

HIGH COURT OF CHHATTISGARH, BILASPUR**REVP No. 180 of 2018****(Judgment Reserved on 22.08.2019)****(Judgment Delivered on 12.09.2019)**

1. The Indian Church Council Of The Disciples Of Christ Through Its Executive Secretary A.D. James, R/o Rajeev Gandhi, Chowk, Jarhabhata, District-Bilaspur, Chhattisgarh.....(**Respondent No.2**)
2. Rev. A. Nathaniel S/o Rev. Samuiel Nathaniel Aged About 59 Years Treasurer Paster Of Disciples Of Christ Church, Civil Lines, Infront Of Police Ground, District- Bilaspur, Chhattisgarh.....(**Proposed Applicant**)

---- Petitioners**Versus**

1. Krishna Kumar Agrawal S/o Shri Pawan Kumar Agrawal Aged About 26 Years R/o Naya Sarkanda, Bilaspur, District- Bilaspur, Chhattisgarh.....(Appellant)
2. Rev. N. L. Soni Ex. Executive Secretary, Indian Church Council Of The Disciples Of Christ Church, R/o Ashlay Memorial Banglow, Moholla, Jarhabhata, District- Bilaspur, Chhattisgarh.....(**Respondent No.-1**)

---- Respondents

3. Sushil Kumar Agrawal, S/o Late Shri Mahavir Prasad Agrawal, aged about 53 years, R/o Rai Saheb ka Bagicha, New Sarkanda, Bilaspur (C.G.)

-----applicant under Order 1 Rule 10 of CPC

For Petitioners	:	Ms. Fouzia Mirza, Advocate with Shri H.S. Ahluwalia, Advocate
For Respondent No.1	:	Shri Rahul Jha and Shri Anand Mohan Tiwari, Advocates
For Respondent No.2	:	Shri S.C. Verma, Advocate with Shri N.L. Soni, respondent No.2 in person.
For Applicant	:	Shri R.N. Singh, Sr. Adv. With Shri Shashank Thakur and Shri Akshay Pawar, Advocates

Hon'ble Shri Justice Goutam Bhaduri**CAV Judgment**

1. This order would adjudicate review petition filed by the Indian Church Council of the Disciples of Christ (hereinafter referred to as 'the ICCDC') through his secretary A.D. James and another applicant Rev. A Nanthaniel against the non-applicants for review of a judgment and decree dated 01.10.2018. The said decree was passed on the basis of compromise entered between the parties in the First Appeal No.24/1993 out of them one of the party is a registered society under the Society Registration Act, 1973. In the first appeal Krishna Kumar Agrawal was the appellant and the respondents were Rev. N.L. Soni, arrayed in capacity of Executive Secretary, Indian Church Council of the disciples of Christ as respondent No.1 and the respondent No.2 was the Indian Church Council of the Disciples of Christ a society registered under the Society Registered under the Society Registration Act, 1973 The society was also represented by its Executive Secretary Rev. N.L. Soni, Bilaspur, who was a respondent No.1. On the basis of compromise in between the parties in the first appeal, the decree was drawn. The instant review petition has been filed by the Society namely Indian Church Council of the Disciples of Christ represented by another person claiming as Executive Secretary named A.D. James, whereas the non-applicants Krishna Kumar Agrawal is arrayed as non-applicant No.1 and Rev. N.L. Soni as non-applicant No.2.
2. Ms. Fouzia Mirza, learned counsel for the applicants in the instant review petition would submit that the property of ICCDC have been sought to be done away with at the behest of Rev. N.L. Soni, who claimed himself to be the Executive Secretary of Society. She would further submit that a fraud has been played on the Court as N.L. Soni claimed himself to be the Executive Secretary as has entered into compromise whereas he is not the Secretary. The reference of Annexure A/5 was made and would submit that N.L. Soni, who

claimed to be the Executive Secretary was expelled from ICCDC. It is stated that though the authority was claimed on the basis of resolution dated 27.05.2005 but even that resolution did not give the power to N.L. Soni to enter into any compromise in respect of property of Society which was subject of dispute. It is stated that N.L. Soni did not bring into the notice of this Court that N.L. Soni had no right to enter into the compromise on behalf of the Society. She further refers to the affidavit of pastor Anurag Nathaniel, Ujiyar Masih, V.N. Bhelwa and it is stated that compromise was arrived at on the basis of the resolution dated 27.05.2005 and that too is outcome of fraud and Mr. N.L. Soni have played fraud with the entire christian community. She would further submit that Rev. A. Nathaniel and four others have filed a writ petition in the year 2018 to register the FIR against N.L. Soni and further paper publication dated 19th of August 2018 was referred and would submit that the public notice was made in paper that N.L. Soni committing fraud on the earlier occasion too tried to do away with the property of the society and public was notified about the fraudulent acts of N.L. Soni. She would further submit that therefore, facts would show that a dispute exists in between the members of the society and N.L. Soni therefore tried to take advantage of the same.

