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Ce Construction Ltd. and Anr. Vs. Intertoll Ics India (P) Ltd.

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Court : Delhi

Decided On : Apr-20-2015

Judge : Pradeep Nandrajog

Appellant : Ce Construction Ltd. and Anr.

Respondent : Intertoll Ics India (P) Ltd.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Reserved on : April 13, 2015 Judgment Delivered on : April 20, 2015 + FAO (OS) 490/2014 CE CONSTRUCTION LTD. & ANR. .....Appellants Represented by: Mr.Deepak Khosla, Advocate with Mr.Ajay Marwah, Advocate versus INTERTOLL ICS INDIA (P) LTD. .....Respondent Represented by: Mr.Balaji Subramanian, Advocate with Ms.Jasleen Oberoi and Ms.Surbhi Mehta, Advocates for R-8 Mr.Vaibhav Mirg, Advocate for Mr.Ateev Mathur, Advocate for R-11 CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

1. We preface our decision by extracting certain pertinent observations made by the Supreme Court in the decision reported as 2010 (2) SCC114Dalip Singh Vs. State of U.P. & Ors.:

1. For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahimsa' (nonviolence). Mahavir, Gautam Buddha and Mahatma

Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

2. In Hari Narain v. Badri Das: AIR 1963 SC1558 this Court adverted to the aforesaid rule and revoked the leave granted to the appellant by making the following observations: It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue and misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is, entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterizes as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked.

2. As rightly observed by the Supreme Court, Satya is a basic value of life which was required to be followed by everybody and is recognized since many centuries. In spite of caution, courts are continued to be flooded with litigation with false and incoherent pleas and tainted evidence led by the parties. The judicial system in the country is choked and such litigants are consuming courts time for a wrong cause. Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the Court. Indeed, it is a nightmare faced by a Trier of Facts; if required to stitch a garment when confronted with a fabric where the weft, shuttling back and forth across the warp in weaving, is nothing but lies. As the threads of the weft fall, the yarn of the warp also collapses; and there is no fabric left.

3. We have to undertake such a voyage in the instant appeal.

4. The appellants are the petitioners before the learned Single Judge and had filed OMP No.1282/2014 in which the respondents in the appeal were impleaded as respondents. The Original Miscellaneous Petition (OMP No.1282/2014) was invoking remedy under Section 9 of the Arbitration and Conciliation Act, 1996 to, inter-alia, restrain the respondents and in particular respondent No.8 not to appropriate the money which it had received from the respondent No.9 (NHAI), pending resolution of the dispute through arbitration. Being not sure of the amount received by respondent No.8 from respondent No.9, in the prayer it was pleaded that to preserve the entire payment of `50-65 odd crores.

5. An urgent mention of OMP No.1282/2014 was made when the Delhi High Court was in recess. It was October 20, 2014. It was a Monday. The Court was closed for Diwali break from October 19, 2014 till October 26, 2014. Marked to a learned Single Judge, a petition pleading facts in 33 pages and with documents running into 454 pages were placed before the learned Single Judge who, while issuing notice to the respondents as a protem measure directed status quo to be maintained with respect to the money received by respondent No.8 from respondent No.9. The order would evince (refer paragraph

2) that the learned Single Judge was made to believe that the petitioner No.1 was party to an agreement dated January 29, 2004 and probably that the money was

released in favour of respondent No.8 by respondent No.9 under said agreement. The learned Single Judge was given to understand that respondent No.8 was a joint venture of petitioner No.1 and respondent No.1. The learned Single Judge expressly recorded that the protem order (dated October 20, 2014), requiring status quo to be maintained, would operate only till the next date of hearing, which was November 17, 2014.

6. The learned Single Judge on November 17, 2014 recorded that he had heard arguments and had reserved the matter for judgment. The order records presence of Mr.Deepak Khosla Advocate for the petitioners and Mr.Balaji Subramanium, Ms.Jasleen K.Oberai, Ms.Surbhi Mehta and Mr.Ayud Sharma, Advocates for respondent No.8.

