

Reserved on : 18.07.2025
Pronounced on :30.07.2025



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JULY, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.17796 OF 2025 (GM - CPC)

BETWEEN:

SIVAGAMI N.,
AGED ABOUT 47 YEARS
W/O LATE ANUP KUMAR DEY
RESIDING AT NO.39/2, AISHWARYA,
3RD CROSS, DEVASANDRA, K.R PURAM,
BENGALURU – 560 036.

ALSO AT

NO.788, 3RD FLOOR, 3RD MAIN ROAD,
BHOO MI REDDY COLONY,
GEETHANJALI LAYOUT, THIPPASANDRA,
BENGALURU – 560 075.

... PETITIONER

(BY SRI K.B.S.MANIAN, ADVOCATE)

AND:

1 . M/S. VINAYAKA TRAVELS
A PARTNERSHIP FIRM REGISTERED

UNDER THE PARTNERSHIP ACT, 1932,
HAVING ITS OFFICE AT
872/E, GROUND FLOOR,
ROAD TO MICHAELPALYA,
NEAR SAPNA BOOK HOUSE,
HAL III STAGE,
BENGALURU – 560 075.

- 2 . R.VIJAY KUMAR
S/O LATE RATHINAM CHETTIAR.
AGED ABOUT 66 YEARS,
RESIDING AT NO.153,
"SHREE GANESH VILLA",
4TH 'C' CROSS,
KASTURINAGAR,
BENGALURU – 560 043.
- 3 . D.S.P REDDY
S/O LATE SHRI D.D REDDY,
AGED ABOUT 64 YEARS,
RESIDING AT NO.2780,
18TH A MAIN ROAD,
HAL II STAGE,
BENGALURU – 560 008.
- 4 . SHRI ANISH DEY
S/O LATE ANUP KUMAR DEY
RESIDING AT NO.002.
SAI TRANQUIL APARTMENT,
NO.414, 4TH C MAIN,
OMBR LAYOUT, BANASWADI
BENGALURU – 560 043.
- 5 . CHAITHANYA PROJECTS PVT. LTD.
NO.104, 3RD FLOOR,
PRESTIGE OMEGA,
EPIP ZONE, WHITEFIELD,
BENGALURU – 560 066,

REPRESENTED BY ITS
MANAGING DIRECTOR,
MR. GURUPRASAD.

6 . KOTAK MAHINDRA BANK LIMITED
22, TRINITY CIRCLE,
M.G. ROAD,
BENGALURU – 560 001
REPRESENTED BY ITS
BRANCH MANAGER.

... RESPONDENTS

(BY SRI DHANANJAY V.JOSHI, SR.ADVOCATE A/W
SRI VACHAN H.V., ADVOCATE FOR R-1 TO R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA PRAYING TO 1. SET ASIDE THE ORDER
ON IA NO.24 DATED 21.04.2025 PASSED BY THE LXXXV ADDLN.
CITY CIVIL AND SESSIONS JUDGE AT BANGALORE (CCH-86) IN
COM.OS 64/2022 PRODUCED AS ANNEXURE A AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED
FOR ORDERS ON 18.07.2025, COMING ON FOR PRONOUNCEMENT
THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner/defendant No.1 is before this Court calling in
question an order dated 21-04-2025 by which LXXXV Additional

City Civil and Sessions Judge, Bengaluru rejects the application/I.A.No.XXIV filed by the petitioner to draw adverse inference and deny cross-examination to the plaintiffs.

2. Heard Sri K.B.S.Manian, learned counsel for the petitioner and Sri Dhananjay V. Joshi, learned senior counsel appearing for respondents 1 to 3.

3. Facts, in brief, germane are as follows: -

The petitioner's late husband who was a partner in the 1st respondent/Vinayaka Travels (hereinafter referred to as 'the firm' for short) dies on 13-11-2020. The firm had to settle the accounts of the petitioner's husband after his death. But did not do so, and there was no determination of his share *qua* the assets of the firm. Respondents 2 and 3/plaintiffs 2 and 3 institute commercial O.S.No.64 of 2022 claiming, *inter alia*, certain monetary benefits due and payable by the petitioner to the plaintiffs as legal representative of the deceased partner. The petitioner is said to have filed a counter-claim on 01-04-2022 seeking settlement of

accounts of the partnership firm as on the date of death of the husband of the petitioner and tentatively claimed ₹5/- crores to be payable to the petitioner in the counter claim.

3.1. The petitioner files an application in I.A.No.XIII seeking a direction from the Commercial Court directing the plaintiffs to furnish statement of accounts of the plaintiff No.1/firm. The Commercial Court directs production of documents/accounts as sought for. The respondents challenge the said order before this Court in Writ Petition No.22053 of 2022 which comes to be dismissed by upholding the order of the commercial Court and also observing that adverse inference would be drawn against the respondents on account of non-compliance with the order of this Court, which would be withholding the accounts pertaining to the partnership firm. Another writ petition comes to be filed in Writ Petition No.1597 of 2023 by the respondents only to withdraw the suit filed by them. A coordinate Bench of this Court accepting the petition permits withdrawal of the suit. Therefore, the suit comes to be dismissed as withdrawn. This Court however, directed that the counter claim can be proceeded with by the Court. The interim

direction so issued would continue to be valid till the disposal is what was directed by the coordinate Bench.

