JANKI VASHDEO BHOJWANI AND ANR. A

v.

INDUSIND BANK LTD. AND ORS.

DECEMBER 6, 2004

B

[D.M. DHARMADHIKARI AND H.K. SEMA, JJ.]

Code of Civil Procedure, 1908:

Order 3 rule 1, 2—Power of attorney—Acts done by—Doesn't include deposing in place and instead of the principal—Held, Power of attorney C *holder may depose for the principal in respect of the acts rendered in pursuance of power of attorney—He cannot depose for the principal for the acts done by the principal nor in respect of matter which principal can have personal knowledge.*

D

Civil disputes:

Conduct of the parties—Significance of—Filing objection claiming ownership after the order of attachment—Getting their power of attorney holder examined to prove their co ownership instead of themselves—Held, parties have not approached the court with clean hands. E

Foreign Exchange (Immunity) Scheme, 1991:

Foreign exchange-receipt of—Scheme protects the recipient from prosecution under FERA and Income Tax but doesn't prohibit from F *disclosing the sources—Remittance so received can't be described as income much less independent income.*

In the recovery proceeding initiated against the family members including the husbands of the appellants, the Debt Recovery Tribunal (DRT) ordered for attachment *inter alia* of the Suit property. Appellants G **objected to the attachment claiming to have contributed for the purchase of the property from their independent income. While remitting the matter to DRT to record a finding on the ownership of the appellants, the apex court permitted the parties to lead evidences, however, it was clarified that the burden of proving their shares will be on the appellants.** H

A **For the remittances under the Foreign Exchange (Immunity) Scheme' 1991 it was contended that the appellants are immune from disclosing the sources of receipt.**

At the DRT, instead of getting themselves examined they got their B **power of attorney holder examined who was none else but the husband, himself a judgement debtor, of one of the appellant. DRT decided in favour of the appellants. High Court set aside that order.**

In appeal before this court, Respondent *inter alia* contended that power of attorney holder can apply or act but such act can't extend to C **deposing as witness.**

Dismissing the appeal, the Court

HELD 1.1. In the context of the directions given by this Court, D **shifting the burden of proving on the appellants that they have a share in the property, it was obligatory on the appellants to have entered the box and discharged the burden by themselves. The question whether the appellants have any independent source of income and have contributed towards the purchase of the property from their own independent income can be only answered by the appellants themselves and not by** E **a mere holder of power of attorney from them. The power of attorney holder does not have the personal knowledge of the matter of the appellants and, therefore, he can neither depose on his personal knowledge nor can he be cross-examined on those facts which are to the personal knowledge of the principal. [688-F-G-H]**

F

1.2. The word "acts" employed in Order III, Rules 1 and 2 CPC, confines only in respect of "acts" done by the power of attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some "acts" in G **pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled** H **to be cross-examined. [689-A-B-C]**

1.3. Appellants have failed to establish that they have any independent source of income and they have contributed to for the purchase of the property from their own independent income. [689-D-E] A

Shambhu Dutt Shastri **v.** *State of Rajasthan,* **(1986) 2 WLL 713, approved.** B

Ram Prasad **v.** *Hari Narain & Ors.,* **AIR (1998) Raj 185 and** *Dr. Pradeep Mohanbay* **v.** *Minguel Carios Dias,* **(2000) Vol.102 Bom C.R. 754, referred to.**

Humberto Luis **v.** *Minguel Carios,* **(2002) 2 Bom. C.R. 754, overruled.** C

2. In civil dispute the conduct of the parties is material. The appellants have not approached the Court with clean hands. From the conduct of the parties it is apparent that it was a ploy to salvage the property from sale in the execution of Decree. [689-G] D

Vidyadhar **v.** *Manikrao and Anr.,* **[1999] 3 SCC 573, referred to.**

3. Regarding the capital received from foreign remittances under Foreign Exchange (Immunity) Scheme, 1991, it is true that as per the terms of the scheme the recipient will not be required to disclose for any purpose the nature and source of remittances and further no enquiry or investigation will be commenced against the recipient under any law on the ground that he has received such remittance. It only protects the appellant from prosecution under FERA and income tax. It does not prohibit the appellants from disclosing the sources. Furthermore, the remittance, so received by the appellants, could not be described as income, much less an independent income. [693-G-H; 694-A-B] E F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6790 of 2003. G

From the judgment and Order dated 23.4.2003 of the Bombay High Court in W.P. No. 2165 of 2003.