7. Impugned order dated November 21, 2014 was passed by the learned Single Judge giving reasons not to extend the protem ex-parte order dated October 20, 2014. OMP No.1282/2014 was adjourned for further proceeding to January 08, 2015, laying down a schedule for pleadings to be completed. And for record we note that the OMP is now listed for consideration on May 19, 2015.

8. The learned Single Judge has recorded in his order dated November 21, 2014 that learned counsel for respondent No.8, against whom the ex-parte protem order dated October 20, 2014 operated, had pressed for an urgent hearing highlighting that the protem order gravely affected the interest of respondent No.8. The learned Single Judge has recorded that when the case was called out the learned counsel for the appellant was not present, but reached the Court when learned counsel for respondent No.8 was pressing for a hearing with a request that the protem order be not extended. The learned Single Judge has noted that learned counsel for the appellant had sought time to file a rejoinder to the reply filed by respondent No.8 to OMP No.1282/2014. The learned Single Judge took note of the fact that many respondents were yet to be served. The learned Single Judge has held that interest of said respondents was not involved in the litigation and it was only respondent No.8 who was the contesting party. To overcome the request made by learned counsel for the appellant for an adjournment to enable the appellants to file a rejoinder to the reply filed by respondent No.8 to OMP No.1282/2014 the

learned counsel for respondent No.8 said, a fact noted by the learned Single Judge, that respondent No.8 would argue its opposition to the continuation of the protem order dated October 20, 2014 and for which argument the reply and the documents filed by respondent No.8 may not be looked into.

9. It was in the aforesaid backdrop of events which transpired in the Court, which have been duly recorded by the learned Single Judge in the order dated November 21, 2014, that arguments were heard and the judgment was reserved on November 17, 2014.

10. The learned Single Judge has thereafter proceeded to note the relevant facts, but very briefly, for the reason the learned Single Judge was concerned only with one issue : whether the protem ex-parte injunction granted on October 20, 2014 which was operative till November 17, 2014 should or should not be continued. In other words, the learned Single Judge was deciding whether an ad-interim order (as against an interim order) was liable to be passed.

11. But we would prefer to note the backdrop facts in more in depth detail for the reason the basis of the petition under Section 9 of the Arbitration and Conciliation Act, 1996 were two agreements dated July 31, 2002 and August 03, 2002. The appellant was not sure as to which agreement was it relying upon for purposes of its claim that pending resolution of the dispute before the Arbitral Tribunal the Court should exercise its power under Section 9 of the Arbitration and Conciliation Act, 1996. In the very first paragraph of OMP No.1282/2014, the appellant has pleaded:

Reliefs in the present petition are sought in terms of disputes flowing from an Arbitral Agreement dated 31-07-2002 and/or 03-08-2003, a copy of which is appended hereto, and are colly. marked as Annexure 3 (herein, the Arbitral Agreement or the Arbitral Agreements).

12. It needs to be noted that there is no agreement between the parties which is dated 03-08-2003. There is an agreement dated 03-08-2002 executed amongst the appellant, respondent No.1 and respondent No.2. It is apparent that there is a typographic error in the petition filed by the appellant.

13. On July 31, 2002, the appellant No.1 (CE Construction Ltd.), of which Mr.Arun Mehra (appellant No.2) is a Director of, entered into a shareholders agreement with Intertoll ICS India Pvt. Ltd. (respondent No.1) which appears to be controlled by Intertoll PTY Ltd. (respondent No.2 and a company incorporated in South Africa. The said shareholders agreement listed the terms on which the appellant and respondent No.1 agreed to carry on business in India by forming a joint-venture company named Intertoll ICS Cecons O&M Co. Pvt. Ltd. (Respondent No.8). The agreement mentions the details of the authorized, issued and subscribed share capital of respondent No.8. It refers to the dividend policy of the joint venture company. The rights of the shareholders. The manner in which the joint venture company shall bid for and execute the projects as per contracts with third parties. The said agreement has an arbitration clause, being clause No.18, as per which all disputes arising out of or connected with the agreement have to be settled by arbitration according to the rules or procedures of the Indian Council of Arbitration.

