

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6449 OF 2019
(Arising out of SLP (Civil) Nos.31787 of 2018)

Abdullakoya Haji & Ors.Appellant(s)

Versus

Rubis Tharayil & Anr. Respondent(s)

J U D G M E N T

A.S. Bopanna,J.

Leave granted.

2. The appellants herein were the defendants in the suit bearing OS No.89 of 2008. The suit in question was filed by the respondents herein seeking for a judgment and decree for specific performance of the agreement for sale dated 26.03.2007. The Trial Court on having considered the matter has decreed the suit in part by its judgment

dated 23.12.2010. Through the said judgment, the decree for specific performance was declined and the alternate relief directing the appellant herein to pay the sum of Rs. 75 Lakhs with interest at 9% per annum was granted. The plaintiffs claiming to be aggrieved by the same had preferred the appeal under Section 96 of the Civil Procedure Code before the High Court of Kerala at Ernakulam in RFA No. 344 of 2011. The Division Bench of the High Court through its judgment dated 21.08.2018, set aside the judgment passed by the trial court and has allowed the appeal.

3. The appellants herein have accordingly been directed to execute the sale deed in favour of the Respondent No. 1 herein, conveying the properties described in Item Nos. 1, 2, & 5 on the balance sale consideration being deposited within the period of two months. In respect of the properties described in Item Nos. 3 & 4, the same was not included in the judgment since the said properties involved the minor's interest. The defendants in the suit, who are the respondents in

the appeal before the High Court are therefore before this Court claiming to be aggrieved by the judgment dated 21.08.2018 passed by the High Court in RFA No.344 of 2011. Thus, on the divergent conclusion reached by the two Courts, consideration is required in this appeal.

4. For the sake of convenience and clarity the parties would be referred to in the same rank as assigned to them in the original suit wherein the respondents herein were the plaintiffs and the appellants herein were the defendants.

5. The brief facts necessary to be noted for the consideration of this appeal is that the defendants are the owners of the different item of properties which are described in the schedule to the suit subject agreement dated 26.03.2007. The total extent of property was indicated in the agreement as 12.775 acres. The plaintiffs agreed to purchase the said land at the rate of Rs. 11,350 per cent of land. In that regard the agreement dated 26.03.2007 was entered into and an advance of Rs. 75 lakhs was paid by the first plaintiff to the defendants.

The plaintiffs agreed to make a further payment of Rs. 75 lakhs on or before 15.10.2007 and before such time the actual measurement of the property was required to be made so as to determine the actual sale consideration payable and to complete the sale transaction.

6. According to the plaintiffs, they were ready and willing to pay the balance and secure completion of the transaction. In that regard the plaintiffs claim that they had also kept ready the sum of Rs. 75 lakhs which was agreed to be paid on or before 15.10.2007. The plaintiffs contend that defendants did not make available all the documents necessary for executing the sale deed. They therefore contend that the said position was accepted by the defendants and an appropriate endorsement was made at the foot of the agreement and the defendants had conceded that the amount payable on 15.10.2007 can be paid on the date of the conveyance and that the documents will be satisfied prior to this date. The outer limit for completion of the transaction was fixed as 22.01.2008. The further contention of the plaintiff is that

despite they being ready and willing, since the defendant did not come forward to complete the transaction, they were constrained to file this suit.

7. The defendant on being served with summons had appeared and filed their written statement. The execution of the agreement, the receipt of the sum of Rs. 75 lakhs as also the manner in which the balance amount was to be paid and the transaction was to be completed was not disputed. However, it was contended that the plaintiffs did not possess the funds for paying the balance of the sale consideration and in such event the completion of the transaction did not arise. It was accordingly contended that the plaintiffs were not ready and willing to complete the transaction. It was alleged therein that since the plaintiffs did not have sufficient funds, they had entered into an agreement with regard to the same properties with one Shri Ali Khan without involving the defendants but neither the plaintiffs nor the said Shri Ali Khan had the funds to pay and complete the transaction.

8. The Trial Court, in the light of the rival pleadings had framed five issues for its consideration which read as hereunder:

- “(i) Whether the suit is bad for misjoinder of causes of action and parties?
- (ii) Whether the first plaintiff was ready and willing to perform their part of the contract?
- (iii) Whether the first plaintiff is entitled to get a decree for specific performance of the contract?
- (iv) Whether the first plaintiff is entitled to get a decree for realization of Rs. 75,00,000/- (Seventy-five lakhs) together with 18% interest per annum as an alternative relief?
- (v) Reliefs and costs?”

