

Highlights:**Corporate Brief**

- MCA notification for amendment of the Companies (Share Capital and Debentures) Rules, 2014 by Central Government;
- MCA general circular for extension of time for passing ordinary and special resolutions by companies under Companies Act, 2013, on account of Covid-19;
- MCA general circular for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013;
- MCA general circular for extension of time for creation of deposit repayment reserve of 20% u/s 73 (2) (C) of the Companies Act 2013 and to invest or deposit 15% of amount of debentures u/r 18 of Companies (Share capital and Debentures) Rules 2014;
- MCA notification for amendment of Companies (Meetings of Board and its Powers) rules, 2014;
- MCA notification dated for amendment of Companies (Appointment and Qualification of Directors) rules, 2014;
- SEBI circular for relaxation in compliance with requirements pertaining to AIFs and VCFs;
- SEBI circular for Relaxation from compliance with certain provisions of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008;
- SEBI circular for relaxation in timelines for compliance with regulatory requirements;
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RERA Brief

- Notice issued by the Maharashtra Real Estate Regulatory Authority for continuation of online services and operations
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Litigation Brief

- Scope of amendment to the petition under section 34 of the Arbitration & Conciliation Act
- Order VII Rule 11 (a): Whether non payment of part of Sale Consideration is a ground for cancellation of Registered Sale Deed?

Corporate Brief

- ➔ Vide Ministry of Corporate Affairs ('MCA') notification No. "F. No. 01/04 /2013-CL-V- Part-IV" dated 05.06.2020:

- **Amendment of the Companies (Share Capital and Debentures) Rules, 2014 by Central Government:**

- ➔ This notification gave effect to the MCA notification dated 19.02.2019 by amending the second proviso to Rule 8, sub-rule (4) of the Companies (Share Capital and Debentures) Rules, 2014 (hereinafter referred to as the said rules):
 - Definition of a startup company has been broadened. According to the amended clause, the definition of a startup, now includes the following changes:
 - An entity, to be classified as a startup must have been incorporated for a period of ten years from the date of incorporation, which was earlier restricted to five years.
 - Turnover criterion has increased from twenty five crores to one hundred crores, in any financial year since its incorporation.
 - An entity which works towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.
 - Process of recognition of an entity as startup has been simplified by reduction in the number of documents to be uploaded. Additionally, new provisions regarding certification u/s 80 IAC of Income Tax Act, 1961, exemption for the purpose of section 56 (2)(viiB) of Income Tax Act, 1961, declaration, scope and revocation have been introduced.
 - The timeline for issuing sweat equity shares not exceeding fifty per cent of its paid up capital from the date of its incorporation or registration has been extended from five years to ten years.

- ➔ Vide MCA General Circular No. 22/2020 "F. No. 02/01/2020 CL-V" dated 15.06.2020:

- **Extension of time for passing ordinary and special resolutions by companies under the Companies Act, 2013, read with rules made thereunder on account of Covid-19:**

Timeline for holding extraordinary general meetings (EGMs) through video conferencing (VC) or other audio visual means (OAVM) or passing of certain items or transact certain business only through postal ballot without convening general meeting has been extended from 30.06.2020 to 30.09.2020.

- ➔ Vide MCA General Circular No. 23/2020 "F. No. 02/05/2020 CL-V" dated 17.06.2020:

- **Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013:**

- ≡ The details of the scheme are as under: -
The scheme shall be applicable in respect of filing of Form No. CHG-1 and Form No. CHG-9 (both referred as 'form' or 'forms' by a company or a charge holder)

(i) Relaxation of time:

- (a) where the date of creation/ modification of charge is before 01.03.2020 and the timeline has not expired u/s 77 of CA, 2013 (the Act) and the form is filed during 01.03.2020 and 30.09.2020, for the purpose of counting the number of days u/s 77 and 78 of the Act, such period shall not be considered, and the fees payable as on 29.02.2020 for the said form shall be charged. If the form is not filed within such period, the first day after 29.02.2020 shall be reckoned as 01.10.2020, and the applicable fees shall be charged after adding the number of days beginning from 01.10.2020 and ending on the date of filing, plus the time period lapsed from the date of the creation of charge till 29.02.2020.

