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

Judgment reserved on:16.05.2025
Judgment pronounced on: 29.07.2025

\+ **CS(COMM) 959/2024 & I.A. 43586/2024, I.A. 43587/2024, I.A.43588/2024, I.A. 43589/2024, I.A. 43590/2024**

MMTC LIMITED .....Plaintiff

Through: Mr. Harish Salve and Mr. Sanat Kumar, Sr. Advs. with Mr. Akhil Sachar, Ms. Sunanda Tulsyan, Advs.

versus

ANGLO-AMERICAN METALLURGICAL PTY LIMITED AND ORS. .....Defendants

Through: Mr. Jayant Mehta, Sr. Adv. with Mr. Sumeet Kachwaha, Mr. Samar Kachwaha, Mr. Ankit Khushu, Ms. Akanksha Mohan, Mr. Pratyush Khanna, Advs. for D-1
Mr. Shyel Trehan, Sr. Adv. with Mr. Sumeet Kaul, Mr. Himanshu, Ms. Vidhi Jain, Advs. for D4-7

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

1. Filing of the present suit by the plaintiff herein is a classic case of abuse of the process of law. Having exhausted all the remedies as available under the law, the present suit has been filed seeking to re-litigate the issues already adjudicated upon by the Arbitral Tribunal in the Arbitral Award which has been upheld by the Hon'ble Supreme Court, on a ground of fraud not upon the Court but by the officials of the plaintiff itself. The issue which is before me is: Can a "suit" be maintainable to declare an Arbitral Award a nullity. In my view, if this is allowed, then the very purpose and object of the Arbitration and Conciliation Act, 1996 (***"1996 Act"***) will be rendered infructuous/otiose.

2. The present suit filed by the plaintiff has claimed the following reliefs:-

> *"a) To pass a decree of declaration in favour of the Plaintiff and against the Defendants to declare and hold that the Addendum No. 2 dated 20.11.2008 executed between the Plaintiff and the Defendants is vitiated by fraud and tainted by corruption and is thus void ab initio;*
>
> *b) Pass a decree of declaration to declare that the Award dated 12.05.2014 passed by the International Chamber of Commerce, International Court of Arbitration in ICC Arbitration Reference 18968/CYK titled as Anglo-American Coal Metallurgical Coal Pty Limited versus MMTC Limited is obtained/tainted by fraud as it is based on the Addendum*

No. 2 dated 20.11.2008, which itself is void ab initio and thus the Award dated 12.05.2014 itself is void and unenforceable and is liable to be set aside;

c) Pass a decree of declaration to declare and set aside the Award dated 12.05.2014 and all/any consequential orders based on the said Award on the ground that the Award is obtained/tainted by fraud and/or was vitiated by the acts of corruption of the Defendants in securing the Plaintiff's consent to enter into the Addendum No.2 dated 20.11 .2008;

d) To pass a decree in favour of the Plaintiff and against the Defendants, jointly and severally, for recovery of a sum of Rs. 8,95,29,612/- (Rupees Eight Crores Ninety-Five Lakhs Twenty-Nine Thousand Six Hundred and Twelve Only) along with interest @ 18% per annum calculated from the date of commencement of cause of action i.e. 16.08.2022 till date of its realization;

e) To pass a decree of Permanent injunction in favour of the Plaintiff and against the Defendants, its legal heirs, successors, legal representatives, administrators, executors, nominees and assigns or anybody acting on their behalf, thereby restraining the Defendants from acting/ relying upon the Addendum No.2 dated 20.11.2008 and the Award dated 12.05.2014 in any manner whatsoever;"

BREIF FACTS AS PER THE PLAINT

3. The plaintiff is a Central/Public Sector Enterprise, the entire shareholding is held by the Central Government. The plaintiff is under

the pervasive control of the Ministry of Commerce and Industry. Amongst other things, the plaintiff is engaged in the business of export and import of mineral ores and essential metals whereas the defendant No. 1 is the international supplier of the coking coal.

4. In the year 2003, the plaintiff approached the defendant No. 1 for supply of coking coal. On 07.03.2007, the plaintiff with the defendant No. 1 entered into an Long Term Agreement (***"LTA"***) for the supply of hard coking coal intended for use by Neelachal Ispat Nigam Limited (***"NINL"***) in which the plaintiff was holding 49.78% shares at the contemporaneous time. The LTA incorporated provisions relating to pricing and performance. Further, the LTA had three one-year delivery periods starting on July 1, 2004, and ending on June 30, 2007 and by virtue of Clause 1.3 of LTA, the plaintiff was given an option to extend the LTA for two more delivery periods through mutually executed addendums based on mutually agreed price and quantity which was later exercised by the plaintiff.

5. The LTA contains an arbitration clause which reads as under:-

> *"PARA 20: ARBITRATION:*
>
> *20.1 All disputes arising in connection with the present Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce, Paris by one or more Arbitrators appointed in accordance with the said Rules and the Award made in pursuance thereof shall be binding on the parties. The Arbitrator shall give a reasoned award. The venue of arbitration shall be New Delhi, India."*

6. On 28.06.2007, Addendum No. 1 was executed between the parties for the period 01.07.2007 to 30.06.2008, extending the arrangement to a fourth delivery period. Thereafter, before execution of Addendum No. 2, the defendant No. 5, the then GM (Coking Coal) in accordance with his role in/duty to the plaintiff, prepared a Note dated 03.06.2008 for finalization of price for LTA for the fifth delivery period at the rate of US$ 300 per MT. The said note recorded that the supplies against the fourth delivery period from 01.07.2007 to 30.6.2008 had not been completed and had been extended till 30.09.2008. The note sought sanction of Sale/Purchase Committee of Directors (***"SPCOD"***) for entering into a binding contract for the period 01.07.2008 to 30.06.2009. The note did not mention the quality of coking coal to be supplied during the fifth delivery period.

