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\$~J-3 to 5 (common order)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CONT.CAS(C) 434/2013**

METAL BOX INDIA LIMITED

..... Petitioner

Through: Mr. Navim R. Nath, Advocate with
Ms. Malvika Trivedid, Adv. &
Mr. G.Kandpal, Adv. &
Mr. G. Joshi, Adv.

versus

T K SEHGAL & SONS (HUF) AND ORS Respondents

Through: Mr. H.L. Narula, Advocate

+ **CONT.CAS(C) 504/2013**

PANKAJ K. SAHGAL

..... Petitioner

Through: Ms. Malvika Trivedi, Adv. with
Ms. Malvika Prasad, Adv.

versus

V. KRISHNA & ORS.

..... Respondent

Through: Mr. H.L. Narula, Advocate

+ **CONT.CAS(C) 452/2014**

SH. PANKAJ K SAHGAL

..... Petitioner

Through: Ms. Malvika Trivedi, Adv. with
Mr. G. Kandpal, Adv. &
Ms. Malvika Prasad, Adv.

versus

SH. V KRISHNA & ANR

..... Respondents

Through: Mr. H.L. Narula, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

ORDER

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26.05.2016

Vide a separate order, the contempt petitions stand dismissed.


V.K. SHALI, J.

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HIGH COURT OF DELHI AT NEW DELHI

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RFA 97/2012

Pronounced on: 26th May, 2016

METAL BOX INDIA LTD.

..... Appellant

Through: Mr. Amit Sibal, Senior Advocate with
Mr. Jugal Wadhwa, Adv
Ms. Malvika Trivedi, Adv. ,
Mr. Ghanshyam Joshi, Adv. &
Mr. Chirag Joshi, Adv.

versus

T.K. SEHGAL & SONS (HUF) & ORS. Respondents

Through: Mr. H.L. Narula, Adv. with
Mr. Bhupesh Narula, Adv.

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CM(M) 439/2013

METAL BOX INDIA LIMITED

..... Petitioner

Through: Mr. Harish Malhotra, Senior Advocate
with Mr. Akhil Sibbal, Adv.,
Ms. Malivika Trivedi, Adv.,
Mr. Jugal Wadhawa, Adv. &
Mr. G. Joshi, Adv.

versus

T. K. SEHGAL & SONS (HUF) & ORS. Respondents

Through: Mr. H.L. Narula, Advocate

+

CONT.CAS(C) 434/2013

METAL BOX INDIA LIMITED

..... Petitioner

Through: Mr. Navim R. Nath, Advocate with
Ms. Malvika Trivedid, Adv. &
Mr. G.Kandpal, Adv. &
Mr. G. Joshi, Adv.

versus

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T K SEHGAL & SONS (HUF) AND ORS Respondents
Through: Mr. H.L. Narula, Advocate

+ **CONT.CAS(C) 504/2013**

PANKAJ K. SAHGAL Petitioner
Through: Ms. Malvika Trivedi, Adv. with
Ms. Malvika Prasad, Adv.
versus

V. KRISHNA & ORS. Respondent
Through: Mr. H.L. Narula, Advocate

+ **CONT.CAS(C) 452/2014**

SH. PANKAJ K SAHGAL Petitioner
Through: Ms. Malvika Trivedi, Adv. with
Mr. G. Kandpal, Adv. &
Ms. Malvika Prasad, Adv.
versus

SH. V KRISHNA & ANR Respondents
Through: Mr. H.L. Narula, Advocate

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. These are three contempt petitions, one CM (Main) and one Regular First Appeal which are being taken up together as the present order will effect almost all these cases. Arguments were actually heard only on the application being CM APPL.30021/2015.

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and other pending applications in the main matter bearing RFA No.97/2012.

2. Before giving the facts of the present case I am tempted to reproduce the saying that '*Fools make houses and wise men live in them*'. This is the most apt saying in the context of the present batch of petitions. How it is apt and fitting most appropriately to the facts of the case will be reflected by the facts of the stance taken by the parties. It would be pertinent here to reproduce the brief facts of the case first.
3. One T.K. Sehgal and sons (HUF) through its *Karta* Respondent/plaintiff No.1 (herein) filed a suit for possession and damages against Metal Box India Limited, formerly known as Metal Box of India Limited, registered office at Allahabad Bank Building, 2nd Floor, 17, Parliament Street, New Delhi claiming the possession of the Northern portion of the property No.4, Sardar Patel Marg, New Delhi, comprising ground floor, first floor and Barsati floor along with four servant quarters and two garages, etc. on a monthly rent of Rs.4360/- exclusive of water and electricity charges. In addition to this, a decree for a sum of Rs.50,000/- by

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way of damages for use and occupation was also claimed for the period from 01.06.1991 to 30.06.1991 as well as future damages/mesne profits at the aforesaid rate till the actual possession of the premises is delivered. It was the case of T.K. Sehgal and Sons and they had let out the aforesaid property to the appellant/Metal Box on a monthly rent of Rs.4360/- and the tenancy month was to commence from first of each English calendar month and to end with the last day of English Calendar month. The respondent/plaintiff had terminated the tenancy of the appellant/Metal Box vide notice dated 07.04.1991 which was duly served on them on 13.04.1991 by registered post the tenancy had been terminated w.e.f. 31.05.1991 and since they failed to vacate the premises, a suit for possession was filed and damages at the rate of Rs.50,000/- were claimed.