3.2. The petitioner then files an application in I.A.No.XXIV before the concerned Court seeking a direction that the plaintiffs have no right to cross-examine the petitioner/1st defendant on account of adverse inference to be drawn against the plaintiffs. The concerned Court, in terms of the impugned order dated 21-04-2025, rejects the application that adverse inference cannot be drawn midstream, as it is only at the end of the trial. The rejection of the application is what has driven the 1st defendant/petitioner to this Court in the subject petition.

4. The learned counsel appearing for the petitioner would vehemently contend that the statute recognizes drawing of adverse inference. This Court, had in fact, directed drawing of adverse inference in the event of the documents i.e., the accounts would not be furnished. The accounts have not been furnished in their entirety. He would, therefore, submit that adverse inference must be drawn and the result of drawal of such adverse inference would

be denial of cross-examination of 1st defendant by the plaintiffs. He would seek to place reliance upon a judgment of the learned single Judge of this Court in the case of **SMT. JUBEDABI v. SMT. JAINABI** reported in **ILR 1974 KAR 1473**.

5. Per contra, learned senior counsel Sri Dhananjay V. Joshi appearing for the respondents 1 to 3 would seek to contend that adverse inference can only be drawn at the end of the trial. There can no order of denial of cross-examination on the score that adverse inference has been drawn. He would seek to place reliance upon judgments rendered by the Apex Court and that of this Court to buttress his submission that right of cross-examination is a valuable right and cannot be taken away on the rebuttal plea of adverse inference as obtaining under the statute. He would seek dismissal of the petition.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The afore-narrated facts and link in the chain of events are all a matter of record. A Commercial Original Suit is instituted by the plaintiffs 2 and 3 in Commercial O.S.No.64 of 2022 seeking the amounts that are due from the petitioner. The petitioner is said to have filed a counter claim in the said suit claiming a sum of ₹5/- crores. The issue does not relate to the merit of the matter. An application in I.A.No.XIII comes to be filed by the petitioner seeking a direction to the plaintiffs to furnish statement of accounts of 1st plaintiff/firm. The said application comes to be favoured by the concerned Court on the following reasons:

"....

7. **Point No.1:** By filing the above application, 1st defendant sought for production of as many as 7 documents from plaintiffs stating that they are in possession of plaintiffs. Plaintiffs are not denying specifically the possession of said documents with them. It is their only contention that after trial if the documents now sought by the 1st defendant are not on record, 1st defendant can file such application and the application filed at this stage is premature. Whereas Order 11 Rule V(1) states that at any time during the pendency of any suit any party may seek direction to produce documents in the possession of other party. For the purpose of direction to be issued for production of a document it is necessary for the party to establish that said document has to be in custody of the person from whom the same is sought for production and further the document must relate to the controversy involved in the suit and are necessary to decide the matter in controversy. The plaintiffs in their objections statement not at all denied the possession of those documents. Direction to produce the documents sought by 1st defendant would not have caused any

detriment to the plaintiffs. Accordingly, 1st defendant has made out a ground to allow this application and thereby direct the plaintiffs to produce documents in their possession as sought by him so as to adjudicate the controversy between the parties. Accordingly, I have answered Point No.1 in the Affirmative.

8. **Point No.2:** In view of my finding on point No.1, I proceed to pass the following

ORDER

Interim Application No.13 filed by 1st defendant under Order 11 Rule V(1) of Commercial Courts Act r/w Sec. 151 CPC seeking direction to produce as many as 7 documents which are in possession of plaintiff is allowed with no cost."

This is called in question before this court in Writ Petition No.22053 of 2022. A coordinate Bench of this Court disposes of the petition by the following order:

"This petition is by the plaintiffs in Commercial O.S. No.64/2022 on the file of the LXXXV Additional City Civil and Sessions Judge, Bengaluru [for short, 'the commercial Court']. The petitioners have impugned the commercial Court's order dated 14.10.2022. The commercial Court by this order has called upon the petitioners to produce the documents as sought for by the first respondent in her application [I.A. No.13] filed under Order 11 Rule 5[1] of the Code of Civil Procedure, 1908 as applicable to the commercial Courts [for short, 'the CPC'].

Sri. Dhananjay Joshi, the learned senior counsel for the petitioner submits that the civil Court could have allowed the application only if the two conditions are satisfied viz. the petitioners have the custody of the original documents and it is germane to the matter in question in the suit. The commercial Court has allowed the first respondent's application only because the petitioners cannot contest that the documents are

in their possession but without examining the question whether these documents relate to the subject matter of the suit.

However, Sri. Dhananjay Joshi fairly submits that the first respondent has filed a counter claim which would essentially require the commercial Court to decide on whether there must be directions to the first respondent to produce audited balance sheets and whether expert valuator must be appointed to assess the market value of the firm's assets and the firm's goodwill. The first respondent has sought for the firm's IT/GST returns and audited balance sheets for the financial years commencing from 2014-15 to 2019-20.

It emerges from the above that these documents relate to the subject matter of the suit. The petitioners must produce the documents, but if they fail to produce the documents, the consequence would be statutory because of the provisions of Order XI Rule 5[4] of CPC. The commercial Court will have to draw adverse inference. As such, the petition stands disposed of with the observation that if the petitioners fail to produce the documents despite the impugned order, the commercial Court, subject to all just exceptions in law, will have to consider drawing appropriate adverse inference."