7. Upon the said note dated 03.06.2008 being put up before the defendant No.6, the then Director (Marketing) of the plaintiff, the defendant No.6 on 04.06.2008, noted that the plaintiff "*should try to avoid/defer US$ 300 price coal to be finalized for 2008-2009*" till March, 2009. The said defendant No. 6 was aware of the requirements of NINL for coking coal and that NINL had sufficient stocks of coking coal, a fact that was subsequently confirmed by NINL. The defendant No.6 thus expressed his opinion that considering the state of the international markets, the plaintiff should not commit to the price of US$ 300 per MT in advance, before the need for supplies of coal arose.

8. After much deliberation and communications between the plaintiff and defendant No. 1, on 20.11.2008, Addendum No. 2 was executed

whereby the LTA was extended to cover a fifth delivery period from 01.07.2008 to 30.06.2009. Under this Addendum, a fixed price of US$ 300 per MT was stipulated for a contracted quantity of 466,000 MT. This Addendum forms the crux of the dispute between the parties.

9. The plaintiff alleges that the price of US$ 300 per MT was arbitrarily and fraudulently determined through collusion between plaintiff's key managerial personnel, arrayed as Defendant Nos. 4 to 7, and representatives of defendant No. 1, namely defendant Nos. 2 and 3, at a time when global coal prices had significantly declined owing to the 2008 global economic downturn (Lehman Brothers Crash).

10. It is also stated that the consent of the plaintiff for this Addendum was obtained by fraudulent means. The Addendum was also opposed to public policy since the acts and omissions of the defendants amounted to commission of a criminal offence of corruption under the Prevention of Corruption Act, 1988. The plaintiff was acting through the defendant Nos. 4 to 7, who made the plaintiff consent to committing for price of US$ 300 per MT which was more than 3 times the price fixed for the fourthdelivery period i.e. 96.40 US$ per MT and caused a massive loss to the public exchequer, for the next year, when the prevalent trend was of fall in prices and when there was no immediate requirement of coking coal.

11. The Addendum No. 2 specified a different quality of coal to what was mentioned in the Agreement. The quality of the Coal as mentioned in the Addendum No. 2 is extracted below:-

> *"1. Prime Washed Isaac Coking Coal Brand (Blend of 65% Moranbah North and 35% German Creek Coking Coals)*

SIZE 0-50 MM

2. Dawson Valley Blend Coking Coal (Blend of 80% Dawson MV 20% Capricorn Coking Coal) shipment subject to technical clearance from Neelachal Plant."

12. The aforesaid quality of Coking Coal was different from that mentioned in the Agreement, which was only the Blend of 65% Moranbah North and 35% German Creek Coking Coal. This shows that with regard to each delivery period, a separate Addendum was to be executed to mutually settle and decide the price as well as the quality and quantity of Coal.

13. The officials of plaintiff, despite being fully aware that the price of Coking Coal had drastically fallen, proceeded to execute the Addendum No. 2. It is important to note that on 20.11.2008 i.e. date of signing of the Addendum, officials of the plaintiff knew about the drastic fall in price, which is evident from the letter of defendant No.4. Thus, the communication dated 20.11.2008 is a demonstrable proof of the breach of fiduciary duty by the defendant Nos. 4 to 7 for their own protection and that they had acted in a manner to cause a loss to the public sector undertaking with the intent and motive to cause a wrongful gain in favour of defendant No. 1.

14. There was no reason whatsoever for the plaintiff, which was purchasing coking coal from the defendant No.1 till 30.09.2008 at USD 96.40, to agree to the price of USD 300 per MT for the same period. The execution of the Addendum No. 2 was the catalyst, which drove the defendant No.1 to an ever-dominating position in the transaction. On the other hand, the defendant No. 1 in News Release

dated 20.02.2009 made an unambiguous admission that in the second half of 2008, as a result of global economic slowdown, there had been a significant decline of prices of commodities including coking coal.

15. On said price, when the plaintiff was unable to make purchases, the defendant No.1 invoked the arbitration clause of the LTA and obtained an Arbitral Award dated 12.05.2014 against the plaintiff for damages on account of alleged non-lifting of 4,54,034 MT out of the contractual 4,66,000 MT of coking coal by the plaintiff and the defendant No.1 was held to be entitled to recover damages to the tune of US$ 78,720,414.92 along with pre-award interest @ 7.5% inthe sum of US$ 27,329,420.29, along with costs of US$ 977,395, amounting to US$ 107,027,230.21 (approximately Rs. 716 crores), and interest @ 15% on the principal sum from the date of the Award until payment.

16. In execution of said Arbitral Award, the plaintiff has been made to deposit a sum of Rs. 1087,76,44,465.40, (though the calculation of thisamount is disputed by the plaintiff), apart from the original title deeds of 36 immovable properties vested with or owned by the plaintiff totalling to a sum of Rs. 1,275.51 crores with the registry of this Hon'ble Court.

17. These aforesaid facts itself speaks that there was neither any plausible reason nor circumstance, prevalent in the market justifying in any manner, procurement of 4.66 lakh MT and that too at a price of US$ 300 per MT. Fraud is evident and apparent on the face of record, since the execution of the Addendum No. 2 on 20.11.2008 was the result of fraud, collusion, conspiracy and corruption. This conspiracy led to

wrongful gain to the defendant No.1 and wrongful loss to the plaintiff and is a case of an egregious fraud.