4. The appellant/Metal Box denied the ownership of T.K. Sehgal and Sons (HUF). It has taken the plea that the rent was being paid regularly. It was denied that the rent was Rs.4360/-. It was stated that the rent of Rs.2760/- with an interest of Rs.1600/- per month

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and therefore the jurisdiction of the Civil Court is barred. The damages @ Rs.50,000/- were also contested.

5. On the basis of the pleadings of the parties, an application under Order 12 Rule 6 CPC was moved by the Respondent/plaintiff. Reply to the said application was called for and the learned trial Court after hearing the arguments passed a decree of eviction on the basis of admission holding that the rent of the premises was Rs.4,360/-. Prima facie, from the documents placed on record by the respondent/plaintiff although the defendant was claiming that the rent was only 2760/- per month and a sum of Rs.1600/- was paid on account of interest on the fixed deposit. The notice of termination was not denied by the appellant and since all the basic requirements were satisfied in order to sustain a judgment on the basis of admission, the Court passed a decree.
6. Against this decree, the Appellant/defendant/Metal Box filed RFA No.97/2012 which came up for hearing for the first time on 28.02.2012 and since there was a caveat filed by the landlord T.K. Sehgal & Sons (HUF), a copy of the paper book was supplied to him and the the matter was adjourned to 06.03.2012 on the request

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of Mr. Parag Tripathi and Mr. Neeraj Kishan Kaul, learned senior counsel on 06.03.2012 the matter was again adjourned to 07.03.2012. On 07.03.2012, the following order was passed by the Court:-

"After arguments were heard in this appeal it is agreed that the appeal can be disposed of by granting time of two years from today to the appellant to vacate the suit premises and the appeal is not being pressed on merits. The appellant agrees to pay a sum of Rs.1,00,000/- per month as mesne profits from the date of the impugned judgment and decree for a period of one year from today to be paid every month and thereafter a sum of Rs.2,00,000/- per month every month for the second year. Any amount already paid for this period by the appellant to the respondents can be adjusted towards payment required to be made of the aforesaid amount of mesne profits. The payment of mense profits is without prejudice to the respective rights and contentions inasmuch as the issue of mense profits is pending disposal before the Trial Court. The appellant will also clear all electricity and water charges payable with respect to the suit premises till the premises are vacated. It is clarified that the period of two years is the outer limit and the appellant can vacate the premises earlier if its wants to. Let the appellant file an undertaking in the aforesaid terms in this Court within a period of two weeks from today. On the appellant filing and complying with the terms of the aforesaid undertaking, execution of the impugned judgment and decree dated 4.2.2012 is stayed for a period of two years from today or earlier till the premises are vacated Appeal is disposed of accordingly.

Sd/-

VALMIKI J. MEHTA, J
March 07, 212."

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7. In terms of the order dated 07.03.2012 one thing is clear that the learned Judge would have heard the appeal but for the fact that the learned two senior counsels appearing for the appellant had prayed for grant of two years time to vacate the premises and they would not press their appeal, this relief was granted by the court and the appeal was disposed of subject to the appellant agreeing to pay a sum of Rs.1,00,000/- per month as the mesne profits from the date of order and for a period of one year and thereafter at the rate of Rs.2,00,000/- per month for the second year. Further an undertaking was to be filed on behalf of the appellant Metal Box.
8. This undertaking was also filed by one Rohit Kumar Sharma, aged about 67 years as the constituted attorney of the appellant/ Metal Box. I am tempted to reproduce the exact language of the undertaking which reads as under:-

“UNDERTAKING ON BEHALF OF THE APPELLANT”

I, Rohit Kumar Sharma, aged about 67 years, Son of Late J.S. Sharma, working for gain at 4 Scindia House, Ist Floor, Connaught Place, New Delhi-110001, do hereby solemnly affirm and state as follows:

- 1. That I am the Constituted Attorney of the Appellant Company and am fully conversant with the facts and*

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circumstances of the case and am competent to depose by way of the present undertaking on behalf of the Appellant.

