Newsletter

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Editor’s note

Dear Readers,

We are pleased to share with you our newsletter for the month of July, 2024, which covers significant legal and regulatory developments.

In a noteworthy judgment, the Calcutta High Court ruled that the ineligibility of an arbitrator cannot be invoked as a ground to challenge the enforcement of an award under Section 36 of the Arbitration and Conciliation Act, 1996, for the first time during enforcement proceedings. In another ruling, the Court provided clarity on the procedural framework under Section 11, ensuring that the arbitration process is not prematurely encumbered by detailed scrutiny of the claims, thus maintaining the efficiency and purpose of preliminary arbitration applications.

The recent judgments from the National Company Law Appellate Tribunal (NCLAT) and the Supreme Court have addressed crucial aspects of the IBC, influencing the administration and enforcement of insolvency laws in India.

The Ministry of Corporate Affairs (MCA) in India has recently introduced several amendments to key corporate regulations. The Nidhi (Amendment) Rules, 2024 and Companies (Incorporation) Amendment Rules, 2024 are noteworthy.

The Reserve Bank of India (RBI) has introduced a series of regulatory updates across various banking activities. These updates cover foreign exchange remittances, capital regulations, and domestic money transfer frameworks, among others. Stakeholders across the financial ecosystem must stay informed and adapt to these developments to ensure compliance and capitalize on new opportunities.

In this edition, we have also included an article authored by our Associate Partner, Ms. Samreen Imran Paloba and Associate, Ms. Zainab Patel. The article discusses a recent Supreme Court decision in the case of Duni Chand Vs Vikram Singh & Ors and Vikram Singh Vs Duni Chand & Ors, which focuses on the interpretation of Section 41 of the Transfer of Property Act, 1882.

We hope you will find this edition useful and informative.

Best wishes,

Rajesh Narain Gupta

Founder & Chairman,
SNG & Partners

A. ARBITRATION

1. Calcutta High Court: Ineligibility of an Arbitrator cannot be a ground for challenging the enforcement of an award in a proceeding u/S.36 of the Arbitration Act for the first time

The High Court of Calcutta, while disposing of an application filed by the award debtor under Section 36 of the Arbitration and Conciliation Act, 1996 for enforcement of an ex parte award, held that;

(a) a unilateral appointment of Arbitrator, without any further allegation of bias, renders the Arbitrator ineligible to undertake arbitration proceedings;

(b) in view of the provision of waivability under the proviso to Section 12(5), the bar of ineligibility partakes of a character of not being an absolute bar which would hit at the root of the very assumption of jurisdiction at the inception, rendering the award a nullity. Thus, an ineligibility of unilateral appointment by one of the parties, which comes within the broader connotation of Section 12(5) of the 1996 Act, does not render an arbitral proceeding and the consequential award void ab-initio;

(c) importing the provisions of Section 47 of the Code of Civil Procedure to an enforcement proceeding under Section 36 of the 1996 Act would be entirely extraneous and superfluous and would overlap with Section 34. The provisions of Section 47 are not , in any manner, applicable to Section 36 of the 1996 Act and

(d) If a party chose not to challenge the ineligibility of the Arbitrator before the Arbitrator and/or prefer a challenge under Section 34 of the 1996 Act against the final award of the Arbitrator and having thus kept silent all along, the award-debtor cannot, for the first time, in the proceeding for enforcement of award under Section 36 of the 1996 Act, raise the issue of ineligibility of arbitrator.