- (b) where the date of creation/ modification of charge falls on any date between 01.03.2020 to 30.09.2020, (both dates inclusive), and the form is filed in such period, for the purpose of counting the number of days u/s 77 and 78 of the Act, such period shall not be considered, and normal fees shall be payable. If the form is not filed within such period, the first day after the date of creation / modification of charge shall be reckoned as 01.10.2020 and the number of days till the date of filing of the form shall be counted accordingly for the purposes of payment of fees.

(ii) The Scheme shall not apply, in case:

- (a) The forms had already been filed before the date of issue of this Circular.
- (b) The timeline for filing the form has already expired, prior to 01.03.2020.
- (c) The timeline for filing the form expires at a future date, despite exclusion of the time provided in sub-para (i) above.
- (d) Filing of Form CHG-4 for satisfaction of charges.

➔ Vide MCA General Circular No. 24/2020 "F. No. 02/08/2020 CL-V" dated 19.06.2020:

- **Extension of time for creation of deposit repayment reserve of 20% u/s 73 (2) (C) of the Companies Act, 2013 and to invest or deposit 15% of amount of debentures u/r 18 of Companies (Share capital and Debentures) Rules, 2014:**

Creation of deposit repayment reserve of 20% of deposits maturing before 30.04.2020 during FY 2020-21, and deposit of 15% of amount of debentures maturing before

30.04.2020, may be done till 30.09.2020, which was earlier restricted to 30.06.2020.

➔ Vide MCA notification No. "F. No. 1/32/2013-CL-V-Part" dated 23.06.2020:

- **Amendment of Companies (Meetings of Board and its Powers) rules, 2014 by Central Government: (Companies (Meetings of Board and its Powers) second amendment rules, 2020)**

In the Companies (Meetings of Board and its Powers) Rules, 2014, in rule 4 in sub-rule (2), the matters which were earlier not allowed to be dealt in a video conferencing, such as approval of annual financial statements, board's report, prospectus or matters relating to amalgamation, merger, demerger acquisition and takeover or the Audit Committee Meetings, are now allowed to be dealt through video conferencing or any other audio visual means, till 30.09.2020, which was earlier restricted to 30.06.2020.

➔ Vide MCA notification No. "F. No. 8/4/2018-CL-I-Part-I" dated 23.06.2020:

- **Amendment of Companies (Appointment and Qualification of Directors) rules, 2014 by Central Government (Companies (Appointment and Qualification of Directors) third amendment rules, 2020):**

In the Companies (Appointment and Qualification of Directors) Rules, 2014, in rule 6, in sub-rule (1), in clause (a), with respect to the compliances required by a person eligible and willing to be appointed as an independent director, the period of application for inclusion of name in data bank by a person appointed as an independent director of a company has been extended to ten months from the date of commencement of these rules, which was earlier restricted to seven months.

➔ Vide Securities and Exchange Board of India ('SEBI') Circular No. "SEBI/HO/IMD/DF6/CIR/P/2020/92" dated 04.06.2020:

- **Relaxation in compliance with requirements pertaining to AIFs and VCFs:**

AIFs and VCFs may submit regulatory filings for the periods ending 31.03.2020 and 30.04.2020 and the months ending March, April, May and June 2020, on or before 07.08.2020.

➔ Vide SEBI Circular No. "SEBI/HO/DDHS/CIR/P/2020/098" dated 08.06.2020:

- **Relaxation from compliance with certain provisions of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008, SEBI (Non-Convertible Redeemable Preference Shares) Regulations, 2013 and other SEBI Circulars due to the COVID -19 virus pandemic:**

≡ Extension to the relaxation provided in the circular for issuers who intend/propose to list their Non-

Convertible Debentures (NCDs) /Non-Convertible Redeemable Preference Share (NCRPS) /Commercial Papers (CPs) for disclosure of financial results for another one month, has been provided in the following manner:

Particulars	Available Financials	Date for issuance	Extended date for issuance	Period of relaxation
Cut-off date for issuance of NCDs/NCRPS /CPs	As on September 30, 2019	On or before March 31, 2020	On or before June 30, 2020	91 days

➔ Vide SEBI Circular No. "SEBI/HO/MIRSD/DOP/CIR/P/2020/101" dated 19.06.2020:

