* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of Decision : October 31, 2011*

\+ RFA(OS) 111/2011

BHAGWAN MAHAVEER EDUCATIONAL SOCIETY & ORS. ..... Appellants

Through: Mr.T.K.Tanju, Sr.Advocate with Mr.Neeraj Grover and Mr.Sayad Aqui Ali, Advocates

versus

RAJESH JINDAL & ORS. ....Respondents

Through: Nemo

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE S.P.GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

For orders, see FAO (OS) 518/2011.

(PRADEEP NANDRAJOG)
JUDGE

(S.P.GARG)
JUDGE

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1. Whether the Reporters of local papers may be allowed to see the judgment?

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3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. FAO(OS)No.518/2011 lays a challenge to the order dated 3.2.2011 dismissing RA.No.9418/2010 as also two accompanying Civil Miscellaneous Applications being IA.No.9419/2010 and IA.No.9420/2010.

2. RFA(OS)No.111/2011 challenges the order dated 19.5.2010 disposing of the suit by recording a compromise between the parties.

3. Both appeals are being decided by a common judgment inasmuch as, a common question of law on the same facts, between the same parties, arise for consideration in both appeals.

4. Vide RA.No.9418/2010 it was prayed before the learned Single Judge that order dated 19.5.2010 i.e. the order challenged in RFA(OS)No.111/2011 be reviewed and recalled.

5. Sushil Kumar Jain, Subhash Chand Jain and Jogi Ram Jain joined as plaintiffs No.2, 3 and 4 respectively, and under the banner of Bhagwan Mahavir Educational Society (Regd.) which was plaintiff No.1, filed a suit seeking declaration that membership of defendants No.2, 3 and 4 i.e. Kanak Mal Saklecha, Rekha Jindal and Mahender Pal Jain respectively be declared null and void. A declaration was sought that election held on 2.4.2007 be declared null and void and the election held on 30.3.2007 be declared as genuine and legal. Further prayer made was to restrain said defendants as also other defendants from interfering in the administration of plaintiff No.1 by the office bearers elected on 30.3.2007 and to restrain the defendants from preventing plaintiffs No.2 to 4 to enter the office premises of plaintiff No.1.

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6. As CS(OS)No.2366/2007, filed by the plaintiffs, proceeded and as time lapsed, fresh elections became due when the suit was listed before the learned Single Judge on 19.5.2010 inasmuch as the term of the existing governing body, be it as per the elections held on 30.3.2007 or 2.4.2007 would end by April 2010.

7. Application seeking interim injunction, pending disposal of the suit, was listed before the learned Single Judge. Pleadings had been completed. Probably, stage of framing issues had reached. It was thus the date of the first hearing of the suit as conventionally understood.

8. The plaintiffs were represented by Mr.Shiv Charan Garg Advocate and the defendants were represented by Mr.Ravi Gupta Senior Advocate with Mr.Laliet Kumar Advocate assisting him. It is not in dispute that Mr.Shiv Charan Garg Advocate had filed a vakalatnama executed by the plaintiffs in his name, authorizing him to act and plead on behalf of the plaintiffs. Likewise, Mr.Laliet Kumar Advocate had the requisite authority, to act and plead, on behalf of the defendants.

9. Order dated 19.5.2010 records a compromise and hence a consent decree being passed. The order reads as under:-

> "Present : Mr.Shiv Charan Garg, Advocate for the Plaintiffs"
> Mr.Ravi Gupta, Sr.Advocate with Mr.Laliet Kumar, Advocate for the Defendant Nos.1,3,6,7 & 8
>
> CS(OS) 2366/2007 & IA Nos. 14578/2007 (under O.39 R.1 & 2 CPC), 1549/2010 (under Section 151 CPC by plaintiff), 1550/2010 (under

Section 151 CPC by plaintiff), 2372/2010 (under Section 151 CPC by defendant nos 1, 3 & 6)

