

ITEM NO.58

COURT NO.1

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Cr1.) No(s).9156/2011

(Arising out of impugned final judgment and order dated 21-04-2011 in CRLRA No. 237/2009 passed by the High Court Of Judicature At Bombay)

JASPAL SINGH SAWHNEY & ORS.

Petitioner(s)

VERSUS

THE STATE OF MAHARASHTRA & ORS.

Respondent(s)

(FOR ON IA 23570/2011 FOR STAY APPLICATION ON IA 23571/2011 FOR [PERMISSION TO FILE ANNEXURES] ON IA 23572/2011 FOR ON IA 71289/2011 FOR ON IA 71297/2011 FOR ON IA 3631/2017)

WITH

SLP(Cr1) No.2476/2012 (II-A)

(FOR STAY APPLICATION ON IA 8209/2012

FOR ON IA 8210/2012

FOR PERMISSION TO FILE SYNOPSIS AND LIST OF DATES ON IA 8211/2012)

SLP(Cr1.)...CRLMP No. 24012/2011 (II-A)

(FOR CONDONATION OF DELAY IN FILING ON IA 24012/2011

FOR CONDONATION OF DELAY IN REFILING ON IA 24017/2011

FOR CONDONATION OF DELAY IN FILING/REFILING SLP ON IA 24017/2011)

Date : 06-10-2017 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE A.M. KHANWILKAR

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioner(s) Mr.Shyam Divan, Sr.Adv.
Ms.Anagha S. Desai, AOR
Mr.Mohan Moti Ram Jayakar, AOR
Mr.Mehul M.Gupta, Adv.

Mr.V. K. Sidharthan, AOR

For Respondent(s) Ms.Kamini Jaiswal, Adv.
Ms.Rani Mishra, Adv.
Mr.Jatinderpal Singh, Adv.
Ms.Shrutti Dutt, Adv.
Mr.Aabad Panda, Adv.
Mr.S.Srivastava, Adv.

Mr.Mahaling Pandarge, Adv.,
Mr.Nishant Ramakantrao Katneshwarkar, AOR

Mr.V. K. Sidharthan, AOR

Ms.Kaveeta Wadia, AOR

Mr.T. Mahipal, AOR

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

A long rope given to litigants can sometimes create anarchy. Therefore, the need of the time is to scuttle the rope. The present case expositis such a scenario.

On 14.08.2017, the following order was passed:

"This is an application filed by Mr. Umesh Mehra, Respondent No.3 in the special leave petition and other applicants for directions. If this application for direction is to be described in the proper sense of a phrase, there will be no hesitation stamping it as "much a do about nothing". We say so as Ms. Kamini Jaiswal, learned counsel appearing for Mr. Pravesh Mehra, Respondent No.2 in the special leave petition, submits that the respondent No.2 has serious objection for use of the words "due to love and affection" in the executed document dated 18.3.2017.

Having heard learned counsel for the parties, it is directed that as the parties have already executed the documents, they shall make themselves available for registration and for whatever reason the argument has been canvassed for deletion of the words "due to love and affection", we accept the same and delete the words "due to love and affection". This shall be treated as a direction of this court and the documents shall be presented for registration before the concerned Sub-Registrar and the Registrar shall register them. Any document executed between the parties, if has this expression, the same shall be deleted treating it as a part of the order of this Court. We have so directed so that further execution of the documents is avoided.

It is accepted by Mr. Pravesh Mehra that he

has no objection for executing a 'Special Power of Attorney' in favour of Mr. Amit Mehra, Mr. Umesh Mehra, Mr. Rajeev Mehra and Ms. Veena Soni. The draft power of attorney shall be filed by the learned counsel for the 3rd respondent in the special leave petition within a week hence.

List the matter at 2.00 p.m. on 4.9.2017."

Thereafter, on 04.09.2017, an order was passed asking the learned counsel for the parties to put it in writing through memorandum with regard to agreed conditions. The Court expressed hope that the learned counsel for the parties would be able to persuade the parties.

On 08.09.2017, learned counsel for the parties prayed for some more time to file the agreed memorandum. Today, when the matter was called, Ms.Kamini Jaiswal, learned counsel has filed a Minutes of the Discussion held on 04.09.2017. It reads as follows:

"(i) Parties have agreed that Respondent No.2 will sign Special Power of attorney with regard Plaza cinema in favour of Smt. Veena Soni wherein addition to the "In Blood Relation" "as per Family Settlement deed dated 29.06.2013 and the Annexure dated 28.04.2014" be included.

(ii) Parties have agreed that Respondent No.2 will sign Power of attorney with regard to Sherman Flat in favour of Amit Mehra and Rajiv Mehra wherein "as per Family Settlement deed dated 29.06.2013 and the Annexure dated 28.04.2014" is mentioned and Respondent No.2 will also sign one relinquishment deed in name of Amit Mehra.