• **Relaxation in timelines for compliance with regulatory requirements:**

- ≡ Extension of the timelines for compliance with the regulatory requirements by the Trading Members / Clearing Members / Depository Participants, has been mentioned in the SEBI circulars, as under:

Compliance requirements for which timelines were extended vide SEBI circular No. SEBI/HO/MIRSD/DOP/CIR/P/2020/61 dated April 16, 2020.	S. No. in circular for which timeline is extended further	Extended timeline / Period of exclusion
Client Funding Reporting	I	Till July 31, 2020 for the months of April, May and June 2020.
Reporting for Artificial Intelligence (AI) and Machine Learning (ML) applications.	II	Till July 31, 2020 for the quarter ended on March 31, 2020.
Compliance certificate for Margin Trading for CM Segment.	III	Till July 31, 2020.
Risk based supervision.	IV	
Internal Audit Report for half year ending (HYE) March 31, 2020.	V	Till July 31, 2020 for the half year ended on March 31, 2020.
Net worth certificate in Margin Trading for CM Segment for HYE March 31, 2020.	VIII	
Net worth certificate for all members for HYE March 2020.	IX	
Penalty for non-collection / short collection of upfront margins in cash segment.	X	Till July 31, 2020.

Maintaining call recordings of orders/instructions received from clients.	XI	
Compliance requirements for which timelines were extended vide SEBI circular No. SEBI/HO/MIRSD/DOP/CIR/P/2020/62 dated April 16, 2020.	S. No. in circular for which timeline is extended further	Extended timeline / Period of exclusion
KYC application form and supporting documents of the clients to be uploaded on system of KRA within 10 working days.	III	Period of exclusion shall be from March 23, 2020 till July 31, 2020.
Compliance requirements for which timelines were extended vide SEBI circular No. SEBI/HO/MIRSD/DOP/CIR/P/2020/62 dated April 16, 2020.	S. No. in circular for which timeline is extended further	Extended timeline / Period of exclusion
Submission towards weekly monitoring of client funds under the provisions of Enhanced Supervision.	I	Till July 31, 2020.
Submission of data on monthly basis towards clients' and fund balance under the provisions of Enhanced Supervision.	II	
Daily margin trading reporting.	III	
Update in Income Tax Permanent Account Number of Key Management Personnel / Directors.	IV	Three months from the due date.
Issue of Annual Global Statement to clients.	V	

➔ Vide SEBI Circular No. "SEBI/HO/CFD/CMD1/CIR/P/2020/106" dated 24.06.2020:

- **Further extension of time for submission of financial results for the quarter/half year/financial year ending 31st March 2020 due to the continuing impact of the COVID-19 pandemic:**

Timeline for submission of financial results under Regulation 33 of the LODR Regulations has been extended to 31.07.2020, for the quarter and the year ending 31.03.2020. Similarly, the timeline under Regulation 52 of the LODR for submission of half yearly and/or annual financial results for the period ending 31.03.2020 for entities that have listed NCDs, NCRPS', CPs, MDS' has also been extended to 31.07.2020, which was earlier restricted to 30.06.2020.

Real Estate Brief

- ➔ Notice issued by the Maharashtra Real Estate Regulatory Authority for continuation of online services and operations

- The Maharashtra Real Estate Regulatory Authority (“**Maha-RERA**”) issued a notice dated 01.06.2020 bearing No. MahaRERA/Adm/Notice/2020, in view of the extension of nation-wide lockdown the Maha-RERA provided that the Maha-RERA shall continue its operations and online delivery of all its services, including project registrations, agent registrations, project extensions, corrections, updates and filing of complaints with all staff working digitally.
- The MAHA-RERA further provided that only urgent matters shall be listed for hearing, after urgency of the matter decided by the full bench of Maha-RERA.