3. The document one publication filed along with the rejoinder is also referred which is Annexure RJ/2 dated 26th August 2018 a public notice published by N.L. Soni, to show counter allegations have been made by N.L. Soni. Likewise, Annexure RJ/3 another publication was referred by the applicants that on 05.09.2018 a paper publication was made against N.L. Soni about his activities of fraud. She would further submit that therefore serious dispute exists in between the parties. It is further stated that a complaint was made as Annexure RJ/4 on 09.08.2018 to the Registrar, Firms and Societies and submits that,

even if without prejudice it is admitted that some resolution was passed to represent in a case but N.L. Soni was not authorized to enter into compromise in lieu of the amount received from third party in respect of property of society. It is further stated according to the Section 21 of the Society Registration Act, 1973 (for short 'the Act, 1973) no prior permission of Registrar to do away with the property was obtained. The reference is further made to the existing guideline of prices which are existing for the area was referred and would submit that the price of the area is 45000 per sq. meter as per government price whereas N.L. Soni on behalf of the society has done away with the property in throw away price in 10 Lakhs alone which has caused serious loss to the society. It is stated that before the compromise all the facts were suppressed from the Court and were not brought before the Court and thereby compromise decree was obtained by playing fraud on Court. The reliance is placed in the case of **AIR 1994 SC 853 and 2007 (7) SCC 482** and would submit that the fraud vitiates everything, therefore, in order to advance the cause of justice the order dated 01.10.2018 the judgment and decree required to be recalled. She would further submit that the review petition is delayed by 21 days and the applicants came to know about the judgment and decree on 14.10.2018, thereafter, immediately the executive committee meeting was held and resolution was passed for filing of the instant review petition, therefore, the delay of 21 days may be condoned.

4. Shri Rahul Jha, learned counsel for respondent No.1 Krishna Kumar Agrawal submits that since the resolution was produced by N.L. Soni in capacity of Executive Secretary of ICCDC, so there was no occasion to disbelieve those resolution produced by the non-applicant No.1 (appellant in first appeal) therefore the earlier judgment & decree is well merited consequently, the review

cannot be ordered for.

5. Shri S.C. Verma, advocate on behalf of Shri N.L. Soni (respondent No.2), along with N.L. Soni, appeared in person, would submit that the order of the Registrar, Firms and Societies is quite clear about authority of N.L. Soni. It is stated that the document which is filed as AN-2D dated 05.02.2019 is the order of Registrar Firms & Society would show that N.L. Soni was authorized by Registrar to act on behalf of the Society. It is stated that the order certifies the correctness of resolution of general body meeting dated 26.05.2018 that N.L. Soni was appointed as a Executive Secretary. It is stated that the said order was subject of an appeal preferred by the applicant, wherein on 07.06.2018 the Sub-Registrar Firms & Society accepted the fact that the intimation issued under Section 27 of the Act, 1973 whereby office bearers of society were elected would hold such office. It is stated that the authority of N.L. Soni was subject of challenge by the present applicants and after detail hearing, the Registrar has allowed NL Soni to act as an Executive Secretary of the society. It is contended that the applicants were also party to the resolution in the meeting whereby N.L. Soni was allowed to act as Executive Secretary and as such the applicant were also in know of the fact that N.L. Soni had the authority to represent the society for best of its interest of society and accordingly it was done by way of compromise. It is stated that no mistake was committed either by the respondent or on the part of the Court. He would further submit that as per the law laid down in the case of ***Lily Thomas, etc. etc. V. Union of India and others {AIR 2000 SC 1650}***, ***Ajit Kumar Rath Vs. State of Orissa and others {AIR 2000 SC 85}*** and ***Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhary {[1994] Supp. 5 S.C.R.}*** the power of review cannot be put at par with the power of appeal, therefore, the review petition is required to be

dismissed.

