

**Dharamchand and Others Vs. M/S. Alacrity Housing Ltd. Rep. by Its Managing Director and Another**

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**Court :** Chennai

**Decided On :** Oct-17-2012

**Judge :** P. Jyothimani & P. Devadass

**Appeal No. :** O.S.A.No.389 of 2011 and M.P.No.1 of 2011

**Appellant :** Dharamchand and Others

**Respondent :** M/S. Alacrity Housing Ltd. Rep. by Its Managing Director and Another

**Advocate for Pet/Ap. :** For the Appellants : Mrs. Hema Sampath Senior Counsel for Mrs. R. Meenal, Advocates. For the Respondents: R1, V. Kuberan for M/s. Rank Associates, R2, G. Sundaram, Advocates.

**Judgement :**

**(Prayer:-**Appeal against the fair and decretal order passed by the learned Single Judge dated 06.09.2011 in Application No.1009 of 2011 in E.P.No.3459 of 2010 in C.S.No.398 of 2007.)

**P. DEVADASS, J.**

Aggrieved by the orders of the learned Single Judge passed on 06.09.2011, in Application No.1009 of 2011, in E.P.No.3459 of 2010, in C.S.No.398 of 2007,

defendants 2 to 4 [Judgment Debtors 2 to 4] have directed this intra-court Appeal.

2. The members of Plaintiff, 'Aravalli Flat Owners Association', wanted to purchase flats, to be constructed by 'M/s.Alacrity Housing Limited', the first defendant, on the suit property, measuring about 19029 sq.ft., comprised in R.S.No.1550/6, situate in Murrays Gate Road, Alwarpet, Chennai - 18. On 18.12.2000, the second defendant, as Power Agent of owners of the suit property, entered into a sale agreement with the builder/first defendant for the sale of the suit land. First defendant issued allotment letters to the members of Plaintiff Association. They have paid nearly 4.76 crores to the first defendant. First and second defendants have raised loans on the suit property from Union Bank of India, Mylapore. The second defendant guaranteed the loan and the title deed of the suit property has been deposited with the Bank.

3. However, the first defendant did not construct the flats as promised. There were several negotiations. Part of the money was refunded to the members of Plaintiff Association. Rs.2,21,18,319/- remain to be paid. In the meanwhile, on 01.11.2005, by an agreement, first and second defendants have cancelled the sale agreement dated 18.12.2000. And on 07.06.2006, the second defendant sold the suit property to his wife (third defendant) and to his brother's wife (fourth defendant). However, the said Rs.2,21,18,319/- remained to be paid to the members of Plaintiff Association.

4. In the circumstances, Plaintiff filed the suit in C.S.No.398 of 2007 for cancellation of the said agreement dated 01.11.2005 cancelling the sale agreement dated 18.12.2000 and for declaring the sale deed dated 07.06.2000 as null and void. In the suit, on 13.02.2008, by its Judgment, a Division Bench of this Court, among other conditions directed the second defendant to pay the said Rs.2,21,18,319/- to the Plaintiff. But, the amount was not paid. So, Plaintiff levied execution. In the E.P., on 06.09.2011, in Application No.1009 of 2011 filed by the first defendant, a learned Single Judge directed the second defendant to pay the said amount to the Plaintiff and also directed the Master to proceed further, in default of the payment. As stated at the out set, aggrieved by this order, the second defendant (second Judgment Debtor) and defendants 3 and 4 (Judgment

Debtors 3 and 4) have directed this intra-court appeal.

5. Mrs.Hema Sampath, learned Senior Counsel for Mrs.R.Meenal, learned counsel for the appellants (Defendants 2 to 4) assailing the impugned order contended that in order to give a quietus to this matter, based on the information furnished by the first defendant, the second defendant (first appellant) agreed for a solution and filed a Memo. And based on that the Judgment of the Division Bench came to be passed on 13.02.2008. Subsequently, it came to light that the first defendant was already burdened with many financial commitments and the first defendant heavily indebted and has weak financial position. But, the first defendant did not reveal this to the second defendant. Had the first defendant disclosed its true position, appellants would not have agreed for an arrangement, based upon which, on 13.02.2008, the Judgment of the Division Bench came to be passed. In effect, the first defendant has misled, duped and defrauded the second defendant. This aspect has not been properly considered by the learned Single Judge.

