

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

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**Date of decision: 1<sup>st</sup> October, 2020**

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**RFA(OS) No.36/2020**

**JAMIA HAMDARD (DEEMED UNIVERSITY).... APPELLANT**

Through: Mr. Talha Abdul Rahman, Mohd.  
Shaz Khan & Mr. Udit Atul  
Konkanthankar, Advs.

Versus

**HAMDARD NATIONAL FOUNDATION  
(INDIA) & ORS.**

**...RESPONDENTS**

Through: Mr. Kailash Vasdev, Sr. Adv. with  
Mr. Shreyans Singhvi, Adv. for R-  
1&2.  
Mr. Rajiv Nayar, Sr. Adv. with Mr.  
Saket Sikri, Mr. Kartik Nayar, Mr.  
Vikalp Mudgal & Mr. Kshitij Mudgal,  
Advs. for R-1,3&6.  
Mr. Apoorv Kurup & Ms. Nidhi  
Mittal, Advs. for R-7/UGC.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**HON'BLE MS. JUSTICE ASHA MENON**

**[VIA VIDEO CONFERENCING]**

**JUSTICE RAJIV SAHAI ENDLAW**

**CM Nos. 24607/2020, 24611/2020 and 24612/2020 (all for exemption)**

1. Allowed, subject to just exceptions and as per extant rules.
2. The applications are disposed of.

**RFA (OS) No. 36/2020, CM Nos.24604/2020 (for permission to file the instant appeal) , 24605/2020 (for stay), 24606/2020 (for condonation of 2 days delay in filing the appeal), 24608/2020 (for permission to file additional documents), 24609/2020 (for calling for suit record) and 24610/2020 (for impleadment of University Grants Commission (UGC) as respondent No. 7)**

3. The challenge in this Regular First Appeal (RFA), is to the common order dated 13<sup>th</sup> December, 2019 of the Single Judge of this Court, in as many as six suits i.e. CS(OS) Nos.162/2017, 211/2017, 326/2017, 60/2018, 583/2018 and 164/2017, decreeing the suits in terms of the Deed of Family Settlement dated 22<sup>nd</sup> October, 2019 between the family members who were parties to the suits. Though it appears that besides family members, certain others also were parties to the suits but the said others were not parties to the Deed of Family Settlement dated 22<sup>nd</sup> October, 2019.

4. The challenge is made, not by any of the parties to the suits or by any of the parties to the Deed of Family Settlement, but by a non-party i.e. Jamia Hamdard (Deemed University) (hereinafter referred to as the appellant University). The appeal is thus *inter alia* accompanied with CM No.24604/2020 under Section 151 Code of Civil Procedure, 1908 (CPC), seeking permission to prefer the appeal inspite of being a non-party to the suits from which the appeal arises.

5. We have heard the counsel for the appellant without going into the aspect of maintainability of a single appeal from the decree in as many as six suits.

6. The Deed of Family Settlement dated 22<sup>nd</sup> October, 2019 (hereinafter referred to as the 'Family Settlement') in terms whereof the suits were

decreed, was executed between (i) Abdul Majeed and (ii) Asad Mueed, both sons of Late Janab Abdul Mueed Sahib, of the one part, described in the Deed of Family Settlement dated 22<sup>nd</sup> October, 2019 as “HLT Group”; and, (iii) Janab Hammad Ahmed Sahib and his sons (iv) Hamid Ahmed and (v) Sajid Ahmed, on the other part and described in the Deed of Family Settlement dated 22<sup>nd</sup> October, 2019 as “HFI Group”. We will refer to both factions collectively as ‘Hamdard Family’.

7. Being of the *prima facie* opinion that the decree impugned being a compromise decree and which can bind and indeed binds only the parties thereto and is incapable of binding non-parties, we have, at the outset, enquired from the counsel for the appellant University, how the appellant University can be the “person aggrieved”.