The coordinate Bench observes that documents relate to the subject matter of the suit. The petitioners therein i.e., the firm and others were directed to produce documents. But, if they fail to do so, the consequence would be statutory as the provision of Order XI Rule 5(4) of the CPC permits the Commercial Court to draw adverse inference. The coordinate Bench observes that Commercial Court will have to draw the adverse inference.

8. The plaintiffs then seek to withdraw the suit in Writ Petition No.1597 of 2023. This is permitted by an order of the coordinate Bench dated 25-01-2024. The order reads as follows:

"ORDER

Learned counsel for the petitioners has filed a memo, which reads as under:

"The advocate for petitioner submits that the application under Order 23 Rule 1(3) of CPC was filed as a matter of abundant caution after repayment of loan to defendant No.4 during the pendency of the suit. As such the plaintiff steps into the shoes of the defendant No.4 and is entitled to file suit for foreclosure. Hence, the petitioner no longer presses his application under Order 23 Rule 1(3) of CPC and seeks to withdraw the suit simpliciter."

2. Memo is placed on record.

3. IA filed under Order XXIII Rule 1(3)(b) read with Section 151 of CPC is dismissed as not pressed and the suit is dismissed as withdrawn simpliciter.

4. In view of the above, writ petition also does not survive for consideration. Accordingly, the writ petition is **dismissed as withdrawn**.

4. It is made clear that the counter claim made by the defendants - respondents shall continue. The interim orders which are in operation in favour of the defendants - respondents shall be in force. It is also made clear that the observations made by the Trial Court in the impugned order, while dismissing IA is set aside, as the same are not relevant."

The coordinate Bench holds that the suit filed by the plaintiffs is dismissed as withdrawn and the counter-claim made by the

defendants would continue. The interim orders that were operating in favour of the defendants would continue to operate till the disposal of the suit.

9. After the aforesaid order of the coordinate Bench, an application in I.A.No.XXIV comes to be filed stating that the plaintiffs have lost the right to cross-examine DW-1/defendant on the counter-claim, in the light of adverse inference to be drawn against the plaintiffs in terms of the order dated 08-12-2022 passed in Writ Petition No.22053 of 2022. This comes to be rejected by the concerned Court on the following reasoning:

"....

11. I have gone through the decision cited by both sides wherein observations are made with regards drawing of adverse inference, where and in what circumstances it has to be drawn. In all these decisions it has been consistently held that adverse inference can be drawn only after trial is completed and evidence is being appreciated and not at this stage when D.W.1 is yet to be subjected to cross-examination. In the result and for the aforesaid reasons and following the observations made in the above cited decisions it cannot be said that justifiable grounds are made for granting the reliefs as claimed in the application. Accordingly, I answer Point No.1 in the **Negative**.

12. **POINT NO.2**:- For the aforesaid reasons, I pass the following:

ORDER

I.A.No.XXIV filed by the defendant No.1 U/Sec.151 of CPC is **rejected**.

No order as to costs.”

The Court holds that adverse inference can be drawn only after trial is completed and evidence would be appreciated and not at the stage DW-1 is yet to be subjected to cross-examination.

10. The issue now would be, whether a direction to adverse inference can be given as mandated under the statute, to take away the right of the party to the *lis* to cross-examine. It, therefore, becomes necessary to notice Order XI Rule 5 of the CPC. It reads as follows:

“5. Production of documents.—(1) Any party to a proceeding may seek or the court may order, at any time during the pendency of any suit, production by any party or person, of such documents in the possession or power of such party or person, relating to any matter in question in such suit.

(2) Notice to produce such document shall be issued in the form provided in Form No. 7 in Appendix C to the Code of Civil Procedure, 1908 (5 of 1908).

(3) Any party or person to whom such notice to produce is issued shall be given not less than seven days and not more than fifteen days to produce such document or to answer to their inability to produce such document.

(4) The court may draw an adverse inference against a party refusing to produce such document after issuance of a

notice to produce and where sufficient reasons for such non-production are not given and order costs.”

Order XI Rule 5 CPC mandates production of documents from the hands of the plaintiff. Sub-rule (4) of Rule 5 of Order XI observes that in the event documents are not produced as directed, it is open to the Court to draw an adverse inference. This is what is directed by the coordinate Bench. **The issue now would be at what stage and whether it can take away the right of cross-examination.**

11. The right to cross-examine is not mere procedural privilege. It is the bedrock of fair hearing, a lodestar in the constellation of natural justice. It is trite law that right to cross-examine is a valuable right. If a Court were to pass an order taking away the right of cross-examination, it can be only in exceptional circumstances. There is no provision of law in the statute that would permit cross-examination to be denied. The provision available is only to strike off the defence. Striking off the defence can never mean striking off cross-examination. Right to cross-examination is a facet of natural justice. Statute or no statute, right to cross-examine

stems from the principles of natural justice and fair opportunity in a trial.

12. The Apex Court in the case of **AYAAUBKHAN NOORKHAN PATHAN v. STATE OF MAHARASHTRA**¹ amplifies in lucid elucidation as to what is the right of cross-examination. The Apex Court has held as follows:

"... .."

