

**\* THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE  
AND  
THE HONOURABLE SRI JUSTICE N.V. SHRAVAN KUMAR**

**+ I.A. Nos.1, 2 and 3 of 2024  
IN/AND  
SECOND APPEAL No.533 of 2023**

**% Dated 01-05-2024**

Between:

# M/s. Cyrus Investments Limited  
Having its office at Esplanade House,  
Hazirimal Somani Mar, Fort, Mumbai,  
Represented by its Authorised signatory/Attorney Holder  
Dr. P.S. Prasa, S/o. Late P.S. Rao,  
aged 75 years, R/o.6/10, Shanthiniketan, New Delhi

... Appellants/1<sup>st</sup> respondent/1<sup>st</sup> Defendant

and

\$ Sahebzadi Hameedunnissa Begum,  
W/o. Late Ghouse Mohiuddin Khan,  
(Died per LR) and others.

.... Respondents/Appellants/Plaintiffs

! Counsel for the Appellants : Mr. N.M.Krishnaiah

^ Counsel for the respondents : Mr. N.SREEDHAR REDDY  
Mr. RAKESH SANGHI (R2)

< GIST : ---

>HEAD NOTE : ---

? Cases referred: :

1. AIR 2007 Supreme Court 1721
2. (2010) 8 Supreme Court Cases 423
3. 2006 (4) ALT 581 (DB)
4. AIR 2001 Supreme Court 383
5. AIR 1968 Supreme Court 1413
6. AIR 1917 Privy Council 402

7. (2011) 11 Supreme Court Cases 524
8. (2005) 1 Supreme Court Cases 212
9. (1995) 1 Supreme Court Cases 421
10. AIR 2006 Supreme Court 3028
11. AIR 2007 Supreme Court 1546
12. 2002 (3) ALT 513 (S.B.)
13. AIR 2020 Supreme Court 4247
14. AIR 2005 Supreme Court 2119
15. (2008) 12 Supreme Court Cases 762
16. 2006 (1) A.P.L.J. 123 (HC)

**THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE  
AND  
THE HONOURABLE SRI JUSTICE N.V. SHRAVAN KUMAR**

**I.A. Nos.1, 2 and 3 of 2024  
IN/AND  
S.A. No.533 of 2023**

**JUDGMENT:** *(Per the Hon'ble Sri Justice N.V. Shravan Kumar)*

Heard Ms. Dr.Menaka Guruswamy, learned Senior Counsel and Mr. Rakesh Sanghi, learned counsel, for petitioner in these applications, who is the respondent No.2 in the Second Appeal.

2. Mr. K.G. Raghavan, learned Senior Counsel representing Mr. N.M.Krishnaiah, learned counsel for respondent No.1 in these applications, who is the appellant in the Second Appeal.

3. Since the parties in these applications and the issues fell for consideration before this Court are similar, they are being heard together.

4. **I.A. No.1 of 2024** has been filed by the petitioner, who is respondent No.2 in the Second appeal, seeking to reject the Second Appeal for not filing authorisation / Power of Attorney on behalf of the appellant and on account of non-compliance of Rules 32 and 33 of Civil Rules of Practice.

5. **I.A. No.2 of 2024** has been filed by the petitioner, who is respondent No.2 in the Second Appeal, seeking to recall the order dated 05.01.2024 directing admission of the subject Second Appeal on

the ground of fraudulent suppression of the Suit No.643 of 2014 dated 28.04.2017 passed by the Bombay High Court by the 1<sup>st</sup> respondent / appellant and consequently be pleased to dismiss S.A. No.533 of 2023.

6. **I.A. No.3 of 2024** has been filed by the petitioner, who is respondent No.2 in the Second Appeal, seeking to pass an order making and referring a criminal complaint under Section 200 Cr.P.C. to the jurisdictional Magistrate for prosecution of the 1<sup>st</sup> respondent/appellant for the offence committed under Section 193 and Section 194 IPC (by having pressed into service the forged and fabricated photocopy of the authorisation letter dated 03.05.2019 in the subject appeal).

7. For better appreciation of the case on hand, brief facts of the case are noted hereunder:

8. Initially, O.S. No.843 of 2014 was filed by one Sahebzadi Hameedunnisa Begum, W/o. late Ghouse Mohiuddin Khan, before the XX Junior Civil Judge, City Civil Court, Hyderabad, seeking for cancellation of Registered Sale Deed dated 21.05.1966 bearing Document No.1564 of 1966 and the trial Court vide judgment dated 21.04.2017 dismissed the suit holding that the suit is barred by limitation. Aggrieved by the same, the plaintiff preferred an appeal in A.S. No.196 of 2017 before the XI Additional Chief Judge, City Civil Court, Hyderabad, and the first appellate Court vide its judgment dated 07.12.2023 allowed the said appeal holding that the plaintiff was able to establish her exclusive possession over the suit schedule

property as on the date of filing of the suit. Assailing the same, the appellant, M/s. Cyrus Investments Limited, in the Second Appeal, who is the defendant/respondent in the suit and in the appeal suit, respectively, preferred the present Second Appeal.