⇒ **Notification issued by the Urban Development and Housing Department, Jaipur notifying the Rajasthan Real Estate (Regulation and Development) (Amendment) Rules, 2020 (“Amendment Rules”)**

- Vide Notification dated 03.06.2020, the Urban Development and Housing Department, in exercise of the powers conferred by Section 84 of the Real Estate (Regulation and Development) Act 2016, the state government amended the Rajasthan Real Estate (Regulation and Development) Rules, 2017.
- **Amendment to Rule 10:** With respect to the procedure for application for registration by the real estate agent, the said Amendment Rules, further provided for application for registration by a sole proprietorship firm. Further, the said amendment also provides that a sum of rupees fifty thousand rupees shall be payable in an event the applicant is other than an individual or a sole proprietorship firm.
- The said amendment to Rule 10 (2) of the Rajasthan Real Estate (Regulation and Development) Rules, 2017 has broadened the scope of application for registration by the real estate agents to also include sole proprietorship firm(s) as an applicant.
- **Amendment to Rule 11:** With respect to the grant of registration to the real estate agent, the said Amendment Rules have prescribed a time limit of 30 (thirty) days for the issuance of registration certificate in Form – I to the real estate agent.
- **Amendment of Form – I:** With respect to form pertaining to the Registration Certificate of Real Estate Agent, the Amendment Rules have added an additional condition by adding sub-clause (iii-a), (iv-a) and (iv-b) for the grant of registration of the real estate agent.
- The additional condition as mandated in sub-clause (iii-a) for a real estate agent to comply is that the real estate agent shall facilitate the possession of all documents, as the allottee is entitled to, at the time of booking of any plot, apartment or building, as the case may be.
- Further, as per the newly inserted sub-clause (iv-a) and (iv-b), the real estate agent shall display his registration certificate number on all hoardings/sign boards put up at his business place; and the real estate agent shall keep and display at his business place the registration certificate granted to him under the Real Estate (Regulation and Development) Act 2016.

- **Amendment of Form – L:** Further, with respect to renewal of the registration of the real estate agent, the Amendment Rules further propose to add additional conditions for renewal of registration by inserting sub-clause (v-a) and (v-b) to Clause 2 of Form – L.
- The said additional conditions as inserted are as per (v-a) and (v-b) are that the real estate agent shall display his registration certificate number on all hoardings/sign boards put up at his business place; and that the real estate agent shall keep and display at his business place the registration certificate granted to him under the Real Estate (Regulation and Development) Act 2016.

⇒ **Notice issued by the Government of Tripura, Directorate of Urban Development for registration of real estate projects commenced from 26.03.2020**

- The Government of Tripura, Directorate of Urban Development vide its notice dated 03.06.2020 bearing no. F.14(1)/UDD/DUD/2017/3223, issued to all developers/ promoters / contractors/ builders in Tripura who have undertaken real estate projects for residential or commercial purpose with land more than 500 square meters or more than eight apartments, which commenced from 26.03.2020 onwards.
- All developers/ promoters / contractors/ builders falling within the above mentioned category, shall register their real estate projects with Tripura – Real Estate Regulatory Authority (“**T-RERA**”) within 30.06.2020.
- Further, even all the real estate agents shall have to register themselves with the T-RERA within 30.06.2020.
- The said notice dated 03.06.2020 further provides that the application for registration shall be done only online through portal “rera.tripura.gov.in” along with the payment of the requisite fee online.
- The certificate of registration shall also be issued online with the digital signature of T-RERA.
- The said notice dated 03.06.2020 further provides that the non-compliance of the provisions of the Real Estate (Regulation and Development) Act, 2016 is punishable with penalty or imprisonment for a term which may extend to 3 (three) years as per Section 59 of the Real Estate (Regulation and Development) Act, 2016.
- The said notice dated 03.06.2020 further advises all the banks and financial institutions not to approve any loan or finance to developers/ promoters/ contracts/ builders whose real estate project has not been registered with T-RERA.

⇒ **Memo issued by the Punjab Real Estate Regulatory Authority notifying FAQs on GST rate structure**

- The Punjab Real Estate Regulatory Authority (“**Punjab-RERA**”) has issued Memo dated 11.06.2020 bearing memo No. RERA/Pb/AM(F&A)/2020/3264, by virtue of which the Punjab-RERA provided that the Government of India, Ministry of Finance, Department of Revenue (Tax Research Unit) notified a compilation of Frequently Asked Questions (FAQs) for guidance and easy understanding of all

stakeholders in the real estate sector with respect to the new GST rate structure on the real estate sector that was made effective from 01.04.2019.