6. The learned Senior Counsel contended that a fraudulent act can be questioned at any time in any proceedings and there is no time limit for it. Any Judgment, Decree or Order born out of a fraudulent act is a nullity. When a fraudulent act is apparent on the face of the record even a consent decree becomes void.

7. In support of her said submissions, the learned Senior Counsel cited the following decisions:-

i) S.P.CHENGALVARAYA NAIDU Vs. JAGANNATH AND OTHERS [1994 (1) SCC 1].

ii) STATE OF ANDHRA PRADESH AND ANOTHER Vs. T.SURHACHANDRA RAO [2006 (1) L.W. 547].

iii) A.V.PAPAYYA SASTRY AND OTHERS Vs. GOVT. OF A.P. AND OTHERS [2007 (4) SCC 221].

iv) LACHMAN DASS Vs. JAGAT RAM AND OTHERS [2007 (10) SCC 448].

v) SANTOSH Vs. JAGAT RAM AND ANOTHER [2010 (3) SCC 251].

vi) DALIP SINGH Vs. STATE OF UTTAR PRADESH AND OTHERS [2010 (2) SCC 114].

8. In the circumstances, the learned Senior Counsel would submit that the impugned order of the learned Single Judge dated 06.09.2011 is required to be set aside and the second defendant be absolved from paying the amount to the Plaintiff under such an order.

9. On the other hand, Mr.V.Kuberan, learned counsel for the first defendant/first respondent/first Judgment Debtor would contend that in pursuance of the directions in the Judgment of the Division Bench dated 13.02.2008, the first defendant had discharged its obligations, namely, execution of the promissory note and assignment agreement. Thereafter, as per the Division Bench judgment, it is incumbent upon the second defendant to pay the amount to the Plaintiff. However, to avoid it, the appellants are making untenable contentions.

10. The learned counsel for the first defendant further contended that no information has been withheld by the first defendant. There is a Supplemental Agreement dated 01.07.2006 as between the first defendant and second defendant. Everything has been disclosed in the said agreement. Second defendant is fully aware of all the information and only after knowing that the first defendant had signed in a Memo and based upon that only the judgment has been passed by the Division Bench on 13.02.2008. What the appellants are now harping has not been stated by them earlier. They did not say so in the execution proceedings. It is a new plea. Everything has been concluded by the Judgment of the Division Bench dated 13.02.2008. But, as against that, the appellants have not gone in appeal to the Hon'ble Supreme Court of India. In the facts and circumstances, the decisions cited by the appellants are not applicable to the facts of this case. The order dated 06.09.2011 passed by the learned Single Judge is perfectly valid.

11. Mr.G.Sundaram, learned counsel for the Plaintiff Association/second respondent/Decree holder would submit that it is one more attempt by the second defendant to delay the payment of amount to the Plaintiff. Now, the matter is in execution stage. At this stage, through this O.S.A., the appellants wants to re-open

the concluded Judgment of the Division Bench dated 13.02.2008, without going in the appeal to the Hon'ble Supreme Court.

12. We have anxiously considered the submissions of the learned Senior Counsel, learned counsel for the first defendant/first respondent/first Judgment Debtor and learned counsel for the plaintiff/second respondent/Decree holder. We have perused the typed set of papers and also the impugned Judgment of the learned Single Judge, dated 06.09.2011. Now, we shall proceed to process them.

13. The second defendant as Power Agent of the owners of the suit property over which, the flats for the members of the Plaintiff Association is agreed to be constructed by the first defendant, entered into a sale agreement with the builder/first defendant on 18.12.2000. As stated already, huge amount, namely, Rs.4.76 crores have been received by the first defendant from the members of Plaintiff Association. On 01.11.2005, defendants 1 and 2, by an agreement have cancelled the said sale agreement dated 18.12.2000. Thereafter, on 07.06.2006, the second defendant as Power Agent sold the very same land (suit property) to defendants 3 and 4, who are his wife and his brother's wife. In the circumstances, in the suit, the plaintiffs have sought for cancellation of the said agreement dated 01.11.2005 and declaring the said sale deed dated 07.06.2006 as null and void as they were duped of their balance money, namely, Rs.2,21,18,319/-.

