

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**W.P.(C) 4538/2005 & CM Appls 3256/2005, 3872/05, 5625/05**

Reserved on: August 17, 2010  
Decision on : September 7, 2010

KUNTH SECURITIES PVT. LTD. .... Petitioner  
Through: Mr. Sudhir Nandrajog, Senior Advocate  
with Mr. Vinay Gupta, Mr. K.K. Mishra and  
Mr. Mahender Singh, Advocates

versus

PUNJAB & SIND BANK LTD. & ORS ..... Respondents  
Through: Mr. Rajinder Wali, Advocate for R-1.  
Mr. Amit Sibal, Mr. Vinay Tripathi, Advocates  
for R-2.  
Mr. Arvind Nayar and  
Ms. Divya Jain, Advocates for R-3.

**CORAM: JUSTICE S. MURALIDHAR**

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

**JUDGMENT**  
**07.09.2010**

1. The Petitioner, Kunth Securities Private Limited (KSPL), through its Director Mr. R.K. Gupta, filed this petition on 19<sup>th</sup> February 2005 against the Respondent Punjab & Sind Bank ('Bank') seeking two reliefs. The first is for a writ of mandamus to the Respondent to issue 'No Objection Certificate' ('NOC') releasing one-fourth portions of the property at 7-A, Rajpur Road, Delhi ('property in question') under the lien of the Bank on the Petitioner depositing three equivalent sums of ₹ 1,62,50,000/- each respectively and for a writ of mandamus to the Bank "to instantly and immediately direct the owners of the subject property to execute the sale deed" in respect of the property in question

at 7-A, Rajpur Road, Delhi admeasuring 4200 sq.yds in favour of the Petitioner on their being provided with the copies of all the four NOCs as may procured by the Petitioner and to abide by the orders passed by this Court in Writ Petition (Civil) No. 6088 of 2003. The third prayer is for a mandamus to the Bank to receive and appropriate “an amount to be so deposited by the Petitioner in a specific period of time” as part consideration for the sale of the property in question; and upon receiving the entire sale consideration of ₹ 6.50 crores, to hand over the original deed of the title in respect of the property in question so deposited by the owners with the Bank with an intent to create an equitable mortgage, free from its charge of the Bank in all respects.

***Background facts***

2. The narration of facts set out in the petition are that the property in question admeasuring 8800 sq.yards was purchased on 19<sup>th</sup> January 1956 from Mr. Inder Narain Seth in the joint names of Mr. Ramesh Chand Jain, Mr. Sudesh Chand Jain, Mr. Umesh Chand Jain, Mr. Subhash Chand Jain and Mr. Prabhash Chand Jain for a total sale consideration of ₹ 1 lakh. At that point of time Mr. Ramesh Chand Jain was 19 years old and the remaining four were minors under the guardianship of their father late Mr. P.S. Jain son of Late Mr. Jayanti Prasad Jain. On 22<sup>nd</sup> March 1957, a deed of partition was executed between Mr. P.S. Jain, Smt. Illaichi Devi wife of Mr. P.S. Jain, Mr. Ramesh Chand Jain, aged about 20 years and four other minor sons of Mr. P.S. Jain. It is stated that the partition deed provided that the movable properties mentioned in the First Schedule thereto were the

joint properties of the said family, part of which was ancestral and part acquired through earnings of the individual members including that of the Hindu Undivided Family ('HUF') thrown into common stock. The Petitioner claims that the property in question had been equally partitioned in terms of the aforementioned deed of partition among the brothers. In the site plan attached to the First Schedule, the respective shares of all the five brothers had been earmarked and reflected in different colours.

3. Upon the expiry of Mr. P.S. Jain in November 1965, his share in the property went to the share of his wife Smt. Illaichi Devi. The said position continued till 31<sup>st</sup> August 1976. On 3<sup>rd</sup> September 1976, all the owners are stated to have jointly mortgaged the property in question in favour of the Bank in lieu of a term loan of ₹ 10 lakhs. The petition proceeds to narrate how a default was committed in the repayment of loan which resulted in the Bank initiating the proceedings for recovery. It is stated that the owners preferred not to contest these proceedings but to suffer a consent decree and undertook to repay the decretal amount in equal instalments. The Respondent No. 1 Bank instituted execution proceedings against the firms, companies (of which the borrowers were partners or directors) for recovery of the decretal amount.

4. Civil Suit No. 707 of 1983 was filed by the Bank in this Court for recovery of ₹ 20,57,658.33 representing the amount of principal due together with interest and other charges. A compromise was entered between the parties and a decree was passed in terms of the compromise.

After paying the instalments of ₹ 25,000/- per month for some time, defaults were again committed by the Judgment Debtors ('JDs'). Subsequently, the Bank filed an Execution Petition No. 128 of 1994 in this Court. It is stated that the JDs could not honour their commitments to repay the balance amount in instalments. Meanwhile, the execution petition was transferred to the Debt Recovery Tribunal ('DRT'), New Delhi on 13<sup>th</sup> December 1995 in terms of the Recovery of Debts due to Banks & Financial Institutions Act, 1993 ('DRT Act').

5. It is stated that while the execution proceedings were pending, the Recovery Officer of the DRT, New Delhi issued a proclamation of sale in respect of the property in question and fixed the date for auction as 17<sup>th</sup> December 1998. The reserve price of the property was initially kept at ₹ 1 crore, which was subsequently enhanced to ₹ 6.50 crores. It is stated that objections were preferred by the Certificate Debtors ('CDs') against the order of proclamation of sale in R.C. No. 5/98 under Part III of Appendix 'B' of the DRT Act. The Petitioner states that "meanwhile flats were constructed and sold out to various prospective buyers on the vacant half portion within the knowledge of the banks." The Bank had not included the portion of the flats in the proposed auction. It is stated that despite the above assurance the property in question was put to public auction on 17<sup>th</sup> December 1998. However, no prospective purchaser turned up to bid on the date of auction and resultantly the auction had to be abandoned. Thereafter on 26<sup>th</sup> April 1999 at the instance of the Decree Holder ('DH') Bank, the Recovery Officer of the DRT, New Delhi issued attachment order as regards the movable assets

of Mr. R.C. Jain located in the property in question. It is stated that under the garb of attaching the said movable properties, the Bank officials ransacked the house and on strong exception having been taken by the borrowers in the matter, the DRT, New Delhi withdrew the Recovery Certificate.