- 2. That I am filling the present undertaking on behalf of the Appellant, in compliance of order dated 7.3.2012 passed by this Hon'ble Court in the present appeal.*
- 3. That the Appellant Company undertakes that it shall vacate the suit premises within a period of two years from the date of passing of the aforesaid order disposing of the present appeal viz. on or before 6.3.2014.*
- 4. The Appellant Company also agrees to pay to the Respondent, T.K. Sehgal & Sons (HUF) from the date of the impugned judgment (4.2.2012), every month, till the date of vacation, over the aforesaid period; a sum of Rs.1,00,000/- (Rupees One Lakh only) per month from the date of the impugned judgment viz 4.2.2012, till the period of one year from the date of this Hon'ble Court's Order dated 7.3.2012 i.e. till 6.3.2013 and thereafter from 7.3.2013 till 6.3.2014 a sum of Rs.2,00,000/- (Rupees Two Lakhs only) per month for the second year. The amounts already deposited by the appellant in Tis Hazari Courts in favour of the respondent(s) for the period 4.2.2012 to 31.12.2012 shall be adjusted from the first payment to be made for the period 4.2.2012 to 31.3.2012. As per the Order dated 7.3.2012 passed by this Hon'ble Court, the said payments are without prejudice to the rights and contentions of the Appellant in respect of pending litigation.*
- 5. The appellant also agrees to clear all electricity and water charges payable with respect to the suit premises till the premises are vacated.*

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Sd/-
DEPONENT

VERIFICATION:

Verified by me at New Delhi on this, the 19th day of March 2012 that the contents of the above Undertaking are true and correct to the best of my knowledge and belief. That no part of it is false and nothing material has been concealed therefrom.

Sd/-
DEPONENT"

9. Before the undertaking could be formally accepted, certain discrepancies were pointed out by the counsel for the Respondent/ landlord because of which the constituted attorney was directed to appear and get his statement recorded. On 23.08.2012, the constituted attorney did not appear and a request for adjournment was made on the ground that counsel will be changed. In the meantime the appellant/tenant paid mesne profits/damages at the rate of Rs. One lac for the month of April, 2012 to August, 2012. Thereafter, the matter kept on adjourning for one reason or the other on the ground that the stand taken by the appellant/tenant is that the undertaking is in compliance to the order dated 07.03.2012 while as the counsel for Respondent/landlord has raised certain objections with regard to the undertaking. As a consequence of this

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the appellant filed number of successive applications stating that the appeal be decided on merits, for stay of eviction, etc. Similarly, the respondent also filed applications seeking execution of the decree.

10. I have heard Mr. Amit Sibal, the learned senior counsel for the appellant and Mr. Narula, the learned counsel for the respondent. Mr. Sibal has contended that the order dated 07.03.2012 is an order which is unenforceable on account of the fact that the appellant/tenant had filed CM No.30021/2015 praying therein that the appeal be heard and decided finally on merits. It has been contended that the aforesaid application for decision of the appeal on merits was filed by the appellant on account of the fact that the respondent/plaintiff had raised objections to the undertaking having been filed on behalf of the appellant. Further, the purported compromise which was made as a base for deciding the appeal was not a compromise which was enforceable in law. In order to supplement this argument, Mr. Sibal contended that the appeal can be disposed of in three manners, firstly on merits, secondly by withdrawal under Order 23 Rule 1 CPC and thirdly, by a

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compromise under Order 23 Rule 3 CPC. It was contended that the order dated 07.03.2012 was neither an order recording withdrawal of the RFA by the appellant nor could it be treated as a disposal of the appeal on merits.

11. It was next contended that the order could also not be treated as an order passed on the basis of a compromise in terms of Order 23 Rule 3 CPC. The learned counsel further contended that when an appeal or a suit is disposed of in terms of compromise, the provisions of Order 23 Rule 3 CPC have to be strictly complied with as the same are mandatory in nature. Reliance was sought to be placed on the judgment of the Apex Court in *Jagdish Manohar Singh vs. M/s. South Delhi Builders Pvt. Ltd.*, ILR (2008) Supp. (9) Delhi, Para 8, wherein in Para 8 it has been observed as under:-

“8. The procedure for compromise as may be noticed is outlined in Order 23 Rule 3 CPC and in the opinion of this Court, is not merely a procedure, but also obliges the parties and the Court to follow a particular discipline in regard to the recording of settlement, which would result in a binding decree. The decision of the Supreme Court in Ajad Singh (supra) and indeed the earlier decisions are sufficiently clear on this aspect, that, any decree which is opposed to the letter and procedure of Order XXIII R.3 CPC cannot be sustained so far as those who do not participate in it. It is axiomatic that where the law prescribes a mode of doing something, no other

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procedure or mode of its performance is lawful. Therefore, the Court has to adhere to the parameters of Order 23 in disposing of a suit-either permit its withdrawal (Rule 1) or record a lawful compromise (Rule 3). In the latter event, a decree is also drawn in terms of the compromise. The Supreme Court in Ram Narang vs. Ramesh Narang, (2000) 11 SCC 44, held that an order under Order 23 Rule 3 is composed of both a command and a contract, consent of the parties being an essential component of such an order. Such a consent needs to be obtained in the form prescribed in the said rule, failing which it cannot be treated as valid or binding”.

