

Reserved on : 27.04.2026

Pronounced on : 12.06.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.19812 OF 2025 (GM - RES)

BETWEEN:

- 1 . SRI B.K.KANTHA REDDY
S/O LATE KRISHNA REDDY
AGED ABOUT 54 YEARS
RESIDING AT NO. 3, 1ST AVENUE
SHUBH ENCLAVE, HARALUR ROAD
OFF SARJAPUR ROAD
BENGALURU – 560 102.
- 2 . SMT. RADHIKA
W/O LATE B.K.ANANTHA REDDY
S/O LATE KRISHNA REDDY
AGED ABOUT 38 YEARS
RESIDING AT BELLANDUR VILLAGE
VARTHURU HOBLI
BENGALURU EAST TALUQA
BENGALURU.
- 3 . MASTER A.KUSHAL REDDY
S/O LATE B.K.ANANTHA REDDY
S/O LATE KRISHNA REDDY
AGED ABOUT 20 YEARS
RESIDING AT BELLANDUR VILLAGE

VARTHUR HOBLI
BENGALURU EAST TALUQA
BENGALURU.

- 4 . MISS.VIDHYA A.,
D/O LATE B.K.ANANTHA REDDY
AGED ABOUT 16 YEARS
SINCE MINOR REPRESENTED BY
HER NATURAL MOTHER AND GUARDIAN
SMT. RADHIKA
RESIDING AT BELLANDUR VILLAGE
VARTHUR HOBLI
BENGALURU EAST TALUK
BENGALURU.

- 5 . SMT.B.K.DHANALAKSHMI
W/O K.S.UMESH
AGED ABOUT 48 YEARS
RESIDING AT NO. 37, 4TH AVENUE
SMILEE GREENS
GULIMANGALA VILLAGE
HUSKUR ROAD
BENGALURU – 560 099.

... PETITIONERS

(BY SMT.LAKSHMY IYENGAR, SR.ADVOCATE A/W
SRI K.B.MONESH KUMAR AND
SRI GEORGE JOSEPH, ADVOCATES)

AND:

- 1 . M/S. SMARTWORKS COWORKING
SPACES PRIVATE LIMITED
COMPANY REGISTERED UNDER
THE PROVISIONS OF COMPANIES ACT, 2013
HAVING ITS REGISTERED AT
UNIT NO. 305-310
PLOT NO. 9, 10 AND 11

VARDHMAN TRADE CENTER
NEHRU PLACE, NEW DELHI – 110 019.

ALSO AT:
PRESTIGE ZEENATH
RAJA RAM MOHN ROY ROAD
SAMPANGI RAM NAGAR
BENGALURU – 560 001.

REPRESENTED BY ITS
AUTHORIZED REPRESENTATIVE
MR.KARTHIKRAJA PERUMAL.

- 2 . M/S.VAISHNAVI INFRASTRUCTURE (P) LTD.,
R/OFF AT NO. 2/2
WALTON ROAD
OFF VITTAL MALLYA ROAD
BENGALURU - 560 001
REPRESENTED BY
MANAGING DIRECTOR.
- 3 . SRI GOVINDACHARY
S/O LATE DASACHARY
AGED ABOUT 72 YEARS
RESIDING AT 17/1, AMBALIPURA
AGARA POST SARJAPURA ROAD
BENGALURU – 560 034.
- 4 . SRI B.K.NAGARAJA REDDY
S/O LATE KRISHNA REDDY
AGED ABOUT 50 YEARS
R/AT BELLANDUR VILLAGE
VARTHUR HOBLI
BENGALURU EAST TALUQA
BENGALURU – 560 103.