6. An FIR and a charge sheet was also filed at the instance of the Bank against the borrowers at Police Station Civil Lines, Delhi. The Bank, aggrieved by the withdrawal of the Recovery Certificate as aforesaid, preferred an appeal before the Debt Recovery Appellate Tribunal ('DRAT'), Mumbai. During the course of arguments on 17<sup>th</sup> February 2000 before the DRAT, its Chairman was informed by learned counsel appearing for the CDs that the auction sale did not fetch any prospective purchaser at the reserved price fixed. It was brought to the notice of the Chairman that the property can be sold by private negotiations. While disposing of the said appeal on 17<sup>th</sup> December 2000, the Chairman, DRAT ordered as under:

“In view of this statement, I think that Recovery officer can very well exercise powers conferred by Rule 66 of Procedure for recovery of Tax Rules which are required to be followed for recovery of dues under recovery certificate issued by the Presiding Officer. As such, instead of deciding this appeal on merits, I direct the Certificate Debtors to make application before Presiding Officer, Debts Recovery Tribunal, Delhi seeking permission to sell property by mentioned in Rule 66 (1) and for that purpose order of the Presiding Officer withdrawing recovery certificate is set aside.

Recovery Officer shall grant such certificate to the Certificate Debtors on the terms and conditions as stated above namely amount recovered by sale shall be deposited with Debts Recovery Tribunal to the extent of dues of the certificated creditor Bank. The Recovery Officer shall act under directions, control, superintendence and supervision of the Presiding Officer in this behalf. The Recovery Officer shall grant permission as stated above within period of two weeks from the date of receipt of this order by him, and private sale by the certificated debtors shall be completed within four weeks.”

The appeal was disposed of by the DRAT without expressing any opinion on merits.

7. The writ petition then states that in the Execution Petition No. 126 of 1994 pending in this Court, the question of the property in question had cropped up and in the said proceedings, this Court had “equally permitted sale of the property” in the sum of ₹ 6.5 crores. Enclosed with the petition are copies of the orders dated 24<sup>th</sup> November 1999 passed by the learned Single Judge of this Court in the Execution Petition No. 126 of 1994 recording the statement of learned counsel for the JD that there is a purchaser for property No. 7-A, Rajpur Road, Delhi who is willing to purchase it for ₹ 6 crores and 20 lakhs and that in order to demonstrate his bonafides, he is willing to deposit ₹ 10 lakhs. The JD was asked to contact the DH Bank. This was reiterated by this Court on 25<sup>th</sup> January 2000. On 9<sup>th</sup> August 2000, the Court was informed that the Bank was agreeable for the private sale by the JD of half of the mortgaged property for ₹ 6.75 crores subject to deposit of ₹ 20 lakhs in

advance in the Court. The JD was asked to seek instructions. On 20<sup>th</sup> September 2000, the Court was informed that the DH is agreeable to sale of half of the property for ₹ 6.50 crores subject to deposit of ₹ 20 lakhs by the JD.

8. It is stated in the petition that meanwhile Mr. R.C. Jain, one of the JDs, had been pursuing the matter with the Respondent Bank for one time settlement (OTS) in accordance with the guidelines issued by the Reserve Bank of India ('RBI') in relation to non-performing asset (NPA) accounts. In response to a communication dated 17<sup>th</sup> December 2000, the Bank wrote to the legal advisor of the CDs on 26<sup>th</sup> February 2001 providing a list of 176 accounts. The Bank offered to settle all the cases as a compact and package OTS calling upon the CDs to pay ₹ 11,24,99,000/-. The CDs are stated to have submitted their acceptance of such proposal on 5<sup>th</sup> March 2001. On 19<sup>th</sup> March 2001, the CDs wrote to the Bank seeking its response and sent a reminder on 22<sup>nd</sup> March 2001.

9. It is stated that "with great difficulty, the owners were in a position to make the Petitioner agreeable to purchase the said property" admeasuring 4200 sq. yards "along with all and whatever constructions had been raised thereon for a sum of ₹ 6.50 crores as consideration for purchase on mutually agreed terms and conditions. This is how that the Petitioner is stated to have entered the picture.

10. It is stated that one of the borrowers Mr. Prabhash Chand Jain filed

an application before the DRT, New Delhi under Section 22 of the DRT Act read with Rule 18 of the Rules framed thereunder bringing on record the fact of the compromise having been entered into by the borrower group and the Bank. According to the Petitioner, there being a necessity 'for something concrete to be brought in writing', an agreement was entered into between Mr. R.K. Jain, one of the borrowers and the Petitioner on 20<sup>th</sup> February 2002.

11. It is interesting that in the said agreement, a copy of which is annexed as Annexure P-14 to the present writ petition, the Party of the Second Part Mr. R.K. Jain had revealed to the Petitioner (Party of the First Part) that the property in question was under the mortgage, charge and lien of the Bank in respect of few credit facilities availed by the "group of the Party of the Second Part"; the Bank was desirous of bringing the property to sale for realisation of its decretal/settlement amounts; Mr. R.K. Jain was equally desirous to liquidate the property and to reduce the liability of their group to the extent of the total sale realisation out of the sale proceeds; that a compromise had been arrived at between the Bank and the group of Mr. R.K. Jain (i.e. the borrower group) whereby the group was to pay a sum of ₹11,24,99,000/-; that the High Court of Delhi as well as the DRAT, Mumbai had consented and allowed sale of the aforesaid property at 7-A, Rajpur Road, Delhi by mutual negotiations as it was apprehended that public auction may not yield any prospective customer; that pursuant to the negotiations and deliberations, the 'deal' was 'struck' in the sum of ₹ 6.5 crores with the Petitioner having already deposited a sum of ₹ 10 lakhs with the Bank

on this count; that an application had been filed under Section 22 of the DRT Act before the DRT and that in the said application it had been mentioned that the Party of the Second Part i.e. Mr. R.K. Jain and his other family members were “practically in possession of more than 80% of the property and 20% or so is under the use and occupation of a co-mortgagor Mr. Subhash Chand and his family” and that the parties had discussed the matter pertaining to the handing over of the possession. It was set down in the agreement that it shall “not in any way effect adversely or prejudicially the rights, interests and security of the mortgage Bank i.e. the Punjab & Sind Bank”, that it is the responsibility of the Bank to have its possession conveyed to it by the Party of the Second Part as and when it so desires on the date of execution of the transfer deed or even earlier provided the handing over of the possession is with the consent of the Bank. It was further provided that the Petitioner would not insist on any condition precedent in the implementation of the sale deed regarding handing over of the peaceful and vacant possession of the property in question, under occupation of the Party of the Second Part. By virtue of the agreement, “the role of the mortgagee Bank is extinguished in respect of the liability of the bank to hand over vacant and peaceful possession to the purchaser as per mutual agreed terms and conditions. However, it shall be obligatory on the part of the mortgagee Bank to get the possession of the remaining portion which is with Mr. Subhash Jain and his family members.”