Mukul Rohtagi, E.R. Kumar, Sandeep Parekh, Sumit Goel, P.H. Parekh for P.H. Parekh & Co. for the Appellants. H

A Dr. A.M. Singhvi, Simran Mehta and Pranab Kumar Mullick for the Respondent No. 1.

K. Radhakrishnan, Amit Mishra and S.K. Agnihotri for the Respondent Nos. 2-7.

B The Judgment of the Court was delivered by

H.K. SEMA, J. : This appeal is directed against the judgment of the Bombay High Court dated 23-4-2003. The appeal has been heard at length by a Bench in which one of us was a Member, Sema, J and by an order dated C 10-2-2004 reported as *Janki Vashdeo Bhojwani And Another* v. *Indusind Bank Ltd. And Ohers,* [2004] 3 SCC 584 it was remitted to the Tribunal with the following directions in paragraphs 24 at Page SCC 587:

> "In our view, it is essential, before any further orders can be passed D to first decide whether or not the appellants have a share in this property. We therefore remit the matter back to the Debt Recovery Tribunal *to record a finding whether or not on the date the decrees were passed, the appellants were co-owners of the property at 38, Koregaon Park, Pune and if so, to what extent. In so deciding the Debt Recovery Tribunal will undoubtedly ascertain whether the* E *appellants had any independent source of income and whether they had contributed for purchase of this property from their own independent income.* The Debt Recovery Tribunal will also decide whether this property was the residence of the appellants at the time possession was taken. *The Debt Recovery Tribunal shall permit the* F *parties to lead evidence, both oral and documentary. It must be clarified that the burden of proving that the appellants have a share in the property will be on the appellants.* The Debt Recovery Tribunal shall then forward its decision to this Court within a period of six months from today."

G *(Emphasis supplied)*

Avoiding prolixity, but at the risk of repetition the directions were founded on the following facts:

H The 1st appellant is the wife of the 5th respondent and the 2nd appellant

is the wife of the 2nd respondent.

The respondent-bank extended loan facilities to the 6th and 7th respondents, M/s Bhojwani Hotels Pvt. Ltd. and Hotel Amir Pvt. Ltd., which are run by respondent Nos. 2 to 5 namely Dr. Laxmikant Rewachand Bhojwani, Mr. Sanjay Laxmikant Bhojwani, Mr. Romy Laxmikant Bhojwani and Mr. Vashdeo Rewchand Bhojwani. The loan facilities were to the extent of Rs. 22 crores in one case and Rs.3.75 crores in the other. Respondents 2 to 5 were also guarantors and some of the properties belonging to the parties have been mortgaged to the bank. Initially, Plot No.38, Koregaon Park, Pune was also stated to have been mortgaged to the bank. It is now admitted by the respondent-bank that the said plot was not mortgaged to the bank.

As the loan had not been repaid, the respondent-bank filed a suit against 2nd and 7th respondents on 3.10.2000, OA No. 159-P of 2001 before the Debt Recovery Tribunal (hereinafter referred to as the DRT) for recovery of a sum of Rs.3.86 crores. The first respondent-bank also filed another suit against respondent nos. 2 to 6 and one M/s Progressive Land Development Corporation, OA No. 160-P of 2001 for recovery of a sum of Rs.27.5 crores. M/s Progressive Land Development Corporation is a partnership firm of which the appellants are partners, along with others. The DRT by an order dated 11-12-2000 passed an injunction order in an application made in OA No.160-P of 2001. The plot no.38, Koregaon Park, Pune was one of the properties which the respondents were restrained from alienating. The DRT also passed a decree on 13-9-2001 in OA No.159-P of 2001 in favour of the respondent-bank in which the property at 38, Koregaon Park, Pune was shown as one of the mortgaged properties. A recovery certificate was also issued by the DRT and pursuant thereto the properties were attached on 8.11.2001 in which the property at 38, Koregaon Park, Pune was also attached. Thereafter, pursuant to attachment, a public notice was published in the Times of India of 25.1.2002 publication, notifying that the properties of the second respondent have been attached.

It is only at this stage, the appellants have filed objections before the DRT against the attachment of the residential property at 38, Koregaon Park, Pune on 16.4.2002, which were rejected by the Recovery Officer on the premise that he could not go beyond the decree. In the application, the appellants claimed that they came to know of the attachment through the

A advertisement published in the Times of India of 25.1.2002.