6. During the course of hearing of review petition an application was filed under Order 1 Rule 10 CPC by Sushil Kumar Agrawal for impleadment of him as a party.
7. Shri R.N. Singh, learned senior counsel appearing for proposed applicant would submit that the background of the case would be necessary to appreciate the entire facts. The learned counsel went through the documents threadbare to demonstrate whether compromise could ever be entered upon by Shri N.L. Soni in capacity of Executive Secretary and submitted by reference to various documents that fraud has been played on Court. Predominantly elaborate arguments were advanced with respect to merit of the review petition by reference to various document filed by the parties to attach the compromise & decree to demonstrate fraud is played on Court by suppression of facts.
8. The learned counsel for the applicant Sushil Kumar Agrawal would submit that Banwari Lal Agrawal had four sons namely Mahavir, Bajrang Prasad, Hanuman Prasad & Pawan Kumar. One son Krishna Kumar Agrawal was the appellant in first appeal is S/o Pawan Kumar and Sushil Kumar Agrawal, who has filed the application for impleadment is S/o Mahavir, the other brother. It is stated that in the year 1971 Banwari Lal Agrawal purchased the property Khasra No.85/1 from UCMC through power of attorney holder. Subsequently, in the year 1977 a suit was filed for restoration of possession and payment of arrears whereas as against this adverse possession was claimed by the seller M.C. Jonnathan, the power of attorney holder of UCMC, who declined to transfer the possession to Seth Banwari Lal Agrawal despite sale made. It is stated that Seth Banwari Lal Agrawal died and on his death his son Bajrang Prasad was impleaded as legal

heir. It is stated that in original suit 5 issues were framed and it was held that M.C. Jonnathan was not competent to execute the sale deed and eventually the suit was dismissed in the year 1992. In 1993 Krishna Kumar Agrawal filed first appeal before the Court and on 30.10.1996 family settlement was entered in between the family members of Banwari Lal Agrawal, wherein it was settled that the suit property would be owned by Krishna Kumar Agrawal.

9. The counsel would further submit that on 02.09.2013 much before the deed of settlement an agreement was executed to transfer the suit land by Krishna Kumar Agrawal to Sushil Kumar Agrawal, who has filed an application for impleadment during the pendency of this review. The reference was made to the certain documents and agreement wherein it was stated that huge amount of money was paid by the present applicants Sushil Kumar Agrawal (who seeks his impleadment) to Krishna Kumar Agrawal (the appellant) as more than Rs.1 crore is given to Krishna Kumar Agrawal, therefore, substantial interest created. It is stated however, playing fraud on the Court in the first appeal settlement was executed to the effect that Krishna Kumar Agrawal will pay Rs.10Lakhs towards litigation expenses to ICCDC, thereafter, the Society will handover the possession to Krishna Kumar Agrawal. It is further stated that these facts were suppressed by the said Krishna Kumar Agrawal consequently, on the basis of the compromise on 30.09.2018 this Court has passed the impugned order dated 01.10.2018. Learned senior counsel further referred to the document / complaint filed by Sushil Kumar Agrawal in police station, Sarkanda against Krishna Kumar Agrawal for fraud on 06.04.2019 and stated that since now in the subject matter substantially the right of the applicant is created, therefore, the review petition be allowed and the petitioner may be made as party in the first appeal to avoid the multiplicity of the proceedings. Learned senior counsel

has placed reliance in the case of ***Sushil Kumar Sen Versus State of Bihar*** {(1975) 1 SCC 774} and ***Pankajbhai Rameshbhai Zalavadiya Versus Jethabhai Kalabhai Zalavadiya*** (DECEASED) THROUGH LEGAL REPRESENTATIVES and others {(2017) 9 SCC 700} and would submit that in any stage of proceeding the application under Order 1 Rule 10 CPC can be allowed and the review is the stage of proceeding.

10. I have heard learned counsel for the parties and perused the various documents filed by the parties.

11. The entire dispute concerns with a property of the first appeal. Prima facie, the said property appears to belong to the society namely The Indian Church Council of the Disciples. The question which falls for consideration is that whether in the first appeal, wherein the society was a party, whether Rev. N.L. Soni was authorized to enter into the compromise? Serious allegations have been attributed to N.L. Soni. The resolution which has been placed on record is of 27.05.2005 on the basis of which compromise was entered upon. Even if the resolution is accepted, it purports that in respect of the cases pastor N.L. Soni will represent the society before the Court and would be attorney until the other person is appointed. The said resolution does not empower to enter upon any compromise in respect of the subject suit property, only it is limited to the extent of representation in the case.