12. On 26<sup>th</sup> February 2002 the Presiding Officer, DRT, Delhi passed an order on the said application filed by Mr. Prabhash Jain seeking private

sale of the property in terms of the order passed by the DRAT, Mumbai.

However, in the said order, it was directed as under:

“However, the private sale shall be done before the Recovery Officer in accordance with Rule 66 (1) of the Income Tax Rules CDs may produce a buyer before the Recovery Officer and the bid may be accepted by the Recovery Officer in accordance with rules and also keeping in mind the orders passed by the Hon’ble DRAT, Mumbai. The property is in possession of CDs/co-mortgagers, Recovery Officer shall appoint a receiver to take possession of the property from the CDs/occupants so that vacant possession of the property is handed over to the proposed buyer. After bid is accepted Recovery Officer shall issue sale certificate expeditiously in accordance with law.”

13. The matter then went to the Recovery Officer at the instance of the Bank which had appointed Mr. Amit Dhall, Advocate as Court Receiver to take possession of the subject property. The Court Receiver was directed to get the vacant possession after giving notices to the present occupants of the building. The Court Receiver was also directed to take assistance of police from the concerned police station. The CDs were directed to produce the prospective buyer for the subject property before the Recovery Officer so as to finalise the sale in terms of the orders of the DRAT, Mumbai and the DRT, Delhi. The Court Receiver addressed a letter dated 13<sup>th</sup> March 2002 to the occupants of the subject property asking them to vacate the premises.

14. Aggrieved by the above order, the borrowers preferred an appeal under Section 30 of the DRT Act before the DRT, Delhi which heard

arguments on 19<sup>th</sup> March 2002. The appeal was dismissed as pre-mature. The borrowers, Mr. R.K. Jain and others, filed Writ Petition (Civil) No. 2049 of 2002 in this Court. By an order dated 1<sup>st</sup> April 2002 the Division Bench of this Court noted that the Petitioners therein could invoke the alternative remedy by way of an appeal and accordingly dismissed the petition. They then preferred an appeal before the DRAT, New Delhi. It is stated that in the meanwhile the borrowers entered into a mutual settlement and the Bank also conceded to extend the time for the execution and implementation of the compromise entered into between them. On the above basis, Suit No. 654 of 2002 filed by Mr. Siddharth Jain in this Court stood withdrawn.

15. The Petition proceeds to state that in the meanwhile the Petitioner had entered into an agreement with M/s. Futuristic Properties (Pvt.) Limited ('FPPL') in terms of which the Petitioner with the help of FPPL submitted a plan to the Municipal Corporation of Delhi ('MCD'). After carrying out the necessary demolition of the existing structures, it raised new constructions on the property in question admeasuring 4200 sq. yards. The Petitioner states that a copy of this agreement was delivered to the Bank. The Petitioner further states that although it was pursuing the matter with the Bank no concrete step was taken by the Bank to execute and implement the contract i.e. "on receipt of Rs. 6.5 crores to transfer the property" to the Petitioner. The Petitioner does not dispute that apart from depositing a sum of ₹ 10 lakhs with the Bank on 1<sup>st</sup> February 2002 which was kept in 'No Lien Account', no further payment was made.

16. The Petitioner then filed Writ Petition (Civil) No. 6088 of 2003 which was disposed of by this Court by an order dated 22<sup>nd</sup> September 2003 with the following directions:

“Respondents 2 to 5 shall take necessary steps for execution of the sale deed in favour of the Petitioner on or before 31<sup>st</sup> December 2003. The Petitioner shall deposit the full amount of Rs. 6.5 crores with Respondent No. 1 Bank prior to the execution of the sale deed. Simultaneously on deposit of the amount, Respondent No. 1 Bank will give a no objection and no lien certificate in respect of the portion being sold to the Petitioner along with copies of earlier title documents. Respondent No. 1 bank will also ensure production of prior title documents before Sub-Registrar which may be required for registration of sale deed in question.

Insofar as the prayer for sanction of plan is concerned, learned counsel for the Petitioner does not press this relief at this stage since occasion has not arisen as yet for the Corporation to consider the plans of the Petitioner.

The writ petition is disposed of with the aforesaid direction.”

17. On 5<sup>th</sup> December 2003, the Petitioner KSPL wrote a letter to the Bank stating *inter alia* as under:

“In this connection we have considered all aspects of payment and we propose to make payment as under:

- a) Down payment of Rs.100 lacs by 31<sup>st</sup> December 2003
- b) Balance payment by 31<sup>st</sup> March, 2004

We hope you will be kind enough to accept the aforesaid payment terms and we request you to kindly convey your consent to Honourable Delhi High Court on next date of hearing which is scheduled on 15<sup>th</sup> December 2003.”

18. The Petitioner moved an application being CM No. 13237 of 2003 in the disposed of petition being Writ Petition (Civil) No. 6088 of 2003 which was heard on 15<sup>th</sup> December 2003 in which the following order was passed:

“Learned counsel for the Petitioner and Respondent No. 1 states that it is agreed between the parties that the Petitioner would deposit a sum of Rs. 1 crore on or before 31<sup>st</sup> December 2003 and the balance amount on or before 31<sup>st</sup> March 2004. However, this is subject to the condition that in case the Petitioner fails to make the full payment of the balance amount on or before 31<sup>st</sup> March 2004, the amount of Rs. 1 crores deposited by the Petitioner would stand forfeited. This is an arrangement arrived at between the parties subsequent to the order dated 22<sup>nd</sup> September 2003.

In view of the aforesaid, the directions for payment in pursuance to the order dated 22<sup>nd</sup> September 2003 stand modified as aforesaid on the consent of the parties.

The application stands disposed of.

Dasti to learned counsel for the parties.”

19. On 31<sup>st</sup> December 2003, the Petitioner wrote to the Bank enclosing three cheques - one for ₹ 40 lakhs and two for ₹ 25 lakhs each, all dated 31<sup>st</sup> December 2003 and requested the bank “to adjust and appropriate this amount of ₹ 1 crore towards part liquidation of the OTS amount of

PS Jain Group and subsequent payment also be adjusted accordingly.”