9. According to the appellant in the Second Appeal, brief facts of the case are that in the suit, the parties i.e. HEH The Nizam, in whose favour the sale deed dated 21.05.1966 was executed, was not made party. The present appellant/D1 who was subsequent purchaser from HEH The Nizam was made party, but Defendant No.1 did not file written statement in the suit and hence it was set *ex parte*. The subsequent purchasers of the lands from the defendant No.1, who are affected parties, were also not made parties. However, the trial Court, by judgment and decree dated 21.04.2017 dismissed the suit in O.S. No.843 of 2016 on the ground that the suit is barred by limitation and as per Article 59 of the Limitation Act, a suit for cancellation of sale deed has to be filed within three years and when the sale deed dated 21.05.1966 bearing document No.1544 of 1966 is filed in the month of March, 2016 (after 50 years) is hopelessly barred by limitation. Further, the trial Court observed that the sale deed bearing document No.1544 of 1966 was recognised by the High Court as per the orders passed in Application No.229 of 1966 in C.S. No.14 of 1958 dated 10.10.1969 and as such the sale deed cannot be cancelled without setting aside the orders of the High Court. Hence, the trial

Court has rightly dismissed the suit of respondents No.1 and 2 (original plaintiff Hameedunnisa Begum W/o. Gouse Mohiuddin Khan).

10. It is further submitted that the original plaintiff Hameedunnisa Begum has carried the matter in appeal in A.S. No.196 of 2017 on the file of the XI Additional Chief Judge, City Civil Court and during the pendency of the said appeal suit, she died and her son namely Mohd.Moizuddin Khan S/o. Mohammed Gouse Mohiddin (respondent No.2) has come on record as LR as per the orders in I.A. No.331 of 2022 dated 21.02.2023. Thus, the appeal suit was continued by the LR of the original plaintiff.

11. It is further submitted that in the appeal, the respondents No.1 and 2 have filed I.As. for receiving the additional documents under Order 41 Rule 27 CPC and the appellant herein also filed I.A. for receiving the proceedings No.D5/3634/2001 dated 29.09.2001 as additional evidence to prove that the 1<sup>st</sup> respondent is having knowledge about the sale deed as on the date of the said proceedings dated 29.09.2001 wherein the mutation claim of the 1<sup>st</sup> respondent was rejected by the Joint Collector on the ground of execution of registered sale deed dated 21.05.1966. All those IAs were heard and reserved for judgment along with the appeal and posted to 07.12.2023. In the morning session, the official website was uploaded stating that due to leave of the Steno, judgment was not prepared and hence posted to 20.12.2023. But at the evening in the official website it was

uploaded that the appeal was allowed and the registered sale deed dated 21.05.1966 was cancelled. It is relevant to submit that there was no order in the above IAs filed by both parties for receiving the additional documents as on today and there is no mention about the same in the impugned judgment. By the present judgment under appeal, the first appellate Court has allowed the appeal in A.S. No.196 of 2017 on 07.12.2023 and resultantly the impugned judgment and decree dated 21.04.2017 in O.S. No.843 of 2014 passed by the trial Court was set aside and granted the relief that the registered sale deed bearing Document No.1544 of 1966 dated 21.05.1966 was cancelled. Aggrieved by the judgment and decree in A.S. No.196 of 2017, the present Second Appeal has been filed.

12. This Court on 05.01.2024 admitted the Second Appeal on the following substantial question of law, which reads as under:

“Mr. Vedula Venkataramana, learned Senior Counsel appears for Mr. N.M.Krishnaiah, learned counsel for the appellant.

Heard on the question of admission.

The appeal is admitted on the following substantial question of law:

Whether the suit filed by the respondent/plaintiff is barred under Article 59 of the Limitation Act, 1963

Notice on behalf of respondent No.2 is accepted by Mr. N. Sreedhar Reddy, learned counsel.”