12. It was contended that for the purpose of compromise under Order 23 Rule 3 CPC there has to be an agreement in writing, signed by all the parties and only then it should be treated as a valid compromise and anything which is in derogation of the same is not enforceable. To support his contention, the learned counsel has placed reliance on *Gurpreet Singh vs. Chatur Bhuj Goel*, (1988) 1 SCC 27; *Kamla Devi vs. Prabhat Chand*, 1997 (40) DRJ (DB); *Bhai Swinder Singh vs. Ram Kishore & Anr.*, 66 (1997) Delhi Law Times 575; *Shyam Telelink Ltd. Vs. UOI*, (2010) 10 SCC 165.
13. The learned counsel has also referred to the legislative history of Order 23 Rule 3 CPC to indicate that before amendment to the CPC in the year 1976 condition of compromise being in writing

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and signing by the parties was not there and therefore the same was amended by the legislature in its wisdom to avoid any confusion.

14. This aspect of the matter was contested by Mr. Narula, the learned counsel for the respondent. He contended that the language of Order 23 Rule 3 CPC is not applicable to the facts of the present case and no help can be drawn from the same by the appellant/tenant.
15. It has been contended by Mr. Narula that the conduct of the authorized representative of the appellant is nothing but reaffirmation of the order which has been passed by the Court on the basis of the statement having been made by the learned counsels appearing for the parties. It is stated that pursuant to the order dated 07.03.2012 the two senior counsel who were appearing on behalf of the appellant, they did not press the appeal and both the parties representing their respective clients had agreed that the appellant shall be given two years time to vacate the premises subject to its paying use and occupation charges @ Rs. 1,00,000/- for the first year and Rs.2,00,000/- for the second year. It is stated that these charges were actually paid and deposited by appellant

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with the Registrar General as per the orders dated 06.05.2015 and 18.09.2015 and further an undertaking was also filed in compliance to the order dated 07.03.2012 which was indicative of the fact that the appellant had accepted the terms and conditions and enjoyed the benefit in terms of order and later on it cannot be permitted to retrace its steps.

16. I have carefully considered the submissions made by the respective sides and gone through the order and the record.
17. At the outset it is stated that under Section 80 of the Evidence Act a presumption of correctness is attached to the judicial orders. Meaning thereby, not only the judicial orders are correctly recorded but there is a certain amount of sanctity to the judicial orders is to be attached and in case such a sanctity is not imparted to judicial orders then any litigant can toss around a judicial order simply raising false, frivolous and meritless pleas after taking the advantage in terms of the said order. It is to be noted that any counsel who appears in Court has an authorization in his favour by way of *vakalatnama* to represent the said client. The present appeal has been filed on behalf of the appellant through Ms. Indira

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Sawhney, Mr. J.K. Seth and Mr. Lakshya Saharia, Advocates and their *vakalatnama* is on record. The appellant was also represented by two reputed senior counsels, namely, Mr. Neeraj Kishan Kaul and Mr. Parag Tripathi of this Court who only appeared on the instructions of the briefing counsel. Similarly, the respondent/landlord was also represented by the counsel. The appeal came up for the first time on 28.02.2012 when the counsel for the respondents were present as caveator. Copy of the paper book was supplied to them and the matter was adjourned to 06.03.2012. On which date at request of the learned senior counsel the matter was adjourned to 07.03.2012. On the next date, i.e. on 07.03.2012 after arguments were heard in the appeal, it was agreed that the appeal can be disposed of by granting time of two years to the appellant to vacate the suit premises from that particular date and also on the condition that appellant would not press the appeal on merits. Thereby meaning that the proposal of the grant of time of two years to the appellant though may have emanated from either of the counsel but it was accepted by both the parties. Obviously the said proposal could not have been accepted without

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the instructions of the counsel whose power of attorney was on record and further on account of the said grant of time of two years, the learned counsel for the appellant decided not to press their appeal on merits. This is a statement of fact recorded in the order sheet and it does not need any further hair splitting. Any *vakalatnama* if perused carefully, clearly incorporate a condition that any admission or concession which is made by a counsel for and on behalf of his client will bind him and he has no occasion to raise a grievance about the same. If there is a grievance raised by a client on that score that his counsel had made a concession or an admission on question of fact which he was not authorized to do or for which no instructions were given to him, it must be matched with a contemporaneous conduct of the client. This contemporaneous conduct of the client would be reflected by sending a protest letter either to the counsel or in an extreme situation by making a complaint to the professional body against the counsel. There is no such grievance raised in the present case of that nature. Therefore, this concession of accepting the period of two years as a period for vacation of the premises is full and final