... RESPONDENTS

(BY SRI SWAROOP S., ADVOCATE FOR C/R-1;

SRI PRABHULING K.NAVADGI, SR.ADVOCATE A/W
SMT.SANJEEVINI P.NAVADGI, ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO A. CALL FOR TRIAL COURT RECORDS; B. BE PLEASED TO SET ASIDE THE ORDER DATED 02.04.2025 PASSED IN COM. OS NO. 114/2024 ON IA NO. XIII AND XIV OF 2025 BY THE XI ADDL. DISTRICT AND SESSIONS JUDGE (DEDICATED COMM. COURT) BENGALURU RURAL DISTRICT, ANNEXURE-J; C. BE FURTHER PLEASED TO ALLOW THE APPLICATION I A NO.XIII AND XIV DATED 19.10.2024 FILED BY THE PETITIONERS SEEKING FOR THE RELIEF OF PERMISSION TO WITHDRAW THE AMOUNTS DEPOSITED BY THE RESPONDENT NO.1 AS DAMAGES.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 27.04.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

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

CAV ORDER

ON

I.A.NO.1 OF 2025

The subject petition was preferred calling in question an order dated 02-04-2025 passed in Commercial O.S.No.114 of 2024 whereby applications – I.A.XIII and XIV of 2025 filed by the petitioners come to be rejected.

2. Heard Smt Lakshmy Iyengar, learned senior counsel appearing for petitioners, Sri Swaroop S, learned counsel appearing for caveator/respondent No.1 and Sri Prabhuling K Navadgi, learned senior counsel appearing for respondent No.2.

3. The matter was heard at length by this Court and on 16-09-2025 was disposed on a memo being filed by the learned counsel for the petitioners. The memo so filed that made for closure of the petition is quoted in the order. The order reads as follows:

"Learned counsel for the petitioners has filed a memo which reads as follows:

"The Advocate for the Petitioner on instructions submit that the Petitioner Land owners would open an Escrow A/c & keep in the said A/c a sum of Rs 6.00 Crores as GST amounts in the event any claim would arise on the Land Owners. At the same time, the Petitioners also undertake to make good any additional amounts on head of GST if so demanded by the GST department. In the event the share of GST as to be demanded is much lesser than Rs 6.00 crores, in that event the Petitioners may be permitted to withdraw such amounts which shall remain after satisfaction of the GST demand Notice. It is also placed on record that the Petitioners are bound by the terms stated in this MEMO in the event of a GST demand on the portion of the Petitioners built up area only.

Placing the afore-stated on record, it is most humbly prayed that this Hon'ble Court be pleased to direct the release of amounts in deposit before the Court below & such future amounts to be deposited by the respondents in the future to serve the interest of justice

& equity without prejudice to all their adjudicable and all other legal rights in law."

2. Learned Senior Counsel Sri.Prabhuling K.Navadgi appearing for respondent No.2 have no objection to the contents of the memo except the fact that the amount of Rs.6,00,00,000/- would be deposited before the Arbitrator Hon'ble Justice Subhash B Adi and not in escrow account.

3. Learned counsel appearing for the petitioners submits that they must be permitted to withdraw the amount, the withdrawal would be on the condition that it is not a lease but damages. The submission is unacceptable to the respondents as it is the Coordinate Bench of this Court or the order in the Commercial Court would clearly indicate that the petitioners are entitled to receive the amount as rent payable by the respondents to the petitioners. Learned counsel Sri.Monesh Kumar submits that they have not executed any lease deed, it is the developer who has executed the lease deed. Therefore, they will receive it as damages. Be that as it may.

4. The petitioners if they want to withdraw the amount, they shall withdraw the same without prejudice to their contentions to be decided before the Arbitrator or suit in Commercial O.S.No.114/2024.

With the aforesaid observations, the petition stands disposed."

The memo was indicative of the fact that the Advocate for the petitioners, on instructions, has submitted that the petitioners/land owners would open an escrow account and keep in the said account a sum of ₹6/- crores as GST amounts in the event any claim would arise on the landowners. At the same time, petitioners also undertook to make good any additional amount under the GST

head. Placing the memo on record, it was prayed to release the amounts in deposit before the Court below and such future amounts to be deposited by the respondents appropriately. The petitioners further submitted that if they want to withdraw the amount in deposit, the same would be without prejudice to the contentions to be decided before the Arbitrator or in the suit in Commercial O.S.No.114 of 2024. The memo was accepted by the respondents.