14. It is pertinent here to note that the first defendant agreed to purchase the suit property as per sale agreement dated 18.12.2000, out of the money received from the members of Plaintiff Association. Later, on the suit property, the first and second defendants have raised loan from Union Bank of India, Mylapore by depositing title deeds of the suit property and by an arrangement as between them the said encumbrance was discharged and as stated above the second defendant had sold the property to his kith and kin, namely, third and fourth defendants free of encumbrance. It is pertinent to remember that in the acquisition of the suit property, money of the members of the Plaintiff Association is involved. Out of that, Rs.2,21,18,319/- is remained to be paid to the plaintiff. In the circumstances, the plaintiffs were given to understand that defendants 3 and 4 have planned to sell the suit property to some third parties. Naturally, if it is sold without paying

them their said balance amount, the members of Plaintiff Association will be the looser. In the circumstances, in the suit, the Plaintiff filed Original Application No.571 of 2007 seeking injunction restraining the defendants 3 and 4 from alienating the suit property or creating any encumbrance over it.

15. On 27.07.2007, in O.A.No.571 of 2007, a learned Single Judge of this Court passed orders as under:-

" That the second defendant/second respondent herein, either by himself or with defendants 3 and 4/respondents 3 and 4 herein, shall make a deposit of Rs.2,21,18,319/- into this court to the credit of the suit C.S.No.398 of 2007 within 4 weeks from this date (i.e.) on or before 24.08.2007.

2. That the first defendant/first respondent herein, shall execute necessary loan documents and the same shall include a demand promissory note and an assignment of whatever rights they have over the Perambur property subject to the first charge that ICICI has over the said property.

3. That the first defendant/first respondent herein, shall complete the aforesaid formalities within a period of 4 weeks from this date (i.e.) on or before 24.08.2007.

4. That the first defendant/first respondent herein, upon clearing all the formalities within time as mentioned in clauses (2) & (3) supra, it shall be open to the applicant herein, to come up with an application for payment out of the money in the name of the individual member of the Applicant Association.

5. That after the members of the Applicant Association take payment out of such money, as aforesaid, it shall be open to the defendants 2 to 4/defendants 2 to 4 herein, to deal with the property morefully set out in the schedule hereunder in any manner they like, till then the said property shall not be dealt with." 16. Aggrieved by the said order dated 27.07.2007, defendants 2 to 4 have directed the appeal in O.S.A.No.296 of 2007. In the appeal, on 12.02.2008, they have filed a Memo. It is very much relevant to note here the contents of this Memo. It runs as under:-

"MEMO FILED BY THE DEFENDANTS 2 TO 4

This memo is filed by the Defendants 2 to 4 in C.S.No.398 of 2007 and pray that this Hon'ble Court may be pleased to pass orders as follows:

1. 1<sup>st</sup> Defendant shall execute necessary loan documents and the same shall include a demand promissory note and an assignment of whatever rights they have over the property in Mogappair West and Perambur (described in Annexure 1 to this memo) in favour of the 2<sup>nd</sup> Defendant subject to the charge that ICICI and SBI, Indore have over the said properties within a period of 4 weeks from today.
2. On execution of the above documents the 2<sup>nd</sup> Defendant shall arrange finance on behalf of the 1<sup>st</sup> Defendant to pay individually the members of the Plaintiff Association (as per Annexure II to this memo) totaling Rs.2,21,18,319/-. The Defendants 3 and 4 will not alienate the suit schedule property till then. The Plaintiff members on realization of the above sum will have no right, title or interest in the suit schedule property.
3. The members of the Plaintiff Association shall immediately withdraw pending Complaints / Petitions against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants herein before the State Consumer Disputes Redressal Commission, Madras and reserve their right to claim interest and costs only against the 1<sup>st</sup> Defendant.

The Defendants 2, 3 and 4 herein pray that this Hon'ble Court may be pleased to pass appropriate orders in C.S.No.398 of 2007 as well as O.S.A.No.296 of 2007 and pass such further or other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render Justice.  
Dated at Chennai on this 12<sup>th</sup> day of February 2008

\*\*\*\*\* (s/d) (Mr.P.Dharamchand)

\*\*\*\* (s/d) (Mrs.Kusumlatha)

\*\*\* (s/d) (Mrs.Renu)"

17. In the said O.S.A.No.296 of 2007, on 13.02.2008, with the consent of all the parties, a Division Bench of this Court had taken up the suit itself and passed the final Judgment. In para 14 of its Judgment, the Division Bench directed as under:-

“14. As we have already concluded that there is no harm in incorporating the said clause in clause (b) of the order of the learned single judge, which will not in any way prejudice the interest of the first defendant, we are of the view that the Mogappair west property can also be incorporated in clause (b). Hence, having regard to the circumstances of the case, there will a judgment as follows:

1. The first defendant shall execute necessary loan documents and the same shall include a demand promissory note and an assignment of whatever rights they have over the property in Perambur and Mogappair west, as described in Schedule I mentioned below, in favour of the second defendant subject to the charge that ICICI and SBI, Indore have over the said properties within a period of four weeks from today.