As already noticed, the 1st appellant is the wife of the 5th respondent and the 2nd appellant is the wife of 2nd respondent. On 3.10.2000 the respondent-bank filed a suit against the 2nd respondent and the 7th respondent, OA No.159-P of 2001 before the DRT for the recovery of a sum of Rs.3.86 crores. Again on 25th October, the respondent-bank filed another suit against respondent nos. 2 to 6 and one M/s Progressive Land Development Corporation, OA No.160-P of 2001 for recovery of a sum of Rs.27.5 crores. M/s Progressive Land Development Corporation is a partnership firm of which the appellants are the partners along with others. Thereafter, as recited above the DRT passed an injunction order in which one of the properties the respondents were restrained from alienating was 38, Koregaon Park, Pune. On 13.9.2001, a decree was passed in OA No.159-P of 2001 and in the said decree the property at 38, Koregaon Park, Pune was shown as one of the mortgaged properties. All these proceedings against their husbands and M/s Progressive Land Development Corporation which is a partnership firm and in which the appellants are partners along with others, were within the knowledge of the appellants. The appellants, however, feigning ignorance of the facts and proceedings, took a plea that they came to know about the attachment of the property at 38, Koregaon Park, Pune only through the public notice published in the Times of India of 25.1.2002.

In the backdrop of given facts and circumstances, this Court has already observed in its order dated 10.2.2004 at page 585 SCC as under:-

> "This averment is impossible to believe. It is clear that they were aware of the proceedings against their husbands and family concerned."

The property at 38, Koregaon Park, Pune was purchased from Ms. Sushila Talera and the consideration for the purchase was paid to her on 25.8.1987. It is not disputed that the indenture of sale was executed on 5.9.1991. It is also not disputed that payment on 25.8.1987 was entirely made by M/s Bhojwani Brothers, HUF, a separate legal entity. It is the case of the appellants that the said amount was paid by M/s Bhojwani Brothers on behalf of the appellants and the same was treated as a loan extended to the appellants which was subsequently repaid by the appellants in 1992. In short, the appellants sought to build up a case, albeit belatedly, that the

appellants had contributed the consideration amount and they are the co-owners in respect of property at 38, Koregaon Park, Pune. The appellants are neither debtors nor guarantors and, therefore, the property in question to the extent of their share in the property could not have been sold in the execution of the decree.

Pursuant to the directions quoted above, the DRT has recorded a finding by its order dated 2.8.2004. The parties have filed objections to the finding. The Tribunal has framed the following issues, purportedly pursuant to the directions by this Court:

(i) Whether the appellants have any share in the property (38, Koregaon Park, Pune) subject matter of dispute?

(ii) Whether on the date decrees were passed, the appellants were co-owners of the said property?

(iii) Whether the said property was the residence of the appellants at the time possession was taken?

The fallacy of the Tribunal begins with the framing of the issues. The issues as noticed above are inconsistent with the directions of this Court. The directions contained in paragraph 24 are that the Tribunal was directed to record a finding whether or not on the date the decrees were passed the appellants were co-owners of the property at 38, Koregaon Park, Pune and if so to what extent. In deciding the aforesaid issue, the DRT will ascertain whether the appellants had any independent source of income and whether they had contributed for purchase of this property from their own independent income. The Tribunal was directed to permit the parties to lead evidence, both oral and documentary. This Court further clarified that the burden of proving that the appellants have a share in the property will be on the appellants.

The second fallacy of the order of Tribunal was allowing Mr. V.R. Bhojwani (power of attorney holder), husband of appellant no.2 Ms. Mohini Laxmikant Bhojwani, to appear in the witness box on behalf of the appellants. It may be noted that that the appellants were shy away from gracing the box. The respondent-bank vehemently objected to allowing the holder of power of attorney of the appellants to appear in the witness box on behalf of the

A appellants. This Court clarified that the burden of proving that the appellants have a share in the property will be on the appellants and it was incumbent on the appellants to have graced the box and discharged the burden that they have a share in the property, the extent of share, the independent source of income from which they have contributed towards the purchase of the B property. The entire context of the order dated 10.2.2004 was forwarded to the Tribunal for the purpose. It is unfortunate that the Tribunal has framed its own issues not consistent with the directions and recorded a finding contrary to the directions as aforesaid.