The Petitioner also wrote to the Bank on 30<sup>th</sup> December 2003 requesting to encash the FDR for a sum of ₹ 10 lakhs towards part payment for purchase of the property in question. On 13<sup>th</sup> March 2004, the lawyers for the Respondent Bank wrote to the borrowers referring to the terms of settlement entered into with the borrowers and stating that in the event of any delay or default whatsoever in adhering to any of the terms and conditions “all such rebates, concessions as provided by our client shall be deemed to be withdrawn forthwith and our client shall be entitled to proceed to recover all amounts due to it.” On the same date, i.e. 13<sup>th</sup> March 2004, a separate letter was addressed to the Petitioner KSPL referring to the earlier letter dated 13<sup>th</sup> October 2003 addressed by the Petitioner assuring that they will deposit with the Bank ₹ 65 lakhs towards ‘Biana’ within a period of fifteen days and balance 90% within six month from the date of ‘Biana’. The Petitioner was informed that it was agreed to extend the payment/adjustment of the compromise amount arrived at “with the members of R.C. Jain/P.S. Jain Group which also comprises of the co-owners of the said property” and the time had been extended till 31<sup>st</sup> March 2004 and, therefore, the entire sale consideration of ₹ 6.50 crores in respect of half share of the subject property should be deposited prior to 31<sup>st</sup> March 2004.

20. On 24<sup>th</sup> March 2004, the letter was written by the Petitioner KSPL to the Bank and to the borrowers alleging that silence was being maintained by the Bank in providing to the Petitioner with ‘various documents’, in the absence of which “it is impossible to have the

documentation completed.” The Bank and the borrowers were called upon to furnish copies of the original title deeds, family partition deed/family settlements, house tax, water, electricity clearance of the subject property and so on. On 31<sup>st</sup> March 2004, one of the original borrowers wrote to the Bank *inter alia* stating that the Petitioner KSPL had “already submitted a scheme for balance payment of ₹ 5.5 crores within next six months.” On 31<sup>st</sup> March 2004, the Petitioner again wrote to the Bank stating that the date originally fixed for making payment be extended by another six months. As an alternate arrangement, it was stated that the Bank may divide the total sum of ₹ 6.5 crores into four parts by giving NOC for each one-fourth part upon payment of the instalments of that part. Reminders were sent on 8<sup>th</sup> April 2004 and 24<sup>th</sup> April 2004.

21. In the disposed Writ Petition (Civil) 6088 of 2003, an application CM No. 6763 of 2004 was filed by the Petitioner seeking further extension of time up to 30<sup>th</sup> June 2004 for depositing the balance sum. On 31<sup>st</sup> May 2004, this Court passed an order recording the learned counsel for the Respondent No. 1 Bank having no objection to the same. It was further observed by this Court that for the future in the case the Bank had no objection for extension of time, “the same can be directly done without approaching this Court since it is a question of mutual arrangement between the parties.”

22. The Petitioner had preferred yet another petition being Writ Petition

(Civil) No. 7242 of 2004 in this Court seeking a mandamus to the Respondents, particularly, Respondent No. 1 Bank to execute the sale deed in respect of the subject property in favour of the Petitioner upon depositing the entire mutually agreed sale consideration of ₹ 6.5 crores. The Petitioner then filed an application being CM No. 6300 of 2004 seeking permission to withdraw the said petition in view of the subsequent developments. This application was allowed. It is stated that on 27<sup>th</sup> May 2004, the Bank conveyed its NOC in respect of the subdivided property at 7-A, Rajpur Road, Delhi in respect of which the original borrowers had deposited a sum of ₹1,62,50,000/-. The Petitioner stated that on the date of filing of the present writ petition, it had deposited a sum of ₹ 3,12,50,000/- with the Bank and yet the remaining NOCs were not issued.

23. It is stated that the Petitioner was surprised to come across public notices issued by the Bank in local newspapers stating the subject property in question remained mortgaged/charged with Bank and any one dealing with the said property in any manner shall do so at his/her own risk and cost. In the circumstances, the present writ petition was filed.

***Proceedings before this Court***

24. When the writ petition first came up for hearing on 14<sup>th</sup> March 2005, while directing notice to issue, this Court passed the following interim order:

“CM No. 3256/2005

Issue notice, returnable on 25<sup>th</sup> April 2005.

It has been pointed out that the Petitioner/M/s. Kunth Securities (P) Limited has deposited 50% of the amount which the Bank had undertaken to receive in full and final settlement of the dues of its borrower. This has been noticed by the recovery officer in the order dated 11<sup>th</sup> January 2005 placed as annexure P-45 to this petition. Learned counsel for the Petitioner has submitted that the recovery officer has appointed a Receiver of the property vide order dated 1<sup>st</sup> March 2005 who has been directed to take symbolic possession. Copy of this order has been handed over in Court and has been taken on record. It is, therefore, directed that pending further adjudication, there shall be stay of the order dated 1<sup>st</sup> March 2005.

The Petitioner shall deposit the balance amount as undertaken before 31<sup>st</sup> March 2005 with the Respondent Bank.

Copy of this order be given dasti to learned counsel for the parties.”

25. An application being CM No. 11377 of 2005 was filed seeking impleadment of Mr. Ravi Kumar as Respondent No. 2 and M/s. Futuristic Properties Limited as Respondent No. 3 in the writ petition. Mr. Ravi Kumar stated that he had obtained a judgment and decree dated 28<sup>th</sup> October 1986 against Mr. Umesh Chand Jain, one of the co-owners of the immovable properties bearing Nos. 7-A and 7-B, Rajpur Road, Delhi from the Supreme Court of Hong Kong in the amount of US\$ 909,675 plus interest until satisfaction of the decree. Pursuant to the said decree, the Execution Petition No. 2 of 1987 was filed in this Court by Mr. Ravi Kumar and 1/4<sup>th</sup> share of the 32 flats situated at 7, Rajpur

Road, Delhi were attached. Objections had been filed under Order XXI Rule 58 CPC by M/s. United Estates in the said execution petition claiming to be the owner of the property at 7-A, 7-B, Rajpur Road, Delhi. These objections were dismissed and it was held that Mr. Umesh Chand Jain had 1/4<sup>th</sup> share in the property at 7-A, 7-B, Rajpur Road, Delhi. Accordingly, the order issuing the warrants of attachment in respect of 1/4<sup>th</sup> share in respect of the said property was confirmed. In its order dated 7<sup>th</sup> September 2003 this Court categorically ruled in favour of Mr. Ravi Kumar as under:

“I have carefully considered the entire documents on record, statement of the objectors 1 and 2 and heard the learned counsels appearing for the parties at length. On a careful consideration of the entire documents on records and submissions at the bar by the learned counsel, **conclusion is irresistible that the Judgment Debtor has a share in the HUF property 7-A and 7 B, Rajpur Road, Delhi and the factum of having taken the loan by the Judgment Debtor has been clearly admitted by him.** In these circumstances, the executing court has to confirm the ex parte order of the learned Single Judge dated 12<sup>th</sup> January 1987 and 20<sup>th</sup> February 1987, sic I order accordingly.