26. In *New India Assurance Co. Ltd. v. Nusli Neville Wadia* [(2008) 3 SCC 279: (2008) 1 SCC (Civ) 850: AIR 2008 SC 876] , this Court considered a case under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and held as follows : (SCC p. 295, para 45)

"45. If some facts are to be proved by the landlord, indisputably the occupant should get an opportunity to cross-examine. The witness who intends to prove the said fact has the *right to cross-examine* the witness. This may not be provided by under the statute, but it being a part of the principles of natural justice should be held to be indefeasible right."

(emphasis added)

In view of the above, we are of the considered opinion that the right of cross-examination is an integral part of the principles of natural justice.

27. In *K.L. Tripathi v. SBI* [(1984) 1 SCC 43 : 1984 SCC (L&S) 62 : AIR 1984 SC 273] , this Court held that, in order to sustain a complaint of the violation of the principles of natural justice on the ground of absence of opportunity of cross-

¹ (2013) 4 SCC 465

examination, it must be established that some prejudice has been caused to the appellant by the procedure followed. A party, who does not want to controvert the veracity of the evidence on record, or of the testimony gathered behind his back, cannot expect to succeed in any subsequent grievance raised by him, stating that no opportunity of cross-examination was provided to him, specially when the same was not requested, and there was no dispute regarding the veracity of the statement. (See also *Union of India v. P.K. Roy* [AIR 1968 SC 850] and *Channabasappa Basappa Happali v. State of Mysore* [(1971) 1 SCC 1 : AIR 1972 SC 32] .) In *Transmission Corpn. of A.P. Ltd. v. Sri Rama Krishna Rice Mill* [(2006) 3 SCC 74 : 2006 SCC (L&S) 467 : AIR 2006 SC 1445] , this Court held : (SCC p. 80, para 9)

"9. In order to establish that the cross-examination is necessary, the consumer has to make out a case for the same. Merely stating that the statement of an officer is being utilised for the purpose of adjudication would not be sufficient in all cases. If an application is made requesting for grant of an opportunity to cross-examine any official, the same has to be considered by the adjudicating authority who shall have to either grant the request or pass a reasoned order if he chooses to reject the application. In that event an adjudication being concluded, it shall be certainly open to the consumer to establish before the appellate authority as to how he has been prejudiced by the refusal to grant an opportunity to cross-examine any official."

28. The meaning of providing a reasonable opportunity to show cause against an action proposed to be taken by the Government, is that the government servant is afforded a reasonable opportunity to defend himself against the charges, on the basis of which an inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so only when he is told what the charges against him are. *He can, therefore, do so by cross-examining the witnesses produced against him.* The object of supplying statements is that, the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against him.

Unless the said statements are provided to the government servant, he will not be able to conduct an effective and useful cross-examination.

29. In *Rajiv Arora v. Union of India* [(2008) 15 SCC 306 : (2009) 3 SCC (Cri) 977 : AIR 2009 SC 1100] this Court held : (SCC p. 310, paras 13-14)

"13. ... Effective cross-examination could have been done as regards the correctness or otherwise of the report, if the contents of them were proved. The principles analogous to the provisions of the Evidence Act as also the principles of natural justice demand that the maker of the report should be examined, save and except in cases where the facts are admitted or the witnesses are not available for cross-examination or similar situation. ...

14. The High Court in its impugned judgment proceeded to consider the issue on a technical plea, namely, no prejudice has been caused to the appellant by such non-examination. If the basic principles of law have not been complied with or there has been a gross violation of the principles of natural justice, the High Court should have exercised its jurisdiction of judicial review."

30. The aforesaid discussion makes it evident that, not only should the opportunity of cross-examination be made available, but it should be one of effective cross-examination, so as to meet the requirement of the principles of natural justice. In the absence of such an opportunity, it cannot be held that the matter has been decided in accordance with law, as cross-examination is an integral part and parcel of the principles of natural justice."

(Emphasis supplied)

What would emerge from the elucidation of law by the Apex Court is, that right to cross-examination whether or not

encoded in statute, emerges as a *sine qua non* of adjudication. Therefore, it is not merely permissible, it is a right indispensable.

13. It is necessary to notice what the Apex Court would hold in cases where right to cross-examination is taken away on the ground of non-compliance with the orders passed by the Court, which is said to be in tune with the statute in the case of **NOOR MOHAMMED v. KHURRAM PASHA**². The Apex Court was answering an identical situation where a coordinate Bench of this Court had ordered the cross-examination of the accused therein to be denied, on non-compliance with the order directing deposit of amount under Section 143A of the Negotiable Instruments Act. **The Apex Court resoundingly rejected the notion that even statutory non-compliance such as failure to pay interim compensation under Section 143A of the N.I.Act, can justify foreclosure of cross-examination. If that sword could not be drawn into the statute, it cannot be drawn in a rebuttal**

² 2022 SCC OnLine SC 956

presumption in the case at hand. The Apex Court has held as follows:

"... .."

12. Before we examine the matter in issue, we may extract the relevant provision, namely, Section 143-A of the Act, which is to the following effect:

"143-A. Power to direct interim compensation.—(1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974), the Court trying an offence under Section 138 may order the drawer of the cheque to pay interim compensation to the complainant—

(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and

(b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section (1) shall not exceed twenty per cent of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

(5) The interim compensation payable under this section may be recovered as if it were a fine under

Section 421 of the Criminal Procedure Code, 1973 (2 of 1974).