Dr. Singhvi, learned senior counsel appearing for the respondent-bank C vehemently contended that the appellants did not grace the box to lead evidence but authorised Mr. V.R. Bhojwani (power of attorney holder) to appear on behalf of the appellants. Learned counsel contended that Mr. Bhojwani was not an independent person to the litigation but was a judgment debtor in the suit and a co-owner of the property and there was a clash of D interest between the husband and wife and as such he could not have been permitted to grace the box on behalf of the appellants. He further contended that under Order III Rules 1 & 2 CPC a power of attorney holder can appear, apply or act in any court but such act cannot be extended to depose in the witness box. He further submitted that in the present case a power of attorney holder is not acting as a witness on behalf of the principal but he E is representing the principal himself. He further contended that deposing in a witness box and being cross-examined is a personal act and cannot be done through an agent/power of attorney holder.

In the context of the directions given by this Court, shifting the burden F of proving on the appellants that they have a share in the property, it was obligatory on the appellants to have entered the box and discharged the burden by themselves. The question whether the appellants have any independent source of income and have contributed towards the purchase of the property from their own independent income can be only answered by the appellants themselves and not by a mere holder of power of attorney G from them. The power of attorney holder does not have the personal knowledge of the matter of the appellants and therefore he can neither depose on his personal knowledge nor can he be cross-examined on those facts which are to the personal knowledge of the principal.

H Order III, Rules 1 and 2 CPC, empowers the holder of power of

attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order III, Rules 1 and 2 CPC, confines only in respect of "acts" done by the power of attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some "acts" in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.

Having regard to the directions in the order of remand by which this Court placed the burden of proving on the appellants that they have a share in the property, it was obligatory on the part of the appellants to have entered the box and discharged the burden. Instead, they allowed Mr. Bhojwani to represent them and the Tribunal erred in allowing the power of attorney holder to enter the box and depose instead of the appellants. Thus, the appellants have failed to establish that they have any independent source of income and they had contributed for the purchase of the property from their own independent income. We accordingly hold that the Tribunal has erred in holding that they have a share and are co-owners of the property in question. The finding recorded by the Tribunal in this respect is set aside.

Apart from what has been stated, this Court in the case of *Vidhyadhar* v. *Manikrao and Another,* [1999] 3 SCC 573 observed at page 583 SCC that "where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct".

In civil dispute the conduct of the parties is material. The appellants have not approached the Court with clean hands. From the conduct of the parties it is apparent that it was a ploy to salvage the property from sale in the execution of Decree.

On the question of power of attorney, the High Courts have divergent views. In the case of *Shambhu Dutt Shastri* v. *State of Rajasthan,* 1986 2WLL 713 it was held that a general power of attorney holder can appear,

A plead and act on behalf of the party but he cannot become a witness on behalf of the party. He can only appear in his own capacity. No one can delegate the power to appear in witness box on behalf of himself. To appear in a witness box is altogether a different act. A general power of attorney holder cannot be allowed to appear as a witness on behalf of the plaintiff in the B capacity of the plaintiff.

The aforesaid judgment was quoted with the approval in the case of *Ram Prasad* v. *Hari Narain & Ors.*, AIR (1998) Raj. 185. It was held that the word "acts" used in Rule 2 of Order III of the CPC does not include the act of power of attorney holder to appear as a witness on behalf of a C party. Power of attorney holder of a party can appear only as a witness in his personal capacity and whatever knowledge he has about the case he can state on oath but be cannot appear as a witness on behalf of the party in the capacity of that party. If the plaintiff is unable to appear in the court, a commission for recording his evidence may be issued under the relevant D provisions of the CPC.

In the case of *Dr. Pradeep Mohanbay* v. *Minguel Carlos Dias* reported in (2000) Vol.102 (1) Bom.L.R.908, the Goa Bench of the Bombay High Court held that a power of attorney can file a complaint under Section 138 but cannot depose on behalf of the complainant. He can only appear as a E witness.

However, in the case of *Humberto Luis & Anr.* v. *Floriano Armando Luis & Anr.* reported in (2002) 2 Bom.C.R.754 on which the reliance has been placed by the Tribunal in the present case, the High Court took a F dissenting view and held that the provisions contained in order III Rule 2 of CPC cannot be construed to disentitle the power of attorney holder to depose on behalf of his principal. The High Court further held that the word "act" appearing in order III Rule 2 of CPC takes within its sweep "depose". We are unable to agree with this view taken by the Bombay High Court in *Floriano Armando* (supra).