➤ Notification issued by the Government of Karnataka, Housing Department notifying the Karnataka Real Estate (Regulation and Development) (First Amendment) Rules, 2020

- Vide notification dated 12.06.2020 bearing No. DOH 8 RERA 2017, the Government of Karnataka, Housing Department, in exercise of the powers conferred by Section 84 of the Real Estate (Regulation and Development) Act 2016, (Central Act 16 of 2016) the state government further amended the Karnataka Real Estate (Regulation and Development) Rules, 2017.
- As per the First Amendment Rules, 2020, the Rule 8A with respect to draft Agreement for Sale has been inserted and the same shall be in the format as per the newly inserted Annexure – A. Further, sub-clause 2 of the said Rule 8A also provides that any application, letter of allotment, letter or any other document signed by the allottee, in respect of the apartment, plot or building, prior to the execution and registration of the agreement for sale for such apartment, plot or building, as the case may be, shall not be construed to limit the rights and interests of the allottee under the agreement for sale or under the Real Estate (Regulation and Development) Act 2016.
- **Insertion of Annexure – A:** After the Form I of the Karnataka Real Estate (Regulation and Development) Rules, 2017, the Annexure A, with respect to format for Agreement for Sale has also been inserted.

➤ Circular issued by the Maharashtra Real Estate Regulatory Authority issuing standard operating procedures for online hearings

- The Maha-RERA issued a Circular dated 12.06.2020 bearing No. 27/2020 with respect to the standard operating procedure for online hearings through video conferencing.
- The Maha-RERA through its various orders has leveraged the digital facility to ensure non-stop online delivery of its services including (i). project registration; (ii). agent registration; (iii). project extensions/ corrections; (iv). filing of complaints; and (v). project updates and so on.
- The Maha-RERA has also initiated the procedure for online hearing through video conferencing, of urgent matters, after its urgency was established by the full bench of Maha-RERA.
- The Maha-RERA is further enhancing its complaint management IT application so that the entire complaint procedure including filing of complaints, reply by respondents, counter replies by both complainants and respondents, hearings, judgements, etc. can be done online.
- The Maha-RERA, shall now use the online mode to re-start regular hearing of cases through video conferencing, while following the standard operating procedures attached to the said Circular.

- This order has come into effect immediately, i.e., from 12.06.2020, however, the same may further be reviewed based on the status of the COVID-19 pandemic.

Litigation Brief

➤ Scope of amendment to the petition under section 34 of the Arbitration & Conciliation Act

Prakash Industries Limited vs. Bengal Energy Limited and Ors. (MANU/WB/0536/2020)

BACKGROUND

To adjudicate upon the disputes arisen between Prakash Industries Limited & Bengal Energy Limited, an arbitral tribunal consisting of three members passed an Award, dated 31.03.2017 in favor of Bengal Energy Limited. Prakash Industries ('Applicant') aggrieved by the award filed a Petition under section 34 of the Arbitration and Conciliation Act, 1996 ('Act') for setting aside the award.

Subsequent to the filing of the Section 34 Petition, Prakash industries preferred an application seeking amendment of the Petition to 'amplify' the already existing grounds of defense/objections. The Applicant submitted that the need to amend the Petition arises from the fact that a new set of advocates have been engaged post the filing of the Petition. Moreover, the proposed amendments does not in any manner change the nature and character of the Petition and are only an amplification to the existing grounds of defense taken earlier by the Petitioner.

In support of the abovementioned contention, the Applicant relied on various judgements- Fiza Developers and Inter-Trade Private Limited Vs. AMCI (India) Private Limited (2009) 17 SCC 796, Venture Global Engineering Vs. Satyam Computer Services Ltd.(2010) 8 SCC 660, Emkay Global Financial Services Limited Vs. Girdhar Sondhi (2018) 9 SCC 49 and State of Maharashtra Vs. Hindustan Construction Company Limited (2010) 4 SCC 518, as instances where the court in Section 34 applications, allowed the grounds to be amended after taking into account all relevant considerations.

This application was opposed by the Respondents on two broad grounds;

1. That the amendment application comes beyond the cut-off period for filing under Section 34(3), and if such an application for amendment is allowed there will be no end to litigation. Also, the legislative object behind Section 34(3) is defeated on the acceptance of such an application.
2. Proposed amendment sought by the Applicant would change the very nature of arbitration proceedings. Respondent relies on Bijendra Nath Srivastava (Dead) Vs. Mayank Srivastava reported in (1994) 6 SCC 117 and Vastu Invest & Holdings Pvt. Ltd, Mumbai Vs. Gujarat Lease Financing Ltd., (2001) 2 Mah LJ 565 to show that amendments for introducing new grounds will not be permitted in a section 34 application.