(6) The amount of fine imposed under Section 138 or the amount of compensation awarded under Section 357 of the Criminal Procedure Code, 1973 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this section."

13. After empowering the court to pass an order directing the accused to pay interim compensation under sub-section (1) of Section 143-A, sub-section (2) then mandates that such interim compensation should not exceed 20% of the amount of the cheque. The period within which the interim compensation must be paid is stipulated in sub-section (3), while sub-section (4) deals with situations where the drawer of the cheque is acquitted. Said sub-section (4) contemplates repayment of interim compensation along with interest as stipulated. Sub-section (5) of said Section 143-A then states "the interim compensation payable under this section can be recovered as if it were a fine". The expression interim compensation is one which is "payable under this section" and would thus take within its sweep the interim compensation directed to be paid under sub-section (1) of said Section 143-A.

14. The remedy for failure to pay interim compensation as directed by the court is thus provided for by the legislature. The method and modality of recovery of interim compensation is clearly delineated by the legislature. It is well-known principle that if a statute prescribes a method or modality for exercise of power, by necessary implication, the other methods of performance are not acceptable. While relying on the decision of the Privy Council in *Nazir Ahmad v. King-Emperor* [*Nazir Ahmad v. King-Emperor*, 1936 SCC OnLine PC 41 : AIR 1936 PC 253 (2) : (1935-36) 63 IA 372] , a Bench of three Judges of this Court made the following observations in *State of U.P. v. Singhara Singh* [*State of U.P. v. Singhara Singh*, AIR 1964 SC 358] . (AIR p. 361, paras 7-8)

"7. In *Nazir Ahmad case* [*Nazir Ahmad v. King-Emperor*, 1936 SCC OnLine PC 41 : AIR 1936 PC 253 (2) : (1935-36) 63 IA 372] the Judicial Committee observed that the principle applied in *Taylor v. Taylor* [*Taylor v. Taylor*, (1875) LR 1 Ch D

426] , Ch D at p. 431 to a court, namely, that *where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden, applied to judicial officers making a record under Section 164 and, therefore, held that the Magistrate could not give oral evidence of the confession made to him which he had purported to record under Section 164 of the Code. It was said that otherwise all the precautions and safeguards laid down in Sections 164 and 364, both of which had to be read together, would become of such trifling value as to be almost idle and that 'it would be an unnatural construction to hold that any other procedure was permitted than that which is laid down with such minute particularity in the sections themselves'.*

8. The rule adopted in *Taylor v. Taylor* [*Taylor v. Taylor*, (1875) LR 1 Ch D 426] is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. *A Magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down. If proof of the confession by other means was permissible, the whole provision of Section 164 including the safeguards contained in it for the protection of accused persons would be rendered nugatory. The section, therefore, by conferring on Magistrates the power to record statements or confessions, by necessary implication, prohibited a Magistrate from giving oral evidence of the statements or confessions made to him."*

(emphasis supplied)

15. In *J.N. Ganatra v. Morvi Municipality* [*J.N. Ganatra v. Morvi Municipality*, (1996) 9 SCC 495] , exercise of power of dismissal having not been done in conformity of the

Act, the same was set aside. It was stated : (SCC p. 498, para 4)

"4. We have heard the learned counsel for the parties. We are of the view that the High Court [*Morvi Municipality v. J.N. Ganatra*, 1984 SCC OnLineGuj 144] fell into patent error in reaching the conclusion that the dismissal of the appellant from service, in utter violation of Rule 35 of the Rules, was an 'act done in pursuance or execution or intended execution of this Act ...'. It is no doubt correct that the General Board of the Municipality had the power under the Act to dismiss the appellant but the said power could only be exercised in the manner indicated by Rule 35 of the Rules. *Admittedly the power of dismissal has not been exercised the way it was required to be done under the Act. It is settled proposition of law that a power under a statute has to be exercised in accordance with the provisions of the statute and in no other manner.* In view of the categorical finding given by the High Court to the effect that the order of dismissal was on the face of it illegal and void, we have no hesitation in holding that the dismissal of the appellant was not an act done in pursuance or execution or intended execution of the Act. The order of dismissal being patently and grossly in violation of the plain provisions of the Rules. It cannot be treated to have been passed under the Act."

(emphasis supplied)

16. In *CIT v. Anjum M.H. Ghaswala* [*CIT v. Anjum M.H. Ghaswala*, (2002) 1 SCC 633] , a Constitution Bench of this Court stated the normal rule of construction in such cases as under : (SCC p. 644, para 27)

"27. Then it is to be seen that the Act requires the Board to exercise the power under Section 119 in a particular manner i.e. by way of issuance of orders, instructions and directions. These orders, instructions and directions are meant to be issued to other income tax authorities for proper administration of the Act. The Commission while exercising its quasi-judicial power of arriving at a settlement under Section 245-D cannot have the administrative power of issuing directions to other income tax authorities. *It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then*

the said authority has to exercise it only in the manner provided in the statute itself. If that be so, since the Commission cannot exercise the power of relaxation found in Section 119(2)(a) in the manner provided therein it cannot invoke that power under Section 119(2)(a) to exercise the same in its judicial proceedings by following a procedure contrary to that provided in sub-section (2) of Section 119."