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and a grievance cannot be raised about it by the counsel for the appellant now. Not only this concession was made and accepted by the learned senior counsel appearing for the appellant but the conduct of the party itself is further confirming that it was done by them voluntarily and without any reservation in as much as they further paid damages @ Rs.1 lac per month from April, 2012 to August, 2012, that is for five months which is not a small period. Acceptance of the order dated 07.03.2012 and the grant of time of two years further gets fortified by the fact that the appellant was directed to file an undertaking in this Court in terms of order dated 07.03.2012 which was filed by one Rohit Kumar Sharma in the capacity of a constituted attorney of the appellant. All these facts persuade the Court to draw only one irresistible conclusion that not only the order dated 07.03.2012 was loud and clear but it was also accepted by them in letter and spirit but was also complied with by the appellant/tenant. It is a different matter that the respondent on account of its foolishness started raising objections with regard to the contents or the modalities of the undertaking. But the fact of the matter remains that the appellant did draw the benefit in terms

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of the order dated 07.03.2012 twice over that is to say though he was to occupy the property only for two years but even after expiry of four years from the date of passing the order he continues to be in possession. The credit for all this goes to the respondent counsel and ingenuity of the counsel for the appellant/tenant. And in the process sufferer is the poor owners of the house.

18. Undertaking which a party files has to be accepted by the court though the opposite side may point out the deficiencies in the same but if in the process of pointing out the deficiencies, he crosses the limit a cantankerous, unscrupulous litigant is bound to exploit the situation. This precisely has happened in the present case. Record shows that the appellant is the tenant in respect of this posh property on Sardar Patel Marg since 1966 that is as on date for nearly 50 years. The appellant only wants to perpetuate his possession of the property in question by raking up all frivolous plea by taking the advantage of the conduct of the counsel for the respondent. The respondent which is an HUF and is headed by a *Karta*.

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19. So far as the contention of Mr. Sibal is concerned, I do not find any fault with the said contention. In normal circumstances, the appeal would be decided on merits. This is not a case where the appeal has been decided on merits. As regards Order 23 Rule 3 CPC that is a case where a compromise is arrived between the parties in a suit or an appeal and that compromise has to be in writing and signed by the parties. Certainly it is a visualizing case where a compromise may be arrived at between the parties in the Court itself or outside the Court where the Court feels that the compromise deserve to be placed on record in writing that the parties will be drawing a compromise by signing it and filing it in court along with the affidavit to certify its veracity and the court will dispose of the matter. In appropriate cases the Court may record the statement of the parties in Court itself to bind them. But, certainly the present case does not fall in the said category.

20. Thus, we are left with only Order 23 Rule 1 CPC. Order 23 Rule 1 CPC talks about abandoning or withdrawal of a claim or a part thereof. Now this could be on certain terms and conditions or it could be without reservation. In the present case it could be very

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authentically said that when the arguments were heard something transpired due to which either the Court was not inclined to grant relief to the appellant or the Court was inclined to grant time to the appellant only or alternatively decide the appeal by dismissing the same to which both the parties were reluctant and an offer for grant to time was made by the counsel for the respondent which was accepted by the counsel for the appellant and on account of acceptance of this offer by the appellant it gave up its claim of challenging the impugned order on merits. So in that sense it was an abandoning of a relief of raising a challenge to the impugned order on merits subject to its being granted two years time. So far as this is concerned, it became final outcome. The appellant or the respondent cannot be permitted to retrace their steps once this is recorded in the judicial order. This is not a type of order or a compromise or an agreement which is required to be in writing as is contended by Mr. Sibal. The appellant has chosen voluntarily without any threat, coercion or inducement not to press his appeal on merits, subject to grant of two years time which has been

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granted by the Court. This concession or admission is irreversible.

It is for the court to see how to ensure its compliance.

21. Then the question arises as to how to give shape to modalities in which the parties would be bound by the terms and conditions of settlement. It is in this context that the learned counsel for the appellant had also agreed to pay a sum of Rs.1 lac as mesne profits for the first year and Rs.2 lac for the second year and further also filed undertaking. Undertaking also suggests all these terms and conditions which are part of the order were complied with. It is a fact that the appellant after the order did pay to the respondent at the rate at which it was so directed by this Court. In the light of this it became conclusive and the appellant was stopped from retracing his steps from the same by contending that a formal decree has not been passed or that objections were raised by the respondent. These are all frivolous objections to wriggle out of the order dated 07.03.2012. This kind of attitude on the part of the appellant who seems to have turned dishonest and unscrupulous cannot be permitted to be done and thus it could not only harm the respondent because of its foolishness raising objections to the

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terms and conditions of the undertaking but also the Court because if this is permitted to be done then there will be no sanctity or credibility attached to the orders passed by the Court and the Court will be tossed around by litigants of such hue.