**SUBMISSIONS:**

13. The learned Senior Counsel **Ms. Dr.Menaka Guruswamy** appearing for the petitioner/respondents No.2 in the Second Appeal, would submit that the respondent/Appellant filed the Second Appeal being represented by its alleged authorized signatory/attorney holder, Dr. P.S.Prasad, but however, while filing the Second Appeal, the said Dr.P.S. Prasad has not filed the authorisation or the power of attorney issued by the Company in his favour, as stated by him in the cause title of the Second Appeal. Therefore, the Registry of this Court ought to have rejected the Second Appeal without even numbering the Second Appeal. It is further submitted that Order 29 Rule 1 of CPC makes it clear that any pleading may be signed and verified on behalf of the Corporation by the Secretary or by any Director or other Principal Officer of the Corporation who is able to depose to the facts of the case. But, in the case on hand, Dr.P.S. Prasad is neither the Secretary of the appellant Company nor its Director nor any Principal Officer of the Company and he is only an outsider to the appellant Company and neither has authorisation to represent the said Company nor can file the present Second Appeal on behalf of the appellant Company. It is further submitted that as per Rules 32 and 33 of Civil Rules of Practice, when an agent appears on behalf of a



party, he is bound to file before the Court, the power of attorney/written authority, authorising him to appear in the said case along with an affidavit as mandated under Rule 32 of Civil Rules of Practice. In the case on hand, no such authorisation is filed by Dr.P.S.Prasad to represent the appellant Company in the Second Appeal. Hence, the Second Appeal is not maintainable and the same is liable to be dismissed.

14. Insofar as I.A. No.2 of 2024 is concerned, it is submitted by the learned Senior Counsel that this Court had admitted the Second Appeal on 05.01.2024 having framed only one substantial question of law as regards to whether the suit filed by the respondent/plaintiff is barred under Article 59 of the Limitation Act, 1963. While reiterating the aforesaid submissions the learned Senior Counsel would submit that on an enquiry, it is disclosed that the appellant Company had instituted a civil suit bearing Suit No.996 of 2016 against their former agent P.S.Prasad on the file of the Bombay High Court and the said Suit ended in compromise vide judgment and decree dated 28.04.2017 and the relevant clauses of the aforesaid compromise are extracted for reference, which read as under:

- I) "As per Clause No.5(I) at Page No.8 of the memorandum of Compromise, the said P.S. Prasad has assured M/s. Cyrus Investments (P) Ltd., that he shall not henceforth exercise rights under the Powers of Attorney, either by himself or, through his nominee

under the Powers of Attorney, in respect of the scheduled III properties.

- II) The subsequent Clause No.6 (c) of the Compromise states that the Defendant No.1 (Dr. P.S. Prasad) is at liberty to use the said Powers of Attorney solely for the purpose of giving effect to the past transactions done by him in respect of the said properties more particularly mentioned in the Schedule II under intimation to the Plaintiff.
- III) In Para No.8 of the Compromise Decree, it was agreed that a Joint Power of Attorney shall be executed inter-se the principal (M/s. Cyrus Investments) and the Agent (P.S. Prasad) in respect of the properties mentioned in Schedule III and that all future acts and documents shall be executed by both the parties jointly and it is further recorded that any proceedings independently initiated by in respect of the Schedule III properties shall not be binding upon each other and shall be null and void.
- IV) Most of the suit scheduled properties are included in Schedule III of the aforesaid Compromise Decree and some of the properties are also included in Schedule II of the aforesaid Compromise.
- V) Dr. P.S. Prasad has not intimated the alleged Principal Cyrus Investments (P) Ltd., regarding the institution of the Subject Appeal nor, taken the consent of the alleged Principal for institution of the subject appeal.”

The learned Senior Counsel would further submit that Dr. P.S. Prasad had fraudulently suppressed the compromise decree in O.S. No.996 of 2016 dated 28.04.2017 passed by the Bombay High Court.

15. It is further submitted that the respondent/appellant has cleverly filed a photocopy of authorisation letter dated 03.05.2019 alleged to have been signed by one of the Directors of the appellant Company and the said letter is a mere photocopy and is not admissible in evidence as per the ratio laid down in the judgments reported in the case of **Smt J.Yashoda Vs. Smt K.Shobha Rani<sup>1</sup>, Shalimar Chemical Works Limited Vs. Surendra Oil and Dal Mills (Refineries) and others<sup>2</sup>**, wherein their Lordships held that a disputed photocopy of a document cannot be marked even subject to objection. It is further submitted that the said document is a fabricated document wherein it is *bona fide*ly suspected that the signature of the Director of the appellant Company has been cleverly scanned and printed on a document and the photocopy of the said document has been photocopied and placed before this Court on 17.02.2024 by the 1<sup>st</sup> respondent/appellant along with the counter in I.A. No.1 of 2024. It is further submitted that the said authorisation letter dated 03.05.2019 has never seen the light of the day anterior to 17.02.2024 and was never filed by the respondent/appellant either in O.S. No.843

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<sup>1</sup> AIR 2007 Supreme Court 1721

<sup>2</sup> (2010) 8 Supreme Court Cases 423

of 2016 or in A.S. No.196 of 2017 or in the present Second Appeal. Hence, the aforesaid photocopy of the authorisation letter dated 03.05.2019 is *ex-facie* an illegal, forged and fabricated document and therefore, admission of the Second Appeal by this Court on 05.01.2024 is liable to be recalled.