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2. Calcutta High Court expounds: Pleadings u/S.11 of the Arbitration Act are only to satisfy the court and are not the actual statements of claim or defence of the parties

The High Court of Calcutta, while allowing an application filed under Section 11 of the Arbitration and Conciliation Act, 1996, arises out of the disputes between the parties in connection with an Agreement for Settlement, held that in an application under Section 11 of the 1996 Act or the affidavits filed in connection therewith, the petitioner is not making its claim, but only prima facie seeks to satisfy the court that a dispute falling within the purview of the arbitration

clause exists, that there is a valid arbitration clause and the dispute is otherwise arbitrable. It is beyond the competence of the court taking up an application under Section 11 to enter into the merits of the claims at all. The actual claim of the petitioners shall only be reflected in its statement of claims filed before the Arbitrator and as such, at this stage it cannot be said that the pleadings made in the affidavits of the parties can either be believed or disbelieved or even be treated to be comprehensive, comprising the entire case of the parties.

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B. INSOLVENCY AND BANKRUPTCY CODE, 2016 (IBC)

1. NCLAT, New Delhi upholds NCLT's jurisdiction in computing CIRP fees and expenses, directs financial creditor to pay

The Principal Bench of the NCLAT in New Delhi ruled that the NCLT has jurisdiction to compute fees and expenses, as the Financial Creditor is liable for CIRP costs and fees, which the Adjudicating Authority is to determine. Can we include some better judgment???

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2. NCLAT, New Delhi expounds: Mere insertion of any date in the Section 8 demand notice or in the Section 9 application does not make that date of default valid and binding

The NCLAT, New Delhi Bench opined that the mere insertion of any date in the Section 8 demand notice or in the Section 9 application does not make that date of default valid and binding, especially when there is no agreement between the two parties as to what shall constitute an event of default. In the absence of any agreement available on record, the alleged date of default cannot be whimsically and arbitrarily decided by the Operational Creditor. The Operational Creditor needs to be put to strict proof to establish the date of default.

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3. NCLAT, New Delhi expounds: Amendment to schemes can be done at any stage

The NCLAT, New Delhi Bench in the case wherein a modification in the scheme resulted in, iniscule change in the swap ratio of the Transferor Companies, held that such changes/ amendment in the proposed scheme can be done at any stage, especially when the shareholders, whose interest are effected, have approved the change in swap ratio and no consent of creditor is required as this change does not affect any creditor. It was held that the present modification to scheme would not require any further / revised adherence in so far as the regulations for inbound merger are concerned. Further, as per FEMA Notification No. FEMA.389/2018-RB dated March 20, 2018 'Foreign Exchange Management (Cross Border Merger) Regulations, 2018', point 9(1) states any transaction on account of a cross border merger undertaken in accordance with these Regulations shall be deemed to have prior approval of the Reserve Bank of India as required under Rule 25A of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016. Hence, the proposed modification would also need no additional approval from Reserve Bank of India. Accordingly the impugned order passed by the NCLT Chandigarh rejecting the application for modification of Scheme was set aside.

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4. NCLAT, New Delhi expounds: Even if no plea raised against limitation, it has to be examined

The NCLAT, New Delhi Bench ruled that even if no plea is raised regarding limitation, the court is obliged to examine the question of limitation before proceeding further in an application.

The Bench noted the pleadings of the State Bank of India (relating to one time settlement offer submitted by the Corporate Debtor and the Original Application filed before the Hon'ble Debts Recovery Tribunal having been decreed in favour of the Bank) and expounded that it contains the extension of limitation under Section 18 of the Limitation Act and when the pleadings are on the record which provide for extension of limitation no error could be said to be committed by NCLT in admitting Section 95 application against the personal guarantor.

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5. NCLAT, New Delhi opines: Payment of license fee for use of leased premises for business purposes is an operational debt

The Bench ruled that payment of license fee for use of leased premises for business purposes is an operational debt. A conjoint reading of Sections 5(20) and 5(21) of IBC also clearly established that tenancy and lease rent dues fall in the category of operational debt as defined under Section 5(21) of IBC.

In respect of the pre-existing dispute, it was noted that legal notice raisng the disputes was served after the filing of the Section 9 application and, therefore could not qualify as a pre-existing dispute.