14. On August 03, 2002 the appellant, the respondent No.1 and respondent No.2 entered into a joint venture agreement recording therein that the contract awarded by NHAI on the joint bidding by respondent No.2 and respondent No.8 would be executed by the appellant, respondent No.1 and respondent No.2. The parties to the agreement are : Intertoll ICS India Pvt. Ltd. (Respondent No.1), CE Constructions Ltd. (Appellant) and Intertoll PTY Ltd. (Respondent No.2). It records that respondent No.1 and respondent No.2 shall provide the necessary financial and technical support to execute the project and the appellant shall provide the services listed in the agreement. This agreement also has an arbitration clause, being clause No.3.

15. On August 08, 2002 a contract agreement was executed between NHAI and respondent No.8 setting forth the terms under which respondent No.8 would execute the work of four Laning of NH-2 (DelhiAgra Section) from KM188 to 198.00 and NH-24 (Muradabad Byepass) from KM14843 to KM16665 at the Haryana/UP Border. This agreement between respondent No.8 and NHAI also has an arbitration clause being 10.48.2.

16. On March 15, 2003 an agreement was executed between the appellant and respondent No.8 under which the appellant was subcontracted, with the consent of NHAI to execute the works referred to in the agreement which were awarded by NHAI to respondent No.8. This agreement does not have an arbitration clause.

17. On January 29, 2004 the appellant and respondent No.1 executed a share purchase agreement with respect to the shares of respondent No.8. Respondent No.2 was also a party to the said agreement. Pursuant to this share purchase agreement the appellant after receiving the consideration per share mentioned in the agreement sold 99% of its shareholding in respondent No.8 and appellant No.2 resigned as a Director from the Board of respondent No.8. Thus, the appellant was left with only 1% shareholding in respondent No.8. This agreement has an arbitration clause : clause No.9.

18. Simultaneously, on January 29, 2004 an agreement was entered into between the appellant, respondent No.8 and a company named RPG Cables Ltd. under which the appellant, with the consent of respondent No.8 assigned all its rights under the sub-contract agreement dated March 15, 2003 between the appellant and respondent No.8 in favour of RPG Cables Ltd.

19. In other words the status of the appellant as a sub-contractor of respondent No.8 under the sub-contract agreement dated March 15, 2003 came to an end and RPG Cables Ltd. and respondent No.8 became bound as parties to the contract dated January 29, 2004.

20. On March 21, 2005, the appellant and RPG Cables entered into an agreement under which the appellant agreed to finance the works which had to be executed by RPG Cables Ltd. (as a sub-contractor) in terms of the agreement dated January 29, 2004.

21. On March 17, 2006 the respondent No.8 and RPG Cables Ltd. entered into a settlement agreement under which RPG Cables received `3,50,00,000/- (Rupees Three Crores and Fifty Lacs only) from respondent No.8. It was recorded in the agreement that upon of realization of amounts from NHAI (if at all) for the works executed by RPG Cables Ltd. the respondent No.1 would pass on the necessary

money to RPG Cables Ltd. It was recorded that NHAI had terminated the contract dated August 08, 2002 and the parties were in litigation. This agreement dated March 17, 2006 does not have any arbitration clause.

22. On September 06, 2011 the appellant and RPG Cables Ltd. executed an agreement under which RPG Cables Ltd. assigned its rights under the settlement agreement dated March 17, 2006 between it and respondent No.8 in favour of the appellant.

23. A fact may be noted here. The share purchase agreement dated January 29, 2004 under which the appellant sold 99% of its shares in respondent No.8 was the result of a resolution of the dispute between the joint venture partners before a learned arbitrator Sh.Krishan Premnarayan.

24. Respondent No.8 entered into a negotiated settlement with NHAI to bring an end to its dispute with NHAI pertaining to the agreement dated August 08, 2002 and received from NHAI which the appellant seeks to be protected.