List this matter before the Registrar of this Court on 13<sup>th</sup> September 1993 for taking appropriate steps for the sale of the share of the Judgment Debtor for the satisfaction of the decree passed by the Supreme Court of Hong Kong in favour of the Decree Holder. The execution petition is allowed with costs.” (emphasis supplied)

26. M/s United Estates filed an appeal being EFA (OS) No. 8 of 1993

against the dismissal of its objections. The Division Bench of this Court on 18<sup>th</sup> January 1994 directed that: “Attachment will continue till the decision of the appeal. No part of the property in dispute shall be sold, alienated or encumbered till further order.” This was reiterated on 9<sup>th</sup> December 2004 and 26<sup>th</sup> April 2005. On 8<sup>th</sup> November 2005, a detailed order was passed by the Division Bench noting all the orders passed till that date.

27. What is significant is that M/s. United Estates was represented throughout by Mr. J.C. Gupta, learned counsel. On 27<sup>th</sup> September 2005 statement was made by Mr. Sanjay Gupta that Mr. J.C. Gupta was unwell and the matter was adjourned to 18<sup>th</sup> October 2005. On 18<sup>th</sup> October 2005 again, the matter was adjourned to 20<sup>th</sup> October 2005. On that date, in order to show his bona fide, Mr. Gupta stated that he will have the undertaking of the appellant recorded on the next date of hearing; that the Appellant will deposit a sum of ₹ 50 lakhs within two weeks and a sum of ₹ 1 crore will be deposited within eight weeks thereafter. He further stated that after the undertaking given by him to this Court on 17<sup>th</sup> March 2005, no one had been inducted in the 16 flats.

28. An application being CM No. 15201 of 2005 was filed by Mr. Ashok Kumar Aggarwal and his counsel was asked by the Division Bench about the date from which the persons mentioned had come to occupy the flats in the property in question and how much amount had been received from all such persons to whom he had sold the flats. A contempt petition was filed by Mr. Ravi Kumar in the said proceedings

in which notice was issued on 16<sup>th</sup> March 2005. Again on 17<sup>th</sup> March 2005 Mr. J.C. Gupta, learned counsel appeared for M/s. United Estates and the following order was passed by the Division Bench:

**“Cont Cas (C) 235/2005**

Mr. Gupta is present. He undertakes that no person shall be permitted to occupy the building flats constructed at 7B, Rajpur Road, Delhi. On the other hand, counsel for the Petitioner has contended that despite stay, the Respondent had alienated and sold the property 7A, Rajpur Road, Delhi in which the Petitioner had 1/4<sup>th</sup> share.

Reply be filed within four days. Rejoinder, if any, be filed within two weeks thereafter.

Renotify on 26<sup>th</sup> April 2005.

Interim order to continue.”

29. It appears that on 11<sup>th</sup> April 2005, despite the above restraint order Mr. Raj Kumar Jain, son of Late Mr. R.C. Jain executed a general power of attorney (‘GPA’) in favour of Mr. Vijit Lal Mathur, son of Late Mr. B.B.J. Mathur, Director of the Petitioner KSPL, a copy of which is enclosed at page 517 of the paper book. It recorded that Mr. Raj Kumar Jain is the owner of property No. 7-A, Rajpur Road, Delhi; the Petitioner had entered into a collaboration agreement on 6<sup>th</sup> October 2003 with FPPL “who has now constructed residential units on the said property after getting the building plan sanctioned and now both the companies intend to sell the units constructed in the said property” and therefore the Executant was appointed as the GPA to *inter alia* “enter into any agreement for sale of the said property or any part thereof with any person (s) on any terms .....” Mr. Ravi Kumar placed on record a

Cancellation Deed dated 4<sup>th</sup> June 2005 whereby the earlier GPA created by Mr. Raj Kumar Jain in favour of the Petitioner KSPL stood cancelled after noting that the subject property at 7-A, Rajpur Road, Delhi is mortgaged with the Bank.

30. A learned Single Judge of this Court, by a detailed order dated 15<sup>th</sup> December 2006, allowed the CM Nos. 11377 of 2005 & 8861 of 2006 in this writ petition and directed the impleadment of Mr. Ravi Kumar and FPPL as Respondents. After noticing some of the facts, the learned Single Judge concluded:

“If both the applicants are claiming rights in the said property, then the determination of the rights of the Petitioner against Respondent in respect of the same property will not be conclusive unless the rights of the applicant are also determined in respect of the said property. In case, these two applicants are not impleaded as parties to the writ petition, adjudication of the disputes between the Petitioner and the Respondent Bank will not be conclusive. Adjudication of disputes between the Petitioner and the Respondent Bank in absence of these applicants will not negate their rights and consequently in case these applicants are not impleaded as parties, they shall be entitled to file separate proceedings leading to multiplicity of proceedings and in the absence of applicants, the orders passed by this Court between the Petitioner and the Respondent will not be conclusive and in the circumstances, I have no doubt in holding that the applicants are necessary parties to the present proceedings in the facts and circumstances.”

### *Submissions of Counsel*

31. This Court has heard the submissions of Mr. Sudhir Nandrajog, learned Senior counsel appearing for the Petitioner (KSPL), Mr. Rajinder Wali, learned counsel for the Respondent No. 1 (Bank), Mr. Amit Sibal, learned counsel for Respondent No. 2 (Mr. Ravi Kumar) and Mr. Arvind Nayar, learned counsel for the Respondent No. 3 (FPPL) respectively.

32. Mr. Sudhir Nandrajog, learned Senior counsel submitted that the Petitioner had acted bona fide and should not suffer for any default committed by the original borrowers. At every stage, the Petitioner approached this Court with an application seeking extension of time in making the payment and the Bank had also conveyed its consent to the extent of extension of time up to 30<sup>th</sup> June 2004. He pointed out that NOC had been granted in respect of one-fourth share on 27<sup>th</sup> May 2004. Further amounts were paid by the Petitioner and till 2<sup>nd</sup> March 2005, as against a sum of ₹ 6.5 crores, a sum of ₹ 3,12,50,000/- had already been paid. Therefore, this was not the case where the Petitioner was unwilling to make the payment. He referred to an order dated 11<sup>th</sup> January 2005 recorded by the Recovery Officer of the DRT, Delhi where learned counsel for the Bank made a statement that “C.H. Bank has received 50% of the total compromised amount and rest of the amount is payable by 31<sup>st</sup> March 2005.” Without waiting for the above deadline, the Bank proceeded to issue a public notice stating that the subject property in question remains mortgaged/charged with the Bank and any one dealing with the said property in any manner shall do so at his/her own risk and cost. In such circumstances, the Petitioner was constrained to file the

present writ petition. Mr. Nandrajog pointed out that pursuant to the order dated 14<sup>th</sup> March 2005 passed by this Court the balance sum of 50% was deposited before 31<sup>st</sup> March 2005 with the Bank, as recorded in the order dated 18<sup>th</sup> May 2005. He submitted that accordingly ₹ 6.5 crores had been paid to the Bank which sum was accepted by it without prejudice to its rights and contentions. He submitted that as far as the Bank is concerned, the entire payment was made. There was a delay of about three months from the deadline of 31<sup>st</sup> March 2005 as agreed to by the Bank itself before the Recovery Officer, DRT. Therefore there was no legal impediment in the title deeds being released and the further steps being taken. He reiterated that he was not pressing the relief of requiring the Bank to execute a sale deed in favour of the Petitioner as that was really a relief of specific performance. He submitted that the Petitioner would compensate for any delay in making the payment by paying interest at a rate as may be determined by this Court.