12. Article of association of the society clause 12 defines the Executive Secretary and mandates that he must be a member of the Indian Church Council of the Disciples of Christ and as per clause 5, the Executive Secretary shall retire according to the retirement rules of ordained pastors. The age of retirement of pastor is at clause 49 (v) which purports that the pastor will be expected to

retire at the age of 65 years. In the return filed by respondent No.2 N.L. Soni, the affidavit attached with it shows that he has shown himself to be aged about 75 years. Therefore, prima facie it appears that N.L. Soni was stripped off with power to represent as an executive secretary of society by virtue of the Articles of Association on attaining more than 65 years. The bye laws further provide that in case of vacancy of the Executive Secretary, the Executive Committee shall appoint an Executive Secretary until the next Annual Convention or make other provision for his work. The duties conferred on the Executive Secretary mandates that he will do all such work as directed by the Executive Committee from time to time. Consequently, in absence of clear direction to intermeddle with the property of the society, N.L. Soni when in capacity of Executive Secretary has made any transaction in respect of the property which has an effect that society would lose its right over property by affirmation of earlier sale, which was subject of dispute, certainly such power was not vested with him i.e. N.L. Soni. These facts were never brought before the Court while the compromise was effected.

13. The reply of non-applicant No.1 Krishna Kumar Agrawal, would show at para 4 & 5 it is averred that non-applicant Krishna Kumar Agrawal had entered into in compromise and settlement with non-applicant No.2 N.L. Soni and ICCDC, non-applicant No.1, only when clear cut authority was shown and further the reply at para 8 it is stated that appellate authority has passed the interim order dated 05.02.2019 in favour of N.L. Soni thereby he was allowed to act as executive secretary to continue as representative of Society as such compromise was entered.

14. The interim order is dated 05.02.2019 passed by the Registrar Firms &

Societies. When is perused, it shows that the order directs that till the enquiry is being done, to avoid any vacuum or non existence of the authority of office bearers of society as an interim measure, N.L. Soni was authorized to represent the society. The said order was of 05.02.2019 whereas the compromise deed was signed on 30.09.2018 and thereafter the decree was passed. Therefore, on 30.09.2018 much before the interim order. However, what would be the effect of an interim nature would be crucial. The law with respect to like nature of interim order is laid down in the judgment reported in the case of ***Shree Chamundi Mopeds Ltd. Versus Church of South India Trust Association CSI Cinod Secretariat, Madras*** {(1992) 3 SCC 1}. The ratio as laid down by the Supreme Court at para 10 shows that the law that while considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. Meaning thereby and by application of the ratio of law it points out the interim order which was subsequently though was passed, do not include authority of N.L. Soni to intermeddle with the property of the Society. The said action on part of N.L. Soni would be further eclipsed for want of necessary permission from Registrar Firms and Societies under Section 21 of the Act, 1973. Therefore, on the basis of interim order too it does not cloth Mr. N.L. Soni with authority to confer a title by rectification of sale made in favour of Late Banwari Lal Agrawal.

15. Further the document Annexure A-5, which is filed along with the petition speaks about expulsion of N.L. Soni from the society for the reason that he had made financial irregularities in sale and intermeddled with the property of ICCDC. This may be a disputed fact either can be accepted or not but at the same time it would establish that the fact of expulsion of N.L. Soni by ICCDC was in the knowledge of N.L. Soni, who entered into compromise. The said expulsion was further published and public notice in local paper is of 19th of August, 2018, therefore, N.L. Soni knowing fully well that he had been removed entered into an agreement with the original appellant Krishna Kumar Agrawal and played fraud on the Court by suppression of all facts. Further the duties as specified in the Articles of Association of society do not empower the Secretary to do those acts like nature of compromise which would amount to an alienation of property of society. This fact was also suppressed and shelved. These facts having not been brought before the Court with all deliberations amounts to playing fraud on Court.

16. In ***S.P. Chengalvaraya Naid (dead) by L.R.s Vs. Jagannath (dead) by L.R.s and others {AIR 1994 SC 853}*** the Court has held that the principle of finality of litigation cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. It further held that the courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. If the fraud is allowed to sustain the property grabbers, tax evaders, bank loan dodgers and other unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal gains indefinitely.

17. The applicants have placed certain documents to show the value of the

property. It shows that more than Rs.4500 per sq. meter of the value exists for the area for which the compromise has been effected. The conduct of Krishna Kumar Agrawal and N.L. Soni shows that the deliberate deception with the design of securing something by taking unfair advantage of another i.e. the property of society is made which is a deception in order to gain by causing loss to the Society. It is a cheating intended to get advantage. The reliance placed by the respondent No.1 in the case of ***Lily Thomas, etc. etc. V. Union of India and others {AIR 2000 SC 1650}*** and ***Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhary {[1994] Supp. 5 S.C.R.}*** there is no conflict to the proposition that review petition cannot be treated to be as appeal. But when fraud is played, which is apparently prima facie apparent from the records, then the finality of a decree cannot be allowed to precipitate. The said principle is fortified by the Supreme Court in ***{(2007) 7 SCC 482}***. After going through the document and for the reasons as stated hereinabove the compromise decree cannot be allowed to continue. In a result, the compromise decree passed on 01.10.2018 being out come of fraud & suppression of facts is recalled thereby the judgment & decree is set aside.

