

(2011) 12 DEL CK 0356
In the Delhi High Court
Case No : CS (OS) No. 1077 of 2000

Surakshit Exports Private Limited and Others	APPELLANT
Vs	
M/s. GCG Transglobal Housing Project Pvt. Ltd.	RESPONDENT

Date of Decision : 20-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, Order 2 Rule 2, Order 23 Rule 1, Order 23 Rule 1(1), Order 23 Rule 1(2)
Delhi Land Reforms Act, 1954 — Section 34, 43
Transfer of Property Act, 1882 — Section 60

Citation : (2012) 188 DLT 243

Hon'ble Judges : Sanjay Kishan Kaul, J;Rajiv Shakdher, J

Bench : Division Bench

Advocate : T.K. Ganju and Mr. Aman Lekhi, with Mr. Dinesh Rastogi and Mr. Aditya Ganju, for the Appellant; A.S. Chandhiok, Sandeep Sethi and Mr. Raman Kapur with Mr. Amit Sibal, Amit Kumar, Sidharth Bawa, Sandeep Bajaj, Gurpreet S. Palwanda and Mr. Arvind Sah, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, J.

IA No. 6386/2008 (under Order 23 Rule 1 CPC) in CS (OS) No. 1077/2000

1. The prayer made by the plaintiffs seeking unconditional withdrawal of the suit filed for foreclosure of mortgage or sale and in the alternative for recovery or Rs.2,04,76,219.00 is being resisted by the defendant.

2. One Shri Shridev Sharma (for short "Mr. Sharma") is stated to be the Director/ Constituted Attorney and has controlling interests in all the plaintiff companies except plaintiff No.8. Mr. V.K. Misra (for short "Mr. Misra"), an acquaintance of Mr. Sharma is stated to have informed Mr. Sharma that he intended to initiate a luxury housing project for his son Mr. Gautam Misra for which he had identified 15 acres of land in Village Bamnauli, Tehsil Vasant Vihar, Near Brijwasan in the National Capital Territory of Delhi. It is the case of the plaintiffs that since Mr.

Misra at that time was posted as the Controller of Defence Accounts at Meerut, U.P. and held a Government position, help of Mr. Sharma was sought for purchase of the land and also for a loan of Rs.2.00 crore. Mr. Sharma is stated to have past experience in the real estate business in various capacities. To achieve this object it was decided to incorporate a new company with the father of Mr. Misra and his son being the only Directors and shareholders apart from Mr. Sharma or his nominee as shareholders in proportion to their financial involvement. Since Mr. Sharma is stated not to have been comfortable with this arrangement an alternative proposal of a loan of Rs.2.00 crore was explored with rights to sell luxury apartments to be built on the land.

3. Mr. Sharma is stated to have, thus, committed an investment of up to Rs.1.70 crore from the plaintiff companies to be repaid on or before 31.3.2000 together with interest @ 24 per cent per annum from the date of payment of the money till the date of repayment and the title deeds of the land were to remain deposited with the nominees of Mr. Sharma, as security by way of equitable mortgage, who will be advancing the money. On the repayment of the entire amount the title deeds had to be handed back. No construction is stated to have been contemplated on the land prior to the said date of 31.3.2000 and, thus, it was also agreed that the vacant physical possession of the land was to remain with Mr. Sharma on behalf of the plaintiffs till repayment of the entire amount advanced, as licensee of the defendant in whose name the property was to be acquired. The total amount of Rs.1,69,95,000.00 was paid by the plaintiffs to the defendant as per details set out in paragraph 6 of the plaint between the period July, 1999 to December, 1999. The only amount refunded is stated to be Rs.25,000.00. Sale deeds were executed by the owners in favour of the defendant. The land in question is stated to had some existing construction and in view of there being threat of encroachment, the plaintiffs are stated to have spent monies for repairing the boundary wall.

4. It is the say of the plaintiffs that the intention of the Misras turned dishonest from the last week of the month of January, 2000 as they started expressing their inability to repay the amount while simultaneously wanting the possession of the land from the plaintiffs. Since all negotiations broke down, the present suit was filed by the plaintiffs.

5. It is the say of the plaintiffs that the license granted by the defendant to exclusively use and occupy the property is not revocable till payment of dues of the plaintiffs. The title deeds are deposited with the plaintiffs. The endeavour of the defendant to send some cronies to take forcible possession of the land hastened litigation.

6. The plaintiffs say that an earlier suit No.338/2000 was filed by them against the Misras simplicitor for injunction to restrain them from forcibly dispossessing the plaintiffs from the aforesaid property till repayment of the entire dues and by an interim order dated 18.2.2000 this Court had directed the defendants to maintain the status quo with respect to the possession and the title of the

property. The original title deeds are stated to have been deposited by the plaintiffs in Suit No.338/2000.

7. The plaintiffs claim a right as a mortgagee of the property in question but an alternative prayer has also been made that in any case they are entitled to continued possession of the land till repayment. The prayer made is for recovery of Rs.2,04,76,219.00 with interest @ 24 per cent per annum and in default foreclosure of the mortgage and possession and in the alternative sale of the property to satisfy the claim with liberty to apply for a decree for the balance amount, in case sale proceeds are insufficient, under Order 34 Rule 6 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "said Code") along with prayer for costs.

8. The suit has been resisted by the defendant. Preliminary objections have been raised on the suit being barred by Order 2 Rule 2 of the said Code in view of pendency of an earlier suit apart from the plea that plaintiffs 4 to 6 are in the ownership and control of the Misra family. The defendant has denied any loan transaction or having handed over the title documents of the property towards any mortgage or having handed over physical possession as licensee or otherwise. However, a completely different story regarding the monies has been set up.