8. The counsel for the appellant University has drawn attention to the application seeking leave to appeal where it is pleaded that, (a) the Compromise Decree, particularly in terms of Clause 35 with Annexures VI and VII thereto and Clause 36, of the Family Settlement, propose to create obligations upon the appellant University; (b) the appellant University is a deemed university and is governed by the University Grants Commission (UGC) Act, 1956 and the UGC (Institutions Deemed to be Universities) Regulations, 2019; (c) the appellant University, inspite of being a non-party to the suits in which decree was passed, is a “person aggrieved” from the judgment and decree because the pecuniary and property rights of the appellant University are adversely affected by the decree; (d) the administration of the appellant University is being adversely affected; (e) the properties of the appellant University are proposed to be taken away from

the appellant University and the appellant University from being the owner of the said properties is sought to be made the permitted user of the said properties; (f) the Family Settlement in terms of which decree has been passed, seeks to create obligations on the appellant University and the said obligations are now being forced upon the appellant University; (g) the obligations which are being sought to be enforced against the appellant University by the parties to the Compromise Decree, are contrary to the Act and Regulations aforesaid; (h) Clauses 35 and 36 and Annexures VI and VII of the Family Settlement, in terms of which the learned Single Judge has passed the decree, are opposed to law and cannot be enforced; (i) the Family Settlement, in terms of which the decree has been passed, treats the appellant University as a partible asset and proposes to divide it by distributing the Medical College and the assets of the appellant University between the two factions of the Hamdard Family; the same is illegal and impermissible and opposed to public policy; (j) owing to the decree, the functioning of the appellant University and career of thousands of students enrolled in the appellant University are at stake; (k) the members of the Hamdard Family have not released the pending grant of Rs.48 crores and have made it contingent upon passing unlawful resolutions; (l) vide order dated 22<sup>nd</sup> November, 2019 in LPA No.374/2019, it was ordered that the appellant University shall facilitate the implementation of the Family Settlement to the extent the same is legal and permissible in law including the Regulations aforesaid; (m) even though the impugned judgment and decree dated 13<sup>th</sup> December, 2019 are not binding on the appellant University, yet the members of the Hamdard Family who have executed the Family Settlement are arm twisting the appellant University to comply with the terms of the

Family Settlement; various attempts are being made to sabotage the formal functioning of the appellant University including by depriving it of its funds; and, (n) hence, the appellant University is a “person aggrieved”, whose rights are adversely affected.

9. We have next, enquired from the counsel for the appellant University, the constitution of the appellant University.

10. It is informed that though the appellant University was initially set up by a Society registered under the Societies Registration Act, 1860, but on being granted the status of a deemed university, now its constitution and legal persona is as a deemed university only.

11. We have next enquired from the counsel for the appellant University, who governs the functioning of the appellant University.

12. The counsel for the appellant University states that the appellant University is governed by a Board of Management.

13. On further enquiry, it is informed that the Board of Management comprises of twelve members and of whom, only four are members of the Hamdard Family, who have entered into the Family Settlement.

14. We have next enquired, whether the said four family members are in a position to take decisions, without consulting the other eight members of the Board of Management.

15. The answer by the counsel for the appellant University is in the negative. He however states that some other members of the Board of Management have been nominated by the said Hamdard Family. However on further enquiry, it is stated that the members of the Board of

Management, who though may have been nominated by the members of the Hamdard Family, in functioning as the members of the Board of Management, are not required to and do not function or act at the behest of the members of the Hamdard Family and / or are expected to and take independent decision in the best interest of the appellant University and as required by law.

16. We have next enquired, whether it is the plea of the appellant University that the aforesaid nominee members are acting in collusion or in cahoots with the members of the Hamdard Family.

17. The answer is an affirmative 'NO'.

18. Consequently, we have enquired, whether the aforesaid four members of the Hamdard Family, who have executed the Family Settlement and who are also on the Board of Management of the appellant University, are in a position to sway the decision of the Board of Management as per their whims and fancies.

19. The answer is again a positive 'NO'.

20. Once it is so, we have enquired from the counsel for the appellant University, that since the appellant University is not a party to the suits in which decree was passed and is not a party to the Family Settlement, how is the appellant University treating itself to be bound thereby or treating itself to be required to do anything in terms thereof, to be a "person aggrieved" therefrom.

21. The counsel for the appellant University states that the appellant University is not bound to act in terms of the Family Settlement or the decree

in terms thereof but is under a lot of pressure and coercion from the members of the Hamdard Family to act and take decisions in terms of the Family Settlement.