It is an admitted fact that plaintiff no.1 which is an educational society has, at the moment, 11 members. The list of members is indicated at Page 51 of the documents filed by the plaintiffs. The objection of the plaintiffs is to the persons whose names appear at Serial nos.9, 10 and 11 in the list set out at Page 51 (i.e., defendant nos.2 to 4). It is also not disputed by both counsels that elections to the society i.e., plaintiff no.1 are now overdue since the term of the Governing Body ended in April, 2010. The peculiarity of this case is that the members of the society whether they are 8 or 11 are also the persons who get appointed to various posts in the society. The warring groups, i.e., the plaintiffs as well as the defendants are willing to amicably settle the disputes on the following terms:-

(i) Fresh elections will be called within 15 days from today. The elections will be held within 15 days thereafter.

(ii) Since there is no dispute as regards membership of plaintiff nos. 2 to 4, it is agreed that after the elections are held, plaintiff no.2 will be offered the post of vice-president while plaintiff no.4 shall continue as member of the governing body.

(iii) The elections shall proceed on the basis of the list of eleven (11) members as set out at Page 51 of the documents.

(iv) The defendants shall give inspection of all documents and books of plaintiff no.1 on demand by plaintiff nos. 2 to 4.

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(v) Mr.Garg, the learned counsel for the plaintiffs says that plaintiff nos.2 to 4 shall stand for the post(s) which are being offered under this agreement. The entire process shall be completed within six weeks from today.

(vi) Mr.Garg says that in view of the terms of settlement as indicated hereinabove, he does not wish to press the suit any further. The suit is disposed of accordingly on the terms, indicated hereinabove. All the pending applications are also stand disposed of."

10. It needs to be highlighted that no written compromise between the parties was filed and from the order it is apparent that a settlement took place in the court itself when the matter was listed before the learned Single Judge. The settlement appears to have been motivated on the reason that in any case elections had become due, to be held in April 2010, and the warring groups were advised by the court to settle the matter. The settlement recorded is that elections would be held within 15 days and defendants No.2, 3 and 4 would be treated as members of the plaintiff No.1 society. The settlement also envisages, probably by way of goodwill, that after election would be held, plaintiff No.2 would be offered the post of Vice-President and plaintiff No.4 would be treated as a member of the governing body of the plaintiff No.1 society.

11. Election process commenced after order dated 19.5.2010 was passed and in terms thereof the suit stood decreed as settled. The Election Officer invited nominations to be filed and pertaining to the nomination filed by Rekha

Jindal defendant No.3, whose membership was disputed by plaintiffs No.2 to 4, plaintiff No.2 Sushil Kumar Jain filed an objection on 4.6.2010 qua the authenticity of Rekha Jindal's signatures on the nomination form. He never questioned the right of Rekha Jindal to contest the election by alleging that she was not a member of the plaintiff No.1 society.

12. Highlighting that from the aforesaid, it is apparent that plaintiff No.2 was aware that Rekha Jindal could contest election as a member of plaintiff No.1 society and from which it could safely be inferred that the source had to be the consent order dated 19.5.2010, RFA(OS)No.58/2010 was filed challenging the consent order dated 19.5.2010, which had disposed of the suit, on the ground that the counsel concerned was never authorized to have the suit decided on a consent; stand taken was that by way of an interim solution counsel had agreed that election may be held to the officer bearers of plaintiff No.1 society and for which defendants No.2, 3 and 4 be treated as members of the plaintiff No.1 society. Stand taken was that in spite of consent being by way of an interim arrangement, the suit itself was decreed.

13. The said appeal was withdrawn with liberty to seek review of the consent order dated 19.5.2010 and as a consequence thereof, RA.No.9418/2010 was filed.