18. The defendant No. 4 i.e. Sh. Ved Prakash, Chief General Manager, who addressed the communication dated 20.11.2008, subsequently became the Director (Mktg) on 19.02.2010 and thereafter promoted to the role of Chairman cum Managing Director (***"CMD"***) of the plaintiff on 14.03.2015 and remained until his superannuation on 29.02.2020. The said officer remained in control of the arbitral proceedings, the hearing of the objections as well as appeal under section 37 of 1996 Act. Post superannuation of Shri Ved Prakash, upon enquiry, it surfaced that he is doing business in Dubai and Mr. Sanjeev Batra, who was the CMD during the period when the addendum was signed, is presently doing business in Singapore.

19. On 24.02.2021, the then CMD, MMTC for the first time issued a confidential note addressed to Joint Secretary, FT(ST), Department of Commerce with a copy to CVO, MMTC, requesting the CVO to seek Govt. of India permission for the enquiry into the matter. On 25.03.2021, the said Department gave permission to initiate enquiry.

20. Pursuant to the letter dated 25.03.2021, the plaintiff examined the case related to supply of coking coal and dispute pertaining to the fifth delivery period and submitted a factual report dated 27.09.2021. Thereafter the matter was examined and on 16.08.2022, a decision was taken to refer the matter to the CBI *vide* Office Memorandum No.C-13011/06/2020-21-VIG issued by the Under Secretary (Vigilance), Department of Commerce, conveying the approval of the Hon'ble Commerce and Industry Minister for handing over the case to

CBI for detailed investigation of the matter. On 02.09.2022, a Complaint was registered with the CBI by the plaintiff.

21. After getting sanction, on 09.01.2023, the CBI registered a Preliminary Enquiry bearing No. PE2172023A0001. The plaintiff has also moved an application under Section 156(3) of the Criminal Procedure Code, 1973 seeking registration of FIR in the subject matter. Learned Special Judge, CBI *vide* order dated 09.05.2024 dismissed the said application as not maintainable on the ground that the Court of Learned Special Judge, CBI does not have the powers to direct the CBI to register an FIR. Against the said order, Criminal Revision Petition No. 1060 of 2024 has been filed and notice has been issued.

22. This conspiracy is therefore, currently under further investigation by the CBI. The seeds of the commercial relationship between the ex-officials of the plaintiff and the defendant No. 1 leading to the execution of the Addendum No. 2 dated 20.11.2008 is a product of fraud, and as such, the Agreement and the ensuing entire Arbitral proceedings, leading to the culmination of the Award dated 12.05.2014 are infected by poison of fraud.

23. The plaintiff has already invoked the criminal remedies by filing complaint before the CBI and is also independently invoking the civil remedy by way of filing the present suit.

SUBMISSIONS

On behalf of the Plaintiff

24. Mr. Harish Salve, learned senior counsel appearing for the plaintiff, on maintainability, submits that the averments made in the plaint are

to be taken on a demurrer and the merits of the case and the defence available to the defendants are irrelevant to decide the question, whether or not to reject the plaint. The defendant No. 1 has attempted to make oral submissions with regard to the merits of the case, which is impermissible in law as at this stage, the averments made in the plaint are to be considered as true and correct. Reliance is placed on ***P.V. Guru Raj Reddy v. P. Neeradha Reddy, (2015) 8 SCC 331.***

25. The defendant No. 1 has urged that prayers and more particularly (b) and (c) are barred in terms of Section 5 of 1996 Act. However, the case of the plaintiff is that section 5 does not bar the institution of the present suit. Even if it is presumed that prayers (b) and (c) are not maintainable, it is not the case of the defendant No. 1 that prayers (a), (d) and (e) are not maintainable. Section 5 of 1996 Act nowhere states that the aforementioned reliefs i.e. (a), (d) and (e) cannot be sought by way of a separate suit.

26. Mr. Salve, learned senior counsel while relying on ***Central Bank of India vs. Smt. Prabha Jain and Others, (2025) 4 SCC 38,*** submits that even if prayers (b) and (c) as contended by the defendant No. 1 to be barred by law, the said issue cannot be decided under Order VII Rule 11 of Code of Civil Procedure, 1908 (***"CPC"***) since the plaint cannot be rejected partially and no observations with regard to the prayers (b) and (c) can be made.

27. Admittedly, no application has been filed under section 8 of 1996 Act by defendant No. 1. The plaintiff has clearly pleaded that the Award passed by the AT is tainted by fraud and corruption and the former employees of the plaintiff i.e. defendants Nos. 4-7 colluded with

officials of defendant No. 1, causing a substantial loss exceeding Rs. 1,000 crores to the public exchequer. Such serious allegations having broader implications for the public interest must be adjudicated by a Civil Court and are not arbitrable in nature.

28. Reliance is placed on ***Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1*** and more particularly on paragraph 276. Reliance is also placed on ***National Projects Construction Corporation v. Royal Construction Co. Pvt. Ltd., 2017 SCC OnLine Del 10944*** wherein it was held that a suit is maintainable to set aside an Arbitral Award, which is obtained by fraud and the proceedings pursuant thereto are tainted by fraud.

29. Learned senior counsel while placing reliance on ***M. Hariharasudhan v. R. Karmegam, (2019) 10 SCC 94*** and more particularly on paras 5-6, submits that the jurisdiction of a Civil Court to entertain the suit has to be determined whether the Act provides an adequate final remedy to what the Civil Court would normally do in a suit, such that the jurisdiction of the Civil Court must necessarily be inferred to have been ousted. It is submitted that 1996 Act does not provide for a situation, as pleaded in the plaint. As the 1996 Act does not provide any remedy in such scenario wherein the fraud has been discovered post conclusion of the arbitration proceedings, the plaintiff cannot be rendered remediless and thus the present suit is maintainable.