25. The appellant, respondents No.1 and 2 as also respondent No.8 would obviously have a jural relationship only under the agreement dated July 31, 2002, August 03, 2002, March 15, 2003 and January 29, 2004. This jural relation is different under the agreements. Under the agreement dated July 31, 2002 the jural relationship would be akin to partners to carry on business, terms whereof got modified when the agreement dated January 29, 2004 was executed. The jural relationship flowing out of the agreement dated August 03, 2002 and March 15, 2003 would be that of a contractor and a sub-contractor. The importance of this would be that the nature of dispute which is capable of being referred to an Arbitral Tribunal would be different under the agreements dated July 31, 2002 and August 03, 2002, and would be different under the agreements dated March 15, 2003 and January 29, 2004.

26. When the second agreement dated January 29, 2004, to which we have made a reference hereinabove in paragraph 18 was executed, the appellant having assigned all its rights as a sub-contractor to RPG Cables Ltd. was left with no interest under the agreements dated August 03, 2002 and March 15, 2003.

27. The agreement dated March 21, 2005 between the appellant and RPG Cables has no concern with any of the respondents.

28. The agreement dated March 17, 2006 between respondent No.8 and RPG Cables Ltd. makes a reference to a right in favour of RPG Cables Ltd. against respondent No.8 with respect to such amount which respondent No.8 would receive from NHAI pertaining to Optical Fiber Cables (OFC), but this agreement does not have any arbitration clause and assuming the appellant was assigned the rights of RPG Cables under the agreement dated March 17, 2006 when appellant and RPG Cables executed the agreement dated September 06, 2011, which agreement also does not have any arbitration clause, the dispute relating to claims of RPG Cables against respondent No.8 would not an arbitrable dispute.

29. The importance of what we have written hereinabove is to highlight that with passage of time, as the parties entered into various agreements, different rights were created from time to time and were extinguished from time to time. The rights were independent of each other and thus there has to be clarity in the pleadings regarding the nature of dispute for alone then could it be decided whether the disputes are referable to an Arbitral Tribunal.

30. Section 9 of the Arbitration and Conciliation Act, 1996 clothes a Court with the power to issue interim orders pending arbitration between parties and thus while considering a petition under Section 9 of the Arbitration and Conciliation Act, 1996 the petitioner must prima-facie show the existence of an arbitral dispute.

31. The prolix pleadings in the petition spanning 33 pages are rolled over, with lack of clarity; full of vagueness. The pitfalls of such kinds of pleadings, and hence liable to be ignored (because such pleadings do not give birth to a fact in issue between the parties, have been illustratively brought out in various decisions) and we note only a few.

32. In the decision reported as 1998 III AD Delhi 487 Allora Electric & Cable Co. vs M/s. Shiv Charan & Bros it was held as under:

11. ...The defendants in corresponding para 7 of the written statement have admitted that plaintiff had been supplying goods to them from time to time and accounts used to be settled at the end of each year. The total purchases made and the total payments made by defendants as pleaded in paras 8 to 19 of the plaint have been denied but not specifically. Only vague denial has been made stating that the contents of such paras are either incorrect or wrong and denied. Learned counsel for the plaintiff has strongly contended that in the absence of specific denial the above said averments made in these paras of the plaint should be deemed to have been admitted as provided under Order 8 Rule 5 CPC. The object of this provision is to narrow the issues to be tried in the case and to enable either party to know what the real point is to be discussed and decided. The word specifically qualifies not only the word deny but also the words stated to be not admitted and therefore a refusal to admit must also be specifically stated. A defendant can admit or deny the several allegations made in the plaint and if he decides to deny any such allegations, he must do so clearly and explicitly. A vague or evasive reply by the defendant cannot be considered to be a denial of fact alleged by the plaintiff. A party is expected to expressly deny the fact which is within its knowledge and a general denial is not a specific denial.

12. Evasive or vague denial of fact in the written statement of such facts should be taken to be no denials and so deemed to be admitted. On that principle in the absence of specific and unambiguous denial and the denial here being vague, the averments made in paras 8 to 19 should be deemed to have been admitted by the defendants.

33. In the decision reported as (2004) 49 SCL597Official Liquidator of Amfort Agro Finance Ltd. vs Shishpal Singh it was held as under:

7. Reply to this application is filed by the respondent. It is not a parawise reply. Thus the averments made in Para No.7 stand uncontroverted.