14. Not disputing that counsel for the plaintiffs had given consent for elections to be held, with defendants No.2 to 4 being treated as members of the plaintiff No.1 society, it was pleaded in the review application that when order was dictated, learned counsel remained under an impression that

the court was recording a proposal pertaining to an interim arrangement and when language of the order showed the suit to be disposed of, counsel protested but the protest was ignored. In para 5 it was pleaded:-

> "That it was also informed that during the aforesaid process of recording the broad proposals in the order, as soon as the Ld. Counsel for the plaintiffs realized that this Hon'ble Court had proceeded to dispose off the entire suit proceedings, he objected to the same but his objections were not taken note off by this Hon'ble Court and he was advised to take appropriate legal remedies as may be available under the law as the other (sic) had already been dictated."

15. The Review Application was filed under the signature of Shri Neeraj Grover Advocate, inasmuch as plaintiffs withdrew the vakalatnama in favour of Shri Shiv Charan Garg Advocate, who had appeared on 19.5.2010. It may be noted that plaintiff No.3, Sh.Subhash Chand Jain did not seek review and as a co-plaintiff abides by the consent order, meaning thereby plaintiff No.3 stands by the correctness of what was recorded in the order dated 19.5.2010.

16. It is asserted in the Review Application that Order XXIII Rule 3 CPC envisages a suit to be disposed of on a written agreement, under the signatures of the parties, and since no such written agreement under the signatures of the plaintiffs was filed, order dated 19.5.2010 was contrary to law. It was highlighted that consent given by the counsel was for an interim arrangement and not for the suit to be disposed of. It was pleaded, as noted hereinabove in para 5 of the

application, that the learned Single Judge forced down the throat of the plaintiffs, a compromise which was not agreed to.

17. It was also pleaded that the plaintiffs had never given any authority to their counsel and in fact, had not consented to any compromise, which we presume would mean that according to the plaintiffs they never consented even to an interim arrangement being worked out.

18. Dismissing RA.No.9418/2010, the learned Single Judge has held that the vakalatnama executed by plaintiffs No.2 to 4 in favour of Shri Shiv Charan Garg Advocate authorized him to act and plead and thus the counsel was fully competent to enter into a compromise on behalf of the plaintiffs.

19. Learned Single Judge has noted various decisions which relate to the authority of a counsel to enter into a settlement on behalf of his client.

20. We need not note the said authorities, inasmuch as Shri T.K.Ganju, learned Senior Counsel, who appeared for the appellants conceded to the said position i.e. that given the language of a vakalatnama executed by a client in favour of the counsel, the counsel concerned may have the authority to bind his clients by way of a settlement, but sought to urge that the settlement had to be in writing and signed by or on behalf of the parties.

21. Thus, we highlight that the issue debated at the hearing of the two appeals was: Whether law mandates that every compromise between the parties to a suit has to be in writing and signed by or on behalf of the litigating parties?

22. Before answering the aforesaid question, we need to highlight that all the plaintiffs have not sought review. Plaintiff No.3 Shri Subhash Chand Jain abides by the settlement arrived at. It is only Sushil Kumar Jain and Jogi Ram Jain who challenge the compromise recorded as per order dated 19.5.2010.

23. That both of them claim no knowledge of the compromise as they had never instructed the counsel to so compromise needs an explanation from Shri Sushil Kumar Jain, who on 4.6.2010 i.e. after 15 days of the order dated 19.5.2010, with reference to the nomination filed by Rekha Jindal had questioned the genuineness of her signatures on the nomination papers. He never took the stand that Rekha Jindal could not contest the election as she was not a member of plaintiff No.1 society. That plaintiff No.4 Shri Jogi Ram Jain was present in court on 19.5.2010 is evidenced by the fact that a gate pass stands issued in his name by the Registry of this Court to enable him to enter the precincts of the Delhi High Court.

24. Indeed, learned counsel for the appellants conceded that Shri Jogi Ram Jain had entered the court premises on 19.5.2010, but claims he having left due to urgent work by the time the suit reached for hearing.