22. I am not at all impressed by the judgments which have been cited by the learned counsel for the appellant. Reliance has been placed by the appellant on *Mrs. Jagdish Manohar Singh vs. M/s South Delhi Builder P. Ltd; ILR(2008) Supp.(9) Delhi 89*, wherein it was laid down that when a law requires a particular thing to be done in a manner then it has to be done in the said manner and no others. The present case was not a case where the compromise was required to be signed and verified in terms of Order 23 Rule 3 CPC because it was compromise arrived at during the course of arguments and the Court in its wisdom did not grant time to the parties to file a compromise in terms of Order 23 Rule 3 CPC nor did the parties asked for a time to comply with the said order and the rule. Further, it is not necessary that every compromise be reduced into writing and signed by the parties, especially the one which the parties strike of their own or at the intervention of the

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Court during the course of arguments. Moreover, it was a case here that the appeal was not being pressed on merits by the appellant.

23. If the contention of Mr. Sibal is to be accepted then practically every compromise of the nature as is arrived in the present case will not have to be accepted as a compromise under Order 23 Rule 3 of the CPC. Nor can it be said that such compromise are enforceable. The argument of Mr. Sibal that a decree ought to have been drawn mandatorily on the basis of the said compromise also does not impress me because the very fact that the appellant pursuant to the compromise did not press his appeal on merits subject to it being given time of two years to vacate the premises which actually it enjoyed and coupled with the fact that its conduct of paying the use and occupation charges on enhanced rate continuously for five months and giving an undertaking of it's authorized representative to vacate the premises after enjoying the same for two years estopps now to say that compromise is withdrawn. Such an unprincipled and unscrupulous plea of the appellant cannot be allowed, consequently, the appellant can also

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not be permitted to take advantage of the order and then retrace its steps. Such an argument is being advanced by the appellant only to perpetuate the possession of the premises in a posh locality like Sardar Patel Marg.

24. Similarly, the judgment in *Gurpreet Singh vs. Chatur Bhuj Goel, Kamla Devi, Bhai Swinder Singh (supra)* are not applicable to the facts of the case.
25. One of the arguments which Mr. Amit Sibal, the learned senior counsel has advanced was that the respondent relying on the deposits made by the appellant in the month of April to August, 2012 in terms of order dated 07.03.2012 or the deposits made pursuant to the order dated 06.05.2015 and 18.09.2015 is misplaced as subsequent conduct or the events cannot come to the aid of the respondent after 1976 amendment of the CPC. It is further contended that the deposits were made by the appellant in pursuance to orders dated 06.05.2015 and 18.09.2015 only in order to show his bona fides and without prejudice to the rights and contention of the appellant to the merits of the case. It is also contended that the Court took judicial notice of the objections filed



by the respondent and called upon the appellant to file its response to the objections by order dated 05.09.2012 and which negates the compromise dated 07.03.2012 as being enforceable.

26. I do not agree with this contention of Mr. Sibal except to the extent that the orders dated 06.05.2015 and 18.09.2015 by virtue of which the appellant was directed to deposit the use and occupation charges are not being referred to. The said orders were necessitated on account of the fact that the Court had to balance the equities. The appellant could not have been permitted to use the luxurious premises in a posh area of Sardar Patel Marg and yet deny paying the amount at least in terms of the use and occupation charges which he had agreed to pay vide order dated 07.03.2012. Therefore, this contention of Mr. Amit Sibal that orders dated 06.05.2015 and 18.09.2015 are not being looked at except that these orders were passed to balance the equities between the parties. So far as the filing of the response by the appellant to the objections filed by the respondent are concerned, these are also inconsequential. The reason for this is that the point which is under consideration of the Court is as to whether despite the

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objections having been raised by the respondent, did the Court categorically negate the contents of the order dated 07.03.2012. The answer to this question is emphatic no. The reason for saying so is that the order dated 07.03.2012 is in two parts. The first part of the order clearly records the statement of the learned senior counsel representing the appellant that they do not want to press their appeal, subject to their being given two years time to vacate the premises. This two years time was not only granted by the counsel for the respondent and accepted by the appellant voluntarily but it was also accepted by the appellant that it would pay a sum of Rs.1 lac for the first year and a sum of Rs.2 lacs for the second year as use and occupation charges. The factum of the order having been accepted voluntarily by the appellant by his conduct also gets reflected by the fact that for the period of five months from April to August, 2012 he made a payment of Rs.1 lac to the respondent. Therefore, once he did that he was estopped now for retracing his steps. The acceptance of the terms and conditions of not pressing its appeal get further fortified by the fact that the appellant was called upon to file an undertaking which he

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did file through his authorized representative of the appellant. Now to say that the compromise ought to have been in writing or that the objections were filed or that he filed reply to the objections or that the compromise was unenforceable is nothing but an unscrupulous and unprincipled plea raised by the appellant only to perpetuate his occupation of the premises.

