2025 INSC 1428

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 5405 OF 2023

MOIDEENKUTTY ....APPELLANT(S)

VERSUS

ABRAHAM GEORGE ....RESPONDENT(S)

J U D G M E N T

Mehta, J.

1. Heard.

2. The present appeal is directed against the final judgment and order dated 11th March, 2022, passed by the High Court of Kerala at Ernakulam[1] in RFA No.563 of 2014, arising out of Original Suit No.34 of 2010, whereby the High Court reversed the judgment and decree dated 27th November, 2013, passed by the Court of the Subordinate Judge, Manjeri[2]. *Vide* the impugned judgment, the High Court held the

[1] Hereinafter, referred to as the "High Court".
[2] Hereinafter, referred to as the "trial Court".

appellant[3] to be in breach of the agreement (Exh. A-1); allowed the appeal preferred by the respondent[4], and remanded the matter to the trial Court for the limited purpose of examining whether the defendant-respondent had suffered any compensable loss and whether such loss could be set-off against the plaintiff-appellant's claim.

Factual Background

3. The facts relevant and necessary for the adjudication of the present appeal, for the sake of convenience, are mentioned herein.

4. The defendant-respondent entered into an agreement for sale (Exh. A-1) on 10th September, 2008, undertaking to convey the land[5] admeasuring Seventy-Seven Acres and Twenty-Six Cents to the plaintiff-appellant for a total consideration of Rs.4,45,00,000/- (Rupees Four Crores Forty-Five Lakhs only). It is not disputed amongst the contracting parties that in due deference to the contractual stipulation regarding earnest money, the plaintiff-appellant paid the sum of Rs.50,00,000/-

[3] Hereinafter, referred to as the "plaintiff-appellant".
[4] Hereinafter, referred to as the "defendant-respondent".
[5] Hereinafter, referred to as the "suit schedule property".

(Rupees Fifty Lakhs only) in two instalments on 10th September, 2008, and 10th October, 2008, to the defendant-respondent. The balance sale consideration was agreed to be tendered in two further tranches on 29th November, 2008 and 26th December, 2008, the latter being the date fixed for execution of the sale deed.

5. Later, the plaintiff-appellant claims to have received information that the defendant-respondent had availed a substantial loan from the Federal Bank, Pandikkadu Branch[6], by creating an equitable mortgage over the suit schedule property, a fact which, according to the plaintiff-appellant, was deliberately suppressed by the defendant-respondent contradicting the specific recital in the agreement (Exh. A-1) affirming that the property was free from all liabilities and encumbrances. Upon being confronted, with this anomaly, the defendant-respondent assured the plaintiff-appellant that requisite steps were being taken to discharge the outstanding debt; however, he kept on postponing the matter. The plaintiff-appellant, entertained a

[6] Hereinafter, referred to as the "Bank".

bona fide belief that the impediments would be resolved and thus awaited the respondent's response.

6. In the year 2009, the defendant-respondent approached the plaintiff-appellant along with certain mediators and represented that requisite measures had been undertaken to discharge the outstanding liability with the bank and the land would be freed from mortgage at the earliest. To ameliorate the inconvenience caused to the plaintiff-appellant owing to the delay, the defendant-respondent also agreed to reduce the sale consideration by Rs.35,00,000/- from the originally agreed amount of Rs.4,45,00,000/-. Acting upon such assurances and understanding, the plaintiff-appellant paid a further sum of Rs.5,00,000/- in cash on 17th August, 2009, and also handed over a post-dated cheque for Rs.3,55,00,000/- drawn on the Federal Bank Limited, Valancherry branch to the defendant-respondent.

7. However, the plaintiff-appellant came to know that the defendant-respondent had not taken any effective measures to redeem the mortgage and perceived that he was being deceived. Hence, the plaintiff-appellant did not arrange funds for

encashment of the post-dated cheque, which consequently came to be dishonoured for insufficiency of funds.

8. The plaintiff-appellant asserts that he had always been ready and willing to fulfil his obligations under the contract and that the defendant-respondent had committed breach by his fraudulent conduct. Accordingly, the plaintiff-appellant instituted the instant suit (OS No.34 of 2010) seeking refund of the advance amount of Rs.55,00,000/- together with interest @ 15% per annum from the date of filing of the suit till realization, and further prayed that the costs be recovered from the defendant-respondent and his assets by creation of a charge over the property.