16. It is further submitted that this Court should also take judicial notice of the fact that the Registry of this Court is allowing itself to be manipulated for extraneous considerations, by having passed and registered the subject Second Appeal despite Dr.P.S. Prasad having failed to produce the G.P.A. Deed/Authorisation to represent the appellant M/s. Cyrus Investment Trusts Limited.

17. It is further submitted that if this Court is disinclined to follow the ratio of the Division Bench judgment of this Court reported in the case of **A.Anuradha and others Vs. Canara Bank**<sup>3</sup>, by indulgently permitting the imposter Dr. P.S. Prasad to continue to prosecute the subject Second Appeal without any authorisation from M/s. Cyrus Investments Limited then and in such an event, the subject case will be required to be referred to a larger bench as per the ratio of the judgment reported in the case of **Distt. Manater, APSRTC, Vijayawada Vs. K.Sivaji and others**<sup>4</sup>. It is further submitted that if this Court is inclined to dismiss the subject application, then and in such an event, this Court may kindly grant certificate of fitness to

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<sup>3</sup> 2006 (4) ALT 581 (DB)

<sup>4</sup> AIR 2001 Supreme Court 383

appeal to the Hon'ble Supreme Court of India as per the provisions contained in Article 134-A of the Constitution of India.

18. The learned counsel did not choose to advance any specific arguments insofar as I.A. No.3 of 2024 is concerned, which has been filed seeking to pass an order making and referring a criminal complaint for the offence committed under Section 193 and 194 IPC by having pressed into service the forged and fabricated photocopy of the authorisation letter dated 03.05.2019 in the subject appeal by the appellant.

19. On behalf of the respondent/appellant, while denying the averments made in the applications, a counter affidavit has been filed, *inter alia*, stating that the appellant Company has given him authorisation to represent the Company as per Section 291 of the Companies Act, 1956. It is further submitted that when the mother of the petitioner had written letter with the defamatory allegations he had initiated criminal action against her before the Additional Chief Metropolitan Magistrate, New Delhi in Criminal Case No.32362 of 2016 and in view of her death, the said criminal case was abated vide order dated 05.11.2022. It is further submitted that the mother of the petitioner i.e. Mrs.Hameedunnissa Begum (who was defendant No.58 in the suit in C.S. No.14 of 1958) had filed suit in O.S. No.843 of 2016 for cancellation of the sale deed dated 21.05.1966 executed by Hameedunnissa Begum against M/s. Cyrus Investments Limited,

Bombay (a Corporate entity) and since the suit was dismissed she had carried the matter in appeal to the District Court in A.S. No.196 of 2017 and he contested the A.S. No.196 of 2017 as authorised signatory of the appellant Company and no objection was taken by filing appropriate application before the first appellate Court stating that he cannot contest the said appeal suit. Since the appeal suit was decreed reversing the judgment of the trial Court, M/s. Cyrus Investments Limited (D.1) the present Second Appeal is filed. It is further submitted that the Company being legal entity can file the Second Appeal and he signed the necessary vakalat and affidavit as authorised signatory. It is further submitted that the petitioner based on Rule 32 and 33 of Civil Rules of Practice is thoroughly misconceived and as per Section 99 of CPC, the appeal has to be decided on merits but not on any technical matters. Eventually, it is submitted that he is duly authorised by M/s. Cyrus Investments Limited and therefore, the question of rejection of the Second Appeal does not arise. Under Order 7 Rule 11 CPC contemplates rejection of plaint and there is no provision in the Code enabling rejection of First Appeal or rejection of Section Appeal, which has been admitted by this Court.

20. To substantiate the case of the petitioner, the learned Senior Counsel Ms. Dr.Menaka Guruswamy, also placed reliance on the following cases:

**Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif and others<sup>5</sup>,  
Murugesam Pillai Vs. Manickavasaka Desika Gnana Sambandha  
Pandara Sannadhi and others<sup>6</sup>, State Bank of Travancore Vs.  
Kingston Computers India Private Limited<sup>7</sup>, Dale & Carrington  
Invt. (P) Ltd., and another Vs. P.K. Prathapan and others<sup>8</sup>,  
Chandra Shashi Vs. Anil Kumar Verma<sup>9</sup>, Hamza Haji Vs. State of  
Kerala and another<sup>10</sup>, A.V. Papayya Sastry and others Vs.  
Government of A.P. and others<sup>11</sup>, K.Rajagopala Rao Vs.  
P.Radhakrishna Murthy<sup>12</sup>, M/s. Bandekar Brothers Pvt. Ltd. And  
another Vs. Prasad Vassudev Keni Etc. Etc.<sup>13</sup> and Iqbal Singh  
Marwah and another Vs. Meenakshi Marwah and another<sup>14</sup>.**