4. After the disposal of the said petition in terms of the order dated 16-09-2025 certain correspondences have taken place. The correspondences have now led the advocate for the petitioners who had filed the memo for disposal on instructions of his clients, to file the subject application seeking recall of the order. The recall of the order is based on the following premise:

"1. It is submitted that in the afore-stated proceedings, the petitioners undertook to deposit a sum of ₹6/- crores by way of a MEMO dated 16-09-2025 before the Learned Arbitrator. This was the outcome of the "settlement negotiations" as per the directions issued at the hands of this Hon'ble Court.

2. It is submitted that the settlement negotiations included the GST issues, as also the RENTS payable to the portion of the Petitioners (Land Owners Built Up Area). By consent the negotiations were initiated on the aspect of GST in

the first round of negotiations and the aspect of rents payable to the Land owners was to be concluded in the further negotiations on 29-09-2025 as per e-mail sent by respondents on 10-09-2025. Further the Respondent No.1 has also sent e-mail communications regarding the same on 09.09.2025 and 17-09-2025. Even the Respondent No.2 has also sent e-mail communications on 25-08-2025, 08-09-2025, 09-09-2025, 10-09-2025 and 15-09-2025.

3. It is submitted that the GST negotiations took place on 29-08-2025 and 13-09-2025 and the Petitioners undertook to deposit the GST before the Learned Arbitrator as per the applicable GST liability if the same were to arise on the Petitioners' (Land owners) share of the Built-Up Area only subject to all rights that are available to the Land Owners to challenge the same. Copy of the e-mail communications sent for negotiations is collectively produced as Document No.1.

4. As regards to the Rentals agreeable to the share of Land Owners/Petitioners herein, the negotiations were postponed to 28-09-2025 for a final consensus since the Respondent No.2 had leased out the Land Owners share to Respondent No.1 and has been collecting rents @ Rs.200/- to 300/- per sq. ft. without the consent of the Land Owners. The Land Owners had not indicated the rents that they were agreeable but it was recorded they were agreeable to rents @ ₹100/- per sft. For their portion which was to be concluded on 28-09-2025. Based upon the above, the Petitioners filed the memo agreeing to deposit the GST component. Now the rental Negotiations were fixed on 28-09-2025 and the Respondents did not negotiate the rentals payable to the Petitioners as agreed to be finalized on 28-09-2025 and left the Petitioners on the streets high and dry. As such there can never be a one-sided settlement and any settlement must be based upon all factors and the memo filed at the hands of the Petitioner is based upon half baked negotiations and as such since the rental aspect was never negotiated thereafter, the Petitioners are left with no choice to withdraw the MEMO so filed dated 16-09-2025 since all aspect are pending adjudication before the Learned Arbitrator."

Objections are filed to the said application and the objections read as follows:

- "1. The Respondent No.2, M/s.Vaishnavi Infrastructure Pvt. Ltd., respectfully submits the following objections to the Application filed by the petitioners seeking recall of the order dated 16-09-2025 passed by this Hon'ble Court.
2. It is submitted that the present Application is not maintainable and is a gross abuse of the process of this Hon'ble Court. The order dated 16-09-2025 was passed solely on the basis of a Memo voluntarily filed by the Petitioners themselves, wherein they categorically and unconditionally undertook to deposit a sum of ₹6/- crores towards GST liability. Having obtained the benefit of withdrawal of the deposited rents pursuant to such solemn undertaking, the Petitioners now seek to resile from their own commitment on the pretext of alleged non-settlement of other issues, which are wholly extraneous and unrelated to the said undertaking.
3. The relevant extract of the Memo filed by the Petitioners reads as, "It is also placed on record that the petitioners are bound by the terms stated in the Memo. Placing the afore-stated on record, it is most humbly prayed that this Hon'ble Court be pleased to direct the release of the amount in deposit before the Court below". The petitioners are thus estopped in law and equity from withdrawing the said Memo and seeking recall of the consequential order.
4. It is submitted that no legally sustainable ground for recall exists. The Petitioners have failed to demonstrate any error apparent on the face of the record, fraud, or miscarriage of justice that could justify recall of the order dated 16-09-2025. The present Application is founded on speculative, self-serving and value assertions concerning alleged settlement discussions, which have no nexus whatsoever with the unconditional GST undertaking recorded by this Hon'ble Court.