34. In the decision reported as 2003 (96) FLR722Rajesh Singh vs M.P. Rajya Krishi Vipnan Board it was held as under:

4. ...The return filed by the respondent No.4 is cryptic. There is no parawise reply. Therefore, the averments made in the petition which have not been specifically denied will be deemed to have been admitted.

35. On November 21, 2011 this Court while deciding RFA (OS) 78/2011 P.K. Gupta vs Ess Aar Universal (P) Ltd. held as under:

11. We need to highlight that the fundamental principles, essential to the purpose of a pleading is to place before a Court the case of a party with a warranty of truth to bind the party and inform the other party of the case it has to meet. It means that the necessary facts to support a particular cause of action or a defence should be clearly delineated with a clear articulation of the relief sought. It is the duty of a party presenting a pleading to place all material facts and make reference to the material documents, relevant for purposes of fair adjudication, to enable the Court to conveniently adjudicate the matter. The duty of candour approximates uberrima fides when a pleading, duly verified, is presented to a Court. In this context it may be highlighted that deception may arise equally from silence as to a material fact, akin to a direct lies. Placing all relevant facts in a civil litigation cannot be reduced to a game of hide and seek. In the decision reported as 2011 (6) SCALE677Rameshwari Devi vs. Nirmala Devi the Supreme Court highlighted that pleadings are the foundation of a claim of the parties and where the civil litigation is largely based on documents, it is the bounden duty and obligation of the Trial Judge to carefully scrutinize, check and verify the pleadings and the documents filed by the parties.

12. Highlighting that pleadings must be sufficient and consequence of laconic pleadings, which cannot be permitted, and the failure to plead sufficient details amounting to an insufficient plea, in the decision reported as AIR 1999 SC1464D.M. Deshpande vs Janardhan Kashinath Kadam, the Supreme Court observed qua a claim for tenancy that in the absence of a concise statement of material facts relating to the tenancy, the mere raising of a plea of tenancy is not enough for the purpose of raising an issue on the question. The Court cautioned against a pedantic approach to the problem and directed that the Courts must ascertain the substance of the pleading and not the form, in order to determine the

same. It was observed that pertaining to a claim of tenancy, the exact nature of the right which is claimed has to be set-forth and no issue pertaining to existence of tenancy could be framed on a vague plea.

36. In the decision reported as 2012 (5) SCC370Maria Margarida Sequeria Fernandes vs Erasmo Jack de Sequeria it was held as under:-

72. The Court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders. x x x 74. If the pleadings do not give sufficient details, they will not raise an issue, and the Court can reject the claim or pass a decree on admission. On vague pleadings, no issue arises. Only when he so establishes, does the question of framing an issue arise. Framing of issues is an extremely important stage in a civil trial. Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case. x x x 78. The Court must ensure that pleadings of a case must contain sufficient particulars. Insistence on details reduces the ability to put forward a non-existent or false claim or defence.

37. In the decision reported as 2012 (6) SCC430A. Shanmugam vs Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam it was held as under:

27. The pleadings must set-forth sufficient factual details to the extent that it reduces the ability to put forward a false or exaggerated claim or defence. The pleadings must inspire confidence and credibility. If false averments, evasive denials or false denials are introduced, then the Court must carefully look into it while deciding a case and insist that those who approach the Court must approach it with clean hands.

38. In the decision reported as 2012 (10) SCALE330Kishore Samrite vs State of U.P. it was held as under:-

32. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands.

33. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. A litigant is bound to make full and true disclosure of facts.

39. The result of the prolix, confused and rolled over pleadings in OMP No.1282/2014 can be resolved in two manners. The first is to outrightly reject the pleadings on account of vagueness and thereby declined to exercise power under Section 9 of the Arbitration and Conciliation Act or to labour and give meaning to the pleadings keeping in view the relief prayed for.

40. The relief prayed for is to restrain respondent No.8 from appropriating the money received by it from NHAI and this would have no concern whatsoever with the agreements dated July 31, 2002 and August 03, 2002, in respect to which agreements there exist an arbitration clause. Meaning thereby the dispute raised by the appellant in respect of which it claims an interim protection would have no arbitrability.