21. The learned Senior Counsel appearing for the petitioner in these applications has drawn the attention of this Court to the aspect that Dr. P.S. Prasad has fraudulently suppressed the Compromise Decree in O.S. No.996 of 2016 dated 28.04.2017 passed by the Bombay High Court and the consequence of the aforesaid fraudulent suppression should be dismissal of the subject appeal itself. In this regard, the learned Senior Counsel placed reliance in the case of **Anuradha** (supra) wherein the Division Bench of this Court held that the party

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<sup>5</sup> AIR 1968 Supreme Court 1413

<sup>6</sup> AIR 1917 Privy Council 402

<sup>7</sup> (2011) 11 Supreme Court Cases 524

<sup>8</sup> (2005) 1 Supreme Court Cases 212

<sup>9</sup> (1995) 1 Supreme Court Cases 421

<sup>10</sup> AIR 2006 Supreme Court 3028

<sup>11</sup> AIR 2007 Supreme Court 1546

<sup>12</sup> 2002 (3) ALT 513 (S.B.)

<sup>13</sup> AIR 2020 Supreme Court 4247

<sup>14</sup> AIR 2005 Supreme Court 2119

seeking relief under Article 226 of the Constitution of India must approach the Court with clean hands – Party who suppresses facts and makes an attempt to mislead the Court is not entitled to be heard on merits of the case. In the said citation, the Head Note reads as under:

“CONSTITUTION OF INDIA, Article 226 – Approaching Court with unclean hands – Maintainability of writ petition – Debts Recovery Tribunal after issuing notices under Section 13 (2) and (4), passed order under Section 14 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, appointing Commissioner for taking of possession of property mortgaged to Bank for repayment of loan – L.Rs. of deceased borrower filed writ petition seeking a direction to Bank to consider their representations and give time to clear the outstanding dues – Petitioners not approached court with clean hands – They omitted to place on record copies of notices issued by Bank under Section 13 (2) and (4), order passed by Tribunal dismissing their appeal and order passed under Section 14 appointing Commissioner – They deliberately omitted to place the relevant documents before Court – Withholding of documents having direct bearing on decision of writ petition amounts to misleading Court to get the relief sought – Petitioners seeking to restrain Commissioner from taking possession of property – Commissioner not made a party to writ petition – Nor did they challenge the order of Tribunal – Where petitioners approach court with unclean hands suppressing material facts, writ petition cannot be entertained – Writ petition dismissed without going into merits of the case.”



22. The learned Senior Counsel in these applications has also drawn the attention of this Court to the aspect that the order of admission of the Second Appeal dated 05.01.2024 has been obtained by the appellant in the Second Appeal fraudulently and in such an event, this Court is sufficiently empowered to recall the order dated 05.01.2024 and in this regard the learned Senior Counsel placed reliance on the judgments reported in the case of **Hamza Haji** (supra) and **A.V. Papayya Sastry** (supra). It is further submitted that insofar as the facts regarding the alleged authorization are within the exclusive knowledge of Dr. P.S. Prasad himself, the burden of producing sterling evidence regarding his authorization is cast upon the said Dr.P.S. Prasad himself as per the provisions contained in Section 106 of the Indian Evidence Act, 1872 and as per the ratio laid down in the judgment reported in the case of **Murugesam Pillai** (supra) wherein it is held as under:

“A practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of proof, and failing accordingly to furnish to the Courts the best material for its decision. With regard to third parties, this may be right enough : they have no responsibility for the conduct of the suit ; but with regard to the parties to the suit it is, in their Lordship’s opinion, an inversion of sound practice for these desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession which would throw light upon the proposition.”

While placing reliance on the said judgment, the learned Senior Counsel would submit that it is a fit case for this Court to put the said Dr.P.S. Prasad to strict proof regarding his authorization to represent M/s. Cyrus Investments (P) Limited as the G.P.A. holder of the later for institution of the subject appeal.