9. It is the say of the defendant that Mr. Sharma was introduced to the Misra family as a person knowledgeable in Astrology and Palmistry, who speaks fluent Sanskrit and won over the trust and friendship of the Misra family. Mr. Sharma is stated to have been a man of modest means, who held himself out as a property broker. The three companies referred to aforesaid were stated to have been incorporated by Mr. Sharma at the behest of the Misra family for setting up the grandson. There were transfer of companies which took place to the Misras on representations of Mr. Sharma and a property, being property No.L-1/7, Hauz Khas Enclave, New Delhi is stated to have been acquired by the Misras in the name of these three companies in terms of a scheme formulated by Mr. Arun Kumar Aggarwal, who was an associate with Mr. Sharma. Flats were required to be constructed on the property purchased and the prices at which they were to be sold were also agreed. It was agreed to incorporate a new company, i.e., the defendant, for the project at Hauz Khas. The payments are stated to be towards consideration for the flats to be constructed and, thus, the monies received are stated to have nothing to do with the agricultural land purchased by the defendant company. In sum and substance it is pleaded that there were two separate and distinct transactions undertaken by the defendant with the transaction for purchase of agricultural land being without any assistance or loan from the plaintiff company. The title deeds for this agricultural land are stated to have been procured by Mr. Misra but to carry out mutation in their name they were handed over to Mr. Sharma. Despite all requests the title deeds were never returned nor were the transfer of shares in the three companies carried out till the relationship fell apart.

10. The plaintiffs had filed along with the suit an application for interim relief under Order 39 Rules 1 & 2 of the said Code and while issuing summons in the suit and notice on the application on 24.5.2000, interim orders were passed directing status quo qua the agricultural land to be maintained by the parties. The defendant filed an application, being IA No.1641/2002, for deposit of sum of Rs.1,69,70,000.00 in the name of the Registrar of this Court to be kept in fixed deposit until final disposal of the suit and consequently for a direction to the Registrar to return the title deeds to the defendant/applicant and a direction to the plaintiff to hand over vacant physical possession of the property to the defendant, which came to be decided vide order dated 23.3.2004. In terms of the impugned order, the learned single Judge (as he then was) directed that the defendant should deposit a sum of Rs.1,69,95,000.00 with the Registry of this Court and for the balance amount of Rs.34,81,219.00, for recovery of which the present suit is filed, the defendant was to give security in the form of a bank guarantee within three weeks to be kept renewed from time to time till disposal of the suit. The amount of Rs.1,69,95,000.00 was permitted to be withdrawn by the plaintiff on furnishing a bank guarantee failing which the amount would be kept in a fixed deposit so that interest is earned on the same. On compliance of the directions by the defendant the title deeds which are in custody of the Court were directed to be handed over to the defendant and the plaintiffs were to also hand over possession of the property to the defendant.

11. We may note at this stage that, in the mean time, the plaintiffs filed an application for amendment of the plaint (IA No.6930/2002) which also came to be decided by the same order dated 23.3.2004. The amendment was predicated on the plea that the plaintiffs had become owners of the land by virtue of a deemed sale in terms of the rights conferred under Sections 34 & 43 of the Delhi Land Reforms Act, 1954 (hereinafter referred to as the "said Act"). Thus, declaratory reliefs in these terms were prayed. The learned single Judge, however, found that no foundation had been laid by the plaintiffs either in the plaint or in the application seeking amendment that the land in question which is the suit property is agricultural land and the provisions of the said Act would be applicable to the said agricultural land. It is also not alleged that the defendant was a Bhumidar. The learned single Judge also noticed that if it was so, the transfer made by the defendant as Bhumidar in violation of Section 34 of the said Act would be void as declared by the statute itself and, thus, no suit to enforce such a void contract could be instituted. The fact that there was no registered document of any usufructuary mortgage, which is envisaged by section 43 of the Delhi Land Reforms Act, was also taken note of. The application accordingly was rejected.

12. The appellants preferred an appeal, being FAO (OS) No.58/2004, aggrieved by the order passed on the application for deposit of amount. Another appeal FAO (OS) No.57/2004 was preferred against the order rejecting the application for amendment of the plaint on the same date.

13. Endeavours were made during the pendency of the appeals for settlement which proved fruitless as is apparent from the order sheet of the appeal files.

14. An application, being CM No.2670/2008, came to be filed in FAO (OS) No.58/2004 for withdrawal of the appeal as well as the suit and for return of the original title documents of the suit property to the plaintiffs. This application was styled as one under Order 23 Rule 1 of the said Code. It was averred in the application that the defendant herein had filed an application in the present suit for allowing them to deposit the amount of Rs.1,69,97,000.00 and for handing over title documents and possession of the suit property and it is during the course of preparation of the reply to that application it had come to the knowledge of the plaintiffs that the said property was being governed under the said Act. It is in view thereof that they had filed an application for amendment of the plaint by incorporating the plea for a declaratory relief. The plaintiffs prayed in that application that they did not wish to pursue the appeal as well as the suit without prejudice to their rights and contentions to be handed over title documents of the suit property being the four sale deeds. However, before this application could be decided another application, being CM No.8308/2008, came to be filed in the same appeal seeking liberty to withdraw the earlier application (CM No.2670/2008) which was allowed on 29.5.2008 with the result that CM No.2670/2008 was permitted to be withdrawn. We may add that the suit proceedings continued to be adjourned on account of pendency of the appeal.

15. The plaintiffs thereafter filed IA No.6836/2008 in the present suit seeking to withdraw the suit. This application was resisted by the defendant. The controversy was that the plaintiffs continued to press that they had become Bhumidars of the suit land, the same being mortgaged by the defendant to them as per the said Act while the say of the defendant was that in terms of the order dated 23.3.2004 the defendant had been permitted to deposit the mortgaged amount with leave to the plaintiff to withdraw the same against the bank guarantee. The plaintiffs refused to receive the return of the mortgaged amount in view of the plea they sought to advance of having become Bhumidars. The appeal was already pending against the order rejecting amendment of the plaint. The application was directed to await the orders of the Division Bench as per an order dated 23.1.2009. This application thereafter continued to be adjourned to await the order in appeal.

16. In the mean time, the two appeals also continued to be adjourned but finally on 14.1.2009, the appeals were admitted and set down for hearing. This postponement of both the appeals and suit proceedings were also accompanied by another fact, i.e., that the amount deposited by the defendant in Court as per order dated 23.3.2004 was withdrawn on 26.04.2004 in view of interim orders in appeals.