In order to discharge the burden cast by the said issues, the second plaintiff examined himself as PW-1 and relied upon the documents at Exhibits A1 to A13. The first defendant examined himself as DW-1 and examined a witness i.e., the said Shri Ali Khan as DW-2 and relied upon the documents at Exhibit B1 to B25. The report of the Court Commissioner was marked as Exhibit C1 and C1(a). The subsequent agreement between the plaintiffs and Shri Ali Khan was marked as Exhibit X1.

9. The evidence as tendered by the parties was taken note by the Trial Court and concluded that the plaintiffs were not ready and willing to perform their part of the obligation under the agreement and therefore has dismissed the suit. The High Court on the other hand has arrived at the conclusion that the plaintiffs were ready and willing to perform their part of the agreement and that they had also possessed sufficient funds to pay the remaining sale consideration and therefore decreed the suit. In that background, though on the other issues framed by the Trial Court there is no serious dispute for consideration, the issue which arises for consideration is as framed at Issue No. 2 relating to the readiness and willingness of the plaintiffs.

10. That being the position, we have heard Shri Jayanth Muth Raj, learned Senior Advocate for the appellants-defendants, Shri R.N. Ravindran, learned Senior Advocate for the respondent-plaintiff and perused the appeal papers.

11. In that background, in so far as the execution of the agreement dated 26.03.2007 and the payment of the advance amounting to Rs. 75 lakhs, there is no serious dispute. The requirement under the agreement was for the plaintiffs to pay a further sum of Rs. 75 lakhs on or before 15.10.2007. Apart from the endorsement dated 14.10.2007 sought to be relied on by the plaintiffs to contend that they had arranged the funds for payment of Rs. 75 lakhs but had not paid the same since the defendants had not furnished the proper title deeds, the plaintiffs have also sought to rely on the documents at Exhibit A5 to A13. In that regard the documents at Exhibit A5 and A10 is the same. The second plaintiff has examined himself as PW-1, who by referring to the said documents has secured the marking of the same as exhibits. The marking of the document at Exhibit A9 was objected to by the defendants.

12. In that background, in so far as the payment of the advance amount of Rs. 75 lakhs though appears to be a substantial sum, the readiness and willingness of the

plaintiffs with the balance sale consideration is to be taken note keeping in view that the balance sale consideration payable was also substantial. The second plaintiff examined himself as PW-1 by filing his affidavit through which he has reiterated the plaint averments. In respect of the payment of the balance sale consideration; the contention on behalf of the plaintiff was that the further amount of Rs. 75 lakhs was to be paid on or before 15.10.2007 subject to the defendants furnishing all documents relating to title and in that regard the contention was also that in respect of the properties owned by Late Beena, her legal heirs being minors appropriate conveyance was required to be made after completing the formalities. It is no doubt true in the sale agreement dated 26.03.2007 an endorsement was made that the amount payable on 15.10.2017 can be paid on the date of conveyance and the documents shall be satisfied prior to the same. In view of the said endorsement the plaintiff has sought to contend that though the amount of Rs. 75 lakhs was ready as on 15.10.2017, the same was not paid since all the

documents were not made available. In so far as the said endorsement, the defendants had contended that the same was secured by misrepresentation.

13. Be that as it may, as rightly pointed out by the learned Senior Advocate appearing for the defendants, the depiction in the said endorsement about the production of the title deeds does not reflect the true state of affairs in as much as PW-1 in his cross-examination has admitted that prior to the execution of the agreement, the copies of the title deeds produced before the Court were shown to him and that he had entered into the agreement on being satisfied that the defendants have ownership and title to the suit property. Though the issue relating to the transfer of the rights of the minor had also arisen, the defendants were prepared to execute the sale deed through the natural guardian representing the interest of the minors. Though the said aspect was also one of the issues, considering the fact that the Trial Court and the High Court have arrived at divergent conclusion relating to the availability of the

remaining sale consideration, examination of that issue would be appropriate as other issues would depend on that aspect. In that background, it is necessary to examine as to whether the plaintiffs had the financial resource as was required to be paid prior to 15.10.2007 and even if as on such date the same was available, whether the plaintiffs had continued to possess the said funds as on the date when the demand was made to execute the sale deed by issuing the legal notice and also when they filed the suit seeking specific performance of the agreement.