23. The learned Senior Counsel in these applications has further drawn the attention of this Court to the aspect that the appellant in the Second Appeal has cleverly filed a photocopy of the alleged authorization letter dated 03.05.2019 alleged to have been signed by one of the Directors of M/s. Cyrus Investments Limited and the said letter is a mere photocopy and is not admissible in evidence as per the ratio laid down in the judgments reported in the cases of **Smt J.Yashoda** (supra) and **Shalimar Chemical Works Limited** (supra) wherein their Lordships held that a disputed photocopy of a document cannot be marked even subject to objection. The learned Senior Counsel would further submit that in the case on hand, the said document is a fabricated document wherein it is bona fide suspected that the signature of the Director of M/s. Cyrus Investments Limited has been cleverly scanned and printed on a document and the photocopy of the said document has been photocopied and placed before this Court on 17.02.2014 by the appellant in the Section Appeal along with the counter in I.A. No.1 of 2024.

24. The learned Senior Counsel in these applications referring the judgment reported in the case of **Chandra Shashi** (supra) wherein their Lordships held that if a person files forged and fabricated documents into the Court he should be put behind Iron Bars for contempt of the Court.

25. The learned Senior Counsel **Mr. K.G. Raghavan** appearing for the respondent No.1 in these applications, who is the appellant in the Second Appeal, while substantiating his case and reiterating the counter averments would draw the attention of this Court to the consent terms entered into between the Cyrus Investments Private Limited and Dr. P.S. Prasad. Paras 5 and 8 of the said consent terms are extracted hereunder:

“5. In the year 2014, Plaintiff issued a notice dated 19<sup>th</sup> March 2014 terminating the said Powers of Attorney without giving any reasonable / fair opportunity to Defendant No.1 to clarify and explain all the ground realities and facts, which resulted in filing of the present Suit. Defendant No.1 filed an Application (being Application No.356 of 2014) before the Hon’ble High Court at Hyderabad, for restraining Plaintiff and its directors, officers from: (i) interfering with the possession of the suit properties by Defendant No.1, (ii) giving effect to termination of the Powers of Attorney, (iii) changing the attorneys appointed by Defendant No.1 in various litigations and (iv) declare that the Powers of Attorney issued to Defendant No.1 are not capable of being rescinded

or cancelled and any such attempt by Plaintiff to be termed illegal, declared null and void. By an Order dated 7<sup>th</sup> April 2014, the High Court at Hyderabad passed an ex-parte ad-interim Order thereby granting reliefs in terms of the above prayers and by which Plaintiff was restrained from giving effect to the termination notice dated 19<sup>th</sup> March 2014 as well as interfering with the possession of the Suit properties. Plaintiff thereafter filed the present Suit seeking various reliefs including for a declaration that the termination notice is valid, subsisting and binding. Plaintiff filed its say in the said Application No.356 of 2014 in the said Suit and opposed the ex-parte ad-interim order dated 7<sup>th</sup> April 2014. The High Court at Hyderabad, vide its Order dated 29<sup>th</sup> January 2016 disposed off the said Application No.356 of 2014 interalia confirming the interim order. Plaintiff filed Appeal No. OSA No.3 of 2016 and OSA M.P. Nos.348 & 349/2016 against the said order. By order dated 27<sup>th</sup> April 2016 the Division Bench dismissed both the Applications filed by Plaintiff seeking interim relief and the subject matter of OSA No.3 of 2016 is kept pending for final adjudication as to pendency of the connected proceedings of this present Suit No.643 of 2014 filed by Plaintiff in Mumbai. The Plaintiff and Defendant No.1 are now desirous of settling all the disputes and differences between themselves and have therefore agreed to enter into the present consent terms. The Parties hereby agree, confirm and declare as follows: .....

8. That a joint Power of Attorney will be executed by Plaintiff upon execution of these consent terms and order passed therein under which Plaintiff shall appoint and nominate Mr. Richard Arun Sequeira or any other signatory, as its Constituted attorney to act jointly along with Defendant No.1 (or his nominee either an individual or entity) in respect of all the properties mentioned in Schedule III. It is clarified that all future acts or documents shall be executed jointly by the parties pursuant to the joint Power of Attorney to give effect to these consent terms. Any proceedings hereinafter initiated independently by either party in respect of the properties more particularly described in Schedule III shall not be binding on each other and shall be null and void.”

26. The learned Senior Counsel would further submit that the cancellation of the document of sale deed does not apply and belongs to the subject schedule property in the suit and that the authorisation does not create any right. Further, Rules 32 and 33 of Civil Rules of Practice are irrelevant and that para 8 of the said consent terms does not apply to the schedule III properties. He would further submit that as per Doctrine of Indoor Management, that unless the Company questions on the issue of authorisation, the third party cannot come and say anything.

27. The learned Senior Counsel placed reliance on the judgment rendered in the case of **Hakam Singh Vs. State of Haryana and others**<sup>15</sup> and submitted to remand the matter to the Court below for considering and establishing the aspect of authorization and rights conferred on the appellant in the present Second Appeal in terms of the Consent Terms recorded in Suit No.643 of 2014 by the High Court of Judicature at Bombay.