17. The plaintiffs thereafter filed CM No.926/2011 in FAO (OS) No.58/2004 praying that the pendency of the appeal should not come in the way of the learned single Judge in deciding IA No.6836/2008 filed in the present suit for

withdrawal of the suit. This application (CM No.926/2011) came to be decided by us on 9.8.2011 broadly noticing the history of the case. The order passed on 2.12.2010 on the present application for withdrawal of the suit noticed that a clarification was sought from the Division Bench whether the learned single Judge could proceed to decide the application under Order 23 Rule 1 of the said code which has necessitated this application. We observed in our order dated 9.8.2011 that the application listed before the learned single Judge on 21.9.2011 ought to be taken up by the learned single Judge so that we can have the benefit of that order on the application. This was so since the counsel for the plaintiffs herein (appellants in the appeal) stated that he would withdraw the appeal only if he succeeds in the application before the learned single Judge failing which he would like to press the appeal. We simultaneously passed an order on the appeal noticing the plea of the Learned Counsel for the respondent that the respondent was ready and willing to deposit the principal amount in the suit along with appropriate interest to be determined by the Court so that the property can be redeemed and the possession can be given to the respondent along with the title deeds. Learned Counsel stated that he would reserve his right to recover that amount in appropriate proceedings but he is willing to take instructions whether the respondent is willing to give up this right in an overall amicable settlement. Learned Counsel for the appellants also stated that he would obtain necessary instructions as the suit in effect stands decreed if the respondent pays the principal amount and the interest as may be determined by the Court. We, thus, noticed that there was a possibility of settlement and listed the appeals for directions on 25.8.2011. On 25.8.2011 it was stated that this dispute alone could not be settled as there was another dispute pertaining to the Hauz Khas property between the parties and some more time was sought to explore the settlement possibility. Learned Counsel for the defendant/respondent stated that if the settlement did not take place the offer of the respondent to satisfy the claim of the appellants stands and that he had already got a cheque for the principal amount and he would abide by the interest to be determined by this Court and there was no need to first pass a preliminary decree as the final decree itself can be passed for which suit file had been called for by this Court. The settlement, however, did not materialize and this was noted in our order dated 14.9.2011. The matter was posted on 19.9.2011 for hearing of two appeals.

18. On 19.9.2011, FAO (OS) No.58/2004 pertaining to the issue of deposit of amount was partly heard while a separate order was passed on FAO (OS) No.57/2004 directed against the order dated 23.3.2004 dealing with the issue of rejection of the amendment. The following order came to be passed on 19.9.2011 in that appeal:

FAO (OS) No.57/2004

The present appeal is directed against the impugned order dated 23.03.2004 dismissing the application of the appellants being IA No.6930/2002 moved under Order 6 Rule 17 r/w Section 151 of CPC.

The appellants filed a suit as mortgagee for foreclosure or sale of the mortgage and in the alternative for recovery of Rs.2,04,76,219/- , the subject matter of the suit property being 15 acres of land in Village Bamnauli, Tehsil: Vasant Vihar near Bijwasan, New Delhi. The appellants claimed that monies for purchase of this land in the name of the respondent came from the appellants and the registry was in the name of the respondent. The registered title documents were deposited with the appellants along with possession being handed over to the appellants. Over these facts, there is no dispute. However, the underlying arrangement inter se the parties is disputed. The appellants sought to amend the plaint vide the application in question and sought to set up a new plea and a different relief arising from the provisions of the Delhi Land Reforms Act, 1954 ("the said Act" for short). This amendment was predicated on Section 43 r/w Section 34 of the said Act since the appellants claimed that in case a mortgage is created with transfer of possession, the same amounts to sale. A declaration was, thus, sought that the appellants have become owners of the property in question by reason of the said provisions.

Learned senior counsel for the appellants fairly states that it may not be possible to amend the plaint by changing the complete nature of relief, more so, when the case of the appellants is that the competent court where such relief can be granted is the Revenue Court.

Learned Counsel for the appellants states that, in fact, subsequently appellants have moved an application seeking withdrawal of the suit unconditionally so that the appellants can take recourse to the appropriate legal proceedings. Learned Counsel for the appellants, thus, states that the appellants would only be pressing the relief of unconditional withdrawal of the suit and in view thereof, there can be no question of amendment of the suit.

It is in the aforesaid circumstances that learned senior counsel for the appellants seeks to withdraw the appeal.

Dismissed as withdrawn leaving the parties to bear their own costs.

19. The result of the aforesaid was that the plaintiffs found no useful purpose in pursuing the issue of amendment of the plaint as it was their case that the matter was governed by the said Act for which they would like to proceed to the Revenue Court and that they have already moved an application for unconditional withdrawal of the suit.

20. On 20.9.2011, when we were proceeding to hear the remaining argument in FAO (OS) No.58/2004, Learned Counsel for the plaintiffs (appellants in the appeal) stated that the appeal would become infructuous if IA No.6836/2008 in the suit filed under Order 23 Rule 1 of the said Code is decided in favour of the appellants/plaintiffs. This application was pending consideration to await the decision of the Division Bench in the appeal. Learned Counsels for the parties made a joint request that instead of having a multiple tier of scrutiny the suit file may itself be called before this Court and IA No.6836/2008 be decided by the

Division Bench so that the parties do not have to go through another round of litigation. The suit record was already called before this Court and, thus, with the consent of the parties, we proceeded to hear the arguments on the issue of the prayer made by the plaintiffs/appellants in IA No.6836/2008. It is this application, which we are to decide.

21. In the aforesaid factual matrix, the submissions of the Learned Counsels were confined to the issue whether the plaintiffs can be permitted to withdraw the suit unconditionally under Order 23 Rule 1 of the said Code. Learned senior counsel for the plaintiffs/appellants contended that such a right to withdraw the suit is an absolute right as held by various pronouncements.