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6. NCLAT, New Delhi opines: Resolution Plan may provide different categories of creditors and different payment schemes

The NCLAT, New Delhi Bench expounded that whether the homebuyer/ allottee is genuine homebuyer or genuine allottee or speculative homebuyers/ allottee but if he has paid the money for acquisition of such properties or given the advance, such allottee/ homebuyer shall be treated as Financial Creditor in terms of Section 5(8)(f) of the IBC.

The Bench further ruled that the Resolution Plan may provide different categories of creditors and different payment schemes, as seen in the present case which is valid and legally enforceable.

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7. Supreme Court rules: 'Drawer' to be strictly interpreted as the issuer of the cheque, excluding authorized signatories

The Hon'ble Supreme Court held:

1. Section 7 of the NI Act accurately identified the "drawer" as the individual who issues the cheque. This interpretation is fundamental to understanding the obligations and liabilities under Section 138 of the NI Act, which makes it clear that the drawer must ensure sufficient funds in their account at the time the cheque is presented.
2. The general rule against vicarious liability in criminal law underscores that individuals are not typically held criminally liable for acts committed by others unless specific statutory provisions extend such liability. Section 141 of the NI Act is one such provision, extending liability to the company's officers for the dishonour of a

cheque. The appellants' attempt to extend this principle to Section 143A, to hold directors or other individuals personally liable for interim compensation, is unfounded as section 143A only brings within its ambit the "drawer" of a cheque.

3. Authorized signatories act on behalf of the company but do not assume the company's legal identity. This principle, fundamental to corporate law, ensures that while authorized signatories can bind the company through their actions, they do not merge their legal status with that of the company.
4. Thus the drawer under Section 143A refers specifically to the issuer of the cheque, not the authorized signatories.

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C. MINISTRY OF CORPORATE AFFAIRS (MCA)

1. Nidhi (Amendment) Rules, 2024

The Central Government has notified the amendments to the Nidhi Rules, 2014.

In rule 4, in sub-rule (5) of the Nidhi Rules, 2014, the following proviso is inserted: -

"Provided that a company shall not use the words "Nidhi Limited" in its name unless it is declared as such under sub-section (1) of section 406 of the Act."

The amendment will come into force on the date of their publication in the Official Gazette.

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2. Companies (Incorporation) Amendment Rules, 2024

The Central Government has notified the amendments to the Companies (Incorporation) Rules, 2014.

In the Companies (Incorporation) Rules, 2014, in rule 8A, in sub-rule (1):

a. in clause (p), the word "Nidhi", shall be omitted;
b. clause (v) shall be omitted.

The amendments will come into force on the date of their publication in the Official Gazette.

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3. Companies (Appointment and Qualification of Directors) (Amendment) Rules, 2024

The Central Government has notified the amendments to the Companies (Appointment and Qualification of Directors) Rules, 2014

Following are the amendments:

In rule 12A:

(a) in the third proviso, after the word "only", the words and figures "on or before 30th September of the financial year" is inserted;

(b) after the third proviso, the following proviso is inserted:

"Provided also that if an individual intends to update his personal mobile number or the email address again at any time during the financial year in addition to the up-dation allowed under the third proviso, he shall update the same

by submitting e-form DIR-3 KYC on payment of fees of five hundred rupees"

The Amendments will come into force from the 01st day of August, 2024.

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4. Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2024

The Central Government has notified the amendments to the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.

Following are the key amendments:

a. "IEPF-3", wherever it occurs, the letters and figures, "IEPF- 4" substituted;

b. "IEPF-7", wherever it occurs, the letters and figures, "IEPF- 1" substituted;

c. Rule 6(13):

"into the specified account of the IEPF Authority maintained in the Punjab National Bank", the words "online to the Authority within a period of thirty days from the date such amount becomes due" substituted.

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D. RESERVE BANK OF INDIA (RBI)

1. Release of foreign exchange for Miscellaneous Remittances

With a view on streamlining the regulatory compliances and operational procedures, it is now decided that Authorised Dealers shall obtain Form A2 in physical or digital form for all cross-border remittances irrespective of the value of transaction.