ISSUES

1. Whether the proposed amendments meets the threshold under Order XI Rule 17 of the Code of Civil Procedure, 1908?
2. Whether the amendment applies to the schematic arrangement of the tiers of challenge under section 34 of the 1996 Act?

OBSERVATIONS BY THE HON'BLE COURT

The Hon'ble Court while deciding the two issues, held the following:

1. The grounds which are sought to be brought in by way of an amendment by the Applicant predominantly deal with Sale of goods Act & Quantum of damages, none of which can be traced to the original Petition. Since the Applicant has already raised the ground for the Award being opposed to public policy, there is no need to bring additional grounds in support of the contention that the Arbitral Tribunal has not taken various provisions of the Sale of Goods Act, 1930 and certain related propositions which are based on decisions of the Supreme Court into account.

The test therefore is whether the proposed amendments would warrant a fresh application under the Section 34 or not. This essentially means that whether the grounds sought to be introduced by the amendment are new and independent, and only on the satisfaction of the same, such an application would be allowed. The Court went on to say that there can be no concrete yardstick for the test and each case must be decided on its independent facts.

2. While deciding the second issue, the court interpreted that Section 34 of the Act provides for a two pronged recourse to a party for setting aside an Award, namely;
 - a. Under Section 34(2)(a) of the Act ; and
 - b. Under Section 34(2) (b) & 34(2-A) of the Act.

The Hon'ble Court further opined that as opposed to Section 34(2)(a), which starts with ".....the party making the application establishes on the basis of the record.....", the mantle shifts to the court in Section 34(2)(b)); "an Arbitral Award may be set aside.....if the court finds that" repeated as ".....may also set aside by the court, if the court finds that the Award is vitiated by patent illegality appearing on the face of the Award" in 34(2-A).

The Court without delving into the legislative intent underlying the transfer of burden from a party to the court focused on the nub of the matter, which is whether a party who seeks to enlarge the scope of challenge to an award by adding to the grounds is impacted by the baton

being handed over to the Court from section 34 (2) (b) onwards.

The court answered in affirmative and held that amendment of the grounds, in the present case, would not be necessary at all since 'Public Policy' as a ground was part of the original Petition and thus, the petitioner not only has the liberty of urging the legal position under the Sale of Goods Act but also the case-laws which are the subject matter of the amendments under the head of 'Public Policy'. The Court further held that under Section 34(2)(b) the Court can *suo moto* adjudicate upon the sustainability of the Award without the Applicant having raise specific grounds of challenge.

The Hon'ble Calcutta High Court in the light of the abovementioned reasoning and precedents dismissed the Application for amendment of the petition filed u/s 34 of the 1996 Act.

- **Order VII Rule 11 (a): Whether non payment of part of Sale Consideration is a ground for cancellation of Registered Sale Deed?**

IN THE MATTER OF: Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra)(D) the Lrs & Ors. (Decided by Hon'ble Supreme Court of India on 09.07.2020).

Issue:

Whether non payment of part of the sale consideration is a ground for cancellation of Registered Sale Deed?

Facts:

1. The suit property in the present case is of restrictive tenure under Section 73AA of the Land Revenue Code. The Plaintiffs (Appellants) had filed an application before the Collector to obtain permission for selling the suit property to Respondent No.1. The Collector permitted sale of the suit property and fixed the sale price of the suit property at Rs.1,74,02,000/-. The permission for sale was subject to the terms and conditions contained in Section 73AA of the Land Revenue Code.
2. The Plaintiffs sold the suit property to Respondent No.1 *vide* registered Sale Deed, dated 02.07.2009 and the Respondent No.1 issued 36 cheques for Rs.1,74,02,000 towards payment of the sale consideration in favour of the Plaintiffs, the details of which were set out in the registered Sale Deed. The Respondent No. 1 subsequently sold the suit property to Respondent Nos. 2 and 3 herein *vide* registered Sale Deed, dated 01.04.2013, for a sale consideration of Rs.2,01,00,000/-.