33. Mr. Amit Sibal, learned counsel appearing for the Respondent No. 2 Mr. Ravi Kumar referred to the detailed proceedings in the execution petition and to the fact that Mr. J.C. Gupta, learned counsel himself appeared for M/s. United Estates which was the Appellant in EFA (OS) 8 of 1993 in which the interim order was passed. The same Mr. J.C. Gupta had filed the present writ petition on behalf of KSPL. Mr. Sibal stated that not a word has been uttered anywhere in the present petition about the decree passed in favour of Mr. Ravi Kumar; the execution petition filed by him; about the order of this Court dated 7<sup>th</sup> September confirming the attachment of the property in question and the Execution

Appeal filed by M/s. United Estates against the order dated 7<sup>th</sup> September 2003. Even while those proceedings were pending the present writ petition was filed on 19<sup>th</sup> February 2005 without impleading Mr. Ravi Kumar as party. Ex parte orders were obtained permitting the Petitioner to deposit the balance sale consideration with the Bank thus presenting the court with a *fait accompli*. A separate prayer in the writ petition seeking execution of the sale deed in favour of the Petitioner was in the teeth of the interim orders of attachment passed by this Court in the execution petition from time to time. It was not brought to the notice of this Court that there was an attachment of the one-fourth share of the property at 7-A, Rajpur Road, Delhi. He submitted that the present writ petition ought to be dismissed for deliberate concealment of material facts.

34. Mr. Sibal pointed out that KSPL is an alter ego of Mr. R.C. Jain, one of the original borrowers. He referred to the documents obtained from the Registrar of Companies ('ROC') to demonstrate how all these persons, who are Directors of the Petitioner residing in the same address as the property in question, at no point in time disclosed the *inter se* relationship between the Petitioner and those original borrowers. Relying on the observations of the Supreme Court in *Delhi Development Authority v. Skipper Construction (1996) 4 SCC 622* he submitted that in the instant case, the corporate veil had to be lifted to appreciate the huge fraud played on the Court and the Bank. He submitted that the genesis of the present petition was the agreement entered into by the original borrowers, the Bank and the Petitioner. The

Petitioner knew about the execution proceedings and was fully aware of the attachment order. Although the Petitioner by itself may not have been a party, M/s. United Estates which was again an alter ego of the original borrowers, was a party to those proceedings. Both the present Petitioner and M/s. United Estates had engaged the same lawyer.

35. Mr. Sibal further submitted that there was no public law element in this petition and there was no violation of any constitutional or other right of the Petitioner. He submitted that the petition was an abuse of the process of law. He also referred to decision of the Supreme Court in *Orissa Agro Industries Corporation v. Bharti Industries (2005) 12 SCC 725* and *World Tel Inc. v. Union of India (2001) 10 SCC 513*. He pointed out that KSPL was not allowed impleadment in the execution proceedings.

36. Appearing for the Bank, Mr. Rajinder Wali learned counsel drew attention to Rule 2 read with Rule 16 of the Second Schedule of the Income Tax Act, Rules ('IT Rules'). He submitted that even according to the Petitioner, the value of the subject property in early 2005 was ₹ 12.22 crores for the extent of 400 sq. yards. The present value of the property in question would be over ₹ 100 crores. The Bank never agreed to extend the time for the Petitioner to make payment till 31<sup>st</sup> March 2005. The counsel who made such submission to the Recovery Officer, DRT had no authority to do so. The terms of the OTS whereby the original borrowers had to pay ₹ 11.24 crores was never complied with.

There was no question of permitting the Petitioner to take advantage of its own wrong. He prayed that this petition should be dismissed. Counsel for the FPPL stated that they had nothing to add.

37. In reply to the above submissions, Mr. Nandrajog reiterated that the Petitioner was not pressing prayer (b) which was for a direction to the owners of the property to execute the sale deed. He referred to the sale proclamation issued initially by DRAT in RC No. 5 of 1998 in which it was mentioned in clause (iv) that “The sale shall be subject to the judgment and orders of the Hon’ble High Court of Delhi in EFA (OS) No. 8 of 1993”. According to him, this implied that there was in fact an attachment of the said property and therefore, there was no suppression of any fact. Inasmuch as the Petitioner had enclosed the said proclamation with the present petition, there was no suppression of facts in the Petition either. While not denying that the Petitioner was ‘connected with the original borrowers, Mr. Nandrajog contended that for the default committed by the original borrowers, the Petitioner could not be denied its right to the property in question so long as the entire agreed sale consideration had been paid to the Bank pursuant to the order of this Court. There was no attempt by the Petitioner to overreach the Court. The extension of time sought for making payment was consistent with the RBI guidelines regarding OTS. Mr. Nandrajog relied upon the judgment of the Supreme Court in *Gujarat State Financial Corporation v. M/s. Lotus Hotel Private Limited* (1983) 3 SCC 379 and *Sardar Associates v. Punjab & Sind Bank* (2009) 7 SCC 257 to urge that in such circumstances the remedy under Article 226 of the

Constitution was available.

***Maintainability of the writ petition***

38. First, this Court would like to deal with the issue of maintainability of the writ petition. There can be no manner of doubt that the relief sought by the Petitioner in prayer (b) is a mandamus to the original borrowers to execute a sale deed in favour of the Petitioner in relation to the property in question. Mr. Nandrajog understandably gave up prayer (b) since obviously such a relief could not be sought in a petition under Article 226 of the Constitution. He nevertheless persisted with the prayers (a) and (c) which was not only in the nature of the mandamus to the Respondent No. 1 Bank to release NOC in favour of the Petitioner upon making payment of instalments but the consequential relief of “execution of the transfer deed/sale deed” either by the Petitioner ought to be got executed in favour of the Petitioner by the Respondent No. 1 Bank. In the considered view of this Court, the prayer alone does not involve any public law element at all. It is plain that this is the so called equitable mortgage created in favour of the Bank by the original borrowers for the loan borrowed by them of which a settlement had been entered with the Bank. The proclamation of sale was published pursuant to the order passed by the Recovery Officer of the DRAT. By the time the proclamation of sale was published in December 1998, there was already an attachment of the said property in an execution petition before this Court. The original borrowers were fully aware of the attachment of this property. The dispute raised by the Petitioner KSPL claiming to be the subsequent purchaser is of a civil nature. There was

absolutely no public law element in the matter. The present case is different from *Sardar Associates v. Punjab & Sind Bank* where it was held that the legal right arising out of an OTS could be sought to be enforced. The question that arises for consideration in the present case is not about the right of the original borrowers to enforce the OTS. Admittedly, the Petitioner does not claim to be the original borrower. Further, in *Sardar Associates*, there was no question of suppression of facts by the Petitioners therein of any previous execution proceedings.

