely of a gamble as if placing a wager, from which the litigant may conveniently withdraw at any time, if matters are not going his way.
46. A court is a forum for *laying serious, bona-fidé claims*, even if they turn-out to be legally untenable or meritless upon conclusion of the process. A court is not a place for fraudulent game-playing by dishonest litigants, to attempt to get judicial imprimatur for false claims. This derives from the inexorable, immutable and overarching principle that *fraud or fraudulent conduct* in a court of law vitiates all curial proceedings.
47. In the course of hearing in this matter, this court was at pains to elicit from learned counsel for the plaintiff and the defendant their views on the effect that fraud or fraudulent conduct has on legal proceedings, especially in a case such as the present, but no meaningful response was forthcoming on that aspect.
48. Litigating parties cannot be permitted, even by consent, to *bring a dishonest claim* and to *withdraw from it or abandon it* when the dishonesty is discovered. Where it appears to the court that what is being played-out before it, even if consensually between apparently

opposing parties, is suspect, the court would certainly be entitled to receive material, documents and information from a third party that may be alien to the proceedings as filed, to discover and unravel the *mala-fidés* or fraud being played-out before it by the litigating parties. This would be *de rigueur* where it appears that the litigating parties are, whether by consent or otherwise, seeking to destroy or negate the rights of a third party that is alien to the particular proceedings. Support for this is found *inter-alia* in decision of the Hon'ble Supreme Court in ***Ram Chandra Singh vs. Savtri Devi & Ors***,<sup>13</sup> the relevant portion of which reads as under :

*“35. The consent order, as is well known, is an agreement between the parties with the seal of the court superadded to it. The appellant herein in the review application categorically stated that the parties to the appeal had suppressed the auction-sale as also the confirmation thereof. The effect of the events appearing subsequent to the filing of the first appeal resulting in creation of a third-party right was bound to be taken into consideration by the High Court. A third-party right cannot be set at naught by consent. The High Court, therefore, was required to consider the contention of the appellant in its proper perspective. The High Court, in our opinion, was obligated to address itself on these questions for the purpose of reviewing its order.”*

(emphasis supplied)

49. In the present case, the plaintiff would have the court believe that *regardless* of what transpired in the course of the present proceedings, the plaintiff must have the unqualified right to withdraw from the proceedings or to abandon his claim, and the court *cannot* deny such withdrawal. In fact, the plaintiff has gone so far as to suggest that

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<sup>13</sup> (2003) 8 SCC 319

denying to the plaintiff the right to withdraw the suit would be an exercise in futility, since the plaintiff may choose, at his pleasure, to simply stop appearing in the matter; in which case, the court would be woefully helpless in proceeding with the matter.

50. This court is of the view, that the plaintiff's foregoing submission is as misconceived, misplaced and meritless, as it is audacious.
51. Here is a plaintiff, who was bestowed indulgence by the court in calling upon the defendant to appear before it, even bypassing formal processes; and, at the plaintiff's instance, recording the defendant's statement to safeguard the rights of the plaintiff arising from the purported agreement to sell. All this was done by the court, obviously assuming *bona-fidés* on the plaintiff's part. Now that the impleadment-applicant has sought to demonstrate that the defendant's statement conceding the plaintiff's claim is false, malicious, tainted by fraud, apart from being in violation of orders made in other pending judicial proceedings, the plaintiff asserts a divine prerogative to withdraw the suit; which he says, no one can stop him from doing.
52. This court must disabuse the plaintiff of this flawed assumption, in the clearest possible terms. The right to withdraw a suit is *not* absolute; and certainly no process or procedure of law can be made a tool to perpetuate deceit in a court of law. A court is never powerless to deal with a dishonest litigant.
53. Withdrawal from proceedings would of course be permissible *if*, in the opinion of the court, the requirements of Order XXIII CPC are fulfilled; *but* withdrawal *cannot be permitted* if it amounts to misuse of the law; or to abuse of the process of the court; or to otherwise

playing fraud on the court. Requisite consequences would follow if withdrawal is attempted in such circumstances.

54. At this point it would be appropriate to dwell, with requisite seriousness, on the effect that misrepresentation or fraud has upon any judicial proceedings.