22. The first judgement referred to in this behalf is of Hulas Rai Baij Nath Vs. Firm K.B. Bass and Co., . A suit was filed for rendition of accounts by the principal. Issues were framed and even part evidence recorded but no preliminary decree had been passed. It is at that stage that an application under Order 23 Rule 1 of the said Code came to be filed for withdrawal of the suit. It was held by the Supreme Court that the language of Order 23 Rule 1, sub-Rule (1), gives an unqualified right to a plaintiff to withdraw a suit and, if no permission to file a fresh suit is sought under sub-Rule (2) of that Rule, the plaintiff becomes liable for such costs as the Court may award and becomes precluded from instituting any fresh suit in respect of that subject matter under sub-Rule (3) of that Rule. It was observed that there was no provision in the said Code which requires the Court to refuse permission to withdraw the suit in such circumstances and to compel the plaintiff to proceed with it. Different considerations would arise where a set-off may have been claimed under Order 8, or a counter claim may have been filed. The plea raised for contesting such an application has been noticed in the judgement as under:

1...The main ground taken for contesting this application for withdrawal was that, in a suit of this nature, it is permissible to pass a decree in favour of the defendant if, on accounting something is found due to him against the plaintiff and it followed that, if the defendant paid court fee on the amount which was found due to him from the plaintiff, his position became that of a plaintiff himself and he became entitled to have the accounting done and to obtain a decree. It was urged that the plaintiff's game in withdrawing the suit after protracted duration and considerable expenditure on the part of the defendant was to defeat this right of the defendant.

As noticed above, this plea was negated.

23. In R. Rathinavel Chettiar and Another Vs. V. Sivaraman and Others, , a suit after passing of the decree was sought to be withdrawn by the plaintiffs at the appellate stage. The decree was passed in favour of the plaintiffs, the suit property was sold by the plaintiffs to a third party but the defendants preferred the appeal against the decree. The prayer of the plaintiffs was for leave to withdraw the suit at the appellate stage on the ground of having compromised

the dispute with the original defendants was rejected as that would result in nullifying the substantive right to the property acquired by the third party transferee. It was observed in paragraphs 11 & 12 as under:

11. Once the matter in controversy has received judicial determination, the suit results in a decree either in favour of the plaintiff or in favour of the defendant.

12. What is essential is that the matter must have been finally decided so that it becomes conclusive as between the parties to the suit in respect of the subject-matter of the suit with reference to which relief is sought. It is at this stage that the rights of the parties are crystallised and unless the decree is reversed, recalled, modified or set aside, the parties cannot be divested of their rights under the decree. Now, the decree can be recalled, reversed or set aside either by the court which had passed it as in review, or by the appellate or revisional court. Since withdrawal of suit at the appellate stage, if allowed, would have the effect of destroying or nullifying the decree affecting thereby rights of the parties which came to be vested under the decree, it cannot be allowed as a matter of course but has to be allowed rarely only when a strong case is made out. It is for this reason that the proceedings either in appeal or in revision have to be allowed to have a full trial on merits.

24. It is in view of the aforesaid, learned senior counsel for the plaintiffs/appellants contended that in the present case there has been no final adjudication of the rights of the parties which could arise only on passing of a decree and no interim direction would amount to a decree being passed. Thus, the appellants were well within their right to withdraw the suit.

25. In *Smt. Abha Arora Vs. Angela Sharma and Another*, , decided by one of us (Sanjay Kishan Kaul, J.), the principle of abandonment of a suit in the context of Order 23 Rule 1 of the said Code was examined and since the defendant was not claiming any right in the property except right of residence with no right of counter claim the suit was permitted to be dismissed as withdrawn.

26. The next case referred to was of *K.S. Bhoopathy & Ors. Vs. Kokila & Ors.* AIR 2000 SC 2132. It was observed in paragraph 11 as under:

11. The law as to withdrawal of suits as enacted in the present Rule may be generally stated in two parts:

(a) a plaintiff can abandon a suit or abandon a part of his claim as a matter of right without the permission of the court; in that case he will be precluded from suing again on the same cause of action. Neither can the plaintiff abandon a suit or a part of the suit reserving to himself a right to bring a fresh suit, nor can the defendant insist that the plaintiff must be compelled to proceed with the suit; and

(b) a plaintiff may, in the circumstances mentioned in sub-rule (3), be permitted by the court to withdraw from a suit with liberty to sue afresh on the same cause of action. Such liberty being granted by the court enables the plaintiff to avoid the bar in Order II Rule 2 and Section 11 CPC.

27. Lastly, a reference was also made to Shipping Corporation of India Ltd. Vs. Machado Brothers & Ors. 110 (2004) DLT 649 (SC), which has dealt with the inherent powers of the court to make orders to prevent abuse of process of Court. The Courts below were held to have erred in just keeping the interlocutory orders alive which amounted to putting a cart before a dead horse. It was observed that interlocutory orders are made in aid of final orders and not vice versa and no interlocutory order will survive after original proceeding comes to an end. It was held that the ground that the dismissal of the suit would prejudice the respondent on ground of interlocutory order getting dissolved was unsustainable.

28. The plea of learned senior counsel for the plaintiffs/appellants, thus, is that similarly the plaintiffs cannot be compelled to continue the suit merely because the interim orders already granted aided the defendant.

29. Learned senior counsel for the defendant strongly opposed the plea of withdrawal of the suit. It was his say that after the defendant had filed the application, IA No.1641/2002, offering to deposit the amount and seeking return of possession and orders were reserved on the same on 20.2.2004, the application seeking amendment of the plaint was moved belatedly six (6) months thenceforth. We may, however, note that the said application on which relief was granted to the defendant only prayed for deposit of Rs.1,69,70,000.00 by the defendant to be placed in fixed deposit and against that deposit for return of title documents as well as handing over of physical possession. The order was, however, passed on that application on 23.3.2004. Learned Counsel submitted that defendant not only deposited the sum of Rs.1,69,95,000.00 but also a sum of Rs.34,81,219.00, which as per the order dated 23.3.2004 was to be actually secured by way of bank guarantee. However, since the operation of the order dated 23.3.2004 was stayed on 26.4.2004 in FAO (OS) No.57/2004, the amount so deposited would have not achieved the objective and was permitted to be withdrawn by the defendant with no objection from the plaintiffs. Learned Counsel also emphasized that even on 9.8.2011 (as noticed above) he had volunteered on behalf of the defendant to pay the suit amount along with appropriate interest to be determined by the Court for redemption of the mortgage and for possession and for return of title documents subject to the right of the defendant to recover the amount in appropriate legal proceedings and the cheque for the principal amount was also brought to the Court on 25.8.2011.