14. To arrive at a conclusion in that regard, at the outset what is necessary to be taken note is the total value of the transaction; the amount that was required to be paid as the balance sale consideration if the transaction was to be concluded and, in that regard, whether the readiness and willingness was exhibited by the plaintiff. As on 15.10.2007, even if the availability of further amount of Rs. 75 lakhs is accepted as proved, would it be sufficient to hold that the plaintiff had

possessed the balance sale consideration so as to issue a direction to complete the transaction. In that regard if the extent of land as indicated in the sale agreement dated 26.03.2007 is taken into consideration and if the value is worked out at the agreed rate of Rs. 11,350 per cent of land, the total sale consideration for 1822 cents of land would work out to Rs. 2,06,79,700 (Two Crores Six Lakhs Seventy-Nine Thousand Seven Hundred only). From the said amount if the advance of Rs. 75 lakhs admittedly received by the defendants is deducted, the balance sale consideration would be in a sum of Rs. 1,31,79,700 (One Crore Thirty-One Lakhs Seventy-Nine Thousand and Seven Hundred only). If a similar calculation is adopted to the extent as indicated in the report of the Court Commissioner, the total sale consideration for the 1771 cents of land would be in a sum of Rs. 2,10,00,850 (Two Crores Ten Lakhs Eight Hundred and Fifty only). If the advance amount of Rs. 75 lakhs is deducted therefrom, the remaining sale consideration would be in a sum of Rs. 1,26,00,850 (One Crore Twenty-Six Lakhs Eight Hundred and Fifty only).

15. It is in that back drop even if the lower sum of Rs. 1,02,60,850 (One Crore Two Lakhs Sixty Thousand Eight Hundred and Fifty only), is taken into consideration the availability of funds in that regard to pay balance sale consideration is to be examined. In that regard even though the document at Exhibit A5, the account extract of Axis Bank for the periods 09.10.2007 to 08.11.2007 is taken note, the same will at least indicate that the sum of Rs. 75 lakhs was available in the account as on 15.10.2007. Though the sum of Rs. 75 lakhs was shown in the account and even if the endorsement dated 14.10.2007 at the foot of the agreement is taken note, the said amount should be shown to have been available with the plaintiffs even subsequent to 08.11.2007, as also on the date when the demand was made by issue of legal notice and further when the suit was filed and specific performance was sought. In the absence of the same, a temporary arrangement made to have certain funds in the account on a relevant date alone cannot be considered as the financial resource being available to complete the transaction when in addition to the said

amount, further sum was required. This is more so in a circumstance where in the instant facts the first plaintiff had entered into an agreement of sale dated 23.10.2007 (Exhibit X1) with one Shri Ali Khan during the subsistence of the suit subject agreement and in the said agreement the first plaintiff with reference to the very properties which is the subject matter of the suit has stated as hereunder :

“the party No. 1 of us have decided to purchase the immovable property which are mentioned in the schedule herein below AND whereas the party No. 1 of us have no intention to get the same conveyed directly in to their name AND hence the party No. 1 herein agree and decide that they do not have any objections to get conveyed and register the same in favour of the party No. 2.”

The reference to party no. 1 is to the first plaintiff and the party no. 2 is Shri Ali Khan. The plaintiff No. 1 has not entered into the witness box to explain the purpose for which the said agreement was executed. On the other

hand, the said Shri Ali Khan was examined as DW-2 who has stated as follows in his cross-examination.

“I was part of the Exhibit A1 agreement. I participated in the same as a well-wisher of both the parties. I know that the plaintiffs have paid an amount of Rs. 75 Lakhs at the time of the agreement. I know that the agreement Exhibit A1 was not acted upon.”

“I came to know that the agreement did not materialize as the plaintiffs did not have necessary money with them. The plaintiffs approached me and told that they are unable to purchase and so I should purchase the same. That time I inquired with the defendant. I inquired with the defendant within 3-4 days of the plaintiff intimating me. The defendant No. 3 has told me that the defendants have no objections in me purchasing the property. Accordingly, I entered in to Exhibit X1 agreement.”