30. *On merits*, Mr. Salve, learned senior counsel submits that the cause of action to file the present suit arose for the first time on 16.08.2022, whenafter examining the entire material available and discovered, a decision was taken to refer the matter to the CBI *vide* Memorandum

dated 16.08.2022 issued by the Under Secretary (Vigilance), Department of Commerce, conveying the approval of the Commerce and Industry Minister for handing over the case to the CBI for a detailed investigation in the matter. The plea of fraud was never taken by the plaintiff before the Arbitral Tribunal or in the Objections under section 34 and 37 as well as before the Hon'ble Supreme Court as the arbitration proceedings were conducted under the supervision of defendant No. 4.

31. Reliance is placed on ***United India Insurance Co. Ltd. versus Rajendra Singh and Others, (2000) 3 SCC 581*** wherein the Hon'ble Supreme Court has observed that the party cannot be rendered remediless, in the event, it learns about the newly discovered facts amounting to fraud of high degree.

32. A decree obtained by fraud can be set aside by filing a separate suit. Reliance is placed on ***Indian Bank v. Satyam Fibres (India) (P) Ltd., (1996) 5 SCC 550***. The LTA, in the present case, is unlawful and immoral in terms of section 23 of Contract Act, 1872 and the Arbitral Tribunal having not been apprised about the Agreement being unlawful or in ignorance of the said statutory provision, has passed an Arbitral Award.

33. Learned senior counsel urges that the Arbitrator becomes functus officio once the Award is signed and no recourse can be made before the Arbitral Tribunal. In the absence of fraud not being discovered at that stage when the Award was assailed in section 34, will the aggrieved party be constrained to suffer the enforcement of the said unlawful Award? To this, it is submitted that no Court would permit

the Award holder to enforce an unlawful Award. The 1996 Act does not expressly or impliedly bar the jurisdiction of a Civil Court to challenge such an unlawful Award by filing a separate suit. Reliance is placed on ***Union of India v. Ramesh Gandhi, (2012) 1 SCC 476*** and more particularly on paragraph 23.

34. Mr. Salve, learned senior counsel further argues that the fixation of price of coking coal for the fifth delivery period at US$ 300 per MT and the subsequent discovery of fraud leading to the execution of the Addendum No. 2 was not the subject matter before the learned Arbitral Tribunal and neither before the Hon'ble Supreme Court.

On behalf of the Defendant No. 1

35. Mr. Jayant Mehta, learned senior counsel appears for the defendant No. 1 and vociferously submits that the present suit is ex-facie barred by law, and non-maintainable, apart from being an abuse of process. It deserves rejection at the very threshold, without issuance of summons.

36. He submits that the plaintiff had breached the terms of the LTA by failing to lift the bulk of the required quantity of coal which led to invocation of the arbitration clause. The Arbitral Tribunal entered reference and thereafter, the Award was passed on 12.05.2014. The Award was finally upheld by the Hon'ble Supreme Court, *vide* its judgment dated 17.12.2020, the plaintiff filed a Review Petition, which was disposed of *vide* Order dated 29.07.2021. MMTC then filed an application seeking clarification, which was also disposed of *vide* order dated 19.04.2022.

37. The present suit has been filed by the plaintiff after the hearing in Enforcement Petition was concluded. The plaintiff moved an

objection under section 47 of CPC on the same grounds taken in the present suit i.e. fraud. The said objections were dismissed by this Court on 09.05.2025.

38. Learned senior counsel argues that the pith and substance of the present suit is to question an International Award, which has attained finality till the Hon'ble Supreme Court. The plaintiff seeks nullification of the Award, by way of a commercial suit which is unknown to law. Such recourse is barred by law under sections 5 and 34 of 1996 Act.

39. Mr Mehta argues that in view of non obstante clause in section 5, the jurisdiction of Civil Court is ousted. The 1996 Act is a complete code in itself. The 1996 Act categorically provides challenge to an Arbitral Award i.e. section 34. Hence, the present suit seeking to challenge the Award (prayer b) is clearly barred by section 5 read with section 34 of 1996 Act and is evidently "barred by law" within the meaning of Order 7 Rule 11 (d) of CPC.

40. The contention raised by the plaintiff that suit is maintainable by placing reliance on judgment that a decree may be challenged at the stage of execution (under section 47 of CPC) or by way of a separate suit is fundamentally flawed for the reason that the plaintiff has not shown that the alleged fraud was played on the Court or a decree was passed by a Court which inherently lacked jurisdiction. A bare reading of the plaint does not show that either of these grounds are pleaded or made out. An arbitral Award is only enforceable "as if it were a decree," by way of a deeming fiction contained in section 36 of 1996 Act. The said deeming fiction does not convert the Award into a

decree but only provides a mechanism for execution.

41. Learned senior counsel urges that section 34 of 1996 Act is the sole and exclusive remedy against an Arbitral Award. Applicability of all other laws are barred. If the present suit is held to be maintainable, Arbitral Awards and section 34 proceedings would lose all sanctity, and every Award Debtor shall seek to come up with a 'new ground' to challenge the Award, by way of a suit. Holding such an action to be maintainable shall completely defeat the objectives of the 1996 Act.

42. On reading the plaint, the plaintiff has admitted that the disputes arose between the parties, in relation to Addendum No. 2. These disputes were referred to arbitration, leading to the Award dated 12.05.2014. The said Award has attained finality. The plaintiff cannot now seek to raise a new challenge to the said Addendum. The cause of action in relation to the Addendum stands merged into the said Award. There exists no cause of action in relation to the Addendum independent of or outside the Award.

43. Hence, the present suit is therefore not just barred by law, but an abuse of the process, seeking to reopen facts which stand settled, and through a process unknown to law. None of the prayers sought by the plaintiff in the present suit can stand in the face of the Award. Each one of them, to be granted, would require the Award to first be set aside, which cannot be done by way of a suit. Therefore, the present suit is ex facie vexatious and deserves to be dismissed at the very threshold.

