

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 27.02.2017

CORAM

THE HONOURABLE MR. HULUVADI G.RAMESH, ACTING CHIEF JUSTICE
AND
THE HONOURABLE MR. JUSTICE R.MAHADEVAN

O.S.A. NO. 23 OF 2017
AND
C.M.P. NO. 2132 OF 2017

1. Chillara Kalyan
2. Kamal Singh
3. Arjun Singh
4. Smt. Soni Bai
5. Smt. Choti Bai .. Appellants

- Vs -

M/s.Berggruen Estate Projects Pvt. Ltd.
Span Centre, 6th Floor
South Avenue, Santa Cruz West
Mumbai 400 054, India. .. Respondents

Appeal filed under Clause 15 of the Letters Patent, against the order dated 28.11.2016 passed by the learned Single Judge in Application No.6105 of 2016 in O.P. No.434 of 2016 in O.P. No.473 of 2016.

For Appellant : Mr. ATM. Rangaramanujam, SC, for
Mr. R.Sagadevan

For Respondents : Mr. P.H.Arvind Pandian, SC, for
Mr. Sricharan Rangarajan

JUDGMENT

(DELIVERED BY THE HON'BLE ACTING CHIEF JUSTICE)

This appeal is directed against the order dated 28.11.2016 passed by the learned single Judge in Application No.6105 of 2016 in O.P. No.434 of 2016 in O.P. No.473 of 2016.

2. Heard the learned senior counsel appearing for the appellants and the learned senior counsel appearing for the respondent and perused the materials to which this Court's attention was drawn.

3. In the course of proceedings before the learned single Judge, there is said to be an undertaking given by the learned senior counsel appearing for the respondents therein/appellants herein to deposit an amount of Rs.7 Crores along with interest. However, insofar as interest portion is concerned, it is the submission of the learned senior counsel appearing for the appellants herein that there was no instruction was given to the learned senior counsel to give such an undertaking. However, the said stand of the appellants is countered by the respondent herein, who relies upon the judgment of the learned single Judge, where a categorical recording is made that interest will also be deposited.

4. Be that as it may. It is settled position of law that any submission made by the counsel representing the parties, without the concurrence of the parties, the same is not binding on the party. Useful reference can be had to the judgment of the Apex Court in Himalayan Coop. Group Housing Society - Vs - Balwan Singh & Ors. (2015 (7) SCC 373), wherein the Supreme Court held as under :-

"26. While Rule 15 mandates that the advocate must uphold the interest of his clients by fair and honourable means without regard to any unpleasant consequences to himself or any other. Rule 19 prescribes that an advocate shall only act on the instructions of his client or his authorised agent. Further, the BCI Rules in Chapter I of the said Section II provide that the Senior Advocates in the matter of their practice of the profession of law mentioned in Section 30 of the 1961 Act would be subject to certain restrictions. One of such restrictions contained in clause (cc) reads as under:

"(cc) A Senior Advocate shall, however, be free to make concessions or give undertaking in the course of arguments on behalf of his clients on instructions from the junior advocate."

27. Further, the "Code of Ethics" prescribed by the Bar Council of India, in recognition of the evolution in professional and ethical standards within the legal community, provides for certain rules which contain canons of conduct and etiquette which ought to serve as general guide to the practice and profession. Chapter III of the said Code provides for an "Advocate's duty to the client". Rule 26

thereunder mandates that an "advocate shall not make any compromise or concession without the proper and specific instructions of his/her client". It is pertinent to notice that an advocate under the Code expressly includes a group of advocates and a law firm whose partner or associate acts for the client.

28. Therefore, the BCI Rules make it necessary that despite the specific legal stream of practice, seniority at the Bar or designation of an advocate as a Senior Advocate, the ethical duty and the professional standards insofar as making concessions before the Court remain the same. It is expected of the lawyers to obtain necessary instructions from the clients or the authorised agent before making any concession/statement before the court for and on behalf of the client.

29. While the BCI Rules and the Act, do not draw any exception to the necessity of an advocate obtaining instructions before making any concession on behalf of the client before the court, this Court in *Periyar & Pareekanni Rubber Ltd. v. State of Kerala* [(1991) 4 SCC 195] has noticed the sui generis status and the position of responsibility enjoyed by the Advocate General in regard to the statements made by him before the courts. The said observation is as under:

"19. ... Any concession made by the Government Pleader in the trial court cannot bind the Government as it is obviously, always, unsafe to rely on the wrong or erroneous or wanton concession made by the counsel appearing for the State unless it is in writing on instructions from the responsible officer. Otherwise it would place undue and needless heavy burden on the public exchequer. But the same yardstick cannot be applied when the Advocate General has made a statement across the Bar since the Advocate General makes the statement with all responsibility."