39. The reliance by the Petitioner on the decision in *Gujarat State Financial Corporation v M/s. Lotus Hotels Pvt. Limited* is also misplaced. Unlike the facts of that case, in the present case there was no promise held out to the Petitioner that the property in question would be transferred to it even if it did not pay the sale consideration within the time stipulated. Admittedly, the sale consideration was paid beyond the stipulated or agreed date. According to the learned counsel for the Bank, the counsel who made a statement before the Recovery Officer on 11<sup>th</sup> January 2005 on its behalf to the effect that the time for making payment was extended up to 31<sup>st</sup> March 2005 was a proxy counsel and had no authority whatsoever to make such a statement.

40. This Court is of the view that the present petition does not involve any public law element. Also, the Petitioner has not been able to show how there has been any violation of any fundamental or constitutional right. For all of the above reasons, this Court holds that the present

petition is not maintainable under Article 226 of the Constitution.

***Suppression of material facts and role of the Advocate***

41. The more serious issue concerns suppression of material facts by the Petitioner. Nowhere in the petition, is there any mention of the execution petition to which a reference was made in the proclamation notice issued by the Recovery Officer which is at Annexure P-4 of the petition. It is only in reply to the submissions made by learned counsel for the Respondent No. 2 regarding such concealment of fact that the Petitioner sought to deny it by referring to condition (iv) of the proclamation notice which stated that the sale is subject to the judgment and orders of the High Court in EFA (OS) No. 8 of 1993. There is no mention of the fact that Respondent No. 2 Mr. Ravi Kumar obtained an attachment of the 1/4<sup>th</sup> share of the property in question at 7A, Rajpur Road, Delhi; that the execution petition filed by the DH Mr. Ravi Kumar was allowed by this Court on 7<sup>th</sup> September 1993; that the said order was challenged before a Division Bench of this Court by M/s. United Estates or that the Division Bench had by an order dated 18<sup>th</sup> January 1994 restrained the appellant from alienating or creating any third party interests in the property in question. Clearly, the proclamation notice issued by the DRT, which was perhaps not aware of the above orders and proceedings, was in the teeth the said order of attachment of the property in question.

42. What is also of concern is that it is the same Advocate (Mr. J.C. Gupta) who appeared for M/s. United Estates (the Respondent in the execution petition), and in which petition an interim order was passed,

who drafted and filed the present writ petition as M/s. J.C. Gupta & Co. Mr. J.C. Gupta filed the execution appeal for M/s. Untied Estates and appeared for it when the interim order was passed by the Division Bench. Considering that the present writ petition concerns the same property in question which stood attached in the execution proceedings where the Advocate for the party in the execution petition (and the appellant in the execution appeal) was none other than the Advocate for the Petitioner herein, it was inexcusable for the said Advocate to have not disclosed the complete facts. Moreover, by the time the present writ petition was filed on 19<sup>th</sup> February 2005, the proceedings in execution appeal of M/s. United Estates were progressing before the Division Bench of this Court. The same Advocate appeared throughout before the Division Bench, and the interim order of attachment was continued in his presence. A statement was made time and again either by him or his proxy counsel assuring the court that no third party interest would be created in respect of the property in question.

43. This Court is constrained to observe that the legitimacy of the legal system depends not only on the litigants speaking the truth before courts, but on Advocates ensuring that the complete facts within their knowledge about other legal proceedings concerning the same subject matter should not be withheld from the court. While clients for various reasons may not disclose to their Advocate the complete facts within their knowledge, and may face legal consequences for speaking falsehood before the court or for wilful suppression of material facts, the responsibility that an Advocate owes to the Court as an officer of the

Court is much greater. The following observations of the Supreme Court in *D.P. Chadha v. Triyugi Narain Mishra (2001) 2 SCC 221*, are relevant in this regard (@ SCC p. 237):

“24. It has been a saying as old as the profession itself that the court and counsel are two wheels of the chariot of justice. In adversarial system it will be more appropriate to say while the Judge holds the reins, the two opponent counsel are the wheels of the chariot. While the direction of the movement is controlled by the Judge holding the reins, the movement itself is facilitated by the wheels without which the chariot of justice may not move and may even collapse. Mutual confidence in the discharge of duties and cordial relations between Bench and Bar smoothen the movement of chariot. As a responsible officer of the court, as they are called - and rightly, the counsel have an overall obligation of assisting the courts in a just and proper manner in the just and proper administration of justice. Zeal and enthusiasm are the traits of success in profession but over-zealousness and misguided enthusiasm have no place in the personality of a professional.

25. An advocate while discharging duty to his client, has a right to do everything fearlessly and boldly that would advance the cause of his client. After all he has been engaged by his client to secure justice for him. A counsel need not make a concession merely because it would please the Judge. Yet a counsel, in his zeal to earn success for a client, need not step over the well defined limits or propriety, repute and justness. Independence and fearlessness are not licences of liberty to do anything in the court and to earn success to a client whatever be the cost and whatever be the sacrifice of professional norms.

26. A lawyer must not hesitate in telling the court the correct position of law when it is undisputed and admits of no exception. A view of the law settled by the ruling of a superior court or a binding precedent even if it does not serve the cause of his client, must be brought to the notice of court unhesitatingly. This obligation of a counsel flows from the confidence reposed by the court in the counsel appearing for any of the two sides. A counsel, being an officer of court, shall apprise the Judge with the correct position of law whether for or against either party.

27. Mr. Justice Crampton, an Irish Judge, said in *R v. O'Connell*, 7 Irish Law Reports, at page 313:

“The advocate is a representative but not a delegate. He gives to his client the benefit of his learning, his talents and his judgment: but all through he never forgets what he owes to himself and to others. He will not knowingly misstate the law, he will not wilfully misstate the facts, though it be to gain the ease for his client. He will ever bear in mind that if he be an advocate of an individual and retained and remunerated often inadequately, for valuable services, yet he has a prior and perpetual retainer on behalf of truth and justice and there is no Crown or other license which in any case or for any party or purpose can discharge him from that primary and paramount retainer.””