55. In this regard, the court reminds itself of the observations of the Hon'ble Supreme Court in the celebrated decision in *S.P. Chengalvaraya Naidu vs. Jagannath*,<sup>14</sup> :

*“Fraud avoids all judicial acts, ecclesiastical or temporal” observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree — by the first court or by the highest court — has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.*

\* \* \* \* \*

*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.*

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<sup>14</sup> (1994) 1 SCC 1

“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 ....”

(emphasis supplied)

56. In *Meghmala vs. G. Narasimha Reddy*,<sup>15</sup> the Hon’ble Supreme Court has explained this aspect in the following words :

“*Fraud/misrepresentation*

28. **It is settled proposition of law that where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent authority, such order cannot be sustained in the eye of the law.** “*Fraud avoids all judicial acts, ecclesiastical or temporal.*” (Vide *S.P. Chengalvaraya Naidu v. Jagannath* [(1994) 1 SCC 1 : AIR 1994 SC 853] .) In *Lazarus Estates Ltd. v. Beasley* [(1956) 1 QB 702 : (1956) 2 WLR 502 : (1956) 1 All ER 341 (CA)] the Court observed without equivocation that: (QB p. 712) “**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.**”

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30. In *Shrisht Dhawan v. Shaw Bros.* [(1992) 1 SCC 534 : AIR 1992 SC 1555] it has been held as under: (SCC p. 553, para 20)

“20. **Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct.**”

31. In *United India Insurance Co. Ltd. v. Rajendra Singh* [(2000) 3 SCC 581 : 2000 SCC (Cri) 726 : AIR 2000 SC 1165] this Court observed that “**Fraud and justice never dwell together**” (*fraus et jus nunquam cohabitant*) and it is a pristine maxim which has never lost its temper over all these centuries.

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<sup>15</sup> (2010) 8 SCC 383

32. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud.  
.....”

33. *Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression “fraud” involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage. ....”*

34. 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. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the court. ....”*

\* \* \* \* \*

36. From the above, it is evident that even in judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken away. *In such an eventuality the questions of non-executing of the statutory remedies or statutory bars like doctrine of res judicata are not attracted. Suppression of any material fact/document amounts to a fraud on the court. Every court has an inherent power to recall its own order obtained by fraud as the order so obtained is non est.”*

(emphasis supplied)



57. Furthermore, this principle has been reiterated in *Indian Bank vs Satyam Fibres (India) (P) Ltd.*,<sup>16</sup> where the Hon'ble Supreme Court says:

**“22. The judiciary in India also possesses inherent power, specially under Section 151 CPC, to recall its judgment or order if it is obtained by fraud on court. In the case of fraud on a party to the suit or proceedings, the court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the court's business.**

*23. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the court and also amounts to an abuse of the process of court, the courts have been held to have inherent power to set aside an order obtained by fraud practised upon that court. Similarly, where the court is misled by a party or the court itself commits a mistake which prejudices a party, the court has the inherent power to recall its order. ... The court has also the inherent power to set aside a sale brought about by fraud practised upon the court (Ishwar Mahton v. Sitaram Kumar [AIR 1954 Pat 450] ) or to set aside the order recording compromise obtained by fraud. (Bindeshwari Pd. Chaudhary v. Debendra Pd. Singh [AIR 1958 Pat 618 : 1958 BLJR 651] ; Tara Bai v. V.S. Krishnaswamy Rao [AIR 1985 Kant 270 : ILR 1985 Kant 2930] .)*

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*31. The Privy Council in Satish Chandra Chatterji v. Kumar Satish Kantha Roy [AIR 1923 PC 73 : (1923-24) 28 CWN 327] laid down as under:*

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<sup>16</sup> (1996) 5 SCC 550

*“Charges of fraud and collusion like those contained in the plaint in this case must, no doubt, be proved by those who make them — proved by established facts or inferences legitimately drawn from those facts taken together as a whole. Suspicions and surmises and conjecture are not permissible substitutes for those facts or those inferences, but that by no means requires that every puzzling artifice or contrivance resorted to by one accused of fraud must necessarily be completely unravelled and cleared up and made plain before a verdict can be properly found against him. If this were not so, many a clever and dextrous knave would escape.”*”