22. If it is so, the remedy of the appellant University is not to file this appeal but to complain to the UGC or other appropriate authorities against the alleged illegal conduct of the members of the Hamdard Family or to take appropriate legal remedies against the illegal conduct, if any of the members of the Hamdard Family. Similarly, if any of the other members of the Board of Management of the appellant University, while functioning as a member of the Board of Management, does anything which is violative of University Grants Commission Act and the UGC (Institutions Deemed to be Universities) Regulations or is not in the best interest of the appellant University or is injurious to the appellant University, the remedy of the appellant University thereagainst is again, to take appropriate legal action against the said member/s, for acting in violation of law and / or for acting against the interests of the appellant University, including of his/her removal from the Board of Management of the appellant University.

23. Once it is admitted by the appellant University also that the appellant University is not bound by the Compromise Decree and the Compromise Decree in law cannot be enforced against the appellant University and that the parties to the Family Settlement in terms whereof decree was passed, though members of the Board of Management of the appellant University but in minority, and not in a position to sway/influence the other members of the Board of Management of the appellant University to act in violation of law

and against the interest of the appellant University, we fail to see how the appellant University can qualify as ‘a person aggrieved’.

24. The counsel for the appellant University refers to ***Baldev Singh Vs. Surinder Mohan Sharma*** (2003) 1 SCC 34.

25. We have perused the said judgment and do not find the same to be coming to the rescue of the appellant University. Therein, a compromise decree was passed in a suit between husband and wife, to the effect that their marriage stood dissolved from an earlier date by virtue of a memorandum of customary dissolution of marriage. The said decree was sought to be challenged by a ‘person’ who was having a property dispute with the husband and who had filed complaints against the husband to the employer of the husband, of the husband, in contravention of the employment Rules having contracted a second marriage. The Supreme Court, while holding that the ‘person’ who was seeking to challenge the decree had no *locus standi* to do so, held (a) that there is no dispute that as against the decree, an appeal would be maintainable in terms of Section 96 of the CPC; such an appeal, however would be maintainable only at the instance of a person aggrieved by and dissatisfied with the judgment and decree; (b) that the dispute between the said ‘person’ and the husband was in relation to a property and the said ‘person’, save for making complaints to the employer of the husband, had nothing to do with the marital status of the husband; (c) locus of a ‘person’ to prefer an appeal in a matter of this nature is vital; (d) the Court cannot enlarge the scope of locus, where the parties are fighting litigations; (e) the pleas of the said ‘person’ did not disclose as to how and in what manner he would be prejudiced if the compromise decree was allowed

to stand; (f) that the challenge by the said 'person' was not *bona fide*; and, (g) even if the compromise decree was a judgment *in rem*, the said person could not have challenged the same as he was not aggrieved therefrom.

26. The counsel for the appellant University has next referred to Order XLIII Rule 1A(2) of the CPC prescribing that in an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not have been recorded. It is contended that the case of the appellant University is that the compromise should not have been recorded because certain clauses thereof are violative of law.

27. We are unable to agree. Merely because Order XLIII Rule 1A(2) of the CPC, in an appeal against a decree in a suit after recording a compromise, leaves it open to the appellant to contest the decree on the ground that the compromise should not have been recorded, would not vest a stranger appealing against the consent decree, with a right to contend that the compromise should not have been recorded, irrespective of whether such stranger has a locus or not or is a person aggrieved from the decree or not. As far back as in ***Banwari Lal Vs. Chando Devi*** (1993) 1 SCC 581, it was explained (i) the experience of the Courts has been that on many occasions parties, after filing compromise petitions on which decrees are passed, later, for one reason or the other challenge the validity of such compromise; for setting aside such decrees, suits used to be filed which used to remain pending for long; (ii) keeping in view the predicament of the Courts and the public, several amendments were introduced to Order XXIII; (iii) the object