2. On execution of the above documents, the second defendant shall arrange finance to pay the members of the Plaintiff Association individually as per Schedule II mentioned below totally Rs.2,21,18,319/-. Defendants No.3 and 4 shall not alienate the suit property till the individual members are paid off. The members of the plaintiff on realization of the above sum as per the Annexure II would have no right, title or interest in the suit schedule property.

3. The members of the Plaintiff Association on receipt of the payment shall immediately withdraw the pending complaints/petitions against Defendants No.2, 3 and 4 before the State Consumer Disputes Redressal Commission, Madras and reserve their right to claim interest and costs only against the first defendant.

4. The amount stated in clause (2) above has to be paid to the individual members of the plaintiff association within a period of two months from today. If the amount is not paid within the time granted, it will carry interest at 9% p. a.”

18. Thus, it is seen that the entire suit is over. In the suit, decree itself has been passed. After the Judgment of the Division Bench dated 13.02.2008 nothing remains.

19. In M.P.No.1 of 2008, in O.S.A.No.296 of 2007, on 03.04.2009, on the application of the first defendant, the Division Bench granted 4 weeks' time to the

first defendant to execute the promissory note and assignment agreement in favour of the second defendant and gave further 2 months' time for the disbursement of the amount to the plaintiff. But, as directed in the Judgment of the Division Bench on 13.02.2008 and on 03.04.2009, the first defendant did not execute the promissory note and the assignment agreement in favour of the second defendant and the second defendant also not deposited the amount to be disbursed to the Plaintiff. When the Plaintiff asked the (their) money, the first defendant shown them the second defendant and the second defendant shown them the first defendant. This was going on for some time. The actual sufferer was the members of the Plaintiff Association.

20. In the circumstances, in pursuance of the Judgment of the Division Bench dated 13.02.2008, the plaintiff/deed holder filed E.P.No.3460 of 2010 and asked for the arrest of the Managing Director of the first defendant and also attachment of the suit property and selling it to release the decree (dated 13.02.2008) debt. However, defendants 2 to 4 (Judgment Debtors 2 to 4) filed Application No.6197 of 2010 to dismiss the said E.P.

21. On 21.12.2010, the Master passed common order allowing the Application No.6197 of 2010 holding that till date the first defendant had not executed the promissory note and Assignment Agreement and only upon such execution, the second defendant has to pay the amount to the Plaintiff and thus, E.P.No.3460 of 2010 filed by the plaintiff is premature. However, in E.P.No.3459 of 2010, in order to give opportunity to the first defendant, the Master deferred the arresting of the Managing Director of the first defendant and directed the first defendant to comply their part of directions in the Judgment of the Division Bench dated 13.02.2008, namely, execution of the promissory note and Assignment Agreement in favour of the second defendant by 05.01.2011 and in default, directed arresting of the Managing Director of the first defendant.

22. Aggrieved, the first defendant filed Application No.1009 of 2011, to set aside the said directions of the Master dated 21.12.2010. In the meanwhile, the first defendant also executed the promissory note and the Assignment Agreement. In its Additional Counter filed in Application No.1009 of 2011, for the first time, the

second defendant had stated that it had gone through the Annual Reports and Auditor's Reports of the first defendant for 03/2009 and 03/2010 and noticed that the first defendant is already due to Union Bank of India, before the Debts Recovery Tribunal recovery action also has been initiated against the first defendant, thus, the first defendant is heavily indebted, but, this aspect has been buried by the first defendant and there is material suppression on the part of the first defendant.

23. In the said Application No.1009 of 2011, the learned Single Judge in his impugned order dated 06.09.2011 dealing with the said contention of the second defendant remarked as under in paras 19 to 23 of the impugned order, dated 06.09.2011:-

“19. The second respondent also filed an additional counter contending that as per the information furnished by the applicant, there are several cases pending in the Subordinate Court, Poonamallee in respect of Mogappair West property and that the Union Bank of India had also initiated recovery proceedings. From the annual report of the applicant, filed with the Registrar of Companies, the second respondent culled out information to the effect that the applicant is heavily indebted. Therefore, the second respondent has taken a stand in the additional counter affidavit that the Banks, which had initiated proceedings against the applicant, would attack the assignments made by the applicant in favour of the second respondent.