Authorized Dealers shall continue to take necessary steps, in terms of Section 10(5) of Foreign Exchange Management Act, 1999, to assure themselves that such transactions do not involve any contravention of the provisions of FEMA.

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2. Online submission of Form A2: Removal of limits on the amount of remittance

On a review, and to improve ease of doing business, it is now decided to permit all Authorised Dealers (AD Category-I banks and AD Category-II entities) to facilitate remittances on the basis of online / physical submission of Form A2 and other related documents, if and as may be necessary, subject to the conditions laid down in Section 10(5) of FEMA 1999. Accordingly, there shall not be any limit on the amount being remitted on the basis of 'online' Form A2.

Authorized Dealers shall frame appropriate guidelines for the purpose, with the approval of their Board within the ambit of extant statutory and regulatory framework.

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3. Basel III Capital Regulations - Eligible Credit Rating Agencies (ECAI)

Banks are now permitted to use the ratings of the CRA for risk weighting their claims for capital adequacy purposes, subject to the following:

a. In respect of fresh rating mandates, rating may be obtained from the CRA for bank loans not exceeding Rs.250 crore.

b. In respect of existing ratings, the CRA may undertake rating surveillance irrespective of the rated amount, till the residual tenure of such loans.

Provided that in case of existing ratings assigned to working capital facilities exceeding Rs.250 crore, the CRA shall undertake rating surveillance only till the next renewal of such facility by the banks.

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4. Remittances to International Financial Services Centres (IFSCs) under the Liberalised Remittance Scheme (LRS)

At present, remittances under LRS to IFSCs can be made only for:

i. Making investments in IFSCs in securities except those issued by entities/ companies resident in India (outside IFSC); and

ii. Payment of fees for education to foreign universities or foreign institutions in IFSCs for pursuing courses mentioned in the gazette notification no. SO 2374(E) dated May 23, 2022, issued by the Central Government.

On a review, it has been decided that Authorised Persons may facilitate remittances for all permissible purposes under LRS to IFSCs for:

i. Availing financial services or financial products as per the International Financial Services Centres Authority Act, 2019 within IFSCs; and

ii. All current or capital account transactions, in any other foreign jurisdiction (other than IFSCs) through an FCA held in IFSCs.

For these permissible purposes, resident individuals can open Foreign Currency Account (FCA) in IFSCs.

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5. Domestic Money Transfer – Review of Framework

Based on the review of the framework for Domestic Money Transfer (DMT), 2011 the following changes have been made:

a) Cash Pay-out Service

i. The remitting bank shall obtain and keep a record of the name and address of the beneficiary.

b) Cash Pay-in Service

i. Remitting banks / Business Correspondents (BCs) shall register the remitter based on a verified cell phone number and a self-certified 'Officially Valid Document (OVD)'.

ii. Every transaction by a remitter shall be validated by an Additional Factor of Authentication (AFA).

iii. Remitting banks and their BCs shall conform to provisions of the Income Tax Act, 1961 and the rules/regulations framed thereunder (as amended from time to time), pertaining to cash deposits.

iv. Remitter bank shall include remitter details as part of the IMPS / NEFT transaction message.

v. The transaction message shall include an identifier to identify the fund transfer as a cash-based remittance.

The guidelines on Card-to-Card transfer are excluded from the purview of the DMT framework and shall be governed under the guidelines / approvals granted for such instruments.

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6. Master Direction - Overseas Investment

In terms of Rule 3 of OI Rules, the Reserve Bank is empowered to administer these Rules and to issue regulations and directions/ circulars as it may deem necessary, for the effective implementation of the provisions of these Rules.

The Reserve Bank, therefore, issues directions to Authorised Persons under Section 11 of the Foreign Exchange Management Act (FEMA), 1999. These directions lay down the modalities as to how the foreign exchange business has to be conducted by the Authorised Persons with their customers/ constituents with a view to implementing the OI Rules and the OI Regulations.