**ANALYSIS AND CONCLUSION:**

28. We have considered the submissions made on both sides and have perused the record. On a bare perusal of the record, it is not in dispute that the present Second Appeal has been preferred by the appellant, M/s. Cyrus Investments Limited, against the order dated 07.12.2023 passed in A.S. No.196 of 2017 by the XI Additional Chief Judge, City Civil Court, Hyderabad, which was preferred by the appellant/plaintiff Sahebzadi Hameedunnisa Begum, died per L.R. Sahebzada Nawab Mohammed Moizuddin Khan, against the order dated 21.04.2017 passed in O.S. No.843 of 2014 by the XX Junior Civil Judge, City Civil Court, Hyderabad.

29. In the case of **Dale & Carrington Invt. (P) Ltd.**, (supra), the Hon'ble Supreme Court held at para 11 (d) as under:

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<sup>15</sup> (2008) 12 Supreme Court Cases 762

“.... An individual Director has no power to act on behalf of a company of which he is a Director unless by some resolution of the Board of Directors of the company specific power is given to him/her. Whatever decisions are taken regarding running the affairs of the company, they are taken by the Board of Directors. The Directors of companies have been variously described as agents, trustees or representatives, but one thing is certain that the Directors act on behalf of a company in a fiduciary capacity and their acts and deeds have to be exercised for the benefit of the company. They are agents of the company to the extent they have been authorized to perform certain acts on behalf of the company. In a limited sense they are also trustees for the shareholders of the company. To the extent the power of the Directors are delineated in the Memorandum and Articles of Association of the company, the Directors are bound to act accordingly. As agents of the company they must act within the scope of their authority and must disclose that they are acting on behalf of the company. The fiduciary capacity within which the Directors have to act enjoins upon them a duty to act on behalf of a company with utmost good faith, utmost care and skill and due diligence and in the interest of the company they represent. ....”

30. In the case of **State Bank of Travancore** (supra), the Hon'ble Supreme Court held at para 14 as under:

“14. In our view, the judgment under challenge is liable to be set aside because the respondent had not produced any evidence to prove that Shri Ashok K. Shukla was appointed as a Director of the Company and a resolution was passed by the Board of Directors of the

Company to file a suit against the appellant and authorized Shri Ashok K. Shukla to do so. The letter of authority issued by Shri Raj K. Shukla, who described himself as the Chief Executive Officer of the Company, was nothing but a scrap of paper because no resolution was passed by the Board of Directors delegating its powers to Shri Raj K. Shukla to authorize another person to file a suit on behalf of the Company.”

31. For better appreciation and reference, Rule 32 and 33 of Civil Rules of Practice and Order XLI Rule 27 of CPC are extracted hereunder:

**“32. Party appearing by Agent:-**

(1) When a party appears by any agent, other than an advocate, the agent shall, before making of or doing any appearance, application, or act, in or to the court, file in court the power of attorney, or written authority, thereunto authorizing him or a properly authenticated copy thereof together with an affidavit that the said authority still subsisting, or, in the case of agent carrying on a trade or business on behalf of a party, without a written authority, an affidavit stating the residence of his principal, the trade or business carried on by the agent on his behalf and principal, the trade or business carried on by the agent on his behalf and the connection of the same with the subject-matter of the suit, and that no other agent is expressly authorised to make or do such appearance, application, or act.



(2) The Judge may thereupon record in writing that the agent is permitted to appear and act on behalf of the party; and unless and until the said permission is granted, no appearance, application, or act, of the agent shall be recognized by the Court.

**33. Signing of verification by Agent:-** If any proceedings, which under any provision of law or these rules, is required to be signed or verified by a party, is signed or verified by any person on his behalf, a written authority in this behalf signed by the party shall be filed in court, together with an affidavit verifying the signature of the party, and stating the reason of his inability to sign or verify the proceedings and stating the means of knowledge or the facts set out in the proceeding of the person signing or verifying the same and that such person is a recognized agent of the party as defined by order III, Rule 2 of the Code and is duly authorized and competent so to do.”

Order XLI, Rule 27 reads as under:

**“27. Production of additional evidence in Appellate Court.—**(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if —

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the

exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

32. In the case of **Chapala Chinnabbayi vs. Naralasetti Anusuyama**<sup>16</sup> the Division Bench of this Court while answering the reference made by the learned Single Judge of this Court to answer the following questions held as under:

“1. Whether additional documents throwing light by way of subsequent events can be brought on record in a Second Appeal, and if so what is the scope and ambit and the applicability of Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure in such a case?