25. A plausible explanation does exist vis-à-vis Jogi Ram Jain to disclaim knowledge of any settlement, but as regards Sushil Kumar Jain, in the teeth of his having filed an objection on 4.6.2010 to the nomination by Smt. Rekha Jindal, we find no explanation given by him as to why did he not question the

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election process being initiated in which Rekha Jindal was permitted to contest the election, if he knew nothing of the order dated 19.5.2010.

26. Before dealing with the legal issue raised, as afore-noted, i.e. whether every compromise pertaining to a suit needs to be in writing and under the signatures of the litigating parties, or a person authorized on their behalf, we need to note an undisputed fact.

27. Plaintiff No.1 society had needed money to purchase land. It was in touch with a public sector bank for loan to be advanced. The loan was advanced and at that stage, second defendant, along with defendant No.1 stood guarantee. Defendant No.3 Rekha Jindal, is the wife of defendant No.1, and thus there are traces of said two persons being inducted as members of plaintiff No.1 society, inasmuch as guarantors, they had a stake to ensure correct utilization of the funds by plaintiff No.1.

28. But, this is just an ancillary fact noted by us to highlight the backdrop in which the dispute pertaining to the membership of defendants No.2 to 4 needs to be considered.

29. It is obvious that when the suit was listed, the aforesaid facts were noted by the learned Single Judge, and probably there was an expression of anguish by the court that a cause unworthy of consuming precious judicial time was being unnecessarily litigated for 3 years. Probably, sanity dawned upon the parties when order dated 19.5.2010, recording the compromise was passed.

30. We now deal with the issue, which arise for consideration and as noted hereinabove in para 21.

31. We need not bother ourselves with various judgments cited by learned counsel for the appellants; being AIR 1993 SC 1139 *Banwari Lal Vs. Smt.Chando Devi (through L.R.) & Anr.*, 1997 RLR 199 (DB) *Kamla Devi Vs. Prabhat Chand*, AIR 2002 DELHI 223 *S.P.Minocha Vs. Lila Ram*, 105 (2003) DLT 806 *Archies Greetings & Gifts Ltd. Vs. Garg Plastic* and (2005) 4 SCC 117 *K.Venkatachala Bhat & Anr. Vs. Krishna Nayak (D) by LRs. & Ors.* in view of the fact, we have before us an authoritative pronouncement on the issue, by the Supreme Court. It is the decision reported as 2006 (5) SCC 566 *Pushpa Devi Bhagat Vs. Rajender Singh & Ors.*

32. In *Pushpa Devi*'s case (supra) the landlords were in litigation with a tenant, which was a partnership firm, partners whereof were also impleaded as co-defendants. Claiming to have terminated the tenancy on 31.3.1989, plaintiffs/landlords sought ejectment of the defendants from the tenanted premises and also claimed mesne profits. When evidence was being recorded, counsel for the parties made statements to the effect that a compromise had been arrived at between the parties and as per the compromise the defendants would vacate the subject premises latest by 22.1.2002 and till then would pay damages @ ₹4,800/- per month. Statements of counsel for the parties were thereafter recorded. Counsel signed the same. Suit was decreed in terms of the compromise which required a decree to be passed that the defendants would vacate the suit premises by

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22.1.2002 and till then, would pay damages for use and occupation @ ₹4,800/- per month. It was realized that counsel for the defendants, Shri Dinesh Garg, had not filed a vakalatnama on behalf of defendants No.3 and 4. An application was thereafter filed and along therewith a vakalatnama was filed by Shri Dinesh Garg as per which defendants No.3 and 4 had also authorized him to appear on their behalf. Noting that the counsel stood by the settlement between the parties, taking note of the fact that now Shri Dinesh Garg Advocate had the necessary authority, fresh decree in the same terms came to be passed, as was passed in terms of the earlier order. On 21.8.2001, defendant No.2 filed an application stating that she had never instructed Shri Dinesh Garg Advocate to enter into any compromise and she further pleaded that there was no written compromise between the parties duly signed by them and therefore there was no lawful compromise. Notice of the application being issued to the parties as also to Shri Dinesh Garg Advocate, learned Trial Judge noted that Shri Dinesh Garg Advocate had been representing defendant No.2 for about 12 years and he made a statement in Court on 7.12.2001 that all throughout he had been receiving instructions on behalf of the defendants either from Ms.Sadhna Rai, daughter of defendant No.2 or her son-in-law, Vinay Rai or Dr.M.C.Gupta the Group Head of the law department of the companies of the defendants.