3. On 15.12.2014, the Plaintiffs filed Special Civil Suit before the Principal Civil Judge, Surat against the Respondent No. 1, and also impleaded the subsequent purchasers, i.e. Respondent Nos. 2 and 3 as defendants. It was, inter alia, prayed that the Sale Deed, dated 02.07.2009 be cancelled and declared as being illegal, void, ineffective and not binding on them on the ground that the sale consideration fixed by the Collector, had not been paid in entirety by Respondent No. 1. It was submitted that Respondent No.1 had paid only Rs. 40,000 through 6 cheques, and remaining 30 cheques for Rs.1,73,62,000 were "bogus" cheques. The Plaintiffs also prayed that the subsequent Sale Deed, dated 01.04.2013 be declared as illegal, void and ineffective; and, the physical possession of the suit property be restored to the Plaintiffs. Respondent Nos. 2 and 3 filed an Application for Rejection of the Suit under Order VII Rule 11 (a) and (d) of the CPC, contending that the suit filed by the Plaintiffs was barred by limitation and that no cause of action had been disclosed in the plaint.
4. Dismissing the Suit, the Trial Court held that the suit for cancellation of the Sale Deed is barred by limitation. The Trial Court further observed that before purchasing the suit property from Respondent No.1, the Respondent Nos. 2 and 3 had issued a public notice, dated 14.08.2012 to which the Plaintiffs did not raise any objection.
5. Aggrieved by the order of the Trial Court, Plaintiffs filed First Appeal before the High Court of Gujarat at Ahmedabad. The High Court affirmed the findings of the Trial Court, and held that the suit was barred by limitation, since it was filed beyond the period of limitation of three years. Aggrieved by the order of the High Court, the Plaintiffs have filed the present Civil Appeal before the Hon'ble Supreme Court.

Court's Observations:

- The Court analyzed that the Sale Deed, dated 02.07.2009 records that the 36 cheques covering the entire sale consideration of Rs.1,74,02,000 were "paid" to the Plaintiffs, during the period between 07.07.2008 to 02.07.2009 and the same was expressly and unequivocally acknowledged by the Plaintiffs. Even if the case made out in the Plaint is to be believed, it would mean that almost 99% of the sale consideration allegedly remained unpaid throughout. It is inconceivable that the Plaintiffs would have remained completely silent for a period of over 5 ½ years, without even issuing a legal notice for payment of the unpaid sale consideration, or instituting any proceeding for recovery of the amount.

- The Court relied on the precedent "*Vidyadhar v. Manikrao & Anr.*", wherein this Court has held that the words "price paid or promised or part paid and part promised" under Section 54 of Transfer of Property Act, 1882, indicate that actual payment of the whole of the price at the time of the execution of the Sale Deed is not a *sine qua non* for completion of the sale. Even if the whole of the price is not paid, but the document is executed, and thereafter registered, the sale would be complete, and the title would pass on to the transferee under the transaction. The non-payment of a part of the sale price would not affect the validity of the sale. Once the title in the property has already passed, even if the balance sale consideration is not paid, the sale could not be invalidated on this ground. Therefore, even if the averments of the Plaintiffs are taken to be true believing that the entire sale consideration had not in fact been paid, it could not be a ground for cancellation of the Sale Deed.
- The Court further held that the plea taken in the plaint that the Plaintiffs learnt of the alleged fraud in 2014, on receipt of the index of the Sale Deed, is wholly misconceived, since the receipt of the index would not constitute the cause of action for filing the suit. It is clear that the cause of action arose on the non-payment of the bulk of the sale consideration, which event occurred in the year 2009. The plea taken by the Plaintiffs is to create an illusory cause of action, so as to overcome the period of limitation.
- The Court also pointed out that the Plaintiffs had placed reliance on the Order of the Collector, dated 19.06.2009 in their plaint which stated that purchaser of the property have to make payment of the price of the land/property by cheque and violation of such term shall automatically render the permission as cancelled. The Court held that if the Plaintiffs had a genuine grievance of nonpayment of the balance sale consideration, they could have moved for revocation of the permission granted by the Collector, however, no complaint whatsoever was made to the Collector at any point of time. The conduct of the Plaintiffs is, thus, reflective of lack of *bona fide*.

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