44. There could be a situation where the client does not disclose to the Advocate the complete facts of the other legal proceeding in which the said Advocate is not engaged. Also, there could be facts disclosed by the client which are covered by the privilege of ‘professional communication’ recognised under Section 126 of the Evidence Act, 1872. However, the present case offers no such excuse to the Advocate for the Petitioner. He was himself the Advocate for M/s. United Estates in the execution appeal and even if the Petitioner was not a party and therefore could claim ignorance of those proceedings (which also is

doubtful, as will be explained hereafter), the Advocate owed a duty to the Court to inform it of the full particulars of the execution proceedings concerning the property in question and the orders passed therein from time to time.

45. The inescapable conclusion is that it is a brazen case of suppression of material facts, which led the Court into passing an interim order in favour of the Petitioner. The said interim order passed on 14<sup>th</sup> March 2005 directing the Petitioner to deposit the balance amount may never have been passed had the Advocate for the Petitioner informed the Court even at that stage that there was an attachment order passed by this Court in relation to the same property in the execution proceedings. The *fait accompli* that the Petitioner seeks to present to this Court by complying with such interim order creates non equity in its favour. These are further reasons for the dismissal of the writ petition.

***Petitioner an alter ego of the original borrowers***

46. An important aspect of the matter is that the Petitioner is nothing but an alter ego of the original borrowers. The Respondent No. 2 has placed before the Court Form No. 32 dated 7<sup>th</sup> March 1996, a certified copy of which has been obtained from the Registrar of Companies ('ROC') pertaining to the Petitioner. The first Form No. 32 indicates *inter alia* Mr. Vijit Lal Mathur as one of the Directors of the company along with one Mr. Sudarshan Kumar Gupta. The next Form No. 32 dated 30<sup>th</sup> May 2001 shows Mr. Ramesh Chand Jain, son of Late Mr. P.S. Jain resident of 7A, Rajpur Road, Delhi who was appointed as an Additional Director.

Likewise Mr. Raj Kumar Jain, son of Mr. Ramesh Chand Jain resident of the same address as the property in question was also appointed as an Additional Director with effect from 31<sup>st</sup> March 2001. Mr. C.K. Jain and Mr. Arvind Jain are shown to have resigned as Directors with effect from the same dates. Two Additional Directors Mr. Raj Kumar Jain and Mr. Ramesh Chand Jain were themselves the original borrowers who had a share in the subject property at 7A, Rajpur Road, Delhi. Mr. R.K. Gupta was appointed as an Additional Director of the Petitioner company on 24<sup>th</sup> November 2001. On 3<sup>rd</sup> December 2001, Mr. R.K. Jain resigned as Director and on 27<sup>th</sup> November 2001, Mr. R.C. Jain ceased to be the Director of the Petitioner.

47. These facts were either not disclosed to the Bank or were deliberately overlooked to favour the Petitioner. It points to a possible fraud being committed by the Petitioner and the original borrowers either by themselves or in connivance with certain Bank officials. This calls for further investigation. Be that as it may, these facts are sufficient to show that the original borrowers constituted the Petitioner and sought to purchase the very property that belonged to all of them through a private sale for an amount far less than the market value and which amount too they did not pay till more than three years thereafter. They knew that through that process they were defeating the attachment orders passed by this Court in execution proceedings. In the circumstances, the plea that the Petitioner was not a party to the execution proceedings and was therefore unaware of the orders passed therein is simply not believable.

48. In similar circumstances in *Delhi Development Authority v. Skipper Construction Co. (P) Limited*, the Supreme Court observed in para 28 as under (@ SCC p. 639):

“The concept of corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the Court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned. The fact that Tejwant Singh and members of his family have created several corporate bodies does not prevent this Court from treating all of them as one entity belonging to and controlled by Tejwant Singh and family if it is found that these corporate bodies are merely cloaks behind which lurks Tejwant Singh and/or members of his family and that the device of incorporation was really a ploy adopted for committing illegalities and/or to defraud people.”

49. In the present case, there can be no manner of doubt that the original borrowers have sought to defraud the Respondent Bank by getting it to enter into a private sale of a valuable property mortgaged to the Bank by reconstituting themselves into a corporate entity. This is a case where the Petitioner, a corporate entity, was brought into the picture by the original borrowers for defrauding the Bank.

***Agreement dated 20<sup>th</sup> February 2002 void ab initio***

50. The agreement dated 20<sup>th</sup> February 2002 by which the property was agreed to be sold was an agreement *void ab initio*. The said agreement

was in the teeth of orders passed by this Court on 20<sup>th</sup> February 1987 and 3<sup>rd</sup> March 1987 in the execution petition whereby warrants were issued for attachment of one-fourth share of the Judgment Debtor in the properties at 7-A and 7-B, Rajpur Road, Delhi. The further order passed on 7<sup>th</sup> September 1993 by this Court, which is extracted hereinbefore, makes it abundantly clear that one-fourth share of the property of the Judgment Debtor situated at 7A, Rajpur Road, Delhi stood attached. This was the subject matter of the execution appeal in which a restraint order was passed and continued till date.

51. Rule 16 of the Schedule II of the Income Tax Rules clearly states that where an attachment has been made, the defaulter or his representative-in-interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer and that “any private transfer or delivery of the property attached or of any interest therein or any payment to the defaulter of any debt.....” shall be void as against all claims enforceable under the attachment. The proclamation notice clearly refers to the Second Schedule of the Income Tax Rules. Therefore, the private sale permitted to be undertaken by the Bank is contrary to Rule 16 of Second Schedule of the Income Tax Rules.

***No equities in favour of the Petitioner***

52. This is a matter where no leniency ought to be shown to the Petitioner which apart from suppressing material facts, has also overreached the execution petition and sought to defeat the attachment

by persuading the Bank to part with the valuable property in the teeth of the attachment order. The mere fact that the Petitioner has paid a sum of ₹ 6.5 crores through the above method creates no equity in its favour for grant of any of the reliefs sought. The OTS amount owed to the Bank by the original borrowers, who reconstituted themselves as the Petitioner, not having been liquidated, there is no case made out for any consequential order.

53. The writ petition is accordingly dismissed with costs of ₹ 1 lakh which shall be paid by the Petitioner in equal halves of ₹ 50,000/- each to Respondents 1 and 2 within a period of four weeks from today. The pending applications also stand dismissed. The interim order is vacated.

**S. MURALIDHAR, J.**

**SEPTEMBER 7, 2010**  
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