Instructions issued on Overseas Investment by persons resident in India have been compiled in the Master Direction. The list of underlying circulars which form the basis of this Master Direction is furnished in the Annexure I to this Master Direction.

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E. SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

1. Enabling Credit Rating Agencies (CRAs) to undertake rating activities under IFSCA

SEBI has specified that the ratings undertaken by a CRA under the guidelines of IFSCA shall be under the purview of IFSCA.

Accordingly:

a. Any issue arising from the activities of such SEBI registered CRAs in the IFSC shall be dealt by IFSCA under the powers exercisable under Section 12 and 13 of IFSCA Act and regulations and subsidiary instructions made thereunder.

b. IFSCA shall be responsible for dealing with complaints, enforcement actions and furnishing information to third parties, including statutory or judicial bodies, in respect to the services provided by the CRAs in the IFSC.

The circular shall be applicable with immediate effect.

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2. Enabling ESG Rating Providers (ERPs) to undertake ESG rating activities under IFSCA

SEBI has specified that the ESG ratings undertaken by an ERP under the guidelines of IFSCA shall be under the purview of IFSCA.

Accordingly:

a. Any issue arising from the activities of such SEBI registered ERPs in the IFSC shall be dealt with by IFSCA under the powers exercisable under Section 12 and 13 of IFSCA Act and regulations and subsidiary instructions made thereunder.

b. IFSCA shall be responsible for dealing with complaints, enforcement actions and furnishing information to third parties, including statutory or judicial bodies, in respect to the services provided by the ERPs in the IFSC.

The circular shall be applicable with immediate effect.

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3. Recognition of BSE Limited as Research Analyst Administration and Supervisory Body (RAASB) and Investment Adviser Administration and Supervisory Body (IAASB)

BSE Limited has been granted recognition under Regulation 14 of the 'RA Regulations'2 and 'IA Regulations' for administration and supervision of Research Analysts ('RAs') and Investment Advisers ('IAs') respectively as RAASB and IAASB for a period of five years starting from July 25, 2024.

Applicants seeking registration/renewal as RA/IA shall be liable to pay administrative fees, as specified by RAASB/ IAASB.

Fees payable to SEBI by RAs/applicants seeking registration as RA have been revised by way of amendment to the RA Regulations, coming into effect from July 25, 2024.

In respect of grant of registration as RA for applications received before July 25, 2024, the registration fee shall be received by SEBI as per the erstwhile fee structure.

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4. Consultation paper on Introduction of New Asset Class/ Product Category

SEBI has released a consultation paper on Introduction of New Asset Class/ Product Category.

Over the years, a notable opportunity of a New Asset Class has emerged between Mutual Funds and PMS in terms of flexibility in portfolio construction.

The absence of such an investment product appears to have propelled the investors of this segment towards unregistered and unauthorized investment schemes/entities. Such schemes/entities, often promise unrealistically high returns and exploit the investors' expectations for better yields, leading to potential financial risks. Therefore, a New Asset Class would provide a regulated and structured investment suited to the investors in this segment.

The New Asset Class is proposed to be introduced under the Mutual Fund structure, with relaxations in prudential norms for such New Asset Class to be adequately effective. While such relaxations may enhance the risks associated with the product, the same can be mitigated by putting a higher limit on minimum investment size.

Thus, the proposed New Asset Class intends to fill the gap between MFs and PMS by offering a regulated product featuring greater flexibility, higher risk-taking capability and a higher ticket size, to meet the needs of the emerging category of investors.

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5. Consultation Paper on Proposed Legal Provisions for Summary Proceedings

in the SEBI (Intermediaries) Regulations, 2008 to handle the cases of certain violations of the securities laws by Intermediaries

Over a period of time, it has been realised that the approach in the form of summary proceedings is warranted to handle such violations in an expeditious and more efficient manner. The provisions for summary proceedings shall ensure that the similar violations are treated in a uniform manner and shall reduce the existing long-drawn enforcement process in certain violations.