16. In the back drop of the evidence available on record more particularly with regard to the consideration of the relief of specific performance sought in the suit, the

learned Senior Advocate for the appellants-defendants has relied on the decision of this Court in the case of ***Man Kaur (Dead) by L.Rs vs. Hartar Singh Sangha***, (2010) 10 SCC 512, to contend that the person who has entered into the suit subject agreement namely Shri Devassy not being examined will be fatal and that the evidence tendered by PW-1 Shri Rubis Tharayil would be in sufficient. In that regard it is contended that this Court in the cited decision has held that the readiness and willingness to perform is to be proved with the evidence of the person having personal knowledge of the details of transaction and the evidence tendered by the Power of Attorney holder would be in sufficient. Having taken note of the decision we are of the opinion that the said decision would not be squarely applicable to the present facts so as to discard the evidence of PW-1. In so far as the agreement dated 26.03.2007 regarding which specific performance is sought, we notice that though Shri Devassy has entered into the agreement with the defendants it is done so, for and on behalf of Shri Rubis Tharayil and therefore Shri Rubis Tharayil is also arrayed

as the plaintiff No. 1 in the suit. If that be the position, in so far as the suit transaction and the evidence to prove the sufficiency of funds, the evidence tendered by him would be relevant. Hence, in so far as the personal knowledge relating to the other aspects i.e. entering into agreement with Shri Ali Khan and the recitals therein, it was required to be explained by examining Shri Devassy who would have been the relevant and competent witness to explain that aspect of the matter more particularly when reference with regard to the financial capacity is made therein.

17. In that regard, the extract from the agreement dated 23.10.2007 (Exhibit X1) between Shri Devassy and Shri Ali Khan noticed above indicates that the intention of seeking specific performance of the agreement dated 26.03.2007 is given up there under. One of the parties to the said agreement namely Shri Ali Khan was examined by the defendants as DW-2, who apart from referring to the agreement has also stated that the same was entered into since the plaintiffs did not have the financial

resources to continue the transaction. In that circumstance, it is only Shri Devassy who could have explained the real reason if any for executing the said agreement dated 23.10.2007 if it was not for the purpose indicated therein and as spoken to by DW-2. In such situation the execution of the said agreement dated 23.10.2007 will have to be taken as a strong circumstance wherein it indicates that the plaintiffs, prior to filing the suit itself had intended to give up their right to seek for specific performance for want of the financial resources.

18. In that circumstance what would also be relevant to be taken note is that in the suit, an application had been filed by the defendants to direct the plaintiff to deposit the balance sale consideration. Since the plaintiff had contended that the sum of Rs. 75 Lakhs had not been paid on 15.10.2007 as the title documents were not made available and the defendants on the other hand, had contended that the amount had not been made available though the documents were ready, the

applications in IA No. 611/2008 and IA No. 1759/2008 were filed. In view of the directions issued in IA No. 611/2008 the defendants produced the title deeds. Though in IA No. 1759/2008 the directions were issued to deposit the balance consideration in Court within the period, the said amount was not deposited. Due to non-deposit the suit was dismissed. However, the fact remains that the said issue was considered by the High Court in WP No. 25719/2008 and CRP No. 680/2008 assailing the said order. The High Court on considering the said aspect and finding that the dismissal of the suit for not depositing the entire balance sale consideration would not be justified had restored the suit. Though the said order has attained finality and to that extent the restoration of the suit was justified; but the fact remains that except the statement at Exhibit A5 to indicate that the sum of Rs. 75 lakhs was available during the period 11.10.2007 to 19.10.2007, no other documents, such as fixed deposit receipt for the said amount or deposit of the very same amount in the account subsequent 08.11.2007 was produced. Even if the amount was not to be insisted

to be deposited in the Court, the proof of availability should have been tendered. In that circumstance, out of the remaining documents, Exhibit A9, a communication sent by the plaintiff No.1 not being supported by authentic document is eschewed, from the amount depicted in Exhibit A11 to A13, it would not constitute the entire extent of balance sale consideration.