9. The defendant-respondent filed a written statement denying the material averments of the plaint. While the execution of the agreement for sale (Exh. A-1) and the receipt of Rs.50,00,000/- as advance were admitted, the defendant-respondent refuted the allegation of having concealed the existence of the loan and the equitable mortgage over the suit schedule property. According to the defendant-respondent, the agreement itself was

executed with a clear understanding that the loan liability with the Bank was to be discharged from the sale consideration, and the plaintiff-appellant was fully informed of this position from the outset of the transaction. It was alleged that as the plaintiff-appellant failed to adhere to the schedule of payment stipulated in the agreement (Exh. A-1), the mortgage could not be redeemed and the contract remained unexecuted. The defendant-respondent further pleaded that the Bank exerted pressure upon him to settle the outstanding dues or part with the property, and in that view of the matter, he called upon the plaintiff-appellant to remit the balance consideration to facilitate performance of the contract.

10. However, as the plaintiff-appellant failed to honour the payment schedule stipulated in the agreement (Exh. A-1), and feeling constrained to liquidate the outstanding liability and avert the Bank's action of taking over the mortgaged property, the defendant-respondent was compelled to execute a subsequent agreement (Exh. B-8) dated 12th September, 2009 with a third party, whereby the suit schedule property was sold at a reduced price of

Rs.3,67,50,000/- (Rupees Three Crores Sixty-Seven Lakhs and Fifty Thousand only).

11. Pursuant to the said arrangement, sale deeds dated 19th August, 2010 (Exh. B-10) and 31st August, 2010 (Exh. B-9) came to be executed in favour of the third-party purchaser. The defendant-respondent alleged that he had thereby suffered a financial loss quantified at Rs.77,50,000/- and sought to hold the plaintiff-appellant liable to compensate the same along with interest @ 15% per annum by way of a claim for set-off.

12. Upon appreciation of the evidence led by both the parties, the trial Court found merit in the plaintiff-appellant's case that he had been misled into executing the agreement (Exh. A-1) and that the defendant-respondent had suppressed the subsisting mortgage liability over the suit schedule property. It was held that the plaintiff-appellant was justified in withholding further payments under Exh. A-1 in view of such concealment of material facts. The defendant-respondent's plea that he had suffered a loss of Rs.77,50,000/- owing to a subsequent distress sale of the property was rejected by the trial Court holding that the alleged claim did not constitute a legally

sustainable set-off and was in any event barred by limitation. The suit was accordingly decreed in the following terms: -

> "a). That the plaintiff is entitled to realize an amount of Rs. 65,43,750/- (Rupees Sixty five lakh forty three thousand seven hundred and fifty only) with interest at the rate of 13% per annum from the date of suit till realization from the defendant and his assets.
>
> b). That the plaintiff is entitled to realize the entire costs of litigation from the defendant."

13. In the appeal preferred by the respondent–defendant, the High Court placed substantial reliance on a solitary admission elicited in the cross-examination of plaintiff-appellant (PW-1), wherein he conceded that he had become aware of the bank liability over the suit schedule property on 25th August, 2008 itself. Proceeding on this solitary premise, the High Court concluded that the plaintiff-appellant was fully cognizant of the encumbrance even on the suit schedule property well in advance before execution of the agreement (Exh. A-1) dated 10th September, 2008. The Court further observed that the plaintiff-appellant did not seek to clarify or explain this aspect in re-examination and, therefore, the foundation of the case pleaded by the plaintiff-

appellant in the plaint stood contradicted by his own admission.

14. Additionally, the High Court noted that even subsequent to the self-acclaimed discovery of fraud, the plaintiff-appellant continued to act in furtherance of the transaction by paying Rs.5,00,000/- on 20th July, 2009, by issuing a post-dated cheque for Rs.3,55,00,000/-, and refraining from initiating any legal proceedings for over a year despite the expiry of the contractual period on 26th December, 2008.

15. Furthermore, the High Court noted that the plaintiff–appellant himself admitted that he had never inspected the original title deeds of the property prior to executing the agreement (Exh. A-1). The Court rejected the explanation that the defendant–respondent had informed the plaintiff-appellant that the documents were kept in a bank locker and would be shown to him during the course of the transaction. The High Court held that such a plea was wholly untenable, particularly when the agreed sale consideration was Rs. 4,45,00,000/-, an amount that cannot be treated as insignificant. It observed that no ordinarily prudent purchaser would enter into a transaction of such magnitude without verifying the

original title documents or being satisfied about the vendor's title. This conduct, according to the High Court, was incompatible with the allegation of deception.