30. In a nutshell the submission of the Learned Counsel for the defendant is that the defendant had applied for redemption way back on 14.2.2002 by moving IA No.1641/2002 and, thus, the suit can be decreed in terms of Order 12 Rule 6 of the said Code. In so far as the issue of interest is concerned, it was pleaded that the plaintiffs had abandoned their right, if any, to have interest after 26.4.2004 by conveying their no objection to the withdrawal of the amount deposited by the defendant in pursuance of the order dated 23.3.2004.

31. Learned Counsel submitted that in a suit for foreclosure or sale, the only remedy available to the defendant is to redeem the mortgage by payment of the loan amount to which the plaintiffs cannot have any objection and once the defendant has approached the Court and offered to redeem the mortgage, the claim in the suit stands satisfied and the decree must follow forthwith. The order dated 23.3.2004 assailed in FAO (OS) No.58/2004 is, thus, required to be appreciated not in the context of an interim order but would amount to really a decree and nothing survives for adjudication as the Court may pass an order under Order 34 Rule 2 (1) of the said Code as a final decree directing delivery of possession and title to the defendant.

32. Learned Counsel sought to support the order passed on 23.3.2004 by relying upon the judgements of Liberty Sales Services Vs. M/s. Jakki Mull & Sons 1997 (1) RCR 555 and in FAO (OS) No.216/1998 titled Mrs. Adarsh Chugh Vs. Mrs. Jaya Peralata decided on 13.10.1998, where a Division Bench had held that in case the relief claimed by the defendant against the plaintiffs is arising out of the same cause of action on which the plaintiffs had filed a suit and the relief is also incidental to the refusal of the plaintiffs' relief then in such a case the prayers made by the defendant are liable to be allowed. These judgements are stated to have received the imprimatur of the Supreme Court.

33. We may, however, note that in Liberty Sales Services case (supra) the Division Bench was concerned with an order passed under Order 39 Rules 1 & 2 of the said Code and the defendant was held entitled to move an application for injunction without filing a counter claim. Mrs. Adarsh Chugh case (supra) is also in reference to proceedings at the interlocutory stage.

34. Learned Counsel has emphasized that in view of observations in Sneh Gupta Vs. Devi Sarup and Others, , the right to withdraw a suit under Order 23 Rule 1 of the said Code is unqualified if no right has been vested in any other party. It is pleaded that in the present case a vested right had accrued in favour of the respondent/defendant and against the appellants/plaintiffs as a consequence of the impugned order dated 23.3.2004 passed by the learned single Judge.

35. Learned Counsel also contended that this Court is not devoid of jurisdiction to do substantive justice inter se the parties and should adopt a justice oriented approach keeping in mind the observations made by the Supreme Court in Kewal Chand Mimani (d) by Lrs. Vs. S.K. Sen and Others, and Om Parkash Kuthiala Vs. Dr. Sharad Rohtagi, .

36. The case canvassed on behalf of the plaintiffs/appellants was that a suit for redemption of mortgage stands on a different footing. The right of a mortgagor and mortgagee has been discussed in Achaldas Durgaji Oswal (Dead) through Lrs. Vs. Ramvilas Gangabisan Heda (Dead) through Lrs. and Others, . The aspects discussed in the relevant paragraphs are reproduced herein under :

9. Mortgagor, despite having mortgaged the property might still deal with it in any way consistent with the rights of the mortgagee. He has an equitable right to

redeem the property after the day fixed for payment has gone by but his right or equity of redemption is no longer strictly an equitable estate or interest although it is still in the nature of an equitable interest. (See Halsbury's Laws of England, 4th Edn., Vol. 32, p. 264.)

10. The right of the mortgagor, it is now well settled, to deal with the mortgaged property as well as the limitation to which it is subject depends upon the nature of this ownership which is not absolute, but qualified by reason of the right of the mortgagee to recover his money out of the proceedings. The right to redeem the mortgage is a very valuable right possessed by the mortgagor. Such a right to redeem the mortgage can be exercised before it is foreclosed or the estate is sold. The equitable right of redemption is dependent on the mortgagor giving the mortgagee reasonable notice of his intention to redeem and on his fully performing his obligations under the mortgage.

11. The doctrine of redemption of mortgaged property was not recognised by the Indian courts as the essence of the doctrine of equity of redemption was unknown to the ancient law of India. The Privy Council in *Thumbasawmy Mudelly v. Mohd. Hossain Rowthen* called upon the legislature to make a suitable amendment which was given a statutory recognition by reason of Section 60 of the Transfer of Property Act which reads thus:

60. Right of mortgagor to redeem.—At any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to retransfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgement in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by act of the parties or by decree of a court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

12. A right of redemption, thus, was statutorily recognized as a right of a mortgagor as an incident of mortgage which subsists so long as the mortgage itself subsists. The proviso appended to Section 60, as noticed hereinbefore,

however, confines the said right so long as the same is not extinguished by an act of the parties or by a decree of court.

13. In the Law of Mortgage by Dr Rashbehary Ghose at pp. 231-32 under the heading "Once a mortgage, always a mortgage", it is noticed:

In 1681 Lord Nottingham in the leading case of *Howard v. Harris* firmly laid down the principle: "Once a mortgage, always a mortgage". This is a doctrine to protect the mortgagor's right of redemption: it renders all agreements in a mortgage for forfeiture of the right to redeem and also encumbrances of or dealings with the property by the mortgagee as against a mortgagor coming to redeem. In 1902 the well-known maxim, "once a mortgage, always a mortgage", was supplemented by the words "and nothing but a mortgage" added by Lord Davey in the leading case of *Noakes v. Rice* in which the maxim was explained to mean "that a mortgage cannot be made irredeemable and a provision to that effect is void". The maxim has been supplemented in the Indian context by the words "and therefore always redeemable", added by Justice Sarkar of the Supreme Court in the case of *Seth Ganga Dhar v. Shankar Lal*.

