

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.4825 OF 2016
IN
FIRST APPEAL NO.758 OF 2012
WITH
CIVIL APPLICATION NO.4074 OF 2013
AND
CIVIL APPLICATION NO.3653 OF 2011**

Mrs. Neha Pradip Hirani ..Applicant

IN THE MATTER BETWEEN

Lovely Hotels Pvt. Ltd. ..Appellant

Versus

Mrs. Neha Pradip Hirani and another ..Respondents

**ALONGWITH
CIVIL APPLICATION NO.4826 OF 2016
IN
FIRST APPEAL NO.800 OF 2012
WITH
CIVIL APPLICATION NO.4075 OF 2013
AND
CIVIL APPLICATION NO.3651 OF 2011**

Gulshan R. Hirani and another ..Applicants

IN THE MATTER BETWEEN

Lovely Hotels Pvt. Ltd. ..Appellant

Versus

Gulshan R. Hirani and others ..Respondents

Mr. S. K. Shinde for the Applicants/original Respondents in First Appeals.

Mr. A. M. Kulkarni for the original Appellants in First Appeals.

CORAM : R. M. SAVANT, J.
DATE : 22nd DECEMBER, 2016

P.C.

1 Not on board. Though the First Appeals and the Civil Applications are shown on board, with the consent of the Learned Counsel for the parties taken on board and heard.

2 The above Civil Applications have been filed for the following substantive reliefs :-

“(b) This Hon'ble Court may be pleased to recall the order dated 27.07.2016 passed by this Hon'ble Court (Coram: R. M. Savant, J.) in the above First Appeal and connected Civil Applications (Exhibit A) and to modify the said order suitably.

(c) This Hon'ble Court may be pleased to take on record the fresh consent terms agreed upon by and between the parties (Exhibit B) and dispose of the above First Appeal and connected Civil Applications in terms of the fresh consent terms.”

3 The reasons why the said reliefs are sought, are mentioned in paragraphs 3 and 4 of the above Civil Applications. The said paragraphs 3 and 4 are reproduced hereinunder for the sake of ready reference :-

“3. The said Suit was decreed on 06.05.2011. Therefore the Appellant filed the present First Appeal, which came to be admitted. The Appellant filed one Civil Application

seeking stay to the impugned decree while the Applicant filed another Civil Application for injunction. When the matter was pending, the parties arrived at the compromise and entered into consent terms dated 27.7.2016. The Applicant states that the cheques mentioned in clause 3(c) of the said Consent Terms were handed over to the Applicant and there is no dispute whatsoever in that regard. However, there was one mistake while issuing the said cheques. The Applicants later on realized and accordingly informed the Applicant that in F.A. No.800 of 2012 alongwith the Respondents/original Plaintiffs-Gulshan R. Hirani, there was another Plaintiff/Respondent namely Kishan G. Hirani. As such the Applicant informed the Applicant that, the amount given in the name of Gulshan R. Hirani is required to be distributed equally between Gulshan R. Hirani and Kishan G. Hirani. They hereby confirmed that the total amount payable in favour of Gulshan Hirani is not required to be changed but, the same is only required to be distributed between the two original Plaintiffs, so as not to have the TDS issue in future.

4. Apart from the above mistake, in an unfortunate incidence of fire at the office of the Applicant, some of the cheques mentioned in clause 3(c) of the said consent terms got totally destroyed and they cannot be even presented for encashment.”

4 The Learned Counsel for the parties i.e. Mr. S. K. Shinde appearing for the Applicants herein i.e. original Respondents to the First Appeals and Mr. A. M. Kulkarni appearing for the Respondents herein i.e. original Appellants in the First Appeals are ad idem that the order dated 27.07.2016 be recalled. By the said order, the First Appeals filed by the original Appellants were disposed of in terms of the Consent Terms that were filed. The order dated 27.07.2016 in view of the consensus between the Learned Counsel is accordingly recalled. The proceedings are restored

to file. The Civil Applications are accordingly disposed of.

5 The Learned Counsel for the parties i.e. Mr. A. M. Kulkarni for the original Appellants and Mr. S. K. Shinde for the original Respondents tender Consent Terms bearing today's date i.e. 22.12.2016 evidencing the settlement arrived at between the parties. By an order passed today, the above First Appeals alongwith Civil Applications have been restored to file. The Consent Terms filed are on the same lines as the Consent Terms which were filed on 27.07.2016 except to the extent that in the fresh Consent Terms that have been filed the payment to be made to the original Plaintiff No.2 Kishan Hirani is reflected on page 4 of the Consent Terms. The Consent Terms have been signed by the Learned Counsel Mr. A. M. Kulkarni as also by the Learned Counsel Mr. S. K. Shinde. The Consent Terms have also been signed by the respective parties i.e. Mr. Bhupendra Gupta on behalf of the Appellants and on behalf of the Respondents by Mrs. Neha Hirani, Mr. Gulshan Hirani and Mr. Kishan Hirani. The parties are also personally present in Court and when put in the box and queried, they all state that the Consent Terms are acceptable to them and that they have signed them of their own free will and volition. Son of Mr. Kishan Hirani is personally present in Court and states that the Consent Terms are acceptable to his father and that he has signed them of his own free will and volition. The Consent Terms are

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taken on record and marked as “X” for identification. The First Appeals are disposed of in terms of the said Consent Terms.

6 In view of the disposal of the First Appeals, the Civil Application No.4074 of 2013, Civil Application No.4075 of 2013, Civil Application No.3651 of 2011 and Civil Application No.3653 of 2011 do not survive and to accordingly stand disposed of.

[R.M.SAVANT, J]