16. On the defendant-respondent's set-off claim, the High Court held that the same was not barred by limitation. The High Court took note of the defendant-respondent's concession restricting his monetary claim to the extent of the plaintiff-appellant's suit amount. On this reasoning, the High Court was of the view that the plaintiff-appellant ought to be afforded an opportunity to contest the modified set-off limited to the following aspects: -

a) whether the defendant-respondent suffered any actionable loss;
b) if so, the quantification thereof; and
c) whether such a sum could legitimately be set-off against the plaintiff-appellant's claim.

17. Accordingly, the appeal of the defendant-respondent was allowed, and the matter was remanded to the trial Court *vide* the impugned judgment, in the following terms: -

> "In the result, the appeal is allowed. The judgment and decree of the court below are set

> aside and the matter is remanded to the court below to consider and adjudicate the aforesaid issues on which there has been no adjudication. Both the parties are at liberty to make necessary additional pleadings, if so advised, on the aforesaid points and also to adduce evidence in support of their respective case. We make it clear that the remand is not an open remand. The questions available for consideration after remand are only whether the defendant has suffered any loss entitling him to damages, if so, the measure of damages, and whether he is entitled to set-off the amount adjudged as damages against the plaint claim. The parties shall appear before the court below on 23/05/2022. The suite being of the year 2010, the· trial court shall make all earnest efforts to dispose of the matter at the earliest."

18. The above judgment of the High Court is the subject-matter of challenge in the present appeal by way of special leave.

Submissions on behalf of the plaintiff-appellant

19. Shri Raghenth Basant, learned senior counsel representing the plaintiff-appellant invited the Court's attention to the statement of the plaintiff-appellant (PW-1) and more particularly to his cross-examination wherein, on the suggestion put forth on behalf of the defendant-respondent, the plaintiff-appellant stated that he came to know about the availability of the property from one Raveendran and

went to the house of the defendant-respondent for the first time, on 5th September, 2008. The plaintiff-appellant further clarified that he did not insist on production of the original title deeds at that stage, as the same are generally required to be verified at the time of execution of the sale agreement.

20. Shri Basant further submitted that a plausible explanation was given by the plaintiff-appellant for this omission stating that he *bona fide* accepted the version of the defendant-respondent that the original title deeds were lying in the bank locker.

21. Shri Basant urged that the abstract admission as appearing in the cross-examination of the plaintiff-appellant that he became aware of the bank liability on 25th August, 2008, is apparently an inadvertent error/anomaly, inasmuch as the parties admittedly never met before 5th September, 2008. Thus, the plaintiff-appellant could have had no idea about the property of the plaintiff-appellant before that date, and hence, imputing prior knowledge (on 25th August, 2008) of the encumbrance to the plaintiff-appellant is absolutely uncalled for.

22. He urged that the defendant-respondent realized that he was on the wrong side of the law,

which inference is fortified from the fact that the consideration amount was subsequently reduced by Rs.35,00,000/- owing to the defendant-respondent's failure to disclose about the encumbrance and redeem the mortgage at the time of entering into the transaction.

23. Learned senior counsel further drew our attention to the following admissions made by the defendant-respondent in his cross-examination: -

> "The contents of Ext. A1 Agreement are correct. I entered into the agreement after fully agreeing with the contents of the said agreement.
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> .....
>
> I accepted amounts even after the period of Ext. A1 Agreement only because I wanted to somehow sell the property and clear the bank liability.
>
> .....
>
> The day I accepted the cheque, my liability to the bank was approximately Rs. 2.6 crores. When I entered into Ext. A1 Agreement, my liability to the bank was approximately Rs. 2.5 crores. The money received from PW1– I have not used the same to repay the bank.
>
> .....
>
> The fact that the property was being sold to clear the liability to the bank does not find mention in Ext. A1.
>
> .....
>
> PW1 sent me a notice. The notice was sent stating that the advance amount should be

> returned to me. In the said notice, it was stated that I did not mention about the fact that the property was mortgaged with the bank to PW1. I did not send a reply to that notice. I was at the hospital. I was at the hospital for almost one month. Thereafter, after being discharged from the hospital, I did not think of sending a reply."

24. His emphasis was on the above admissions made by the defendant-respondent in cross-examination that he did not use the monies received from the plaintiff-appellant towards liquidation of the loan due to the bank and that a legal notice was issued by the plaintiff-appellant seeking refund of the advance, specifically alleging suppression of the subsisting mortgage, to which the defendant-respondent did not furnish any reply.