It is thus evident that the very conception of mortgage involves three principles. First, there is the maxim: "once a mortgage, always a mortgage". That is to say, a mortgage is always redeemable and if a contrary provision is made, it is invalid. And this is an exception to the aphorism, *modus et convention vincunt legem* (custom and agreement overrule law). Secondly, the mortgagee cannot reserve to himself any collateral advantage outside the mortgage agreement. Thirdly, as a corollary from the first another principle may be deduced, namely, "once a mortgage, always a mortgage, and nothing but a mortgage". In other words, any stipulation which prevents a mortgagor from getting back the property mortgaged is void. That is, a mortgage is always redeemable.

The maxim "once a mortgage always a mortgage" may be said to be a logical corollary from the doctrine, which is the very foundation of the law of mortgages, that time is not of the essence of the contract in such transactions; for the protection which the law throws around the mortgagor might be rendered wholly illusory, if the right to redeem could be limited by contract between the parties. Right to redeem is an incident of a subsisting mortgage and is inseparable from it so that the right is coextensive with the mortgage itself. The right subsists until it is appropriately and effectively extinguished either by the acts of the parties concerned or by a proper decree of the competent court.

37. Learned senior counsel for the defendant/respondent, thus, emphasized that the right to redeem the mortgage is a valuable right possessed by the mortgagor and can be exercised before it is foreclosed or estate is sold. Such a right of redemption is stated to subsist so long as the mortgage itself subsists since once a mortgage, always a mortgage. Such rights subsist until it is appropriately extinguished either by acts of parties or a decree of a competent court.

38. The plea that the consent given by the plaintiffs to the defendant

withdrawing the amount post deposit would amount to acts in further of redemption, is sought to be supported by reliance on K. Vlasini & Ors. Vs. Edwin Periera & Ors. (2008) 14 SCC 349. In the facts of the case, the redemption amount was paid and the mortgagor put in possession by the order of the High Court. There was some delay in depositing the redemption amount but finally the entire sum was deposited and even the revalued amount was also deposited. The mortgagee having accepted the redemption amount and the revalued amount and the right to redeem having been enforced it was held that it should not be interfered with.

39. Learned Counsel submitted that the right of redemption of a mortgagor was not extinguished under a mortgage giving a right to redeem without the intervention of the court. Such right was held not extinguishable on mere execution of such mortgage and the mere putting the property to auction would not extinguish the right unless the sale was completed.

40. Learned Counsel also relied upon the case of R. Rathinavel Chettiar & Anr. case (supra) to canvass that where the vested or substantive rights of the parties to the litigation would be adversely effected, the suit cannot be permitted to be withdrawn even unconditionally.

41. We have considered the elaborate arguments by both the Learned Counsels for the parties and the peculiar position faced where the initiator of the litigation wants to walk out of it by withdrawing the suit unconditionally while such a plea is being opposed by the opposite party. There is no doubt that the motive behind the plaintiffs seeking to withdraw the suit is to retain possession of the land and enforce their right as a Bhumidar by initiating appropriate proceedings before the Revenue Court since the jurisdiction of the Civil Court is barred under the said Act. Whether the plaintiffs are entitled to institute such a proceeding and whether they can at all succeed in the same is a moot point. We are, however, not required to comment on the same since so far as the present proceedings are concerned, the plaintiffs seek to withdraw the suit unconditionally. If the plaintiffs institute proceedings in the Revenue Court, all defences in law would be available to the defendant. No specific liberty has been claimed in this behalf in the present proceedings as the plaintiffs appeared to be advised that they do not require any such liberty. Thus, it is a case of seeking to unconditionally withdraw the suit, which of course, would result in a situation where the prolonged litigation would ensue causing the defendant to incur the costs both in the suit and the appeal proceedings. The question, however, remains is whether there is anything in law which prohibits the plaintiffs from doing so? The legal position is clearly settled that there is per se no bar to the plaintiffs withdrawing the suit under order 23 Rule 1 of the said Code and the defendant can only seek compensation of costs. We reproduce the relevant provision as under:

XXIII - WITHDRAWAL AND ADJUSTMENT OF SUITS

1. Withdrawal of suit or abandonment of part of claim

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

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

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

(3) Where the Court is satisfied

a. that a suit must fail by reason of some formal defect, or

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

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

(4) Where the plaintiff

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

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

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

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

42. The principles governing such withdrawal of suit have been elaborately discussed in the various judgements referred to aforesaid. It has been held in *M/s. Hulas Rai Baij Nath* case (supra) that the language of Order 23 Rule 1 of the said Code gives an unqualified right to a plaintiff to withdraw from a suit and, if no permission to file a fresh suit is sought under sub-Rule (2) of that Rule, the defendants become entitled to such costs as the court may award. It has been observed that there is no provision of the said Code which requires the Court to refuse permission to withdraw the suit and to compel the plaintiffs to proceed with it. The exception to this is where a set off may have been claimed under Order 8 of the said Code or a counter claim may have been filed.

43. We may look at this aspect from another point of view. If the plaintiffs choose not to appear, the only option for the Court would be to dismiss the suit for non-prosecution. The plaintiffs cannot be worse off by reason of appearing before the Court and seeking to withdraw the suit. The rights of the parties are crystallized only when a decree is passed and the same becomes conclusive between the parties. It is in that context that in *R. Rathinavel Chettiar & Anr. case (supra)* where a decree had been passed and rights created in favour of a third party based on a decree passed in favour of the plaintiffs, the endeavour of the plaintiffs and the defendants jointly to seek withdrawal of the suit unconditionally at the appellate stage was frowned upon as it would affect the rights of third parties pursuant to the decree. This is not so in the present case as no decree has been passed.