<u>On behalf of the Defendant Nos. 4-7</u>

44. Ms. Shyel Trehan, learned senior counsel for the defendant Nos. 4-7

adopts the submissions advanced by Mr. Mehta, learned senior counsel for the defendant No. 1 and in furtherance thereof, she submits that the present suit is barred by the limitation as the Addendum No. 2 is dated 20.11.2008 and the delivery of coal as per the Addendum No. 2 was scheduled between 01.07.2008 to 30.06.2009. The plaint discloses the purported cause of action as 16.08.2022, the date the plaintiff preferred a Complaint with the Central Bureau of Investigation alleging fraud by defendants 4 to 7. It is noteworthy that no such allegation was made prior to this time. The said act of submitting a complaint cannot give rise to an independent cause of action.

45. In this view, a suit, that is on the face of it, barred by limitation is liable to dismissed at the threshold. Reliance is placed on ***Nikhila Divyang Mehta v. Hitesh P. Sanghvi, 2025 SCC OnLine SC 779*** and ***Shri Mukund Bhavan Trust v. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle, 2024 SCC OnLine SC 3844***.

46. She further submits that the prayers in the present suit disclose the purpose of the suit which is to garner another opportunity at challenging the Arbitral Award while unfairly seeking to place a claim of fraud on its own officers, a claim that is belied by a plain reading of the plaint and the accompanying documents.

47. Ms. Trehan while relying on Clause 1 and 2 of LTA, submits that the price and quantity were pre-determined under the terms of the MoU and LTA. The transaction was approved by the SPCoD in its meeting dated 06.10.2008. It is pertinent to point out that the SPCoD that approved the proposal for the import of coking coal for NINL and

fixed the quantity and price, consisted of approximately 10 Directors and General Managers, however, only 4 have been arrayed as defendants herein.

ANALYSIS

48. Heard learned senior counsels for the parties and considered the material placed on record.

49. The issue for determination in this judgment is can a civil suit be maintainable to nullify an Arbitral Award when the same has attained finality as per the 1996 Act.

50. Order VII Rule 11 of CPC reads as under:-

"ORDER VII

Plaint

11. Rejection of plaint.— The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to befixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

(Emphasis added)

51. On perusal, the said rule provides 6 grounds to reject the plaint. Amongst others, when the plaint is barred by any law or the plaint does not disclose any cause of action, then the Court shall reject the plaint. The Hon'ble Supreme Court in ***Dahiben v. Arvindbhai Kalyanji Bhanusali, (2020) 7 SCC 366*** has exhaustively explained the applicability of the said provision in paragraph 23 which is extracted below:-

"23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the

action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p. 324, para 12)

> *"12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the*

power to reject a plaint, if it does not disclose any cause of action."

…… …… ……

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.

…… …… ……

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)

"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint

itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. Thetest is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

23.12. In Hardesh Ores (P) Ltd. v. Hede & Co. [Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman [D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941]"

52. On perusal, the Court is only required to see whether the averments made in the plaint along with the documents annexed with the plaint does not disclose any cause of action or the suit is barred by any law and if the answer is in affirmative, then it is the duty of the Court to put an end to sham litigation so that further judicial time is not wasted. The Court is not required to look into the averments made in the application under Order VII Rule 11 of CPC or the written statement filed by the defendant. The test for Order VII Rule 11 of CPC is if the averments made in the plaint are taken as correct in their entirety, then

a decree would be passed. If the plaint lacks the essential ingredients of a proper plaint, the Court should, at the threshold, nip in the bud when such bogus litigation appears to be a clear abuse of process. The said rule prevents frivolous, vexatious or legally untenable suits from consuming judicial time.

53. It is also a settled law that plaint cannot be rejected partially. If one of the relief claimed by the plaintiff is barred and the other one is not, then in that case, the Court shall not make any observation against the relief which is barred.[1]

54. The Hon'ble Supreme Court in ***T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467*** categorically urged the Courts to use Order VII Rule 11 of CPC as a tool to nip in the bud when the plaintiff by clever drafting abuses the process of law. The Courts should scrutinize the plaint to ensure that meritless litigation is put to rest immediately. Relevant paragraph from the said judgment is extracted below:-

> *"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and*

[1] ***Central Bank of India (supra)*** and more particularly paragraphs 23 and 24.

meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them…."

(Emphasis added)

55. At the stage of issuance of summon, the Court can *suo moto* invoke Order VII Rule 11 of CPC. The said provision does not provide that the Court is to discharge its duty of rejecting the plaint only on an application.[2]

56. The Hon'ble Supreme Court in ***Samar Singh v. Kedar Nath, 1987 Supp SCC 663*** has categorically observed that the Court is to be satisfied that suit is maintainable and the plaint discloses cause of action, and if satisfied, only then the Court should proceed further to issue summons.[3]

57. To sum up, the Court should not allow the sword of damocles to be kept hanging on the head of the defendant when there is unwarranted

[2] ***Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd., (2022) 10 SCC 1*** and more particularly paragraph 94.3.

litigation which serves no purpose. Hence, the Court should be vigilant to not waste judicial time on vexatious and irresponsible law suits.

58. Having discussed the threshold, I shall now proceed to deal with the submissions advanced by the learned counsel for the parties.

59. Mr Salve, learned senior counsel for the plaintiff has argued that as per the defendant No. 1, prayers (b) and (c) are barred by section 5 of 1996 Act but section 5 of 1996 Act does not bar filing of a suit. Even assuming without admitting, that prayers (b) and (c) are barred, prayers (a), (d), and (e) still remain valid and are not restricted by section 5 of 1996 Act. Relying on ***Central Bank of India (supra)***, he submits that even if some prayers are barred, the plaint cannot be rejected in piecemeal. Further, fraud-related issues are to be decided by a Civil Court and are not arbitrable in nature.