(emphasis supplied)

17. The provision concerned nowhere contemplates that an accused who had failed to deposit interim compensation could be fastened with any other disability including denial of right to cross-examine the witnesses examined on behalf of the complainant. Any such order foreclosing the right would not be within the powers conferred upon the court and would, as a matter of fact, go well beyond the permissible exercise of power.

18. Since the right to cross-examine the respondent was denied to the appellant, the decisions rendered by the courts below suffer from an inherent infirmity and illegality. Therefore, we have no hesitation in allowing this appeal and setting aside the decisions of all three courts with further direction that Complaint Case No. 244 of 2019 shall stand restored to the file of the trial court. The trial court is directed to permit the appellant to cross-examine the respondent and then take the proceedings to a logical conclusion. With these observations the appeal is allowed.

19. It is also directed that 20% of the cheque amount, namely, Rs 1,40,000 must be deposited by the appellant as interim compensation. The Registry is directed to make over a sum of Rs 1,40,000 to the trial court i.e. Senior Civil Judge & JMFC, Nagamangala, Karnataka. The amount shall be kept in deposit in Complaint Case No. 244 of 2019 and shall abide by such orders as the trial court may deem appropriate to pass. Rest of the amount along with accrued interest, if any, shall be made over to the appellant. The Registry shall take out a pay order in the name of the appellant which shall be handed over to the learned counsel for the appellant.

20. In the end, it must be clarified that we have not and shall not be taken to have reflected on the merits of the matter which shall be gone into after affording right to cross-examine as stated above."

The statute, in the case at hand, nowhere observes that cross-examination should be taken away, if there is non-compliance with the statute quoted *supra*. Therefore, the plea of the petitioner that cross-examination should be taken away of the plaintiffs is a submission that is to be rejected, on it being unsustainable.

14. Turning now to the **core question as to when adverse inference may be drawn**, the answer is illuminated by the Apex Court in the case of **APARNA AJINKYA FIRODIA v. AJINKYA ARUN FIRODIA**³, wherein it is held as follows:

"....

34. It is highlighted at this juncture that presumptions are established on the basis of facts, and the court enjoys the discretionary power, either to presume a fact or not. As observed hereinabove, the facts in *Dipanwita Roy* [*Dipanwita Roy v. Ronobroto Roy*, (2015) 1 SCC 365 : (2015) 1 SCC (Civ) 495 : (2015) 1 SCC (Cri) 683] were so compelling, so as to justify a direction to conduct a DNA test. In the said case, the husband had taken a specific plea of non-access. Further, the court accepted that a DNA test would be the only manner in which the case of adultery could be

³ (2024) 7 SCC 773

proved. However, facts of the present case neither warrant a direction to conduct a DNA test of Master Arjun, nor do they justify drawing an adverse inference as against the appellant wife, under Section 114 of the Evidence Act, on her refusal to subject her son to a DNA test.

35. As per *Black's Law Dictionary*, 9th Edn., **"inference" means "a conclusion reached by considering other facts and deducing a logical consequence from them."**

"Adverse Inference" is explained as follows:

"A detrimental conclusion drawn by the fact-finder from a party's failure to produce evidence that is within the party's control. Some courts allow the inference only if the party's failure is attributable to bad faith."

The aforesaid meaning would also suggest that **inferences, whether adverse or otherwise, are to be drawn by the court, on consideration of facts and circumstances of each individual cases.** Hence, the judgment of this Court in *Dipanwita Roy* [*Dipanwita Roy v. Ronobroto Roy*, (2015) 1 SCC 365 : (2015) 1 SCC (Civ) 495 : (2015) 1 SCC (Cri) 683] is to be read in the aforesaid context."

(Emphasis supplied)

The Apex Court unequivocally observes that such inference is not a prelude to the trial, but its epilogue, which can only stem at the end. It is a discretionary consequence of evidentiary gaps, not a procedural blockade to party's rights to test the opposing evidence – cross-examination. Therefore, adverse inference being a presumption, can only be drawn at the time of trial *qua* the facts of each case, as it

would require evidence and appreciation of evidence, as to whether there is compliance, partial compliance or no compliance with the order. The presumption of drawing adverse inference is always rebuttable in the trial. Therefore, there cannot be any question of foreclosure of cross-examination on the score that there is a direction to draw adverse inference.

15. Both the learned counsel for the petitioner and the respondents have placed reliance upon the judgment of the Apex Court in the case of **UNION OF INDIA v. IBRAHIM UDDIN**⁴ wherein it is held as follows:

“....

Presumption under Section 114 Illustration (g) of the Evidence Act

12. Generally, it is the duty of the party to lead the best evidence in his possession, which could throw light on the issue in controversy and in case such material evidence is withheld, the court may draw adverse inference under Section 114 Illustration (g) of the Evidence Act notwithstanding, that the onus of proof did not lie on such party and it was not called upon to produce the said evidence. [Vide *Murugesam Pillai v. Manickavasaka Pandara* [(1916-17) 44 IA 98: AIR 1917 PC 6], *Hiralal v. Badkulal* [(1953) 1 SCC 400: AIR 1953 SC 225], *A. Raghavamma v. A. Chenchamma* [AIR 1964 SC 136], *Union of India v. Mahadeolal Prabhu Dayal* [AIR 1965 SC 1755], *Gopal Krishnaji Ketkar v. Mohd. Haji Latif* [AIR 1968 SC

⁴ (2012) 8 SCC 148

1413] , *BHEL v. State of U.P.* [(2003) 6 SCC 528 : 2004 SCC (L&S) 506: AIR 2003 SC 3024] , *Mussauddin Ahmed v. State of Assam* [(2009) 14 SCC 541 : (2010) 1 SCC (Cri) 1445 : AIR 2010 SC 3813] and *Khatri Hotels (P) Ltd. v. Union of India* [(2011) 9 SCC 126 : (2011) 4 SCC (Civ) 484] .]