41. If at all, the claim of the appellant would be under the agreement dated September 06, 2011 acquiring the right of RPG Cables under the agreement dated March 17, 2006 between respondent No.8 and RPG Cables because it was under this agreement that respondent No.8 agreed to negotiate the claims with NHAI concerning the works which were executed by RPG Cables as a sub-contractor of respondent No.8 which was the principal contractor with NHAI.

42. None of the two agreements i.e. dated March 17, 2006 and September 06, 2011 have an arbitration clause.

43. The quixotic reasoning of the appellant to trace the dispute to the agreements dated July 31, 2002 and/or August 03, 2002 is that the closure agreement dated September 06, 2011 between the appellant and RPG Cables Ltd. resuscitates the appellants right under the shareholders agreement dated July 31, 2002 has been rightly observed as completely misconceived by the learned Single Judge. Because of the obvious reason that the said agreement had worked itself out when the share purchase agreement dated September 29, 2004 was executed

between the appellant and respondent No.1 with respect to the appellants shareholding in respondent No.8. The learned Single Judge has correctly observed that the vague plea of fraud concerning transfer of shares pertaining to the agreement dated September 29, 2004 cannot clothe any right upon the appellant to restrain respondent No.8 from appropriating the amount received by it from NHAI.

44. We have already held hereinabove that because of various agreements executed between the parties from time to time since different rights accrued to the parties, the appellant has to put forth the claim with clarity so that it could be easily traced to the agreement from which the dispute emanated. We have already held hereinabove that the vague pleadings must be understood in light of relief claimed. The relief claimed is for an injunction restraining respondent No.8 to appropriate the money which it received from NHAI pursuant to the contract dated August 08, 2002 between respondent No.8 and NHAI. The only interest, if at all, which the appellant could claim in said money is only traceable to the agreements dated March 17, 2006 between respondent No.8 and RPG Cables and the agreement dated September 06, 2011 under which the appellant acquired the rights of RPG Cables under the agreement dated March 17, 2006. Thus, for the purposes of the petition under Section 9 of the Arbitration and Conciliation Act, 1996 only said two agreements could be looked into. Respondent No.8 is a party to the agreement dated March 17, 2006. The said agreement does not have an arbitration clause.

45. Thus, the prima-facie view taken by the learned Single Judge not to extend the protem ex-parte ad-interim injunction granted on October 20, 2014 beyond November 17, 2014 suffers from no infirmity.

46. Before bringing the curtains down on the issue we are discussing we need to note that the prolix appeal spanning 33 pages refers to decisions on subjects of law which have no concern with the issue. We can do no better but to reproduce a few grounds, a mere reading whereof would bring out that the appellant can be equated with a compulsive gambler who has lost his time, money and energy in gambling and continues to gamble hoping to strike the jackpot. It is the trait of

such kind of litigants, who border on being vexatious litigants, to use clichs and legal jargon, with prolix pleadings and all and sundry documents thrown at a Judge, hoping that something may stick. The result is that they not only file confusing, lengthy and repetitive pleadings but also make submissions which are a strange mix of metaphors, requiring the same to be filtered to understand what they mean. In their pursuit for the quest for illusory justice, the voluminous pleadings are accompanied by quotations from decisions. Their pleadings pick on stray words and phrases, upon which they lay great emphasis. To the reader, the pleadings present a wearisome diffuse of conversation. We reproduce grounds ix to xxi pleaded in the appeal to bring home the point. They read as under:

ix) BECAUSE the clauses of the arbitral Agreement dated 29-01-2004 that were relied upon by the Respondents in oral arguments were not enforceable against the Company and its present and future shareholders as no amendment in its Articles of Association had been approved by its shareholders in General meeting to be made to that effect. V.B.Rangaraj vs.V.B.Gopalakrishnan - AIR 1992 SC1453 1992 1 SCC160 Pushpa Katoch vs.Manu Maharani Hotels (P) Ltd. - 2006 131 Comp Cas 42 (Del). Western Maharashtra Development Corporation Ltd. vs. Bajaj Auto Ltd. - MANU/MH/0109/2010. Messer Holdings Ltd. vs. Shyam Madanmohan Ruia and Goyal MG Gases (P) Ltd. vs. Shyam Madanmohan Rui - MANU/MH/0998/2010. Reliance Natural Gas Resources Ltd. vs. Reliance Industries Ltd.- MANU/SC/0341/2010 (relevant extract only). M.S.Madhusoodhanan vs. Kerala Kaumudi Pvt.Ltd.-AIR 2004 SC909 2003 AIR SCW7165 Ador Samia Ltd. vs. Incocan Engineering Ltd CL B- DB- (2000) 100 Com Cas 370 x) BECAUSE the order, for the aforesaid reason (of fraud), is a nullity in law, and hence void ab initio as if non est. xi) BECAUSE the order, being one procured by playing a fraud on the Court, is to be ignored by very Court, both superior and inferior.(Ref: Hamza Haji vs. State of Kerala, S.P.Chengalvaraya Naidu vs. Jagannath, etc. xii) BECAUSE the Registry of the Honble Delhi High Court should have refused to list the counter-affidavit, given its noncompliance with judgment dated 08-10-2010 passed in CWP No.7651 of 2009. xiii) BECAUSE Consistency, certainty and finality are the three bedrocks on which any civilized system of jurisprudence is based. xiv) BECAUSE the impugned order reflects a patentlyillegal use of judicial discretion that is arbitrary. xv) BECAUSE the

impugned order reflects a patently - illegal use of judicial discretion that is capricious. xvi) BECAUSE an order passed pursuant to a fraud played on the court is a nullity, and is to be ignored by every Court, both superior and inferior, and that it is the duty of every such Court to ignore such an order if proper challenge is presented. Hamza Haji vs.State of Kerala -AIR 2006 SC3028 (2006) 7 SCC416 S.P.Chengalvaraya Naidu vs. Jagannath - AIR 1994 SC853 1994 1 SCC1xvii) BECAUSE any orders passed pursuant to a fraud played on the Court are nullity, and being nullities, can be challenged before any judicial authority at any time. Kiran Singh vs.Chaman Paswan, AIR1954 SC340 Hasham Abbas Sayyad vs. Usman Abbas Sayyad and Ors (AIR 2007 SC1077 xviii) BECAUSE no waiver or acquiescence can lie to a Court, and therefore, to orders passed by a Court without inherent jurisdiction over the subject matter. Budhia Swain vs. Gopinath Deb; (1994) 4 SCC396(paras 8 and 9), Hasham Abbas Sayyad vs. Usman Abbas Sayyad and Ors (AIR 2007 SC1077 Kiran Singh vs.Chaman Paswan, AIR 1994 SC340 Vithalbhai (P) Ltd. vs. Union Bank of India [(2005) 4 SCC315 xix) BECAUSE a party cannot approbate and reprobate, and any party found doing so is liable to be thrown out of any proceedings. Asiasoft (India) Pvt.Ltd. vs.Globesyn Technologies Ltd. (2005 (2) RAJ163Del.) Kiran Singh vs.Chaman Paswan, AIR 1954 SC340 Rajneesh Kumar Singhal vs. State, (89 (2001) DLT511(FB), R.N.Gosain vs.Yashpal Dhir (AIR 1993 SUPREME COURT352 xx) BECAUSE when any party approaches a Court, especially one composed or multiple Benches, be they of equal or varying strength, he approaches the Court as an institution. Therefore, different parties cannot be permitted to act as if they have approached, say, Court No.12 or Court No.22 of , say, the Honble Delhi High Court. Therefore, while dispensing justice, co-ordinate Benches of the same Court are expected to sing in chorus, in unison so that certainty and finality, which are the two bedrocks on which any civilized system of jurisprudence is based, are not disturbed. It is this concepts of that defines the fundamentals of judicial discipline without which no Court, as an institution;, can function, causing a Constitution Bench of the Honble Supreme Court to hold as recently in 2005 in the case of Central Board of Dawoodi Bohra Community & Anr. Vs. State of Maharashtra & Anr (AIR 2005 SC752 as under:12. Having carefully considered the submissions made by the learned Senior counsel for the parties