19. In that background, the perusal of the judgment passed by the Trial Court would indicate that the Trial Court on appreciating the evidence has at the outset arrived at the conclusion that in view of endorsement dated 14.10.2007 contained in the agreement the non-payment of Rs. 75 Lakhs on or before 15.10.2007 would constitute waiver and cannot be considered as a breach committed by the plaintiff. To that extent the Trial Court was justified and even if that be so the availability of the sum of Rs. 75 Lakhs sought to be established through the document at Exhibit A5 is taken into consideration, whether the said amount was still available subsequent thereto and whether the readiness and willingness can be

accepted as proved was the appropriate consideration required to be made. Hence the Trial Court in that regard has rightly taken note of the entire evidence. While taking note of this aspect, as has been referred to by us herein above, the Trial Court has taken note that the plaintiffs were required to arrange the total balance sale consideration of Rs. 1,31,79,700/- (One Crore Thirty-One Lakhs Seventy-Nine Thousand Seven Hundred only).

20. In that regard, the document at Exhibit A5 namely the accounts statement of Axis Bank was taken into consideration and had rightly observed that the ledger extract for the period subsequent to 19.10.2007 was not produced and in that view the evidence of PW-1 was referred as he could not say on which day he withdrew Rs. 75 Lakhs from his bank account. The Exhibits A6, A7 and A8 were taken note though it was not appropriately attested and the amount as indicated in the said documents at Rs. 15,62,426.70/- Rs. 5,00,488/- and Rs. 7,97,205/- which were in credit to the said

account was taken note. Having discarded Exhibit A9 which was a fax message without the supporting bank documents, the amount of Rs. 2,33,399/- in Exhibit A11 and Rs. 37,187/- in Exhibit A12 was also taken note. The Trial Court had also taken into consideration the agreement entered into between Shri Devassy and Shri Ali Khan, dated 23.10.2007 marked as Exhibit X1 which was also one of the reasons to arrive at the conclusion that the plaintiff had not proved their readiness and willingness.

21. As against the consideration made by the Trial Court, a perusal of the judgment passed by the High Court would indicate that the main basis for its ultimate conclusion is as contained in Para 20 of the judgment which reads as here under:

In this case, Court below finds that the documents produced by the plaintiffs were not sufficient to prove that they had sufficient money with them to pay the balance sale consideration within the period prescribed for performance of the contract. Of course, if the plaintiffs seek specific performance of a contract their readiness and willingness to comply with the terms of the contract is of paramount necessity. Readiness includes the capacity to raise funds for purchasing the property. It is settled law that there is no necessity to make available the funds at the time of filing the suit. However, it has to be

shown that he was in a position to raise funds for purchasing the property within the time specified. In the case on hand, the total consideration of the property would come around Rs. 1.5 crores of which Rs. 75 Lakhs was paid as advance and there was an offer to pay Rs. 75 Lakhs on or before 15.10.2007. Ext. A10 is the certified extract of an account maintained in the name of the 1st plaintiff, which would show that an amount of Rs. 75 Lakhs was credited on 11.10.2007. Therefore, it cannot be stated that plaintiffs were incapable of raising funds. Other documents namely, Exts. A11 to A13 produced by plaintiffs further proves their capacity to raise funds and in fact they had substantial amounts at the relevant time to purchase the property. Therefore, the finding of court below to that extent is erroneous and is liable to be set aside.

The learned Senior Counsel for the respondent-plaintiff sought to contend that the High Court also having taken note of the documents that were tendered in evidence has taken into consideration the fact that towards the sale consideration a sum of Rs. 75 Lakhs had been paid as advance and the plaintiff had also shown that they were ready with the further amount of Rs.75 lakhs which was to be paid on or before 15.10.2007. In that view, it is contended that the High Court had rightly taken note that the plaintiff had the capacity to arrange the financial resource and as such had decreed the suit. It is also his contention that in the final conclusion when out of the five properties the Item No. 3 and 4 properties were

excluded since the right to transfer the minors property had not been established, the balance amount payable was much lesser being equivalent only to the value of the properties in suit Item Nos. 1, 2 and 5. The balance payable would amount to Rs. 52,34,700/- and in view of the judgment passed by the High Court the amount is also deposited on 08.11.2018.