18. Having allowing the review now the application filed under Order 1 Rule 10 CPC filed by one cousin brother of Krishna Kumar Agrawal namely Sushil Kumar Agrawal would be considered. The documents filed along with the application under Order 1 Rule 10 CPC are examined. The documents filed would show that as per agreement dated 02.09.2013 an amount of Rs.1 crore was received by Krishna Kumar Agrawal. Thereafter on 06.04.2015 the memorandum of understanding was executed to appoint an advocate by Krishna Kumar Agrawal. Subsequent agreement dated 15.02.2016 also shows for transfer of 10% share out of 25% share held by Krishna Kumar Agrawal was

executed on a consideration of Rs.41 Lakhs received by Krishna Kumar Agrawal. However another advocate to argue the first appeal was appointed by Krishna Kumar Agrawal in the year 2017. Subsequent facts shows a report was made to the police by Sushil Kumar Agrawal (the applicant) when the agreement of settlement 30.09.2018 came to the notice. Thereafter, the fact would show that Krishna Kumar Agrawal appeared before the Court during the course of compromise and compromise decree was drawn.

19. The Supreme Court in the case of ***Sushil Kumar Sen Versus State of Bihar*** {(1975) 1 SCC 774} had laid down the ratio that when the original decree has been reviewed then, new facts & order when comes to fore and laid down that procedural sins should never be death of rights of parties. Further the Supreme Court in the case of ***Pankajbhai Rameshbhai Zalavadiya Versus Jethabhai Kalabhai Zalavadiya*** (DECEASED) THROUGH LEGAL REPRESENTATIVES and others {(2017) 9 SCC 700} at para 10 has held that Order 1 Rule 10 of the CPC enables the Court to add any person as a party at any stage of the proceedings, if the person whose presence in court is necessary in order to enable the court to effectively and completely adjudicate upon and settle all the questions involved in the suit. It further held that avoidance of multiplicity of proceedings is also one of the objects of the said provision. Para 10 of the said judgment is reproduced hereunder:-

“10. Order 1 Rule 10 of the Code enables the Court to add any person as a party at any stage of the proceedings, if the person whose presence in Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision. Order 1 Rule 10 of the Code empowers the Court to substitute a party in the suit who is a wrong person with a right person. If the Court is satisfied that the suit has been instituted through a bona fide mistake, and also that it is necessary for the

determination of the real matter in controversy to substitute a party in the suit, it may direct it to be done. When the Court finds that in the absence of the persons sought to be impleaded as a party to the suit, the controversy raised in the suit cannot be effectively and completely settled, the Court would do justice by impleading such persons. Order 1 Rule 10(2) of the Code gives wide discretion to the Court to deal with such a situation which may result in prejudicing the interests of the affected party if not impleaded in the suit, and where the impleadment of the said party is necessary and vital for the decision of the suit.”

20. In ***Vidur Impex and Traders Private Limited and Others Versus Tosh Apartments Private Limited and Others*** {(2012) 8 SCC 384} while adjudicating the principle of addition of party under Order 1 Rule 9 CPC has laid down broad principles which are reproduced hereunder:-

41. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

41.1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.

41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court.

41.3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

41.4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

41.5. In a suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

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21. By application of the aforesaid principle laid down by the Supreme Court when

are examined & applied as against the documents filed along with the application under Order 1 Rule 10 CPC it drives to draw an inference that Krishna Kumar Agrawal received a substantial amount and entered into agreement with the applicant herein but subsequently tried to take over the property by suppression of facts solely by entering into compromise with N.L. Soni. Therefore, the circumstances and the documents would show that substantial part of interest was created that of the applicant over the property in suit. In order to avoid all the multiplicity of the proceedings, the Court has already recalled the order passed under the compromise decree by review as it was outcome of fraud. So as to safeguard the further proceeding of the first appeal and to avoid any further fraud and to avoid multiplicity of the proceeding in future, the application under Order 1 Rule 10 CPC filed by Sushil Kumar Agrawal is allowed. Sushil Kumar Agrawal be added as a respondent in the first appeal.

22. In a result, as discussed above, in the facts of this case the order dated 01.10.2018 is recalled. Consequently, the judgment and decree passed on the basis of order dated 01.10.2018 is also recalled. The application under Order 1 Rule 10 CPC is allowed. The necessary amendment be carried out as per Rules & the first appeal is directed to be listed for hearing on merits.

Sd/-

Goutam Bhaduri
Judge