and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms:(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength. xxi) BECAUSE judicial discipline requires every Bench of a High Court to respect the possibility of divergence of views by co-ordinate benches of the same Honble High Court on the same question of law, and in such a scenario, to immediately refer the issue to a larger Bench for its determination, rather than try to contribute to judicial chaos and anarchy by unilaterally attempting to settle the issue itself. In this regard, the views of a Full Bench of the Honble Allahabad High Court held in the case of Rustom Khusro Sapurji Gandhi and Ors. vs. Amrit Abhijat and Ors.(AIR2007 All.149) are as under:

11. So far as the 1st question referred by the learned Single Judge is concerned, although it does not directly arise in view of our answer given to the question No.2 above, we have no doubt that legally once a decision has attained a finality in favour of a party/litigant, no other co-ordinate Bench while hearing a Public Interest Litigation or a writ petition of other nature can issue any directions, which could have the effect of taking away the impact of the final decision without impleading the affected party, who has obtained the decision which has attained finality, or even after impleading such party. The reason is that a co-ordinate Bench cannot sit in appeal and pass a judgment or issue a direction taking away the impact of a decision, which has attained finality, as that would virtually mean a co-ordinate Bench sitting in appeal over the final decision of another Bench of the same strength.

47. Two ancillary points were urged. Firstly, that the law firm Amarchand & Mangaldas & Suresh A.Shroff and Co. could not have represented respondent No.8 because the firm acted as the attorney of respondent No.8 in its dealing with NHAI. Learned counsel for the appellant relied upon the decision of a learned Single Judge of the Bombay High Court reported as AIR1993 Bombay 217 ONGC Vs. Offshore Enterprises. As per the said decision, interpreting Rule 2 and Rule 4 of Order 3 of the Code of Civil Procedure, Section 34(1) and Section 49 of the Advocates Act, 1961, Rule 9 and 13 of the Bar Council of India Rules, 1975 and

Rule 9 and Rule 13 of the Bombay High Court Rules, a firm of Advocates/Solicitors/Attorneys which act as constituted attorney of a party in its contractual dealings cannot represent the party through its partner in the capacity of an Advocate.

48. For the argument advanced by learned counsel for the appellant there must exist a fact to be shown to the Court : that Amarchand & Mangaldas & Suresh A.Shroff and Co. was appointed as a constituted attorney by respondent No.8. No such fact was shown. Learned counsel for the appellant had urged that said fact was in the personal knowledge of the law firm and thus it was for the firm to bring on record facts to negate said contention.

49. Learned counsel for Amarchand & Mangaldas & Suresh A.Shroff and Co. refuted that the company was appointed as a constituted attorney by respondent No.8. And suffice it to state that the assertion of a fact against a party, without proof of the assertion is rebutted by a contra assertion of the negative fact. Thus, it is enough for Amarchand & Mangaldas & Suresh A.Shroff and Co. to assert that the firm did not act as the constituted attorney of respondent No.8. There can be no evidence of a negative fact.

50. It was lastly urged that Mr.Balaji Subramanian, Advocate cannot argue the appeal on behalf of respondent No.8 which has executed a vakalatnama in favour of Amarchand & Mangaldas & Suresh A.Shroff and Co. because Mr.Balaji Subramanian is not a designated senior counsel. Learned counsel for the appellant cited various decisions to substantiate his view point. None of the decisions has been pronounced by the Delhi High Court. The consistent view taken by this Court is that to argue an appeal a lawyer holding a vakalatnama can engage another lawyer who is not a senior advocate to argue the appeal. In todays environment of globalization and specialization it would impede the cause of justice if specialist lawyers who are not designated senior counsel are permitted not to argue points of law under instructions from a lawyer who has a valid vakalatnama from the client in his favour.

51. We dismiss the appeal. Since we find the appeal to be totally frivolous and vexatious we impose cost against the appellant and in favour of respondent No.8

in sum of `1,00,000/- (Rupees One Lac Only). (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA) JUDGE APRIL20 2015 mamta

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