5. The writ petition in W.P.No.19812 of 2025 arose out of challenge to the trial Court's order dated 02-04-2025, whereby the petitioners were refused permission to withdraw the deposited amounts as damages. This Hon'ble Court did not interfere with the said order and disposed of the writ petition vide order dated 16-09-2025, observing as follows:

"The petitioners, if they want to withdraw the amount, shall withdraw the same without prejudice to their contentions to be decided before the Arbitrator or in Commercial O.S.No.114/2024." Thus, the order sought to be recalled was passed with full knowledge and consent of the petitioners, and there is no scope for recall merely because the petitioners have now had a change of mind.

6. It is further submitted that arbitration proceedings are presently pending in respect of disputes relating to GST liability and rentals, before the Arbitral Tribunal comprising Hon'ble Justice Subhash B. Adi (Former Judge, High Court of Karnataka).
7. It is further submitted that the learned Arbitrator has directed the Petitioner to open an Escrow Account and deposit 6 crores within a 6 weeks as per the order dated 4-12-2025 before the learned Arbitrator in A.C.No.70 of 2025, the copy of the order sheet is enclosed herewith for the kind perusal of this Hon'ble Court.
8. The undertaking to deposit GST amount is independent and unconditional, and is not contingent upon rental negotiations or settlement discussions between the parties. Further, the issue of rent is the subject matter of adjudication in Commercial O.S.No.114 of 2024, and cannot be used as a pretext to nullify a binding undertaking recorded by this Hon'ble Court."

The subject application is on the premise that certain rental negotiations are pending between the parties. The petition comes to

be disposed on the score that ₹6/- crores are kept in an Escrow Account which is the GST amount and if the petitioners want to withdraw the rent, it would be without prejudice to their contention in the arbitration proceedings.

5. Had the petitioners maintained silence after passing of the order, the matter might have stood on an altogether different footing. The facts however reveal a different narrative. The respondents, pursuant to the order quoted *supra*, deposited a sum of Rs.34,74,42,324/- before the Commercial Court in Commercial O.S.No.114 of 2024. Out of the said amount, the petitioners admittedly withdrew a substantial sum of Rs.26,98,46,069/-. The receipt of the benefit and the withdrawal of the amount are neither disputed nor disputable.

6. Having accepted the advantage flowing from the order and having appropriated several crores pursuant thereto, the petitioners now seek to revisit the very foundation upon which such benefit was conferred. The attempt to reopen the matter which stood closed after conscious acceptance of its benefits is wholly

incompatible in law. **A litigant cannot be permitted to enjoy the fruits of an order and once those fruits have been harvested, seek to disown the obligations that formed the consideration for obtaining the very order.**

7. **The present application is therefore fundamentally flawed. The doctrine that one cannot 'approve and reprobate' is not a mere technical rule of procedure; it is a principle founded upon fairness and consistency. A party cannot be permitted to blow hot and cold in the same breath, affirming a transaction when it yields advantage and disaffirming it when corresponding obligations arise.** It becomes apposite to refer to the judgments of the Apex Court, which considers and elaborates on the principle of approve and reprobate.

8. The Apex Court, in the case of **KARAM KAPAHI v. LAL CHAND PUBLIC CHARITABLE TRUST**¹, has held as follows:

"....

¹(2010) 4 SCC 753

49. The contentions of the Club cannot be accepted on another legal ground also. It is clear that the Club has taken inconsistent pleas. On the one hand the Club alleged that the Trust is not its lessor and has no right to receive the lease rent and it questions the title of the Trust. On the other hand the Club is seeking the equitable remedy against forfeiture under Section 114 of the Transfer of Property Act where it has proceeded on the basis that the Trust is its lessor and the Club is the lessee and as a lessee it has to pay the lease rent to the Trust. Therefore, the Club seeks to approbate and reprobate.