60. Much reliance is place on ***National Projects Construction Corporation (supra)*** to urge that a civil suit is maintainable to challenge an Arbitral Award obtained by fraud. Reliance is also placed on ***M. Hariharasudhan (supra)***.

61. Section 5 of 1996 Act reads as under:-

> *"5. Extent of judicial intervention.—Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."*
>
> ***(Emphasis added)***

62. On perusal, the said section starts with non obstante clause which indicates that no other law will prevail over Part I. Further, no judicial

authority shall intervene except where it is so provided in Part I. The main purpose and intent behind this section is "limited judicial interference". The Hon'ble Supreme Court in ***Interplay (supra)*** has interpreted the said section in detail and the relevant paragraphs are extracted below:-

> *"81. One of the main objectives of the Arbitration Act is to minimise the supervisory role of Courts in the arbitral process. Party autonomy and settlement of disputes by an Arbitral Tribunal are the hallmarks of arbitration law. Section 5 gives effect to the true intention of the parties to have their disputes resolved through arbitration in a quick, efficient and effective manner by minimising judicial interference in the arbitral proceedings. [Food Corpn. of India v. Indian Council of Arbitration, (2003) 6 SCC 564.] Parliament enacted Section 5 to minimise the supervisory role of Courts in the arbitral process to the bare minimum, and only to the extent "so provided" under the Part I of the Arbitration Act.*
>
> *In doing so, the legislature did not altogether exclude the role of Courts or judicial authorities in arbitral proceedings, but limited it to circumstances where the support of judicial authorities is required for the successful implementation and enforcement of the arbitral process.*
>
> *……*
>
> *82……. It is of a wide amplitude and sets forth the legislative intent of limiting judicial intervention during the*

arbitral process. In the context of Section 5, this means that the provisions contained in Part I of the Arbitration Act ought to be given full effect and operation irrespective of any other law for the time being in force. It is now an established proposition of law that the legislature uses non obstante clauses to remove all obstructions which might arise out of the provisions of any other law, which stand in the way of the operation of the legislation which incorporates the non obstante clause. [State of Bihar v. Bihar Rajya M.S.E.S.K.K. Mahasangh, (2005) 9 SCC 129 : 2005 SCC (L&S) 460]

83. A non obstante clause is appended in a provision to give such provision overriding effect over other provisions of the law.……..

84. Although a non obstante clause must be allowed to operate with full vigour, its effect is limited to the extent intended by the legislature. In Icici Bank Ltd. v. Sidco Leathers Ltd. [Icici Bank Ltd. v. Sidco Leathers Ltd., (2006) 10 SCC 452] a two-Judge Bench of this Court held that a non obstante clause must be interpreted by confining it to the legislative policy. Thus, even if a non obstante clause has wide amplitude, the extent of its impact has to be measured in view of the legislative intention and legislative policy. [JIK Industries Ltd. v. Amarlal V. Jumani, (2012) 3 SCC 255 : (2012) 2 SCC (Civ) 82 : (2012) 2 SCC (Cri) 125]

In view of this settled legal position, the issue that arises for

our consideration is the scope of the non obstante clause contained in Section 5 of the Arbitration Act.

85. In Morgan Securities & Credit (P) Ltd. v. Modi Rubber Ltd. [Morgan Securities & Credit (P) Ltd. v. Modi Rubber Ltd., (2006) 12 SCC 642] , the issue before the two-Judge Bench was whether the provisions of the Arbitration Act would prevail over the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). While noting the non obstante clause contained in Section 5 of the Arbitration Act, this Court held that the non obstante clause has "limited application aiming at the extent of judicial intervention". It was held that the Arbitration Act would not prevail over SICA since the latter enactment seeks to "achieve a higher goal". In other words, the scope of the non obstante clause is limited to prohibiting the intervention of judicial authorities, unless it has been expressly provided for under Part I of the Arbitration Act.

…… …… ……

88. One of the main objectives behind the enactment of the Arbitration Act was to minimise the supervisory role of Courts in the arbitral process by confining it only to the circumstances stipulated by the legislature……

89. Section 5 contains a general rule of judicial non-interference. Therefore, every provision of the Arbitration Act ought to be construed in view of Section 5 to give true

effect to the legislative intention of minimal judicial intervention."

63. Section 5 of 1996 Act is the fundamental principle for ensuring minimal judicial interference only to the extent "so provided" under Part I of the 1996 Act. By featuring limited judicial intervention, the role of Court is not excluded in the arbitral proceedings but limited to the circumstances where the aid is required for implementation and enforcement of arbitration process. The non obstante clause gives overriding effect with the conflicting/inconsistent provisions under other statutes which means that the provisions in Part I of 1996 Act ought to be given full effect irrespective of any other law for the time being in force. The use of non obstante clause is to remove all obstructions which might arise out of the provisions of any other law, which stand in the way of the operation of the legislation which incorporates the non obstante clause.

64. In addition, the 1996 Act is a self-contained code which provides a complete framework for arbitrationfrom reference to enforcement; thus, the applicability of general law is to be excluded. Unless the 1996 Act specifically permits it, the provisions of another legislation cannot be used to override it. Hence, the procedure set forth in the 1996 Act must be strictly followed.[4]

65. It is also relevant to note that section 19 of 1996 Act states that the Arbitral Tribunal shall not be bound by the CPC or the Evidence Act making clear that arbitral proceedings are meant to be more flexible, informal, and party-driven.

[4] ***Interplay (supra)*** and more particularly paragraph 92.

66. In the present case, the Arbitral Award dated 12.05.2014 passed by the learned AT has been upheld by the Hon'ble Supreme Court *vide* judgment dated 02.03.2020. The present suit has been framed seeking declaration, recovery of money, and permanent injunction, however, in essence and substance, the plaintiff has made a collateral challenge to the said Award which has already attained finality.