13. However, in *Bilas Kunwar v. Desraj Ranjit Singh* [(1914-15) 42 IA 202 : AIR 1915 PC 96] a view has been expressed that it is open to a litigant to refrain from producing any document that he considers irrelevant; if the other litigant is dissatisfied, it is for him to apply for interrogatories/inspections and production of documents. If he fails to do so, neither he nor the court at his suggestion, is entitled to draw any inference as to the contents of any such documents.

14. In *Kamma Otukunta Ram Naidu v. Chereddy Pedda Subba Reddy* [(2003) 11 SCC 293 : 2004 SCC (Cri) 155 : AIR 2003 SC 3342] this Court held that *all the pros and cons must be examined before drawing an adverse inference against a party*. In that case the issue had been, as to whether two persons had been travelling together in the vehicle and presumption had been drawn only on the basis that the bus tickets of both the persons were not produced. This Court held that presumption could not have been drawn if *other larger evidence was shown to the contrary*. (See also *Mohinder Kaur v. Kusam Anand* [(2000) 4 SCC 214] and *Takhaji Hiraji v. Thakore Kubersing Chamansing* [(2001) 6 SCC 145 : 2001 SCC (Cri) 1070 : AIR 2001 SC 2328] .)

15. In *Municipal Corpn., Faridabad v. Siri Niwas* [(2004) 8 SCC 195 : 2004 SCC (L&S) 1062] this Court has taken the view that the law laid down by this Court in *Gopal Krishnaji Ketkar* [AIR 1968 SC 1413] did not lay down any law, that in all situations the presumption in terms of Illustration (g) to Section 114 of the Evidence Act must be drawn.

16. In *Srinivas Ramanuj Das v. Surjanarayan Das* [AIR 1967 SC 256] this Court held that mere withholding of documentary evidence by a party is not enough to draw adverse inference against him. The other party must ask the party in possession of such evidence to produce the same, and in case

the party in possession does not produce it, adverse inference may be drawn : (AIR p. 263, para 28)

"28. ... It is true that the *defendant-respondent also did not call upon the plaintiff-appellant to produce the documents* whose existence was admitted by one or the other witness of the plaintiff and that, therefore, strictly speaking, *no inference adverse to the plaintiff can be drawn from his non-producing the list of documents*. The court may not be in a position to conclude from such omission that those documents would have directly established the case for the respondent. But it can take into consideration in weighing the evidence or any direct inferences from established facts that the documents might have favoured the respondent's case."

(emphasis supplied)

17. In *Ramrati Kuer v. Dwarika Prasad Singh* [AIR 1967 SC 1134] this Court held : (AIR p. 1137, para 9)

"9. ... It is true that Dwarika Prasad Singh said that his father used to keep accounts. But no attempt was made on behalf of the appellant to ask the court to order Dwarika Prasad Singh to produce the accounts. *An adverse inference could only have been drawn against the plaintiff-respondents if the appellant had asked the court to order them to produce accounts and they had failed to produce them after admitting that Basekhi Singh used to keep accounts*. But no such prayer was made to the court, and in the circumstances no adverse inference could be drawn from the non-production of accounts."

(emphasis supplied)

(See also *Ravi Yashwant Bhoir v. Collector* [(2012) 4 SCC 407 : AIR 2012 SC 1339] .)

18. In *Indira Kaur v. Sheo Lal Kapoor* [(1988) 2 SCC 488 : AIR 1988 SC 1074] the lower courts drew an adverse inference against the appellant-plaintiff on the ground that the plaintiff was not ready and willing to perform his part of the contract. The question arose as to whether the party had the means to pay. The Court further held that before the adverse inference is drawn against a particular party, *the conduct and diligence of the other party is also to be examined*. Where a person deposed that as he had deposited the money in the bank

and the other party did not even ask as on what date and in which bank the amount had been deposited and did not remain diligent enough, the question of drawing adverse inference against such a person for not producing the passbook, etc. cannot be drawn.

19. In *Mahendra L. Jain v. Indore Development Authority* [(2005) 1 SCC 639 : 2005 SCC (L&S) 154] this Court held that mere non-production of documents would not result in adverse inference. If a document was called for in the *absence of any pleadings*, the same was *not relevant*. An adverse inference need not necessarily be drawn only because it would be lawful to do so.

20. In *RBI v. S. Mani* [(2005) 5 SCC 100 : 2005 SCC (L&S) 609] this Court dealt with the issue wherein the Industrial Tribunal directed the employer to produce the attendance register in respect of the first party workmen. The explanation of the appellant was that the attendance registers being very old, could not be produced. The Tribunal, however, in its award noticed the same and drew an *adverse inference* against the appellants for non-production of the attendance register alone. This Court reversed the finding observing : (SCC p. 113, paras 27-28)

"27. As noticed hereinbefore, in this case also the respondents did not adduce any evidence whatsoever. Thus, in the facts and circumstances of the case, the Tribunal erred in drawing an adverse inference.