44. If we scrutinize the facts of the present case closely we find that the proceedings before the appellate court arise from the interim orders passed in the suit. An *ex parte* injunction was granted in favour of the plaintiffs which continued. In terms of the *ex parte* order there was status quo and, thus, the plaintiffs continued to enjoy the possession of the property which was with them. An interesting aspect is that the title deeds were deposited not in this suit but in the suit filed earlier for injunction by the plaintiffs. The defendant filed IA No.1641/2002 but the prayer in the application was not that the defendant sought to pay the amount claimed for by the plaintiffs with interest and costs but that as an interim measure they were willing to deposit a certain part of the amount stated to be the principal amount and that possession and title documents should be returned to the defendant with the trial proceeding further. It was at the stage of granting order on this application on 23.3.2004, that the Court not only directed the amount offered by the defendant to be so deposited but also sought bank guarantee for the balance amount. It is another matter that instead of bank guarantee the balance amount is also stated to have been deposited. The plaintiffs were granted liberty only to withdraw the principal amount and that too on furnishing of the bank guarantee. It was, thus, clearly not a case of unequivocal redemption on behalf of the defendant but a prayer for interim relief pending trial of the suit.

45. It is undisputed that the defendant/respondent neither filed a suit for redemption nor a counter claim in this behalf nor did they unconditionally offer to pay the amounts in the suit by filing IA No.1641/2002. Even at the appellate stage on 9.8.2011, the offer made was that the principal amount would be paid along with interest to be determined by this Court with leave to file separate legal proceedings for recovery of that amount. This was, of course, much after the filing of the application by the plaintiffs to withdraw the suit.

46. We are unable to accept the plea that the filing of IA No.1641/2002 by the defendant amounts to an unconditional offer to pay the amount and redeem the mortgage or that it amounts to a counter claim or that the order passed on that application would amount to a decree. Such a plea is only stated to be rejected.

The defendant, thus, cannot bring its case within the parameters of a counter claim filed. In fact, in *Abha Arora case (supra)*, it was noticed that if a plaintiff unconditionally withdraws and abandons a suit ordinarily there is nothing in the said Code which requires the court to refuse permission for the same. The plaintiffs in the present case are not even seeking any relief to file a fresh suit and thus take all risks which arise therefrom.

47. We must distinguish between the orders passed in the decree and interlocutory orders which operate during the pendency of the suit. Thus, the judgements referred to by Learned Counsel for the defendant in respect of interlocutory reliefs in *Liberty Sales Services case (supra)* and *Mrs. Adarsh Chugh case (supra)* would have no application. This is not a case where any adjudication on merits in favour of the defendant by the trial court are being nullified by such withdrawal as has been held in *The Executive Officer, Arthanareswarar Temple Vs. R. Sathyamoorthy and Others*, . The plea is based on a misconception that the order passed on the interlocutory application filed by the defendant being IA No.1641/2002 amounts to a final order in the suit. This is not so. We may usefully refer to the observations in *M/s. Hulas Rai Baij Nath case (supra)* where the defendant pleaded that in the suit for accounts something may have been found due to the defendant and the withdrawal of the suit after protracted duration would defeat that right apart from the element of costs. It is in that context it was observed that the remedy was only by way of costs.

48. Interim orders operate only during the pendency of the suit. Withdrawal of a suit naturally dissolves interim orders. Thus, if a party while obtaining interim orders has altered the position of the subject matter to its benefit and then seeks to preserve that status by withdrawing the suit the Court can consider the issue under the parameters of restitution. This is not so as in the present case the title deeds were with the plaintiffs though deposited in an earlier suit, possession is with the plaintiffs and they were seeking to recover the amounts alleged to have been due from the defendant. If withdrawal of suit dissolves interim orders, so be it. A contrary position would be unsustainable in view of observation in *Shipping Corporation of India Ltd. case (supra)*.

49. There can be no quibble with the general principles defining the rights of a mortgagor and mortgagee, which have been succinctly set out in *Achal Das Durgaji Oswal (Dead) Through Lrs. Case (supra)*. It is not as if the rights of redemption of the defendant are being abolished but the respondent not having claimed any such right nor having filed a counter claim in the suit of the plaintiffs nor having unconditionally offered that amount, cannot be permitted to resist the plea of the plaintiffs for withdrawal of the suit unconditionally leaving it for the defendant to pursue its legal remedy for redemption in accordance with law, if they are so advised. The issue really is whether such a right of redemption can now be granted to the defendant in a suit filed by the plaintiffs which they seek to unconditionally withdraw, the defendant never having pleaded or offered the amount claimed under the suit unconditionally.

50. In our considered view, the answer to the same would be in the negative.

51. We may also examine the controversy from another point of view, i.e., the respective pleadings of the parties qua the factual matrix. The defendants in their written statement have categorically disputed creation of a mortgage, the nature of transaction and denied the liability to pay the amount. It is only with the objective of obtaining possession of the title documents pending trial that IA No.1641/2002 was filed. All interim orders would, thus, naturally dissolve on the suit being withdrawn.

52. We may also usefully refer to the judgement of the learned single Judge of the Kerala High Court in Poulose and Another Vs. State Bank of Travancore, . A mortgage suit had been filed and the defendant sought permission to deposit the amount under protest with liberty to continue its contentions regarding the correctness of the amount due. It was held that such a deposit was not unconditional and the offer of deposit could not be considered to be an unconditional offer or tender of amount entitling the mortgagee to receive the same and release the mortgaged security. The defendant was agreeable to withdrawal of the amount by the mortgagee only after the claim was adjudicated by the decree.