(emphasis supplied)

58. The unquestioned legal position is that dishonesty must not be permitted to bear fruit; that collusion or conspiracy with a view to deprive others of their rights would render a transaction *void ab-initio*; that suppression of material documents would amount to fraud upon the court; that once fraud is proved, all advantages gained by the fraud can be taken away; and that every court has inherent powers to recall its own orders obtained by fraud since such order is *non-est*. This *necessarily implies* that *at any stage of a proceedings*, if it appears to a court that fraud is being played upon it, the court must not permit a litigant to obtain any benefit and must nip any such effort in the bud.
59. While *not expressing any final opinion* as to the plaintiff’s involvement in the falsehood that is evident on the defendant’s part, as evidenced by judicial orders in other proceedings, this court entertains serious doubts as to the *bona-fidés* of the plaintiff as well. If nothing else, the plaintiff’s unnatural and emphatic assertion that he must be allowed to withdraw the suit, makes the court suspect the

plaintiff's conduct. As observed above, a *bona-fidé* plaintiff claiming specific performance of an agreement to sell, would in fact press for relief in the present suit, if he found that the defendant had made a false statement as to his entitlement to sell the subject property. The counter-intuitive stand taken by the plaintiff and his prayer for withdrawal, creates serious doubt as to the plaintiff's own involvement in the defendant's deceitful conduct in relation to the subject property. After all, *who but the plaintiff was to benefit* from the outcome of the present proceedings.

60. To be absolutely clear, any rights that the impleadment-applicant may have against the defendant, or for that matter even against the plaintiff, would have to be canvassed by the impleadment-applicant in independent proceedings. However, the impleadment-applicant is nevertheless a 'proper' party in the present proceedings since the impleadment-applicant is seeking to bring before this court material, including orders of court/forums in other proceedings, which *prima-facie* appear to show that the plaintiff and defendant are attempting to play fraud upon this court by collusively instituting, and now withdrawing, the present suit. It is for this limited purpose that the impleadment application deserves to be allowed.
61. Insofar as the plaintiff's contention that his right to withdraw the suit is unconditional and unquestionable and does not require permission of the court, reference may be made to the decision in ***Dadu Dayal Mahasabha vs. Sukhdev Arya & Another***,<sup>17</sup> in which the Hon'ble Supreme Court was dealing with a case where an order permitting

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<sup>17</sup> (1990) 1 SCC 189

withdrawal of the suit was *recalled* by the court in exercise of its inherent powers under section 151 CPC. In this context, the Supreme Court said :

*“6. The main question which requires consideration, however, is whether the trial court has jurisdiction to cancel the order permitting the withdrawal of the suit under its inherent power, if it is ultimately satisfied that Hari Narain Swami was not the Secretary of the appellant Society and was, therefore, not entitled to withdraw the suit. **The position is well established that a court has inherent power to correct its own proceedings when it is satisfied that in passing a particular order it was misled by one of the parties.** The principle was correctly discussed in the judgment in *Sadho Saran Rai v. Anant Rai* [AIR 1923 Pat 483 : ILR 2 Pat 731], pointing out the distinction in cases between fraud practised upon the court and fraud practised upon a party.*

*7. ... The same principle applies where a suit is permitted to be withdrawn on the basis of a prayer purported to have been made on behalf of the plaintiff. The courts below were, therefore, not right in holding that the application of the appellant invoking the inherent jurisdiction of the court was not maintainable. If the appellant's case is factually correct that Hari Narain Swami was not its elected Secretary and was, therefore, not authorised to withdraw the suit, the prayer for withdrawing the suit was not made on behalf of the appellant at all and the impugned order was passed as a result of the court being misled. Such an order cannot bind the appellant and has to be vacated. The trial court was thus clearly wrong in dismissing the appellant's application as not maintainable, and the High Court should have intervened in its revisional power on the ground that the trial court had failed to exercise a jurisdiction vested in it by law.”*

(emphasis supplied)

62. It follows as a sequitur that if a court has inherent power to recall or correct an order that it has passed by reason of being misled by a litigant, the court is not only empowered but is duty bound to prevent

an order being procured by a dishonest litigant by misuse or abuse of the law, or of the processes of court, or by playing fraud upon the court.