33. Holding that the counsel could lawfully compromise the dispute between the parties and believing the counsel that he

was duly authorized on being instructed by Dr.M.C.Gupta to enter into a settlement, the application filed by defendant No.2 to recall the consent decree was dismissed by the learned Trial Judge.

34. The Appellate Court set aside the decision, holding that there being no written agreement duly signed by the parties, the compromise decree on the basis of the statement made by counsel for the defendants could not bind defendant No.2. The consent decree was set aside in appeal.

35. Further challenge by way of appeal to this Court resulted in the appellate decision being set aside and consent decree being restored.

36. Matter ultimately reached the lap of the Supreme Court, and we have before us the decision reported as 2006 (5) SCC 566 *Pushpa Devi Bhagat Vs. Rajender Singh & Ors.*

37. The Supreme Court noted Rule 3 of Order XXIII of the Code of Civil Procedure, which reads as under:-

> "3. Compromise of suit. – Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to compromise or satisfaction is the same as the subject-matter of the suit."

38. The Supreme Court noted the proviso to Rule 3 of Order XXIII, as per which the court concerned, where settlement or

adjustment had been arrived at as the one which had to decide all issues relatable thereto. In para 18 of the decision, the Supreme Court noted that Rule 3 of Order XXIII is clearly in two parts. The first part provides that where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, the court shall order such agreement or compromise to be recorded and shall pass a decree in accordance therewith. The second part provides that where a defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the court shall order such satisfaction to be recorded and shall pass a decree in accordance therewith.

39. The Supreme Court thereafter noted that the rule makes it clear that the compromise or agreement may relate to issues or disputes which are not the subject matter of the suit and that such compromise or agreement may be entered not only amongst the parties to the suit, but also others.

40. The Court then posed a question: "*What is the difference between first and the second part of Rule 3?*"

41. Answering the question in para 19, the Supreme Court held:-

> "xxxxx The first part refers to situations where an agreement or compromise is entered into in writing and signed by the parties. The said agreement or compromise is placed before the court. When the court is satisfied that the suit has been adjusted either wholly or in part by such agreement or compromise in writing and signed by the parties and that it is lawful, a decree follows in terms of what is agreed

between the parties. The agreement/compromise spells out the agreed terms by which the claim is admitted or adjusted by mutual concessions or promises, so that the parties thereto can be held to their promise(s) in future and performance can be enforced by the execution of the decree to be passed in terms of it. On the other hand, the second part refers to cases where the defendant has satisfied the plaintiff about the claim. This may be by satisfying the plaintiff that his claim cannot be or need not be met or performed. It can also be by discharging or performing the required obligation. Where the defendant so "satisfies" the plaintiff in respect of the subject-matter of the suit, nothing further remains to be done or enforced and there is no question of any "enforcement" or "execution" of the decree to be passed in terms of it. Let us illustrate with reference to a money suit filed for recovery of say a sum of rupees one lakh. Parties may enter into a lawful agreement or compromise in writing and signed by them, agreeing that the defendant will pay the sum of rupees one lakh within a specified period or specified manner or may agree that only a sum of ₹75,000 shall be paid by the defendant in full and final settlement of the claim. Such agreement or compromise will fall under the first part and if the defendant does not fulfil the promise, the plaintiff can enforce it by levying execution. On the other hand, the parties may submit to the court that the defendant has already paid a sum of rupees one lakh or ₹75,000 in full and final satisfaction or that the suit claim has been fully settled by the defendant out of court (either by mentioning the amount paid or not mentioning it) or that the plaintiff will not press the claim. Here the obligation is already performed by the defendant or the plaintiff agrees that he will not enforce