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We hold that the view taken by the Rajasthan High Court in the case of *Shambhu Dutt Shastri* (supra) followed and reiterated in the case of *Ram Prasad* (supra) is the correct view. The view taken in the case of *Floriano Armando Luis* (supra) cannot be said to have laid down a correct law and H is accordingly overruled.

In the view that we have taken we hold that the appellants have failed to discharge the burden that they have contributed towards the purchase of property at 38, Koregaon Park, Pune from any independent source of income and failed to prove that they were co-owners of the property at 38, Koregaon Park, Pune. This being the core question, on this score alone, the appeal is liable to be dismissed.

Despite, we now proceed to consider the documentary evidence produced. The admitted position is that the consideration for sale was paid by M/s Bhojwani Brothers, a distinct legal entity. M/s Bhojwani Brothers is a Hindu Undivided Family. The said HUF as a distinct entity filed Income Tax Returns. Shri L.R. Bhojwani and his two sons Sanjay and Romy Bhojwani had filed income tax returns showing themselves as owners of 1/4th share each in suit property. In the photo copies of the income tax returns filed by Shri V.R. Bhojwani (power of attorney holder) 1/4th is struck off and is interpolated into 1/7th share. This fact was admitted by him in cross-examination, Vol. V at page 115. He has also admitted that the correction is not depicted in the original papers received from income tax office. The Tribunal also holds that there was interpolation by pencil which was not depicted in the original papers received from the Income Tax office.

Mr. Rohtagi, learned senior counsel, has drawn our attention to the indenture for sale dated 5.9.1991 and submitted that the name of the appellants appeared at Sl. Nos. 3 and 4 of the sale indenture. According to the counsel they are the co-purchasers. We are unable to accept this contention merely because their names appear in the sale indenture by itself would not be a conclusive proof that they are the co-purchasers. Mr. Rohtagi, learned senior counsel for the appellants, referred to the Income Tax Return for the Assessment year 1988-89 in which at Sl.No.6 (Vol.V at page No. 144) it is shown that during the year the assessee, 2nd appellant, has paid Rs.4,65,000 to Mrs. Susheela Talera towards purchase of Plot No. 38, Koregaon Park, Pune, out of loan taken from M/s Bhojwani Bros. Counsel also drew our attention to Sl. Nos. 3 and 4 at page 155 Vol.V showing that the assessee has paid Rs. 45,000 towards Stamp Duty for Plot at 38, Koregaon Park, Pune, out of loan taken from M/s Bhojwani Bros. and deposited Rs. 76,000 in Dr. L.R. Bhojwani Jt. A/c towards the payment for plot at 38, Koregaon Park, Pune, out of sale proceeds of 100 shares of Bajaj Auto Ltd. at Rs. 710 per share. He has also drawn our attention to Sl.No.5 at page 159 Vol.V showing that during the year assessee has received the following foreign

remittances under Foreign Exchange (Immunities) Scheme 1991:

a) US$ 50,000 vide DD No. 484485 drawn on Marine Midland Bank dt 19.10.91, NA, New York. The Indian currency equivalent to Rs. 12,88,660 has been deposited in SB A/c NO.7930 with UBI, Pune Camp Branch. The xerox copy of Certificate No.284 issued by UBI, Pune Camp Branch is attached.

b) US$ 25,000 vide TT No. 559271 drawn on Bank of India, Singapore. The Indian currency equivalent to Rs. 6,43,902 has been deposited in SB A/c No. 7930 with UBI, Pune Camp Br. The xerox copy of Certificate No.92 issued by UBI, Pona Camp Branch is attached.

At page 160 Vol.V, Sl.No.8 and 9 it is shown that the assessee has deposited Rs. 3,47,465 in CA No. 22035 with Union Bank of India, Pona Camp Branch towards the payment to be made for construction of residential house at 38 Koregaon Park, Pune, out of sale proceeds of shares and foreign remittances received. The assessee has paid Rs. 15,03,290 to M/s Bhojwani Brothers towards the return of loan taken on CA out of foreign remittances received. He has also shown at page 164 Vol.V, Sl.No.6 and 8 that the assessee has invested Rs.75,000 in construction of bungalow at 38 Koregaon Park, Pona, out of rent and salary received and balance in SB A/c No. 7930 with UBI, Poona Camp Branch and sale proceeds of shares. The Assessee has paid Rs. 2,26,995 to M/s Bhojwani Brothers vide Cheque No. 286141 dated 31.3.93 on Current Account out of gift received from Mr. Arjan Khialani of Singapore. Counsel has also shown at page 167 Vol.V, Sl.No.8 that during the year 1993-94 the assessee has acquired 1/7th share in bungalow at 38 Koregaon Park, Pune, which was ready for possession in December 1993. The cost of her share comes to Rs. 21,25,966 which was partly financed by M/s Bhojwani Brothers, Pona.