63. This court must reiterate that *it is not, at this stage*, expressing any final opinion that fraud has been committed by the plaintiff or the defendant or by both in the present proceedings; nor that the plaintiff and defendant are, in fact, acting in collusion. However, with the material presented before it, this court is *prima-facie* of the view that the plaintiff and defendant are attempting to obtain directions from this court to fructify what may be an illegal transaction in relation to the sale of the subject property; and that in view of the material brought before the court by the impleadment-applicant, it is necessary for the court to examine the matter closely; and in order for the court to do so, the plaintiff cannot be permitted to withdraw the suit and evade such scrutiny.
64. Suffice it to say that the aspects of fraud, deception, concealment of material information and documents (including judicial orders) and of collusion, if any, between the plaintiff and the defendant, are matters to be considered finally once the impleadment application is allowed and the newly added defendant is permitted to file a written statement alongwith documents in the matter. But this can only happen if the plaintiff is, at this stage, declined permission to withdraw the suit.
65. In the present case, what is apparent from the record is:
  - i. That the plaintiff had approached a Co-ordinate Bench in a suit seeking specific performance of the same agreement to sell as is sought to be canvassed in these proceedings, but

- subsequently he withdrew that suit when he was asked to pay the deficient court fee;
- ii. That the plaintiff thereafter filed the present suit and when directed by the court (again) to make up the deficiency in the court fee, the plaintiff did so; and sought issuance of summons to the defendant;
  - iii. That in the first instance the plaintiff omitted to produce the original MoU and the Undertaking that were the foundation of the present suit; and did so only upon the court so directing;
  - iv. That on a first blush scrutiny of the MoU and the Undertaking, when it was pointed-out to the plaintiff that there were evident anomalies in the documents, the plaintiff urged the court to ‘call the defendant’ without formally issuing summons, if only to ascertain the defendant’s stand in regard to the claim made in suit;
  - v. That the defendant appeared and very innocently made a statement that he had sold the subject property to the plaintiff; that he had received the entire sale consideration; and that he was ready and willing to execute the sale/conveyance document in favour of the plaintiff but could do so after the encumbrance of a bank was removed, which according to the defendant was the *only* hurdle;
  - vi. That at no point did the defendant even remotely suggest that he was not, in his own personal capacity, the owner of the subject property; and most importantly, that there were specific orders of courts/forums in pending judicial proceedings restraining the sale of the subject property without first

complying with the condition of deposit or securitizing a substantial sum of money, to protect the interests of the impleadment-applicant;

- vii. That when the plaintiff found himself faced with an evidently dishonest defendant, instead of asserting the claim in suit, the plaintiff sought to offer to the defendant an 'escape route' by insisting that he (the plaintiff) must be permitted to unconditionally withdraw the suit. In so doing, the plaintiff not only acted in what would appear to be against his own interests (despite claiming to have paid the large sum of Rs. 38.50 crores) but also seemed to want to protect the defendant from any adverse action at the hands of the court.
- viii. That when the impleadment-applicant sought to bring the concerned restraint orders to the notice of this court, the plaintiff and the defendant both urged the court, and vociferously so, to turn a blind-eye to such orders and tried to wriggle-out of these proceedings, by the plaintiff claiming an unconditional right to withdraw the suit.

66. Lady Justice is blindfolded only so as to be non-partisan; but *not* to be blind to mischief, deception or fraud being played-out before it by dishonest litigants making a mockery of the judicial process.

67. In the above view of the matter, while again observing, that at this stage the court has not formed a final opinion as to whether the defendant or the plaintiff, or both, are guilty of having misused or abused the legal process or having played fraud upon the court, the only course that commends itself to the court is to dismiss plaintiff's application bearing I.A. No.5376/2022 seeking withdrawal of the suit;

and to allow the application bearing I.A. No.6700/2022 filed on behalf of M/s Apogee Enterprises seeking impleadment as a party defendant in the matter.

68. It is so directed.

69. I.A. Nos. 5376/2022 and 6700/2022 are disposed of accordingly.

**ANUP JAIRAM BHAMBHANI, J.**

**JULY 04, 2022**

*uj/Ne*