performance and nothing remains to be performed by the defendant. As the order that follows merely records the extinguishment or satisfaction of the claim or non-existence of the claim, it is not capable of being "enforced" by levy of execution, as there is no obligation to be performed by the defendant in pursuance of the decree. Such "satisfaction" need not be expressed by an agreement or compromise in writing and signed by the parties. It can be by a unilateral submission by the plaintiff or his counsel. Such satisfaction will fall under the second part. Of course even when there is such satisfaction of the claim or subject-matter of the suit by the defendant and the matter falls under the second part, nothing prevents the parties from reducing such satisfaction of the claim/subject-matter, into writing and signing the same. The difference between the two parts is this: where the matter falls under the second part, what is reported is a completed action or settlement out of court putting an end to the dispute, and the resultant decree recording the satisfaction, is not capable of being enforced by levying execution. Where the matter falls under the first part, there is a promise or promises agreed to be performed or executed, and that can be enforced by levying execution. While agreements or compromises falling under the first part can only be by an instrument or other form of writing signed by the parties, there is no such requirement in regard to settlements or satisfaction falling under the second part. Where the matter falls under the second part, it is sufficient if the plaintiff or the plaintiff's counsel appears before the court and informs the court that the subject-matter of the suit has already been settled or satisfied."

42. From a perusal of the observations made by the Supreme Court in para 19 of the decision, which observations we have quoted hereinabove, it is apparent that the Supreme Court underlined the distinction in a matter being settled requiring a decree to be drawn, which decree required to be executed and a settlement where the cause stood satisfied and decree passed recorded the satisfaction, requiring no enforcement thereof.

43. The Supreme Court held that the first part of Rule 3 of Order XXIII referred to a situation where the court was satisfied that the suit has been adjusted either wholly or in part by an agreement or a compromise in writing and that the agreement spells out the adjustment by way of mutual consensus or promise to which the parties would be bound in future for performance thereof i.e. enforcement by the execution of the decree to be passed in terms.

44. It was only such settlements which were opined to be requiring the mandate of being in writing and signed by the parties or signed on behalf of parties by a duly authorized person.

45. The second part of Rule 3 of Order XXIII referred to by the Supreme Court, pertained to cases where the defendant satisfied the plaintiff about the claim or satisfied the plaintiff that his claim cannot be or need not be made or performed. It could also be met by the defendant discharging or performing the required obligation. These situations clearly would result, upon satisfaction being shown, that nothing remained to be done or enforced and thus there was no scope

for an executable decree being passed. The Supreme Court clearly held that such kind of settlement or satisfaction '*need not be expressed by an agreement or compromise in writing and signed by the parties.*'

46. The Supreme Court noted that such kinds of agreements and settlements could be by a unilateral submission by the plaintiff or his counsel or by the defendant and his counsel.

47. The Supreme Court highlighted the difference between the two parts and we once again highlight the expression used. In the concluding part of para 19 the Supreme Court observed as under:-

> "xxxxxxxxx
> where the matter falls under the second part, what is reported is a completed action or settlement out of court putting an end to the dispute, and the resultant decree recording the satisfaction, is not capable of being enforced by levying execution. Where the matter falls under the first part, there is a promise or promises agreed to be performed or executed, and that can be enforced by levying execution. While agreements or compromises falling under the first part can only be by an instrument or other form of writing signed by the parties, there is no such requirement in regard to settlements or satisfaction falling under the second part. Where the matter falls under the second part, it is sufficient if the plaintiff or the plaintiff's counsel appears before the court and informs the court that the subject-matter of the suit has already been settled or satisfied."
> (Underlined emphasized)

48. We need not note the remainder judgment, inasmuch as the Supreme Court considered the decree passed therein and

the effect of the statement made by counsel for the parties i.e. the statement recorded by the Court, which was signed by counsel for the parties. The Supreme Court held that since the counsel concerned had the requisite authority inasmuch as the counsel were authorized to act and plead on behalf of the parties, the statement recorded in Court would be a written document and since the same evidenced a compromise in writing, there was compliance with the first part of Rule 3 of Order XXIII.