2. Whether the view expressed by the Division Bench of this Court in Anisetti Bhagyavathi vs. Andaluri Satyanarayana and others (1) AIR 1992 AP 304 = 1992 (1) ALT 455 can be extended to

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<sup>16</sup> 2006 (1) A.P.L.J. 123 (HC)

cases of bringing subsequent events to the notice of the High Court in Second Appeals?”

The Division Bench at para 6 held as under:

6. The legal position regarding the production of additional evidence in the appellate Court and the appellate Court permitting such additional evidence is very clear and order 41 Rule 27 C.P.C. did not impose an absolute bar on adducing additional evidence in the appellate Court and it can be received under certain circumstances as mentioned in this Rule.

The Division Bench at para 35 answered the reference as under:

35. In the light of the above discussion, we hold that the High Court may permit a party to adduce additional evidence in Second Appeal under the following circumstances:-

- 1) Adducing additional evidence is in the interest of justice;
- 2) Evidence relating to the subsequent happenings or events, which are relevant for disposal of the second Appeal.”

33. In the case on hand, the learned Senior Counsel for the petitioner in these applications is seriously disputing the authorisation of Dr.P.S. Prasad to represent the appellant Company in the Second Appeal relying upon the order 28.04.2017 passed in Suit No.643 of 2014 by the High Court of Judicature at Bombay, which has been

placed for the first time in I.A. No.2 of 2024 and the Certificate of authorisation dated 03.05.2019 has been filed in counter affidavit in I.A. No.1 of 2024 in S.A. No.533 of 2023.

34. The Supreme Court in **Hakam Singh** (supra), in paras 4 and 5 held as under:

“4. Without going into the facts in detail, these appeals can be disposed of on a very short point. It is an admitted position that an application under Order 41 Rule 27 of the Code of Civil Procedure (in short “the Code”) for acceptance of additional evidence was filed before the High Court in the aforesaid first appeals which were dismissed by the High Court by the impugned order. However, the application for acceptance of additional evidence under Order 41 Rule 27 of the Code was not considered by the High Court while disposing of the appeal.

5. That being the position, without going into the legality and propriety of the impugned order of the High Court passed in the aforesaid appeals, we set aside the same and remit back the cases to the High Court for decision of the appeals afresh on merits and in accordance with law along with the application for acceptance of additional evidence under Order 41 Rule 27 of the Code.”

35. In **Shalimar Chemical Works Limited** (supra), the Supreme Court in paragraph 17 has held as under:

“17. The Division Bench was again wrong in taking the view that in the facts of the case, the production of additional evidence was not permissible under Order 41 Rule 27. As shown above, the additional documents produced by the appellant were liable to be taken on record as provided under Order 41 Rule 27(b) in the interest of justice. But it was certainly right in holding that the way the learned Single Judge disposed of the appeal caused serious prejudice to the respondent-defendants. In the facts and circumstances of the case, therefore, the proper course for the Division Bench was to set aside the order of the learned Single Judge without disturbing it insofar as it took the originals of the certificates of registration produced by the appellant on record and to remand the matter to give opportunity to the respondent-defendants to produce evidence in rebuttal if they so desired. We, accordingly, proceed to do so.”

36. In the instant case admittedly, the application preferred under Order XLI Rule 27 of CPC has not been dealt with by the first appellate Court. The respondents have raised an objection with regard to the authority of the appellant to file the Appeal for the first time in the present Appeal. The aforesaid issues require evidence to be recorded for their determination. In view of the law laid down by the Supreme Court in **Hakam Singh** (supra) and **Shalimar Chemical Works Limited** (supra), the first appellate Court should not have proceeded to pronounce the judgment without deciding the application filed under Order XLI Rule 27 of CPC. Therefore, in the peculiar facts of the

case, though parties were initially heard on IAs, in view of the fact that the application under Order XLI Rule 27 of CPC was not decided by the first appellate Court as well as the fact that the objection in I.A.No.2 of 2024 has been raised for the first time in this Appeal, no purpose would be served by keeping this Appeal pending, the Judgment and decree dated 07.12.2023 passed in A.S.No.196 of 2017 is set aside. The respondents shall be at liberty to take all such contentions which are urged by them in I.A.Nos.1, 2 and 3 of 2024 in the present appeal as well as the ground related to filing of criminal complaint under Section 200 CrPC before the first appellate Court. The first appellate Court shall afford an opportunity to adduce evidence and the parties shall be at liberty to urge the contentions as permissible in law. The first appellate Court is directed to decide the application under Order XLI Rule 27 of CPC while deciding the appeal afresh, expeditiously.

Accordingly, in the aforesaid terms, the Second Appeal is disposed of.

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**ALOK ARADHE, CJ**

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**N.V. SHRAVAN KUMAR, J**

**Date: 01-05-2024**

Note: L.R.Copy to be marked.  
B/o.  
LSK