Burden of proof

28. The initial burden of proof was on the workmen to show that they had completed 240 days of service. The Tribunal did not consider the question from that angle. It held that the burden of proof was upon the appellant on the premise that they have failed to prove their plea of abandonment of service."

(emphasis supplied)

(See also *A. Jayachandra v. Aneel Kaur* [(2005) 2 SCC 22 : AIR 2005 SC 534] , *R.M. Yellatti v. Executive Engineer* [(2006) 1 SCC 106 : 2006 SCC (L&S) 1 : AIR 2006 SC 355] and *Pratap*

Singh v. State of M.P. [(2005) 13 SCC 624 : (2006) 2 SCC (Cri) 284 : AIR 2006 SC 514])

21. Order 11 CPC contains certain provisions with the object to save expense by obtaining information as to material facts and to obtain admission of any fact which he has to prove on any issue. Therefore, a party has a right to submit interrogatories relating to the same matter in issue. The expression "matter" means a question or issue in dispute in the action and not the thing about which such dispute arises. The object of introducing such provision is to secure all material documents and to put an end to protracted enquiry with respect to document/material in possession of the other party. In such a fact situation, no adverse inference can be drawn against a party for non-production of a document unless notice is served and procedure is followed.

22. Under Rule 14 of Order 11, the court is competent to direct any party to produce the document asked by the other party which is in his possession or power and relating to any material in question in such suit. Rule 15 Order 11 provides for inspection of documents referred to in the pleadings or affidavits. Rule 18 thereof empowers the court to issue order for inspection. Rule 21 thereof provides for very stringent consequences for non-compliance with the order of discovery, as in view of the said provisions in case the party fails to comply with any order to answer interrogatories or for discovery or inspection of documents, he shall, if he is a plaintiff, be liable to have his suit dismissed for want of prosecution and if he is a defendant, to have his defence, if any, struck out and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the court for an order to that effect.

23. Thus, in view of the above, the suit may be dismissed for non-compliance with the aforesaid orders by the plaintiff and the plaintiff shall also be precluded from bringing a fresh suit on the same cause of action. Similarly, the defence of the defendant may be struck off for non-compliance with such orders.

24. Thus, in view of the above, the law on the issue can be summarised to the effect that the issue of drawing

adverse inference is required to be decided by the court taking into consideration the pleadings of the parties and by deciding whether any document/evidence, withheld, has any relevance at all or omission of its production would directly establish the case of the other side. The court cannot lose sight of the fact that burden of proof is on the party which makes a factual averment. The court has to consider further as to whether the other side could file interrogatories or apply for inspection and production of the documents, etc. as is required under Order 11 CPC. Conduct and diligence of the other party is also of paramount importance. Presumption of adverse inference for non-production of evidence is always optional and a relevant factor to be considered in the background of facts involved in the case. Existence of some other circumstances may justify non-production of such documents on some reasonable grounds. In case one party has asked the court to direct the other side to produce the document and the other side failed to comply with the court's order, the court may be justified in drawing the adverse inference. All the pros and cons must be examined before the adverse inference is drawn. Such presumption is permissible, if other larger evidence is shown to the contrary.

25. In the instant case, admittedly, Respondent 1-plaintiff during the pendency of his suit had made an application before the authorities under the control of the appellant-Defendant 1 to make the inspection. However, he was not permitted to have any inspection. Respondent 1-plaintiff did not submit any interrogatory statement or an application for making inspection or for production of the document as provided under Order 11 CPC. In such a fact situation, in view of the law referred to hereinabove, it is not permissible for the first appellate court or the High Court to draw any adverse inference against the appellant-Defendant 1."

(Emphasis supplied)

The Apex Court considers entire law on adverse inference as is found in Section 114 of the Evidence Act, as the Commercial Courts

Act was yet to come into force and non-production of documents under Order XI. Referring to the entire spectrum of law and considering the pros and cons of non-production of evidence, the Apex Court holds that it must be examined at the time of trial, as presumption of adverse inference for non-production of evidence is optional and all the pros and cons must be examined before adverse inference is drawn. The aforesaid would undoubtedly mean that adverse inference can be drawn only after the trial gets concluded and evidence is let in.

16. The contention of the learned counsel for the petitioner that cross-examination should be denied on drawing of adverse inference in terms of Order XI Rule 5(4) of the CPC is too farfetched. Denial of inherent right of cross-examination cannot be done on a rebuttable presumption of adverse inference, that can be drawn on a particular fact. **To deny the litigant right of cross-examination, would not only become a truncate procedure, but would imperil justice itself. The presumption of adverse inference like all other presumptions, must avail the moment**

of judgment and not pre-empt the examination, which would be at the closure of the proceedings i.e., the trial.

17. Therefore, the Commercial Court's order rejecting the application in I.A.No.XXIV is far from errant, is firmly moored in law. The denial of a midstream application to suppress cross-examination on the score of procedural lapses is based on sound logic and precedent, warranting no interference at the hands of this Court.

18. Finding no merit in the petition, the petition stands ***rejected.***

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

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