49. The compromise decree which we have before us is a non-executable decree. It recognizes that plaintiffs admit valid membership of defendants No.2 to 4. It recognizes that in the ensuing elections, said persons could participate, as members of plaintiff No.1. The decree is declaratory in nature.

50. We need to note that the Review Application filed was placed before the same Judge who had recorded the order dated 19.5.2010, but the learned Judge had to recuse from the matter in view of the fact that personal allegations were made against the learned Judge, by pleading in para 5 of the Review Application, that the Judge forced the compromise down the throat of the parties.

51. Why should a Judge do so? Why would a Judge do so? There was no answer from learned Senior Counsel for the appellants.

52. We regretfully note a tendency which is emerging in current litigations. Motives are being imputed in the pleadings to Judges. The practice and the tendency has to be

depreciated for the reason, if encouraged, it would shake the very foundation of the justice administration system. Judges have no personal stake in a litigation. Judges have a stake in the integrity of the institution which they serve. Judges realize that it is their duty to adjudicate disputes brought before them. Judges realize that the adjudications have to be as per procedures established by law. But, with docket explosion in courts, it is not uncommon that when a matter is brought before a court, after the legal issues which arise for consideration are looked into, suggestions emanate in court, which are helpful in resolving a dispute. Parties rightly grab such opportune moments. It would be most unfortunate, if when things go wrong in the future, motives are alleged to the Judge concerned, while challenging settlements which have taken place in court.

53. In the instant case, we would highlight, that an election held in the year 2007 was the subject matter of dispute. Even the election on which plaintiffs were relying was held in the year 2007. It was not in dispute that fresh elections had become due in April 2010. Membership of 3 persons i.e. defendants No.2 to 4 was questioned by plaintiffs No.2 to 4. That defendant No.2 had stood a personal guarantee for a loan taken by plaintiff No.1 society and that husband of defendant No.3 had likewise stood personal guarantee for the loan in question, was a fact staring the parties as also the learned Judge in the face. That said defendants, having a stake to ensure proper utilization of the loan taken by plaintiff No.1, was also a fact staring the parties as also the learned

Judge in the face. It was natural for a suggestion to emanate that curtains could be brought down by letting defendants No.2 to 4 be treated as lawful members of plaintiff No.1, so that the ensuing elections could be smoothly held. That counsel for the plaintiffs accepting such a settlement proposal, be it emanating from the court or the defendants, is evidenced by the fact that the order came to be passed in court and we do not have any affidavit filed by the counsel concerned that whereas he gave concession for a limited settlement i.e. a settlement by way of an interim arrangement, the learned Judge forced down the settlement as if the lis as a whole was settled. The gate pass issued in the name of plaintiff No.4 is evidence of his presence in the court. That plaintiff No.3 has chosen to abide by the settlement is also proof of the settlement having been arrived at. That plaintiff No.2 did not protest or question the right of Rekha Jindal, defendant No.3, to file the nomination paper and his questioning the validity of the nomination paper filed by her, is proof of the knowledge of plaintiff No.2 that order dated 19.5.2010, pursuant to a compromise, was passed.

54. It is apparent that the expectations of the plaintiffs at the ensuing elections were belied at the democratic process which was followed and led them to try and turn the clock back.

55. We have independently reflected on the facts and the reasoning of the learned Single Judge as per order dated 3.2.2011, whereunder RA.No.9418/2010 has been dismissed.

We reach the same conclusion and thus we dismiss both the appeals in limine.

56. Since the appeals are dismissed in limine we refrain from imposing any costs.

(PRADEEP NANDRAJOG)
JUDGE

(S.P.GARG)
JUDGE

October 31, 2011
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