53. The facts of the present case are somewhat similar though parties have continued to change their pleas during the pending proceedings. The defendant categorically denied the transaction as a mortgagor. The defendant, in fact, denied that the suit property at all was mortgaged and claimed that the amounts advanced were transactions qua another property at Hauz Khas. The circumstances in which the title documents came into the possession of the plaintiffs and the possession of the property to the plaintiffs were set out in a different factual context by the defendant, i.e., documents were given in protest to Mr. Sharma for purposes of mutation whereas the possession is denied being given to the plaintiffs altogether only a right to ingress and egress was given. Thus, the complete transaction of the plaintiffs was disputed. At the cost of repetition we may say the objective of IA No.1641/2002 was only to obtain interim orders for possession and title documents pending the suit and this is more than apparent by the stand taken by the defendant/respondent before us at the appellate stage on 9.8.2011. Even on 25.8.2011, Learned Counsel for the defendant/respondent stated that if the settlement does not take place its offer to satisfy the claim of the plaintiffs/appellants stand and that he had already got a cheque for the principal amount and would abide by the interest determined by this Court and, thus, there is no need to first pass a preliminary decree as the final decree itself can be passed for which the suit file had already been called for by this Court. Once again, we may reiterate that this could also, thus, not be treated as an unconditional offer to satisfy the claim in the suit in view of what we have recorded aforesaid.

54. A broad overview of the judgments cited by the appellants would clearly suggest that a plaintiff has an unqualified right to withdraw a suit under the

provisions of Order 23 Rule 1 read with Sub-rule (1) of CPC, if no liberty is sought to file a fresh suit under sub-rule (2) of that Rule of the CPC. In fact the plaintiff is precluded from instituting a fresh suit in respect of the very same subject matter under sub-rule (3) of Rule 1 of Order 23. The exceptions to this unqualified right of the plaintiff appear to arise in cases where the defendant sets up a set off, or a counter claim or in a suit involving dissolution of partnership firms or in a suit for accounts or even in a case where in a suit for partition a court has passed a preliminary decree declaring and defining shares of parties in the suit [See M/s Hulas Rai Baij Nath (supra)]. The underlying feature of all such exceptions to the general right of the plaintiff to withdraw a suit without seeking liberty to file a fresh suit on the same subject matter, to our minds springs from the principle that a vested right enures in the defendant either at the very inception or during the pendency of the action in court.

55. In the case of mortgage suits undoubtedly there is a right vested in the mortgagor to redeem the mortgaged property at any time prior to such right being foreclosed by law. This right, prior to its legislative recognition, stems from the principle "once a mortgage always a mortgage" [See Noakes vs Rice 1902 AC 24 (HL)]. Section 60 of the Transfer of Property Act, 1882 recognizes this principle of law. As a matter of fact the courts have leaned in the favour of mortgagor to the extent of permitting a mortgagor to redeem a mortgaged property even after sale has taken place if it is not a conditional or an anomalous mortgage. The stage at which such a right is barred is set forth in the proviso to Section 60 of the Transfer of Property Act. The two exceptions to the right to redeem as provided in the said proviso are: (i) by a decree of a court; or (ii) by act of parties. It is no longer res integra that the decree referred to in the proviso to Section 60 is a final decree in a suit for fore-closure, as provided in Rule 3(2) of Order 34 of the CPC, and similarly in a suit for redemption a final decree as provided in Rule 8(3)(a) of Order 34 of CPC. The said provisions make it clear that the right to redeem extinguishes only by way of a formal declaration to that effect by the court. [See Rule 3(2) and Rule 8(3)(a) of Order 34 which apply to a suit for fore-closure and a suit for redemption by conditional sale or anomalous mortgage respectively]. [see Mhadagonda Ramgonda Patil and Others Vs. Shripal Balwant Rainade and Others,].

56. No doubt in the present case the mortgagor would by law have a vested right to redeem the mortgage, the only difficulty is that there has been no display of unconditional intent to seek redemption of mortgage. The intent can only be deciphered by a court by examining the pleadings on record and perhaps in certain cases the record of the case as is reflected in the orders passed by a court from time to time. In the instant case, both from the pleadings on record and also from a perusal of the orders, we have not been able to gather such an intent. As regards the latter part, Mr Chandhiok has sought to place reliance on the following portion of the order passed by us on 25.08.2011:

Learned Counsel for the respondent states that if the settlement does not take

place, its offer to satisfy the claim of the appellant stand and that he has already got a cheque for the principal amount and he would abide by the interest to be determined by this Court and thus there is no need to first pass a preliminary decree as the final decree itself can be passed for which the suit file has already been called for by this Court. Learned Counsel further states that the appellant should keep available its accounts with respect to earnings from the land which may be relevant for determining the quantum of interest.

57. On a bare perusal of what has been recorded by us on 25.08.2011, it is evident that there is in the submissions made on that particular date a pious hope that the mortgage would be redeemed. The submission that a cheque is ready for the principal amount and that interest will be deposited is not what is the mandate of Section 60 of the T.P. Act. If the mortgagor was certain that it wanted to redeem the mortgaged property, it ought to have moved a specific application in that regard averring therein, quite clearly, that the suit be decreed in terms of the relief sought for in the plaint. If such an application had been made, perhaps there would have been difficulty in permitting withdrawal of suit by the appellant. To that extent the conduct of a mortgagor prior to moving an application of this kind, is to our minds, not a relevant factor. [See: Maganlal Vs. Jaiswal Industries, Neemach and Others, followed in Philomina Jose Vs. Federal Bank Ltd. and Others,]. What is relevant is the display of intent, with clarity, which demonstrates keenness on the part of the mortgagor to have the suit decreed in terms of the relief sought by the mortgagee in his action before the court. This not being the case, the application for withdrawal of suit would have to be allowed.

58. We, thus, conclude that there is no prohibition in law preventing plaintiffs from withdrawing the suit in pursuance of the application under Order 23 Rule 1 of the said Code resulting in dissolving of all interim orders but the same would, of course, be subject to costs. The costs must be appropriate in such a case because the suit proceedings have dragged on for eleven (11) years and even appeals have arisen from interim orders. The defendant, thus, has spent considerable amount in litigation including engaging of senior counsels. It is a hard reality that the cost of litigation has escalated over a period of time, costs in such a situation must bear semblance to the actual costs incurred by the defendant. We therefore consider it appropriate to impose Rs.5.00 lakh as costs on the plaintiffs to be paid to the defendant.

59. The application is allowed in the aforesaid terms.

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60. In view of prayer made in IA No.6836/2008 being allowed, the suit is permitted to be withdrawn by the plaintiffs unconditionally subject to payment of Rs.5.00 lakh to the defendant.

61. Dismissed as withdrawn.