There is no proof that the source is from the independent income of the appellants. As already noticed the figure 1/7th share has been interpolated with pencil and no reliance can be placed on this document.

In respect of appellant No.1 Mrs. Janki Vashdeo Bhojwani, the learned counsel submitted that during the assessment year 1988-89 it is shown at

Sl. No. 1 page 169 Vol.V that the appellant has paid Rs. 4,65,000 to Mrs. Susheela Talera towards purchase of Plot No. 38 Koregaon Part out of loan taken from M/s Bhojwani Brothers of Rs. 4,65,000. It is also shown at Sl. No. 3 at page 178 Vol. V that the assessee has paid Rs. 45,000 towards stamp duty for plot at 38, Koregaon Park, Pune, out of loan taken from M/s Bhojwani Brothers. At page 182 Vol. V, Sl. No. 5 it is shown that the assessee has received the following remittances under Foreign Exchange (Immunity) Scheme 1991:-

- US$ 50,000 vide DD No. 484486 at 19.10.91 drawn on Marine Midland Bank, NA, New York. The Indian Currency equivalent to Rs. 12,88,660 has been deposited in SB A/c No. 14910 with UBI, Pune Camp Br. The xerox copy of the Cert No. 285 issued by UBI, Pune Camp Branch is attached.

- US$ 25,000 vide TT No. 559271 Bk of India, Singapore. The Indian Currency equivalent to Rs. 6,43,902 has been deposited in SB A/c No. 14910 with UBI, Pona Camp Br. The xerox copy of Cert. No. 92 issued by UBI, Poona Camp Branch is attached.

At Sl. no. 8 it is shown that the assessee has deposited Rs. 2,87,037 in CA A/c No. 22035 with Union Bank of India, Poona Camp Br. towards the payment to be made for construction of residential house at 38 Koregaon Park, Pune out of LIC loan, sale of shares and partly from foreign remittances received. At Sl. No. 9 it is shown that the assessee has paid Rs. 13,90,383 to M/s Bhojwani Bros towards the return of loan taken on CA out of foreign remittances received.

The above figures do not disclose the source of income and that this income is their own independent income and they had contributed for purchase of the suit property. No reliance can be placed on the said documents.

Regarding the capital received from foreign remittances under Foreign Exchange (Immunity) Scheme, 1991, learned counsel Mr. Rohtagi contended that under the scheme the appellants are immune from disclosing the source of receipt. It is true that as per the terms of the scheme the recipient will not be required to disclose for any purpose the nature and source of remittances and further no enquiry or investigation will be commenced against the

A recipient under any law on the ground that he has received such remittance. It only protects the appellant from prosecution under FERA and income tax. It does not prohibit the appellants from disclosing the sources. Furthermore, the remittance, so received by the appellants, could not be described as income, much less an independent income. As already noticed, in the instant B case, a duty is cast upon the appellants to discharge the burden of proving that the appellants have a share in the property. The appellants could have disclosed the source of remittance to discharge the burden.

At this stage we may also notice that the appellants relied upon the gifts from relatives and friends see Vol. V pages 57-59 which show that the C appellants have received some amount of gifts in terms of US$ from foreign countries. Mr. V.R. Bhojwani admitted that the three donors were not related by blood and two donors were distant cousins. It is apparent that the so-called gifts made by the donors were actually sent by the husbands of the appellants through name-lenders and by no stretch of imagination it could D be an income, much less an independent income of the appellants. Similarly, the net income of the appellants during the year 1992–93 shown at pages 57–59 (Vol.V) was not adequate to repay the loan.

For the reasons aforestated the appellants have miserably failed to establish that on the date the decrees were passed, the appellants were the E co-owners of the property at 38, Koregaon Park, Pune. They further failed to establish that they have any independent source of income and they have contributed for purchase of the property at 38, Koregaon Park, Pune, from their own independent income. Further the appellants failed to discharge the burden of proving that the appellants have a share in the property. The other F connected issues are only consequential to this issue and it may not be necessary for us to deal with them in view of our decision above. Accordingly, the appeal fails and is dismissed with costs.

B.K. Appeal dismissed.