20. In other words, the tone and tenor of the counter and additional counter affidavits, filed by the second respondent give a clear signal to the effect that irrespective of the language employed and the manner of execution of all necessary documents by the applicant, as per the decree dated 13.02.2008, the second respondent will not accept it. The encumbrances on the Perambur and Mogappair West properties and the indebtedness of the applicant to various Banks are cited as reasons by the second respondent to wriggle out of the obligations imposed on them by the decree dated 13.02.2008. Therefore, the only question to be considered now is as to whether the second respondent is entitled to do so or not.

21. At the cost of repetition, it is to be pointed out even when the second respondent agreed to take the assignment of rights over the Perambur property, they were aware of the first charge that ICICI Bank had over the property. I have recorded this fact in paragraph 6 of my order dated 27.07.2007. In paragraph 7(b) of the same order, I have made it very clear that the obligation of the applicant was to make an assignment, **only of whatever rights they have over Perambur property subject to the first charge that ICICI Bank had.**

22. Paragraphs 9 to 13 of the Judgment of the Division Bench also make it clear that both properties were encumbered and that several suits were also pending in respect of the Mogappair west property. In paragraph 13, the Division Bench clearly recorded the statement of the applicant that they did not have any existing interest in the property at Mogappair west and that there were several suits pending. Still, the Division Bench allowed an assignment of the rights of the applicant in the said property, nearly expressing a hope that the applicant may acquire some rights in course of time.

23. Thus, the second respondent herein was fully aware of (i) the existence of encumbrances on both properties; (ii) the pendency of cases; and (iii) the fact that what was to be assigned, would only be **whatever rights that the applicant would have, after exhaustion of the claims of all others.** If with eyes wide open, the second respondent has accepted such a decree, it is not open to him now to pick holes and try to wriggle out of his obligations under the decree dated 13.02.2008.”

24. If we read closely the Memo filed by the defendants 2 to 4 in O.S.A.No.296 of 2007, on 03.09.2007, the contents of which, we have already extracted (see para 16, supra) and also para 14 of the Judgment of the Division Bench dated 13.02.2008, the contents of which we have already given (see para 17, supra) the learned Single Judge is correct in making the said remarks.

25. In this regard, there is one more aspect to be seen. On 07.06.2006, the second defendant executed a sale deed in favour of defendants 2 and 3, who are his wife and brother's wife selling them the suit property. Subsequently, as between the second defendant (representing the original owners of the suit

property) and the first defendant, a Supplemental Agreement was executed on 01.07.2006. The following terms and conditions in this Supplemental Agreement dated 01.07.2006 are relevant here to be noted:-

“NOW THIS DEED OF SUPPLEMENTAL AGREEMENT WITNESSETH THAT:

1. Mr.P.Dharamchand undertakes to pay to M/s.Union Bank of India the sum of Rs.328 lakhs.

2. Mr.P.Dharamchand will arrange Finance for the sum of Rs.5,00,00,000/- (Rupees five crores only) on behalf of the company to be paid to.

a) M/s.Shivalika Leasing and Finance Limited(Rs.100 lakhs).

b) To Customers on account of advance received by the company(Rs.373 lakhs).

c) Dr.Dhariwal Rs.27 lakhs.

3. (a) The company hereby authorises the Union Bank of India, Industrial Finance Branch, to handover the original title deeds of the schedule property to Mr.P.Dharamchand on discharge of the dues to M/s.Union Bank of India. The Company has issued a separate letter to M/s.Union Bank of India in this regard.

b) The company shall further arrange to get M/s.Shivalika Leasing and Finance Limited and its group companies to cancel the registered agreement of sale, as per the confirmation letter to be obtained by the company in favour of Mr.P.Dharamchand thus giving up their claim on any allotment agreement entered between the company and M/s.Shivalika Leasing and Finance Limited.

c) The Company shall get the confirmation letter from the customers confirming to receive Rs.373 lakhs(Rupees three hundred and seventy three lakhs only) in quit of all their claims over the agreement of project promotion and construction agreements entered by the company and their customers.