SEBI has proposed to introduce summary proceedings for specific cases involving intermediaries. Summary proceedings offer an opportunity to the entity to provide its submissions on the reasons why fact on which the proceedings are initiated should not be concluded against him with adverse consequence. Given the need, it is proposed to have provisions for "summary proceedings" in Intermediaries Regulations.

The proposed amendments to the Intermediaries Regulations for inclusion of provisions of summary proceedings are aimed to streamline the regulatory process for handling these kind of violations by intermediaries, thereby enhancing the Board's ability to act swiftly in protecting investors and maintaining market integrity.

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F. A WILL: SHROUDED WITH SUSPICION, NOT ENTITLED TO THE BENEFIT OF SECTION 41 UNDER TRANSFER OF PROPERTY ACT, 1882

An interesting take by the Supreme Court was propounded in ***Civil Appeal No. 8187 of 2023 -Duni Chand Vs Vikram Singh & Ors and Civil Appeal No. 8188 of 2023 - Vikram Singh Vs Duni Chand & Ors ("Appeals")*** in the reportable judgement recently passed on 10th July, 2024 **("Judgement")** touching the elements of Section 41 under the Transfer of Property Act, 1882. The Apex Court honoring its apex position rightfully pointed out the error on part of the High Court of Himachal Pradesh, Shimla in sympathizing and exceeding the benefit and relief to the party defendants in the present case. The Judgement regarded the relief granted by High Court of Himachal Pradesh, Shimla as completely unwarranted, misplaced and against the pleading and evidence on record.

What is Section 41?

"where with the consent, express or implied of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith"

The Section is an exception to the general law that a person cannot convey a better title than he himself has in the property and latinized as 'Nemo Dat Quod Non-Habet". Section 41 is to be construed strictly. Being an exception, the onus certainly is on the transferee to show that the transferor was the ostensible owner of the property and that he had, after taking reasonable care to ascertain that the transferor had power to make the transfer, acted in good faith. An ostensible owner is a person who has got indicia of ownership such as title, possession or entries in records made to show ownership.

The Appeals were very interestingly preferred with the Hon'ble Supreme Court of India, wherein the plaintiffs to the High Court suit filed an appeal seeking relief for part of the judgement and the defendants of the High Court suit filed an appeal seeking relief for the balance part of the judgement. The facts of the present case are as that one, Beli Ram was the owner and in possession of the suit land who was taken care of by his nephew Tota Ram who was cultivating the suit land for more than three decades. In 1988, Beli Ram executed and registered a will dated 12th December, 1988 ("**First Will**") wherein he bequeathed the suit land in favour of his nephew Tota Ram who continued possession of the same after the death of Beli Ram on 11th July, 1994.

Vikram Singh, son of Beli Ram after the death of his father and on basis of another new Will dated 16th May, 1994 ("**Second Will**"), wherein the suit land was bequeathed in his favor, got his name updated in the revenue records and started interfering with the possession held by Tota Ram. Vikram Singh then sold the suit land interalia other adjacent lands to certain individuals **("Transferees")**, aggrieved by the same Tota Ram instituted a suit for a decree of declaration with consequential relief of permanent prohibitory injunction before the Trial Court in the Civil Judge (Junior Division) Barsar bearing Civil Suit No. 204 of 1997. The Trial Court dismissed the suit in favor of Vikram

Ram decreeing that the Second Will is the last Will and subsisting as on date.

Tota Ram being aggrieved by the decision of the Trial Court preferred an Appeal under Section 96 of the Code of Civil Procedure. 1908 before the District Judge, Hamirpur in Civil Appeal No. 110 of 2004. The District Judge did not agree with the findings of the Trial Court and accordingly, it was further held that the First Will was a valid and genuine document and the Second Will was surrounded with suspicion and as such could not be relied upon, as the defendant failed to repel the said suspicious circumstances surrounding due execution of the Second Will. It was held that the Second Will is an invalid document.