(iii) Parties have agreed that Respondent No.2 will sign Power of attorney with regard to "Eagle Nest" Khandala Bungalow, Prem Milan garage, Raj Mala Garage, Takwe Land in favour of Umesh Mehra wherein "as per Family Settlement deed dated 29.06.2013 and the Annexure dated 28.04.2014" is mentioned.

(iv) Parties have agreed that one deed of

rectification for error in relation to the area mentioned in the Hyderabad property will be made by one POA holder on the behalf of all the parties or as required by the authorities. And Respondent No.2 will also sign one Bank closure form and one Form E of partnership firm.

(v) Parties have agreed that Respondent No.2 will be entitled to lease amount received from HDFC bank on Hyderabad property, 50% of perks in Eagle theaters and Falcon Equipments (plaza Cinema) with held since April 2016 and Rs 6.25 lac as 50% of profits of Eagle Films which has been withheld since April 2016.

(vi) However there is dispute with regard to the interest to be paid to Respondent No.2 on all amounts due to him but not paid so far with effect from April 2016. As the payment to the Parvesh Mehra/R-2 has been stopped at the interference of Umesh Mehra/R-3 who through his E-mail dated 02.05.2016 has suggested stoppage of release of the pay orders drafts to him even though all other parties had been paid their share (ANNEXURE-B (Pages No. 26) to affidavit dated 31.08.2017.)

Mr. Parvesh Mehra is not ready to sign the aforesaid documents unless interest at the rate of 18% is paid to him on all amounts since 18% interest being paid to all other family members and associates (including eagle film partners and brothers of the answering Respondent)."

Though Mr. Shyam Divan, learned senior counsel for the petitioners has not filed any Minutes, he would urge that Justice B.N. Srikrishna, who was appointed as a Mediator by this Court (and later as Arbitrator), has passed two interim awards and at present the petitioners have deposited Rs.18,08,82,477/- (Rupees eighteen crores, eight lakhs, eighty two thousand four hundred seventy seven) before the Mediator/Arbitrator. Out of the said amount, Rs.10 crores (approx.) has already been withdrawn. There is no dispute in that regard. The rest of the amount was in the form of bank drafts which have expired.

It is submitted by Ms.Kamini Jaiswal that the respondents are entitled to interest on Rs.8 crores (approx.) from 01.04.2016 till date. According to her, her clients are also entitled to 50% of the profit earned by the firm.

Mr.Shyam Divan, learned senior counsel for the petitioners submits that the profit is included in the payment computed by the Arbitrator and hence nothing is payable on the head of profit, in addition to what was deposited.

Thus, there are two heads; (i) interest on Rs.8 crores (approx.) and (ii) the quantum of profit. First, we shall take up the issue of profit sharing. According to Ms.Kamini Jaiswal, the amount would be Rs.33,00,000/- (Rupees thirty three lakhs).

It is submitted that a sum of Rs.18,08,82,477/- (Rupees eighteen crores, eight lakhs, eighty two thousand four hundred seventy seven) was deposited with the learned Mediator-Arbitrator in the form of bank drafts. The term of bank draft of Rs.8 crores (approx.) has elapsed.

The issue raised with regard to grant of interest and merger of the factor of profits in the payment computed by the Arbitrator has to be answered with a sense of pragmatism. When the matter travelled to this Court and presently when we have taken up the matter on a few occasions, there is a change of scenario. There has been parting of money and documents are ready though not registered. They were not registered as would be reflected from the order dated 14.08.2017. Continuance of this litigation, as we perceive, will create further chaos. The long rope will not become longer but may in the ultimate eventuality, be unduly long. We are

not inclined to permit that kind of a situation. We are compelled to remind ourselves of a book on psychology by Eric Berne, called "Games people play". We intend to end the litigation. Therefore, the following directions:

(i) The petitioners shall pay a further sum of Rs.40,00,000/- (Rupees forty lakhs) within two weeks from today to Mr.Parvesh Mehra and others who shall execute the documents and see that they are registered failing which the Registrar(Original Side), Bombay High Court, shall get it executed and registered, by an officer of the Court nominated for the purpose.

(ii) The bank draft which was given to the Mediator-Arbitrator shall be renewed and shall be handed over to Mr.Parvesh Mehra at the time of execution of the documents.

(iii) In view of the aforesaid order, the criminal proceedings initiated against the petitioners stand quashed and all the claims of Mr.Parvesh Mehra and others would stand satisfied.

In view of the above, Ms.Kamini Jaiswal, learned counsel and Mr.Shyam Divan, learned senior counsel fairly joined in stating "All is well, that ends well."

The special leave petitions and the I.As stand disposed of accordingly.

(SATISH KUMAR YADAV)
AR-CUM-PS

(H.S. PARASHER)
ASSISTANT REGISTRAR