27. I have already observed that the aforesaid occasion would not have arisen but for the foolishness of the respondent that who merely because the respondent being foolish in raking up the issue which was not at all relevant because enforcement of the undertaking is between the Court and the person who is furnishing the undertaking. The respondent had absolutely no right to rake in the same. Therefore, I feel that it is too late in the day that instead of having enjoyed the premises for four years instead of two years which it had sought, cannot be permitted to the appellant to contend today that the order dated 07.03.2012 is unenforceable on account of the so-called technicality that the compromise was not signed by the parties or decree was not drawn or that objections were raised with regard to the modalities of furnishing an

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undertaking or that he had filed reply to the objections of the respondent. This kind of technical objection by the appellant deserves to be not only to be curbed but also outrightly rejected.

28. Another subsidiary argument to the aforesaid argument which was advanced by Mr. Amit Sibal that he was not permitted to utilize the premises peacefully. This is again a lame duck excuse by the appellant that it was not able to enjoy the premises peacefully. On the contrary, as a matter of fact, the appellant being a company and having plenty of resources of engaging counsel it has embroiled the respondent a poor individual or a Hindu undivided family in totally unwarranted litigation so as to ensure that he is not able to retrieve the possession of the premises in question. I, therefore, reject this contention of Mr. Sibal also.

29. For the reason mentioned above, I feel that the applications of the appellant, CM APPL 6638/13 seeking stay of impugned order dated 04.02.2012 passed by the Ld. ADJ in Civil suit No.95 of 2010 and CM APPL 30021/15 for hearing and final adjudication of the appeal on merits is totally misconceived and they are accordingly dismissed and it is held that the order dated 07.03.2012

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by virtue of which the appellant had not pressed his appeal on merits, subject to it being given two years time, which not only has been enjoyed in full measure by the appellant but in fact it was enjoyed double of the said period and by his conduct made the payment to the respondent for the month of April to August, 2012 and also filed an undertaking, therefore, by his conduct also he accepted the terms and conditions of the order dated 07.03.2012 and he has to comply with the said order. The said order is fully enforceable.

30. The objections which have been now raised by virtue of the various applications by the appellant are only ploy by the appellant to perpetuate his holding the possession of the suit premises endlessly. All these application are accordingly dismissed and the appellant is given three months time from today to vacate the premises, failing which the respondent shall be free to file the execution petition for retrieval of the possession of the premises which has been their occupation for the last 50 years. Direction is also issued to the executing court that the executing court shall

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provide in the first instance itself the necessary police aid to retrieve the possession of the premises.

31. Along with the present appeal there are three contempt petitions. The appellant had filed a contempt petition No 434/13, wherein it was stated that the Respondents are in contempt of order dated 28.09.2012 and 07.11.2012 of this court as the Respondents have malafidely filed and pressed an execution petition seeking execution of a decree of possession before the learned trial court inspite of the fact that status quo orders were passed by this court. While as Contempt Petition No. 452/14 and 504/ 13 was filed by the respondent wherein the respondents has sought initiation of an action on the part of the appellant on account of having not complied with the order dated 07.03.2012 for vacating the premises and on account of withdrawal of undertaking dated 19.03.2012 of one Rohit Sharma, filed in pursuance of order dated 07.03.2012 respectively.
32. I am not incline to take any action against the appellant or even the respondent for the reason that the contempt is between the alleged contemnor and the Court. Further, the parties have essentially filed

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the contempt petitioner during the pendency of the applications in the main matter RFA No.97/2013 in order to bring to bear pressure on the opposite side. That is not the purpose of the contempt. The purpose is to see that majesty of the Court is not lowered. Since this Court has already rejected the objections/applications filed by the appellant for hearing the appeal on merits, therefore, I am not inclined to further multiply the litigation before this Court by initiating the action against the appellant or the respondent by initiating action for contempt. Therefore, all the three Contempt Petitions are rejected.

