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

+ **RFA 878/2017**

ANITA JUNEJA

..... Appellant

Through: Mr. Joginder Sukhija, Advocate for
appellant in person.

versus

ARUNA TALWAR

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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08.03.2018

**C.M. Appl. No. 8766/2018 (for recalling of the order dated
17.10.2017, filed by the appellant)**

1. Some sections of the litigants are those type of litigants who do not even want to have a minimum of attachment to honesty and sincerity. The present applicant/Ms. Anita Juneja appellant in RFA No. 878/2017 is one of the such litigant.

2. There were two RFAs filed in this Court being the present RFA No. 878/2017 and a connected RFA being RFA No. 879/2017. Both the appeals were filed against the impugned judgment of the trial court dated 18.5.2017. Trial court by the impugned judgment in a

suit filed by the applicant/Ms. Anita Juneja had dismissed her suit qua the relief for specific performance but instead the trial court granted a money decree for a sum of Rs.40 lacs as compensation along with interest at 12% per annum. It may be noted that applicant/Ms. Anita Juneja had only paid a sum of Rs.10 lacs under the subject agreement to sell dated 19.12.2007 out of the total sale consideration of Rs.90 lacs and a decree for Rs.40 lacs was on account of the trial court holding the respondent/defendant guilty of breach of contract and therefore the entitlement of the sum of Rs.20 lacs with increase thereon of another Rs.20 lacs on account of the period for which double the amount of earnest money of Rs.20 lacs was not paid to the applicant/plaintiff. For dismissing the suit for specific performance trial court had held that there was lack of *consensus ad idem* and therefore there should not be specific performance of such agreement.

3. The impugned judgment of the trial court, as stated above, was also challenged by the defendant in the suit namely Ms. Aruna Talwar in RFA No. 879/2017, and it is noted that the trial court had clearly erred in awarding double the amount as damages without any

pleading and proof of loss suffered by the plaintiff Ms. Anita Juneja, and which conclusion of the trial court was therefore accordingly challenged before this Court, and which conclusion of the trial court was illegal in view of the Constitution Bench judgment of the Supreme Court in ***Fateh Chand Vs. Balkishan Dass AIR 1963 SC 1405.***

4. Both the appeals being RFA Nos. 898/2017 and 879/2017 came up for hearing before this Court on 17.10.2017 and Court heard arguments of the counsels for both the parties. After arguments, both the appeals were disposed of in terms of the consent order as under:-

“1. After arguments, these appeals are disposed of with the following consent order:-

(i) The judgment of the trial court dated 18.5.2017 declining specific performance is being treated as final.

(ii) Appellant-Ms. Anita Juneja in RFA 878/2017 will get a sum of Rs.10 lacs alongwith interest at 18% per annum simple w.e.f 19.12.2007 from the respondent-Ms.Aruna Talwar in RFA 878/2017. This aforesaid amount of Rs.10 lacs alongwith interest at 18% per annum simple will be paid by Smt. Aruna Talwar to Smt. Anita Juneja within a maximum period of six months from today and during which period the rate of interest at 18% per annum simple will continue.

(iii) The concerned court which has the FDR will release the FDR alongwith interest and other requisite documents to the appellant-Ms. Anita Juneja within a period of four weeks.

(iv) Since the appeal is disposed of as compromised before the final arguments on the same, both the appellants Smt. Anita Juneja and Smt. Aruna Talwar in both the appeals being RFAs 878/2017 and 879/2017, will be entitled to refund of 50% of the court fees which they have paid in the appeals. Registry will issue the

necessary certificates in favour of both the appellants in RFAs 878/2017 and 879/2017.

2. The appeals are accordingly disposed of in terms of the aforesaid consent order.”

5. Now, this application is filed on 28.2.2018, more than four months after the passing of the consent order alleging that counsel for the applicant/Ms. Anita Juneja did not take her consent.

6. I may also note that this application is filed quite close to ending the period of six months given to the defendant Ms. Aruna Talwar for payment of Rs.10 lacs to Ms. Anita Juneja. It is also noted that Ms. Anita Juneja was by the consent/compromise order entitled to an unusually high rate of interest at 18% on the amount of Rs.10 lacs which was payable by Ms. Aruna Talwar/defendant to Ms. Anita Juneja.

7. It has almost become a rampant malaise with respect to some litigants who for the sake of their own convenience do not hesitate to indulge in dishonesty and lack of sincerity. The present applicant/Ms. Anita Juneja is one of such person. This Court does not believe that applicant/Ms. Anita Juneja was not aware of the consent order on 17.10.2017 as is claimed by her and that too which

is pleaded by filing of the present application for recall after more than four months of passing of the compromise/consent order dated 17.10.2017.

8. A compromise is entered into by the parties for mutual benefit. Every compromise has elements of give and take. The order dated 17.10.2017 was passed duly recording that consent order was passed after arguments were addressed i.e. the order is passed at the stage of dictation of the judgment. Parties therefore would have thought it fit to settle the matter by compromise and which was done in terms of the order dated 17.10.2017, and both the parties would have benefited from the consent order and therefore the consent order was passed. I, therefore, reject the stand of the applicant/Ms. Anita Juneja that she was not aware and her counsel did not take her consent for passing of the order dated 17.10.2017.

9. Litigant such as the applicant/Ms. Anita Juneja, cannot claim sympathy from the Court on account of suffering from a decease to justify their dishonesty in filing this present application. There was no illegality in the impugned judgment denying specific performance,

and which relief in any case is discretionary relief as per Section 20 of the Specific Relief Act, 1963. Parties therefore in my opinion had consciously agreed to the consent order dated 17.10.2017 and now applicant/Ms. Anita Juneja cannot seek to recall that order dishonestly that her Advocate did not take her consent.

10. I may note that at the time of disposal of the appeals each of the appellants in the respective appeals being Ms. Anita Juneja in this RFA No. 878/2017 and Ms. Aruna Talwar appellant in RFA No. 879/2017 were entitled to refund of 50% of the court-fees. Necessary certificates were issued, both to Ms. Aruna Talwar as also the present appellant. In the present application appellant does not state as to what is the position with respect to her already receiving the refund of 50% of the court-fees and which was ordered in terms of the order dated 17.10.2017. This aspect again shows complete malafides of the applicant/appellant in seeking the order of recall although appellant has got benefit of refund of 50% of the court-fees in terms of Section 16-A of the Court-fees Act, 1870 (as applicable to Delhi).

11. In view of the aforesaid discussion this application for recall

being an abuse of process of law is dismissed with costs of Rs.30,000/-, and which costs shall be deposited with the website www.bharatkeveer.gov.in within a period of four weeks from today and affidavit of payment of costs be filed within two weeks thereafter. In case the appellant does not file the affidavit within six weeks from today then the Registry will list the matter in Court for taking appropriate action against the applicant/appellant/Ms. Anita Juneja.

VALMIKI J. MEHTA, J

MARCH 08, 2018

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