

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

% Judgment Reserved on: 10th February, 2016
Judgment Delivered on: 10th May, 2016

+ FAO(OS) 124/2015

JASMOHAN SINGH & ORS Appellants

versus

DR JANG BAHADUR SINGH & ORS Respondents

Advocates who appeared in this case:

For the Appellants : Mr. Ashwini Mata, Senior Advocate and Mr. Amiet Sibal, Senior Advocate with Mr. Gaurav Varma, Mr. Sujoy Datta, Mr. Vinay Tripathi and Mr. Sourabh Gupta.
For the Respondent No.1 : Mr. K. Sultan Singh, Senior Advocate with Mr. Manish Kumar.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

CM No.8013/2015(seeking modification/recalling of order dated 17.03.2015)

1. By the present application, respondent No.1 seeks recall of order dated 17.03.2015.
2. The appellants had filed the present appeal impugning order dated 12.03.2015 whereby the learned Single Judge had held that a

prima facie case emerged that the transfer of shares or execution of Share Transfer Form, would purport to transfer shares in an Indian Company, which would contravene a number of Indian Statutes. Such action, it was held, would be against the public policy of India. The balance of convenience was held to lie in favour of the plaintiff (respondent No.1) and against the enforcement or implementation of the orders of the Massachusetts Superior Court dated 06.10.2014 and 05.03.2015, insofar as they relate to Indian Companies and shares held in them. The learned Judge was of the view that a case had been made out for grant of an *ex parte* ad interim injunction against the appellants restraining them from executing/enforcing the orders dated 06.10.2014 and 05.03.2015 against the plaintiff (respondent No.1) before the Courts outside India including the Superior Court of Massachusetts and other Courts/judicial fora in the USA.

3. Aggrieved by the said order, the appellants had filed the present appeal. On 17.03.2015, the appeal was taken up for hearing and after hearing the parties at length, this Court passed the following order:-

“IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO(OS) 124/2015

JASMOHAN SINGH & ORS

..... Appellants

Through: Mr Ashwini K. Mata, Mr Amit Sibal, Sr. Advs. with Mr NPS Chawla, Mr Gaurav Varma, Mr Adarsh Tripathi, Mr Vinay Tripathi, Mr Sourabh Gupta and Mr Raghav Kapoor, Advs.

versus

DR JANG BAHADUR SINGH & ORS Respondents
Through: Mr Arun Mohan, Sr. Adv. with
Mr Manish Kumar Saryal, Adv.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

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17.03.2015

CM 4945/2015

Exemption is allowed subject to all just exceptions.

FAO(OS) 124/2015 & CM 4944/2015 & 4946/2015

We have heard the learned counsel for the parties at length. Mr Manish Kumar Saryal, who appears for respondent no.1 states that the impugned order may be set aside and that he has instructions to withdraw I.A. No. 5143/2015 in CS(OS) No. 665/2015 which is pending before the learned single Judge at this stage.

In view of the statement made by the learned counsel for respondent no.1, the impugned order dated 12.03.2015 is set aside and the application being I.A. No. 5143/2015 stands dismissed as withdrawn as stated above.

The appeal stands disposed of.

Insofar as the second prayer made in the appeal with regard to the survival of the suit as such, the appellant shall have liberty to make the same before the learned single Judge.

Dasti under the signature of the Court Master.

BADAR DURREZ AHMED, J

MARCH 17, 2015
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SANJEEV SACHDEVA, J

4. Perusal of the order shows that the order was passed after

hearing the counsel for the parties at length. Parties were represented, on both sides, by senior counsel. After hearing the parties, the appeal was passed-over to enable counsel for the respondent No.1 to take appropriate instructions from his client. The appeal was thereafter taken up again and the above order was passed wherein statement of counsel for the respondent No.1 was recorded to the effect that the impugned order be set aside and the application filed before the learned Single Judge, on which the said impugned order was passed, be also withdrawn. Accordingly, the impugned order dated 12.03.2015 was set aside. The subject application pending in the suit was dismissed as withdrawn and the appeal was disposed of. With regard to the prayer of the appellants about the maintainability/survival of the suit, liberty was granted to the appellants to make the said prayer before the Single Judge.

5. The present application has been filed on 27.04.2015, after a gap of 38 days of the passing of the said order. The contention of the applicant is that during the hearing, when the counsel, on record, contacted his client in the United States of America, it was during the 'wee' hours there. The respondent was sleeping at that time and had come very late after attending to his ailing wife and was under total stress and had many sleepless nights before continuously, looking after his wife and as such, being half-asleep and dazed, he was not

able to comprehend what his counsel was speaking on phone. It is contended that the Advocate, on record, hearing the unspecific mumbling mistook that he was not only giving assent to concede but even withdraw the application, whereas the respondent was saying that he was happy to pursue the said application before the learned Single Judge. It is contended that mishearing of the words of the applicant, who was terribly sleep-deprived and extremely tensed and tired and not fit enough to make any decisive statement or take any stand, and its detrimental further dissemination, warranted the said order dated 17.03.2015.

6. The application was supported by an affidavit of the Power of Attorney. Subsequent to the filing of the said application, an affidavit dated 09.06.2015 has also been filed by the respondent No.1. In the affidavit, it is contended that the deponent does not recall that there was any discussion between him and his counsel on the withdrawal of the application. It is also contended that the counsel mistook that he was giving his assent to not only set aside the *ex parte* order, but withdraw the said application. The affidavit notes that the counsel, on record, had told the deponent that he had actually put the said question to the deponent in the wee hours of 17.03.2015 to consent to set aside or stay the order and even to withdraw the said application. It is contended that had he understood him that way, he would never have

instructed him to do so. It is stated that whether it is due to lack of imparting information properly, or being informed or lack of understanding from the side of the counsel or from his side, the error has happened resulting in serious miscarriage of justice.

7. Perusal of the order dated 17.03.2015 clearly shows that the parties were represented by senior counsel on both sides. The parties had been heard at length and during the hearing, an opportunity was given to the counsel for the respondent No.1 to take instructions. Counsel for the respondent No.1 thereafter made a statement before this Court based on which the order of 17.03.2015 had been passed.

8. From a perusal of the application and the affidavit of the respondent No.1, it is clear that the counsel did have a discussion with his client prior to making the statement. Based on the discussion, the statement was made and based thereon, the order has been passed. The plea of the respondent No.1 that it was wee hours in the morning and there was a misunderstanding on his part is clearly an afterthought. It is not disputed that the counsel did contact his client to seek appropriate instruction. It appears that the respondent No.1 is now trying to wriggle out of the instructions given to his counsel and the statement made before this Court based on which the orders have been passed. Furthermore, it is contended on behalf of the appellants that not only was the statement consciously made on behalf of the

respondent No.1, the respondent No.1 has also acted upon the said statement and has taken further steps in the Court at Massachusetts.

9. Be that as it may, we are not commenting upon the action of the respondent before the Court at Massachusetts, however, it is clear that the order dated 17.03.2015 has been passed after hearing the parties and with the concurrence of the counsel in accordance with the statement made by them. There is no infirmity or error apparent on the face of the record warranting any recall or modification of the said order. Clearly, the respondent No.1 is now trying to shift the burden to his counsel, which cannot be countenanced.

10. In view of the above, we do not find any merit in the application. The application is dismissed.

SANJEEV SACHDEVA, J

BADAR DURREZ AHMED, J

MAY 10 , 2016
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