4. Upon fulfilling the obligations to each other as in clauses 1 to 3 above, Mr.P.Dharamchand or the owners of the property that he represents will have no further claim on the company for any payment in terms of the agreement of sale

dated 18.12.2000 except for a sum of Rs.5,00,00,000/-(Rupees five crores only) which is treated as loan along with interest at 12% per annum to be paid within a period of 12 months from this date. The company also confirms that they will have no claim whatsoever on the owners on account of the Agreement of Sale dated 18.12.2000 and hereby relinquish all their claims, and interests over the schedule mentioned property vested in the Agreement of Sale dated 18.12.2000.

**5. Both parties agreeing that this Supplemental Agreement is to be read in conjunction with the Agreement of Cancellation dated 01.11.2005.”**

(Emphasis supplied by us)

26. In the property schedule to the said Supplemental Agreement the suit property has been mentioned. What is important is that this Supplemental Agreement has been executed to safeguard the money due to the members of the Plaintiff Association. It is more important to note that in the Supplemental Agreement, it is specifically mentioned that both the defendants 1 and 2 have agreed that the Supplemental Agreement is to be read in conjunction with the cancellation agreement dated 01.11.2005, whereunder the Sale Agreement dated 18.12.2000 has been cancelled and subsequently, on 07.06.2000, the suit property has been sold to defendants 3 and 4 by the second defendant. We may recall here that also out of the money collected by the builder (first defendant) from the members of the Plaintiff Association, the suit property (over which the flats for the Plaintiff members is to be constructed) has been purchased. If, we read the terms and conditions of the Supplemental Agreement dated 01.07.2006, it can be clearly seen that the second defendant had undertaken to pay the dues of the Union Bank of India and also the money payable to the members of the Plaintiff Association.

27. Thus, when the Memo dated 03.09.2007 was signed by defendants 2 to 4/the appellants herein, already the said Supplemental Agreement was executed, namely, on 01.07.2006, so, they were fully aware of the financial position of the first defendant and they were also aware of their liability to pay the amount due to the plaintiff and the second defendant had also undertaken it. So, now, the second defendant and defendants 3 and 4, who are all appellants herein, cannot be heard to say that when the Memo was executed by them on 03.09.2007, they were not

aware of the various financial commitments of the first defendant.

28. It is pertinent here to note that defendants 2 to 4/appellants are not making any gratuitous payment to the members of the Plaintiff Association. They are bound to pay them their money as per the Judgment of the Division Bench dated 13.02.2008. And by paying so, they are taking away the valuable suit property. If, they failed to pay, the suit property is liable for attachment and sale in execution of the decree passed in favour of the members of the Plaintiff Association in pursuance of the Judgment of the Division Bench dated 13.02.2008.

29. In the facts and circumstances, the arguments of the defendants 2 to 4 (appellants) that they have been misled, defrauded by the first defendant, to sign in the Memo dated 03.09.2007, based upon which, the Judgment of the Division Bench dated 13.02.2008 has been passed does not arise and it is quite untenable. In the circumstances, the decisions cited by the learned Senior Counsel are not applicable to the facts of this case.

30. When the suit has been completely disposed of by the Judgment of the Division Bench on 13.02.2008, if the defendants 2 to 4 have any grievance on that, they must go in appeal to the Hon'ble Supreme Court of India. In the circumstances, Mr.G.Sundaram, learned counsel for the second respondent/Plaintiff Association and Mr.V.Kuberan, learned counsel for the first respondent have rightly submitted that defendants 2 to 4 by way of an Application cannot re-open the concluded Judgment of the Division Bench dated 13.02.2008.

31. Mrs.Hema Sampath, the learned Senior Counsel for the appellants also contended that instead of the promissory note and Assignment Agreement, if the first defendant gives them any property security, the defendants 2 to 4 (appellants) will pay the amount to the Plaintiff Association as directed in the judgment of the Division Bench dated 13.02.2008.

32. Such a contention of the learned Senior Counsel will not arise here. Such is not the direction in the Judgment of the Division Bench dated 13.02.2008. Something that is not in the said Judgment of the Division Bench, which had become now final, cannot be imported here. Thus, the appellants cannot now

glamour for any property security, as a condition precedent to honour their commitment to the Plaintiff, namely, paying them their amount.

33. In the light of the above, we are of the view that the decisions and direction of the learned Single Judge in the impugned order is in accordance with law. No interference is called for.

34. In the result, this Original Side Appeal is dismissed with costs. The Judgment of the learned Single Judge dated 06.09.2011 is upheld. Consequently, the connected M.P. is closed.

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