22. The learned senior counsel for the appellants-defendants on the other hand would contend that the defendants were willing to transfer all the five Items of the property provided the plaintiffs were ready and willing and had paid the entire balance sale consideration for all the items of property. It is contended that there was no bar to transfer the minors' right by the natural guardian and in any event when the plaintiffs have filed the suit seeking specific performance of the agreement in its entirety, in order to succeed they were required to establish their readiness and willingness in entirety and only thereafter any other consideration even to carve out certain properties would have arisen. The learned senior

counsel for the appellant has relied on the decision of this Court in the case of ***N.P. Thirugnanam (dead) by L.Rs vs. Dr. R. Jagan Mohan Rao and Ors.*** (1995) 5 SCC 1150 wherein it is held that in the absence of showing continuous readiness and willingness on the part of the plaintiff, the relief of specific performance would not arise.

23. In the above background, we find that the consideration as made by the High Court does not indicate that the High Court has taken note of the evidence in the manner as has been analysed by the Trial Court. From the reasoning as extracted above the High Court has proceeded by indicating that the readiness includes the capacity to raise funds for purchasing the property. To that extent though the High Court was justified, the assessment of the evidence made does not indicate that there were sufficient documents to show that they had the capacity to raise the funds for the entire balance sale consideration. The error committed by the High Court is that it proceeded on the basis that

the total consideration of the transaction is Rs. 1.5 crores of which Rs. 75 Lakhs was paid as advance and since there was an offer to pay the balance of Rs. 75 Lakhs on or before 15.10.2007 which was available in credit to their account as on 11.10.2007 the same was sufficient. Hence it concluded that it cannot be stated that the plaintiffs were incapable of raising the funds. From the discussion made by the Trial Court as also by us in the course of this judgment, it would indicate that in so far as the total sale consideration is concerned, even if the extent indicated as per the Court Commissioner's report is taken, it would be the sum of Rs. 2,01,00,850/-. Therefore, the balance payable would be Rs. 1,26,00,850/-. Towards payment of such balance sale consideration though as on 15.10.2007 the sum of Rs. 75 Lakhs was shown to the credit, the availability of that amount subsequent to 08.11.2007 is not shown as the statement at Exhibit A5 is only for the periods 09.10.2007 to 08.11.2007. Hence, the said amount will have to be taken as being made available at one point in time by juggling the figures and was not shown available

for payment at the relevant point when the suit was filed. Hence on exclusion of the same the remaining amount through Exhibit A11 to A13 would be in-sufficient to indicate that as on date of filing the suit they had the entire remaining balance sale consideration and were ready and willing to complete the transaction. In that circumstance, the deposit presently made after the judgment is rendered by the High Court to the reduced extent would not be of assistance as there would be change in the circumstances after more than a decade, as against what the position was in the year 2007.

24. In that circumstance, when not only the availability of fund was satisfactorily explained but in a circumstance where the first plaintiff had entered into an agreement dated 23.10.2007 in favour of Shri Ali Khan in respect of the very same properties even before securing the sale deed in their favour, the bonafides would also become relevant when the specific performance as an equitable relief is taken into consideration. In that view, the Trial Court while declining the relief of specific

performance has appropriately granted the decree for realisation of the sum of Rs. 75 Lakhs with interest at 9% per annum. To that extent though the Trial Court was justified, we find it necessary to protect the interest of the plaintiffs to recover the said amount. In that view, it is necessary to direct the defendants to refund the amount to the plaintiffs within a time frame, failing which the amount is to be paid with the higher rate of interest. Further, charge is to be created over the suit schedule properties to ensure repayment of the amount. Subject to the above the impugned judgment dated 21.08.2018 in RFA No. 344/2011 is liable to be set aside.

25. In the result we pass the following,

ORDER

- a) The judgment dated 21.08.2018 passed in RFA No. 344/2011 is set aside and the judgment dated 30.07.2008 in OS No. 89/2008 is restored.
- b) The appellant is directed to refund the amount of Rs. 75 Lakhs with interest at 9% per annum from the date of receipt till the date of repayment and the

repayment shall be made within 3 months from this date.

- c) If the refund is not made within 3 months, the said sum of Rs. 75 Lakhs shall attract interest at 12% per annum from the date of receipt till the date of repayment.
- d) There shall be a charge over the suit schedule properties until realisation of the amount by the plaintiff and such charge shall stand automatically raised if the amount is deposited in compliance of the directions contained above.
- e) The appeal is allowed in the above terms, however, in the facts and circumstance the cost incurred in this appeal shall be borne by the appellant.

.....J.
(R. BANUMATHI)

.....J.
(A.S. BOPANNA)

**New Delhi,
August 20, 2019**