25. He thus, urged that the High Court committed grave error in facts as well as in law while setting aside the well-reasoned judgment of the trial Court and in remanding the matter to the trial Court on the limited aspect of determining the quantum of damages allegedly payable to the defendant-respondent under the claim of set-off.

Submissions on behalf of the defendant-respondent

26. *Per contra*, Shri V. Chitambaresh, learned senior counsel appearing for the defendant-respondent, contended that the admission of the plaintiff-appellant in his cross-examination, indicating that he had knowledge of the subsisting mortgage as early as 25th August, 2008, must be read against him. On this basis, it was urged that the High Court rightly rejected the plaintiff-appellant's claim and committed no infirmity in remanding the matter to the trial Court for adjudication of the quantum of set-off allegedly payable to the defendant-respondent. He, therefore, prayed for dismissal of the appeal and affirmation of the impugned judgment.

Discussion and Analysis

27. We have given our thoughtful consideration to the submissions advanced by learned counsel at the bar and have gone through the impugned judgment(s) and the material available on record.

28. The following facts are admitted from record: -

(1)That the execution and the contents of the agreement for sale (Exh. A-1) dated 10th

September, 2008 have been unequivocally admitted by the defendant-respondent in his evidence;

(2) That the defendant-respondent did not set up a case either in his set-off claim or in his evidence that he had provided the information of the prior mortgage/encumbrance on the suit schedule property to the plaintiff-appellant on 25th August, 2008;

(3) That even as per the defendant-respondent's own case, the parties had no interaction prior to September, 2008, and thus, the defendant-respondent does not assert that he had ever met the plaintiff-appellant before that period.

29. Thus, the undue emphasis laid by the High Court on an abstract sentence appearing in the cross-examination of the plaintiff-appellant, suggesting prior knowledge of the bank liability over the suit schedule property, was totally misplaced and uncalled for. The High Court ignored the vital admissions as appearing in the version of the

defendant-respondent that the contents of the agreement (Exh. A-1) were unquestionable and correct in their entirety.

30. Moreover, the fact that before instituting the suit, the plaintiff-appellant sent a notice to the defendant-respondent specifically mentioning about the concealment of the mortgage, to which the defendant-respondent chose not to furnish any reply, clearly establishes that the case projected in the set-off, that the plaintiff-appellant was aware of the encumbrance on the suit schedule property from the inception, was nothing but an afterthought, devised solely to defeat the plaintiff-appellant's legitimate claim for refund.

31. Furthermore, the fact that pursuant to the plaintiff-appellant raising this issue with the defendant-respondent, he agreed to reduce the sale consideration by a sum of Rs.35,00,000/- is also a significant fact reflecting on the conduct of the defendant-respondent which convinces us about the deceit practiced by him upon the plaintiff-appellant. It stands to reason that, upon being exposed, the defendant-respondent was compelled to offer a substantial reduction in the agreed sale price, which

unmistakably reflects his culpable intent in concealing the material factum of encumbrance on the suit schedule property.

32. We feel that the aforesaid conclusion[7] of the High Court is unjustified in the peculiar facts of the case. There was nothing unnatural in the explanation offered by the plaintiff-appellant that he relied on the assurance of the defendant-respondent that the original title deeds would be handed over at the time of execution of the sale deed. It may be noted that the advance amount paid by the plaintiff-appellant was around 10% of the total sale consideration and thus, it cannot be said, unexceptionally, that the plaintiff-appellant would not have entered into the agreement without having a look at the original title deeds. It is a common practice for landowners to keep original title deeds in the bank lockers for security purposes. Hence, the explanation offered by the plaintiff-appellant for not insisting on the inspection of the original title deeds, at the time of entering into the agreement, was reasonable and justified.

[7] *Supra* para No.15.

33. In wake of the above discussion, we are of the firm opinion that the trial Court committed no error whatsoever in decreeing the suit filed by the plaintiff-appellant. The impugned judgment rendered by the High Court does not stand to scrutiny and is, thus, hereby set aside, and the judgment of the trial Court is restored.

34. The appeal is allowed accordingly. No order as to costs.

35. Decree be prepared accordingly.

36. Pending application(s), if any, shall stand disposed of.

.....J.
(VIKRAM NATH)

.....J.
(SANDEEP MEHTA)

NEW DELHI;
DECEMBER 15, 2025.