Aggrieved by the aforementioned judgement, Vikram Singh preferred an appeal with the Hon'ble High Court of Himachal Pradesh and filed an application bearing RSA No. 392 of 2005 under Section 100 of the Civil Procedure Code. The High Court of Himachal Pradesh vide Order dated 29th March, 2017 **("HC Order")** held and confirmed as follows:

1. upheld the finding in the appeal before the District Judge, Hamirpur in Civil Appeal No. 110 of 2004 and decreed that the First Will was valid and genuine document.
2. that the Second Will was shrouded with suspicion and cannot be held as a genuine document.
3. that the Transferees were entitled to the benefit of Section 41 of the Transfer of Property Act, 1882 and accordingly saved the transactions in their favour. The remedy provided to Tota Ram and his heirs were the consideration as agreed under the sale transactions.

Tota Ram and Vikram Ram, each being partly aggrieved by the HC Order filed the aforementioned Appeals. The Hon'ble Supreme Court vide its Judgement highlighted the err on the part of the High Court in carving out a completely new case when there was no specific pleading, nor any issues framed in respect of the same which is unsustainable under law. It further stated that once the Second Will has been declared invalid, no rights accrued in favor of Vikram Ram and that there is no question of the Transferees getting any better right, title or interest than Vikram Ram. The Judgement upheld the position of the Second Will as provided in HC Order and stated that the same is basis pure finding of facts and that the Supreme Court refrains from interfering with the same. Hence, the appeal preferred by Tota Ram was allowed and the appeal preferred by Vikram Ram was dismissed.

Conclusion:

The Judgement threw light on the elements of Section 41 and the manner the same is to be construed. The most important elements for a transaction to fall under the exception of Section 41 is that,

1. A person is an ostensible owner of immovable property, (a) with the consent, expressed or implied, of the person interested therein; (b) and transfers the same for consideration,

2. The transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

Where the conditions of Section 41 of the Transfer of Property Act, are not fulfilled, protection of Section 41 is not available. Only those alienees from an ostensible owner are protected under Section 41 of the Transfer of Property Act who can establish that the sale in their favour was with the consent express or implied of the true owner and that too only on proving that it was for consideration and they had taken reasonable care to ascertain that the transferor had the power to made the transfer and they acted in good faith. Where there is absence of reasonable care and ordinary prudence on the part of the transferee to make valid transfer, the transferee is not entitled to protection extended by Section 41.

Further, in the present case High Court took cognizance of the fact that the name of Vikram Ram was appearing in the revenue records at the time of sale in favor of the Transferees, which position has been denied by in a similar case held in ***Chittabai Kundu Vs Sailen Behari Paul, AIR 1988 NOC 68:92 Cal WN 398*** which provided that mere inspection of record of rights is not a sufficiently reasonable inquiry and a transferee who has acted only on such records as evidence of the title of his transferor, cannot be said to have acted in good faith and would not be entitled to the benefit of Section 41. Furthermore, where the vendors have been in possession for a long time and were shown as owners in the revenue record and the vendees had purchased the land after verifying their title from the revenue records then and only then they would be protected and considered as bona fide purchasers which was held in the case ***Pandit Chuni Lal Vs Financial Commissioner Revenue and Secretary to Government of Punjab, 2006 (1) Punj LR 138.***

Hence, whether Vikram Singh falls under the purview of an ostensible owner is in itself a question that should have been considered by the Hon'ble High Court. It has also been held by the Judicial Committee in ***Chokey Singh v Jote Singh (1909)*** that mutation of names by itself created no proprietary interest.

From the findings of the Apex Court it is clear that the concept of ostensible ownership germinates from principle of natural justice especially the theory of estoppel which is an exception to the rule of Nemo Dat Quod Non Habet allowing ostensible owners to transfer the property to bonafide transferee.

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