CM(M) 439/2013

33. So far as the present CM (Main) 439/2013 is concerned, the appellant has challenged the order dated 04.04.2013 by virtue of which the application of the appellant under Order 18 Rule 17 CPC was rejected.
34. Order 18 Rule 17 CPC confers a discretion on the Court to recall any witness at any stage of a suit, who has been examined and put such questions to him as the court may think fit. Therefore, the Order 18 Rule 17 CPC confers, firstly, a discretion on the court which may be exercised *suo motu* or an application of either of the

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parties. But, it cannot be invoked by a party as a matter of right. Secondly, the purpose of Order 18 Rule 17 CPC is to recall a witness and the questions which could be put to him are by the court under Section 165 of the Evidence Act. The whole purpose of the aforesaid provision is to remove any ambiguity or seek clarification which the court may require and which may further the interest of justice. Normally this power would not be exercised by the court at the instance of the party to fill up the lacuna in case the witness has already been examined or it had sufficient opportunity to do so.

35. In the backdrop of aforesaid provisions, the appellant had filed an application under Order 18 Rule 17 CPC for recalling PW-3 and PW-4 for further cross-examination in the suit. The issue which was involved in the suit was that in a suit for possession and for grant of damages/mesne profits for the use and occupation a decree was passed in favour of the plaintiff/respondent under Order 12 Rule 6 CPC which has been assailed in RFA No.97/2013. The appeal was also not pressed vide order dated 07.03.2012 and the only surviving issue arises in the suit was with regard to payment

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of future damages/mesne profits and it was in that context that the evidence was being produced by the parties.

36. It may also be pertinent here to mention that the case which was set up by the Respondent /plaintiff in the suit was that the appellant is a tenant at the rate of Rs.4360/- while as the stand of the appellant was that he was paying rent at the rate of Rs.2760/- along with interest @ Rs.1600/- It was in this context the appellant had contended that its registered office was in Kolkata which was vacated in January and July, 1988 and during this period the documents lying were shifted and dumped without clear demarcation and the operation was completely halted in Delhi in 1995 due to no electricity at Barlow House, Delhi for six months. Because of this reason they were unable to access the documents. It is stated that now they were able to lay their hand on documents which was in the nature of correspondence exchanged between T.K. Sehgal, Karta of the plaintiff/respondent and the appellant company. It had been contended that these documents clearly showed that there was certain transactions between the appellant/tenant and the respondent/landlord in the nature of loan-

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cum-deposit arrangements. It was also contended that these documents were permitted to be placed on record by the trial court, subject to payment of cost of Rs.50,000/-. It has been stated that these documents deserve to be put by the appellant to the respondent in cross-examination.

37. This was opposed by the respondent/plaintiff on the ground that the application is an abuse of process of law in as much as the appellant is indulging in dilatory tactics. It was also contended that the intention of the appellant in recall of PW-3 and PW-4 is to only prolong the cross-examination and perpetuate his possession. The learned trial court rejected the application of the appellant as an abuse of the process of law as a consequence of which the present CM (Main) has been filed by the appellant.

38. I have considered the impugned order and gone through the record.

39. I find myself into full agreement with the reasons for rejection of the application of the appellant. First of all, as has been stated above, Order 18 Rule 17 CPC confers a discretion on the Court and the question which have to be put to the witnesses whose cross examination has already been recorded is to be done by the court

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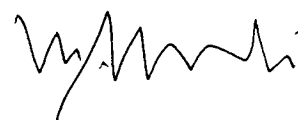
under Section 65 of the Evidence Act and not by the parties normally. Therefore, the provisions of Order 18 Rule 17 CPC is essentially a discretion conferred on the court in furtherance of administration of justice and cannot be claimed as a matter of right by any of the parties.

40. Secondly, the purpose of filing the application by the appellant is to recall PW-3 and PW-4 and confront them with the additional documents which have been filed by the appellant after the closure of the evidence. These additional documents as a matter of fact could not have been taken on record because the appellant is trying to place on record by way of evidence, documents of which he was aware of, though he is claiming that these documents were not previously known to him. Order 18 Rule 17A CPC which deals with the production of evidence which are not previously known or which could not be produced despite due diligence has been deleted by the legislature in its wisdom by an amendment Act of 1999. The purpose of deletion of this provision is essentially that it was being used as a fertile ground for trying to prolong the trial, as has been done in the instant case. The respondent is right in

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contending that the production of the documents by the appellant in the instant case will have absolutely no bearing to the facts of the present case because what is in issue in the suit is with regard to quantum of money to be paid as damages/mesne profits for the user of the premises and the decree under Order 12 Rule 6 has already been passed while as the entire effort of the learned counsel for the appellant is that to assail the decree of possession itself.

41. For the aforesaid reasons, I feel the trial court was absolutely right in observing that the appellant is indulging in dilatory tactics and has rightly rejected the application. There is no illegality, jurisdictional error or impropriety in rejecting the application of the appellant. Accordingly, the present petition is also totally misconceived and the same also deserves to be dismissed. Ordered accordingly. In view of the above order, stay granted to the appellant stands vacated and accordingly pending applications has become infructuous.



V.K. SHALI, J.

MAY 26, 2016

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