50. The phrase “approbate and reprobate” is borrowed from Scots law where it is used to express the common law principles of election, namely, that no party can accept and reject the same instrument.

51. In the instant case while filing its suit and questioning the title of the Trust, the Club seeks to reject the lease deed. At the same time while seeking the equitable remedy under Section 114 of the Transfer of Property Act, the Club is relying on the same instrument of lease. Legally this is not permissible. (See the observation of Scrutton, L.J. in *Verschures Creameries Ltd. v. Hull and Netherlands Steamship Co. Ltd.* [(1921) 2 KB 608 : 1921 All ER Rep 215 (CA)] , which has been approved by a Constitution Bench of this Court in *Bhau Ram v. Baij Nath Singh* [AIR 1961 SC 1327] .)

52. The principle of election has been very felicitously expressed in the treatise *Equity—A Course of Lectures* by F.W. Maitland, Cambridge University, 1947. The learned author has explained the principle thus:

“The doctrine of election may be thus stated :
That he who accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it....”

53. In the old equity case of *Streatfield v. Streatfield* [Wh& TLC, 9th Edn., Vol. I, 1928] this principle has been discussed in words which are so apt and elegant that I better quote them:

"Election is the obligation imposed upon a party by courts of equity to choose between two inconsistent or alternative rights or claims in cases where there is a clear intention of the person from whom he derives one that he should not enjoy both. **Every case of election, therefore, presupposes a plurality of gifts or rights, with an intention, express or implied, of the party who has a right to control one or both that one should be a substitute for the other. The party who is to take has a choice, but he cannot enjoy the benefit of both** [Story, 3rd Edn., p. 452; *Dillon v. Parker*, (1818) 1 Swans 359 : 36 ER 422; *Thellusson v. Woodford*, (1806) 13 Ves 209 : 33 ER 273.] . The principle is stated thus in *Jarman on Wills* [6th Edn., p. 532; and *Farwell on Powers*, 3rd Edn., p. 429.] : '**That he who accepts a benefit under a deed or will must adopt the whole contents of the instrument, conforming to all its provisions, and renouncing every right inconsistent with it**' [See *Walpole v. Conway (Lord)*, 1740 Barn C 153 : 27 ER 593; *Kirkham v. Smith*, (1749) 1 Ves Sen 258 : 27 ER 1018; *Macnamara v. Jones*, 1 Bro CC 481 : 28 ER 1251; *Blake v. Bunbury*, (1792) 4 Bro CC 21 : 29 ER 758; *Wintour v. Clifton*, 8 De GM & G 641 : 44 ER 537; *Codrington v. Codrington*, (1876) LR 7 HL 854 at p. 861; *Pitman v. Crum Ewing*, 1911 AC 217 at pp. 228, 233 (HL); *Brown v. Gregson*, 1920 AC 860 at p. 868 : 1920 All ER Rep 730 (HL).] . The principle of the doctrine of election is now well settled."

54. This principle has also been explained by this Court in *Nagubai Ammal v. B. Shama Rao* [AIR 1956 SC 593] . Speaking for a three-Judge Bench of this Court, Venkatarama Ayyar, J. stated in the Report : (AIR p. 602, para 23)

"23. ... The doctrine of election is not however confined to instruments. **A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. That is to approbate and reprobate the transaction.**

It is clear from the above observations that the maxim that a person cannot 'approve and reprobate' is only one application of the doctrine of election...."

55. On the doctrine of election the learned Judge in *Nagubai Ammal case* [AIR 1956 SC 593] has also referred to *Halsbury's Laws of England* (Vol. XIII, p. 464, Para 512) in which this principle of "approve and reprobate" has been described as a species of estoppel which seems to be "intermediate between estoppel by record and estoppel *in pais*" (p. 602, para 21 of the Report).