30. The Privy Council in *Sourendra Nath Mitra v. Tarubala Dasi* [(1929-30) 57 IA 133 : (1930) 31 LW 803 : AIR 1930 PC 158], has made the following two observations which hold relevance

to the present discussion: (IA pp. 140-41)

"Two observations may be added. First, the implied authority of counsel is not an appendage of office, a dignity added by the courts to the status of barrister or advocate at law. It is implied in the interests of the client, to give the fullest beneficial effect to his employment of the advocate. Secondly, the implied authority can always be countermanded by the express directions of the client. No advocate has actual authority to settle a case against the express instructions of his client. If he considers such express instructions contrary to the interests of his client, his remedy is to return his brief."

31. Therefore, it is the solemn duty of an advocate not to transgress the authority conferred on him by the client. It is always better to seek appropriate instructions from the client or his authorised agent before making any concession which may, directly or remotely, affect the rightful legal right of the client. The advocate represents the client before the court and conducts proceedings on behalf of the client. He is the only link between the court and the client. Therefore his responsibility is onerous. He is expected to follow the instructions of his client rather than substitute his judgment."

5. The mere presence of the party at the time of the proceedings would not be sufficient to establish that what is presented by the counsel is with the concurrence of the party. Further, any proposition, such as the one above, should be made known to the party before any order is passed, so as to avoid any confusion at a later point of time. Any undertaking should be made by the counsel appearing for the party only after the party concerned has consciously agreed to the said undertaking. Any undertaking given by the counsel without the concurrence of the party could not be held against the party. However, from a reading of the order, it is seen that nothing to the said effect, as narrated above, finds place in the order passed by the learned single Judge.

6. In view of the statement and counter statement of the learned counsel for the parties with regard to the undertaking given by the learned senior counsel to pay interest, we are of the view that it would be in the interest of either side that the matter lie over once again before the learned single Judge,

who heard the matter and passed the order and the party be present before the learned single Judge on the date of hearing, who shall be explained about the consequences of the undertaking given by the learned senior counsel therein and orders be passed after such an exercise is completed.

7. Accordingly, the matter is remitted to the learned single Judge, who passed the impugned order, who shall hear the party with regard to the undertaking given by the learned senior counsel and, thereafter, pass orders in accordance with law after hearing the parties to the lis. This appeal is disposed of accordingly. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-
Asst.Registrar

/true copy/

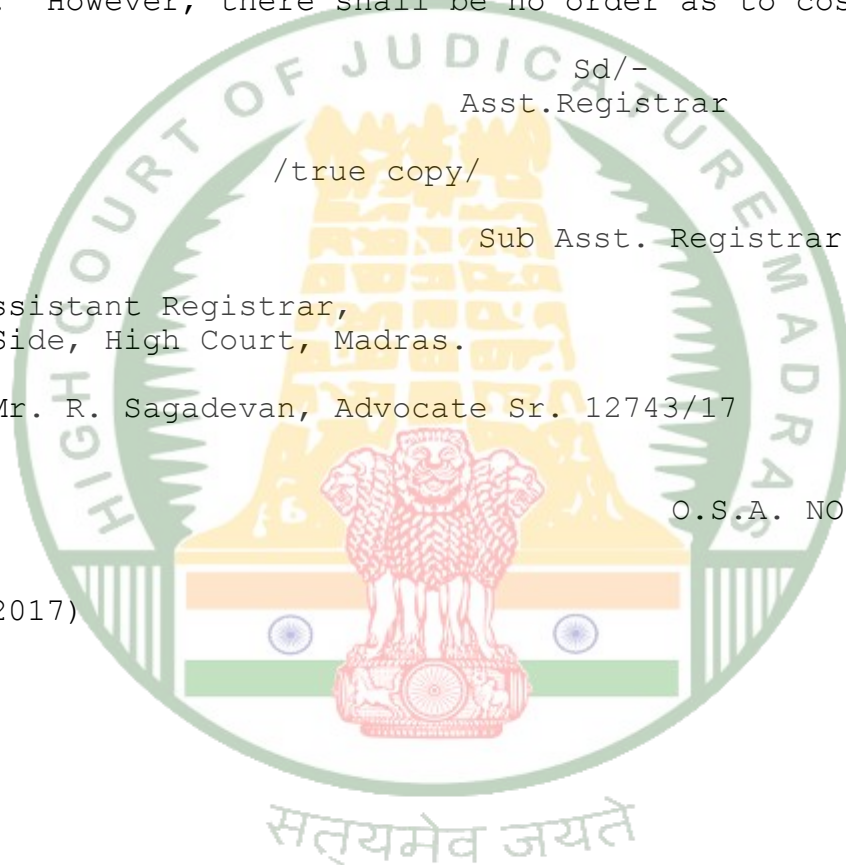
Sub Asst. Registrar

To
The Sub Assistant Registrar,
Original Side, High Court, Madras.

+3ccs to Mr. R. Sagadevan, Advocate Sr. 12743/17

O.S.A. NO.23 OF 2017

KGK (CO)
Vr (17/03/2017)



WEB COPY