67. The plaintiff herein seeks to declare the said Award as void and unenforceable and to set aside in prayers (b) and (c) quoted above. The prayer (e) seeks to grant permanent injunction restraining the defendants from relying upon the Addendum No. 2 and the Award. Prayer (a) seeks declaration that Addendum No. 2 is vitiated by fraud and corruption and is void ab initio and prayer (d) seeks recovery of an amount from the date of cause of action.

68. Section 34 of 1996 Act provides a remedy to challenge an Award which the plaintiff did after the Award was passed by the Arbitral Tribunal. All the remedies as available to the plaintiff under the 1996 Act have been exhausted with respect to challenge to the present Arbitral Award. For the sake of perusal, section 34 of 1996 Act is extracted below:-

> *"34. Application for setting aside arbitral award.—(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).*
>
> *(2) An arbitral award may be set aside by the Court only if—*
>
> *(a) the party making the application [establishes on the*

basis of the record of the arbitral tribunal that]

……"

(Emphasis added)

69. On perusal, the said section clearly specifies that the Arbitral Award can "only" be set aside by an application in accordance with sub-section (2) and sub-section (3) of section 34 1996 Act. It further states that the Arbitral Award may be set aside "only" on the grounds mentioned there under. By using the word "only" twice, section 34 of 1996 Act makes it clear that no challenge to an Award can be launched outside of the said section and beyond the grounds specified therein. This means that section 34 of 1996 Act offers an exhaustive and exclusive remedy to contest an Arbitral Award.

70. Reliance placed on ***M. Hariharasudhan (supra)*** is misconceived, for the reasons noted above, in view of section 5 read with section 34 of 1996 Act as it expressly bars a suit and further provides a final remedy which the plaintiff has already exhausted.

71. It is contended by the plaintiff that fraud came to light only in 2022 upon internal investigation when Mr. Ved Prakash superannuated and thereafter a CBI reference. However, assuming these allegations as true, section 34 of 1996 Act already includes the ground of "award induced or affected by fraud or corruption" as a basis for challenge, which the plaintiff failed to raise timely. Alleged new discovery does not revive a remedy that is otherwise barred by law.

72. Even assuming that the alleged fraud gives rise to a fresh cause of action then also the Addendum was executed on 08.11.2008 and the Award was rendered in 2014. The present suit, filed in 2024, is

hopelessly time barred. Mere filing of a CBI complaint in 2022 won't revive a dormant claim.

73. It is not in dispute that the Award has not been obtained by fraud or corruption upon the Arbitral Tribunal rather the core contention of the plaintiff is that Addendum No. 2 executed on 20.11.2008 was vitiated by fraud and collusion amongst its own officers i.e. defendants 4 to 7 in collusion with the representatives of defendant No. 1, thereby rendering the subsequent Arbitral Award dated 12.05.2014 void ab initio. There is a clear distinction between the fraud played upon the Court and fraud *inter se* among the parties.

74. It is further argued by the plaintiff that even if prayers (b) and (c) are barred, others (a), (d), and (e) still survive and plaint cannot be rejected in piecemeal. However, all reliefs are linked to the nullification of the Arbitral Award. Without first setting aside the Arbitral Award (which this Court cannot do), no independent relief can be granted. Even otherwise the said reliefs are arbitrable in nature as the arbitration clause between the parties is not in dispute.

75. The Hon'ble Supreme Court in ***Rashid Raza v. Sadaf Akhtar, (2019) 8 SCC 710,*** while relying on ***A. Ayyasamy v. A. Paramasivam, (2016) 10 SCC 386,*** observed as under:-

> *"4. The principles of law laid down in this appeal make a distinction between serious allegations of forgery/fabrication in support of the plea of fraud as opposed to "simple allegations". Two working tests laid down in para 25 are: (1) does this plea permeate the entire contract and above all, the agreement of arbitration,*

rendering it void, or (2) whether the allegations of fraud touch upon the internal affairs of the parties inter se having no implication in the public domain."

76. A co-ordinate bench of this Court in ***Amrish Gupta v. Gurchait Singh Chima, 2022 SCC OnLine Del 1116,*** after analyzing catena of judgments of the Hon'ble Supreme Court, observed as under:-

37. It is clear from a reading of the various judgments of the Supreme Court that the jurisprudence has evolved to limit the exclusion of disputes that are non-arbitrable on the ground of fraud. A clear distinction is drawn in respect of the disputes that may result in penal consequences or conviction of an offence under criminal law. Clearly, such cases are required to be adjudicated by Courts of law. An arbitral tribunal cannot convict a person of an offence punishable under the Penal Code, 1860 or render decision in the realm of public law as these matters are squarely reserved for Courts of competent jurisdiction. However, there is no reason to exclude contractual disputes that can be tried by a Trial Court, as nonarbitrable.

39. As a working rule, it must be accepted that where a challenge is made to an agreement on the ground of fraud, it must be assumed that the challenge is to the main agreement and not specifically to the arbitration agreement. Thus, in such cases, the arbitral tribunal would have the jurisdiction to adjudicate disputes regarding validity of an agreement, which is impeached on the ground of fraud, as it

must be assumed that such a challenge is to the main agreement and not to the arbitration agreement.

…… …… ……

42. It is material to note that the A&C Act does not exclude any dispute as non-arbitrable. However, certain disputes are intrinsically non-arbitrable, either for the reason that they cannot be confined as private disputes between parties or there are special statutes, which provide a separate mechanism for adjudication of such disputes. In the former category would be cases such as grant of probate, which are matters in rem. In the latter category are cases such as landlord-tenant disputes covered under the Rent Control Act, matrimonial disputes relating to divorce, etc. Such disputes are intrinsically non-arbitrable and thus, cannot be referred to arbitration, notwithstanding, the agreement between the parties.