56. The said principle has also been accepted by this Court in *C. Beepathuma v. Velasari Shankaranarayana Kadambolihaya* [AIR 1965 SC 241] , AIR p. 246, paras 17-18.

57. Therefore, the common law doctrine of election is a part of our jurisprudence and squarely applies in this case inasmuch as the Club has advanced inconsistent pleas as noted hereinabove."

9. The said finding is reiterated in the subsequent judgment in the case of **UNION OF INDIA v. N. MURUGESAN**², wherein the Apex Court has held as follows:

"....

Approbate and reprobate

26. These phrases are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approve and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who

²(2022) 2 SCC 25

knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally.

27. We would like to quote the following judgments for better appreciation and understanding of the said principle:

27.1. *Nagubai Ammal v. B. Shama Rao* [Nagubai Ammal v. B. Shama Rao, 1956 SCR 451 : AIR 1956 SC 593] : (AIR pp. 601-02, para 23)

"23. But it is argued by Sri Krishnaswami Ayyangar that as the proceedings in OS. No. 92 of 1938-39 are relied on as barring the plea that the decree and sale in OS. No. 100 of 1919-20 are not collusive, not on the ground of *res judicata* or estoppel but on the principle that a person cannot both approbate and reprobate. It is immaterial that the present appellants were not parties thereto, and the decision in *Verschures Creameries Ltd. v. Hull & Netherlands Steamship Co. Ltd.* [*Verschures Creameries Ltd. v. Hull & Netherlands Steamship Co. Ltd.*, (1921) 2 KB 608 (CA)] , and in particular, the observations of Scrutton, L.J., at p. 611 were quoted in support of this position. **There, the facts were that an agent delivered goods to the customer contrary to the instructions of the principal, who thereafter filed a suit against the purchaser for price of goods and obtained a decree.**

Not having obtained satisfaction, the principal next filed a suit against the agent for

damages on the ground of negligence and breach of duty. It was held that such an action was barred. The ground of the decision is that when on the same facts, a person has the right to claim one of two reliefs and with full knowledge he elects to claim one and obtains it, it is not open to him thereafter to go back on his election and claim the alternative relief. The principle was thus stated by Bankes, L.J. : (*Verschures Creameries Ltd. case* [*Verschures Creameries Ltd. v. Hull & Netherlands Steamship Co. Ltd.*, (1921) 2 KB 608 (CA)] , KB p. 611)

'... Having elected to treat the delivery to him as an authorised delivery they cannot treat the same act as a misdelivery. To do so would be to approbate and reprobate the same act.'

The observations of Scrutton, L.J. on which the appellants rely are as follows : (*Verschures Creameries Ltd. case* [*Verschures Creameries Ltd. v. Hull & Netherlands Steamship Co. Ltd.*, (1921) 2 KB 608 (CA)] , KB pp. 611-12)

'... A plaintiff is not permitted to "approbate and reprobate". The phrase is apparently borrowed from the Scotch law, where it is used to express the principle embodied in our doctrine of election — namely, that no party can accept and reject the same instrument : Ker v. Wauchope [Ker v. Wauchope, (1819) 1 Bligh PC 1 at p. 21 : 4 ER 1 at p. 8] : Douglas-Menzies v. Umphelby [Douglas-Menzies v. Umphelby, 1908 AC 224 at p. 232 (PC)] . The doctrine of election is not however confined to instruments. A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. That is to approbate and reprobate the transaction.'

It is clear from the above observations that the maxim that a person cannot "approbate and reprobate" is only one application of the doctrine of election, and that its operation must be

confined to reliefs claimed in respect of the same transaction and to the persons who are parties thereto. The law is thus stated in *Halsbury's Laws of England*, Vol. XIII, p. 464, para 512:

'On the principle that a person may not approbate and reprobate, a species of estoppel has arisen which seems to be intermediate between estoppel by record and estoppel in pais, and may conveniently be referred to here. Thus a party cannot, after taking advantage under an order (e.g. payment of costs), be heard to say that it is invalid and ask to set it aside, or to set up to the prejudice of persons who have relied upon it a case inconsistent with that upon which it was founded; nor will he be allowed to go behind an order made in ignorance of the true facts to the prejudice of third parties who have acted on it.'

27.2. *State of Punjab v. Dhanjit Singh Sandhu* [*State of Punjab v. Dhanjit Singh Sandhu*, (2014) 15 SCC 144] : (SCC pp. 153-54, paras 22-23 & 25-26)

"22. The doctrine of "approbate and reprobate" is only a species of estoppel, it implies only to the conduct of parties. As in the case of estoppel it cannot operate against the provisions of a statute. (Vide *CIT v. MR. P. Firm Muar* [*CIT v. MR. P. Firm Muar*, AIR 1965 SC 1216] .)

23. It is settled proposition of law that once an order has been passed, it is complied with, accepted by the other party and derived the benefit out of it, he cannot challenge it on any ground. (Vide *Maharashtra SRTC v. Balwant Regular Motor Service* [*Maharashtra SRTC v. Balwant Regular Motor Service*, AIR 1969 SC 329] .) In *R.N. Gosain v. Yashpal Dhir* [*R.N. Gosain v. Yashpal Dhir*, (1992) 4 SCC 683] this Court has observed as under : (*R.N. Gosain case* [*R.N. Gosain v. Yashpal Dhir*, (1992) 4 SCC 683] , SCC pp. 687-88, para 10)

'10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of

election which postulates that no party can accept and reject the same instrument and that 'a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage'.

25. The Supreme Court in *Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd.* [*Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd.*, (2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153], made an observation that a party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience.

26. It is evident that the doctrine of election is based on the rule of estoppel, the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of *estoppel in pais* (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when he has to speak, from asserting a right which he would have otherwise had."

27.3. *Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd.* [*Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd.*, (2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153] : (SCC pp. 480-81, paras 15-16)

"I. Approbate and reprobate

15. A party cannot be permitted to “blow hot-blow cold”, “fast and loose” or “approbate and reprobate”. Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner so as to violate the principles of what is right and of good conscience.

[Vide *Nagubai Ammal v. B. Shama Rao* [Nagubai Ammal v. B. Shama Rao, 1956 SCR 451 : AIR 1956 SC 593] , *CIT v. V. MR. P. Firm Muar* [CIT v. MR. P. Firm Muar, AIR 1965 SC 1216] , *Ramesh Chandra Sankla v. Vikram Cement* [Ramesh Chandra Sankla v. Vikram Cement, (2008) 14 SCC 58 : (2009) 1 SCC (L&S) 706] , *Pradeep Oil Corpn. v. MCD* [Pradeep Oil Corpn. v. MCD, (2011) 5 SCC 270 : (2011) 2 SCC (Civ) 712] , *Cauvery Coffee Traders v. Hornor Resources (International) Co. Ltd.* [Cauvery Coffee Traders v. Hornor Resources (International) Co. Ltd., (2011) 10 SCC 420 : (2012) 3 SCC (Civ) 685] and *V. Chandrasekaran v. Administrative Officer* [V. Chandrasekaran v. Administrative Officer, (2012) 12 SCC 133 : (2013) 2 SCC (Civ) 136 : (2013) 4 SCC (Cri) 587 : (2013) 3 SCC (L&S) 416] .]

16. Thus, it is evident that the doctrine of election is based on the rule of estoppel—the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of *estoppel in pais* (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had.”.

(Emphasis supplied at each instance)

10. The conduct of the petitioners unmistakably attracts the rigour of the principle considered by the Apex Court. They willingly furnished the undertaking, secured the release of enormous sums lying in deposit, withdrew amounts running into several crores and are now wanting to turn around, seeking recall of the very order that gave them the benefit, on the score that they are not willing to perform the obligation of securing the GST component in an escrow account. The application, therefore, is wholly devoid of merit, bereft of any legally sustainable foundation and does not warrant any indulgence at the hands of this Court.

The application, thus, stands **dismissed**.

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

bkp
CT:MJ