43. The allegations regarding fraud, forgery or inducement relating to an agreement, do not fall in either of the two categories as stated above. Such disputes, however serious the allegations may be, cannot be stated to be inherently non-arbitrable. If the parties voluntarily agree that said disputes be decided by arbitration, there is no reason to exclude such disputes from arbitration. The guiding principle is that if a civil court can decide the disputes in a trial, so can an arbitral tribunal. The complexity of the

questions or the volume of evidence involved, does not render any dispute inherently non-arbitrable."

77. In the present case, there is no dispute to the execution of the main agreement i.e. LTA containing the Arbitration Clause, the only dispute is with regard to the execution of the Addendum No. 2 which the plaintiff alleges that the same has been executed fraudulently in collusion between the officials of the plaintiff i.e. defendant No. 4-7 and the officials of the defendant No. 1. In view of the said judgments, as there is no dispute to the arbitration agreement i.e. LTA, the plea of fraud raised by the plaintiff *qua* Addendum No. 2 is arbitrable in nature.

78. At this juncture, it is also relevant to refer section 9 of CPC which reads as under:-

"9. Courts to try all civil suits unless barred.—The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

(Emphasis added)

79. On perusal, the said section clearly states that the civil courts shall try all suits except the suits which are expressly and impliedly barred. Section 5 read with section 34 of 1996 Act constitutes such a bar to challenge an Arbitral Award by way of filing a suit which is supposed to be done in the present case. The non-obstante clause of section 5 of 1996 Act makes it amply clear that the civil court cannot entertain suits relating to matters governed by the 1996 Act unless specifically

permitted. The plaintiff in the present plaint by cleverly and eschewedly is seeking to nullify and set aside an Arbitral Award which squarely falls within the ambit of Order VII Rule 11(d) of CPC which mandates rejection of a plaint where the suit is barred by law.

80. The Hon'ble Supreme Court in ***Interplay (supra)*** observed as under:-

> *"75. Section 9 of the Code of Civil Procedure, 1908 provides that the Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which cognizance is either expressly or impliedly barred. Section 28 of the Contract Act states that agreements that restrict a party to a contract absolutely from enforcing their rights under or in respect of any contract by way of usual legal proceedings are void. However, the provision expressly saves contracts by which two or more persons agree to refer to arbitration any dispute which may arise between them in respect of any subject or class of subjects. By choosing to settle their disputes through arbitration, parties surrender their right to litigate before the national courts in favour of the Arbitral Tribunal. By surrendering their right to litigate in national courts, parties also surrender their right to be bound by national procedural laws in favour of expedition, informality, and efficiency of the arbitral process. The Arbitral Tribunal is not subject to the procedural laws of a country. For instance, Section 19 of the Arbitration Act expressly provides that the Arbitral Tribunal shall not be bound by the Code of Civil Procedure, 1908 or the Evidence*

Act, 1872. Moreover, it stipulates that an Arbitral Tribunal may conduct the proceedings in any manner it deems appropriate if the parties fail to agree on the procedure to be followed by the Tribunal. Although Arbitral Tribunals have autonomy in the procedural and substantive sense, they are not completely independent of the law of the country in which the Arbitral Tribunal has its juridical seat, as discussed in the following segments."

81. As noted above, the Courts have to be vigilant and strike down the clever drafting which seeks to circumvent statutory restrictions. If such suits are permitted, then it would open a floodgate of litigation, undermining the core objectives of the 1996 Act which are finality and efficiency. Arbitration, chosen by consent, cannot be overridden by post-facto civil suits on allegedly rediscovered facts otherwise arbitration will turn into a never-ending cycle of challenges.

82. To my mind, challenging an Award, which has already been upheld by the Hon'ble Supreme Court, in the present suit is not only an abuse of the process of law but will be a travesty of justice if the said challenge is allowed by way of filing of the present suit and would render the 1996 Act nugatory, and undermine public confidence in Arbitration. The Court is bound to give full effect to the legislative scheme and uphold the sanctity of finality.

83. In addition, if the present suit is allowed then no Arbitral Award after being upheld by the Hon'ble Supreme Court will ever be executed. Thus, judicial time must be preserved for genuine disputes.

84. Reliance placed on ***National Projects Construction Corporation (supra***) is misplaced as the said judgment is prior to the judgment of ***Interplay (supra)*** wherein the Hon'ble Supreme Court has clearly and unequivocally elucidated the scope of section 5 of 1996 Act and section 9 of CPC and more particularly para reproduced above. Once the Hon'ble Supreme Court has clarified the law, the same is binding on this Court. In addition, the said judgment does not deal with the ambit and scope of section 9 of CPC.

85. Reliance placed on ***United India Insurance Co. Ltd. (supra)*** is misplaced as the Hon'ble Supreme Court observed that the remedy to move for recalling the order on the basis of the newly-discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. However, in the present case, after newly discovered facts, the plaintiff has filed a seperate suit which is expressly barred by section 5 read with section 34 of 1996 Act.

86. Reliance placed on ***Indian Bank (supra)*** is also misconceived as it is was observed therein that Court has inherent powers under section 151 of CPC to recall its judgment or order if it is obtained by fraud on Court whereas in the present case, fraud is not upon the Court but *inter se* among the parties. ***Union of India (supra)*** is also on the same lines and hence, the reliance placed on this judgment is also misplaced.

CONCLUSION

87. For the foregoing reasons, the prayers already quoted above are not maintainable in view of section 5 read with section 34 of 1996 Act.

Hence, the plaint filed by the plaintiff stands rejected by exercising powers under Order VII Rule 11 of CPC.

88. Pending applications, if any, are disposed of accordingly.

JASMEET SINGH, J

JULY 29th, 2025/(MSQ)