of adding proviso along with explanation, to Order XXIII Rule 3 was, to compel the party challenging the compromise to question the same before the Court which had recorded the compromise and that Court was enjoined to decide the controversy; (iv) having introduced the proviso along with explanation in Rule 3, in order to avoid multiplicity of suits and prolonged litigation, a specific bar was prescribed by Rule 3A in respect of institution of a separate suit for setting aside a decree, by prohibiting such suit; (v) earlier, under Order XLIII Rule 1(m), an appeal was maintainable against an order under Order XXIII Rule 3 recording or refusing to record a compromise; that clause was deleted and as a result whereof now no appeal is maintainable against an order recording or refusing to record a compromise; (vi) being conscious that the right of appeal against the order recording or refusing to record a compromise was being taken away, a new Rule 1A was added to Order XLIII; (vii) Section 96(3) of the CPC says that no appeal shall lie from a decree passed by the Court with the consent of the parties; Rule 1A(2) of Order XLIII has been introduced; (viii) when Section 96(3) bars an appeal against a decree passed with the consent of the parties, it implies that such decree is valid and binding on the parties unless set aside by the procedure prescribed or available to the parties; (ix) one such remedy available was by filing an appeal under Order XLIII Rule 1(m); and, (x) thus now neither an appeal against the order recording the compromise nor the remedy by way of filing a suit is available in cases covered by Order XXIII Rule 3A; as such a right has been given under Order XLIII Rule 1A(2) to a party who challenges the recording of a compromise, to question the validity thereof – Section 96(3) of the CPC shall not be a bar to such an appeal

because Section 96(3) is applicable to cases where the factum of compromise or agreement is not in dispute.

28. Though certainly a person aggrieved under Order XLIII Rule 1A (2) of the CPC is entitled to contend that the compromise should not have been recorded but once the appellant University has not been found to be a person aggrieved, owing to the decree in terms of compromise being not binding and / or enforceable against the appellant University, in our view, the appellant University does not have any locus or cause of action to contend that the compromise should not have been recorded.

29. The counsel for the appellant University has next referred to ***Triloki Nath Singh Vs. Anirudh Singh*** AIR 2020 SC 2111 but which was concerned with the question of maintainability of a separate suit by the plaintiff in a suit in which the compromise decree was passed, for declaration that the consent decree was not binding. While answering the said question in the negative, reference was made to Order XLIII Rule 1A(2) and otherwise the said judgment was not concerned with the question of “locus” or “person aggrieved”. The said judgment thus does not come to the help of the appellant University.

30. Else, we find Supreme Court to have recently in judgment dated 21<sup>st</sup> August, 2020 in Civil Appeal Nos.2701-2704/2020 titled ***Sri V.N. Krishna Murthy Vs. Sri Ravi Kumar*** to have held (i) Sections 96 and 100 of the CPC provide for preferring an appeal from an original decree or decree in appeal respectively; (ii) the said provisions do not enumerate the categories of persons who can file an appeal; (iii) however it a settled legal proposition that a stranger cannot be permitted to file an appeal in any proceedings

unless he satisfies the Court that he falls within the category of aggrieved person; (iv) it is only where a judgment and decree prejudicially affects a person who is not a party to the proceedings, he can prefer an appeal with the leave of the Court; (v) a person aggrieved, to file an appeal, must be one whose right is affected by reason of the judgment and decree sought to be impugned; (vi) the expression ‘person aggrieved’ does not include a person who suffers from a psychological or an imaginary injury; (vii) it would be improper to grant leave to appeal to every person who may in some remote or indirect way be prejudicially affected by a decree or judgment; and, (viii) ordinarily leave to appeal should be granted to persons who, though not parties to the proceedings, would be bound by the decree or judgment in that proceeding and who would be precluded from attacking its correctness in other proceedings.

31. Applying the aforesaid tests, we as aforesaid, are unable to find the appellant University to be entitled to leave to appeal.

32. The senior counsels for the respondents / parties to the suits also appear and contend that their objection also is to the maintainability of the appeal by the appellant University for the reason of being not a party to the compromise and an appeal against a compromise decree being in any case not maintainable. Mr. Rajiv Nayar, Senior Advocate also refers to our recent judgment in *Anshu Malhotra Vs. Mukesh Malhotra* MANU/DE/1157/2020 where we held the appeal against a consent decree of dissolution of marriage by mutual consent to be not maintainable. However in view of categorical judgments aforesaid of the Supreme Court, we do not feel the need to call

upon the Senior Counsels for the respondents to address or to discuss the judgment cited.

33. The appellant University has also impleaded to this appeal the University Grants Commission (UGC) as respondent No. 7 though UGC also was not a party to the suits in which the decree was passed. The counsel for UGC also appears on advance notice and we are confident that if anything contrary to law is happening in the appellant University, the UGC will take appropriate action.

34. The application of the appellant University for leave to appeal is thus dismissed and axiomatically the appeal is also dismissed.

35. However no costs.

**RAJIV SAHAI ENDLAW, J.**

**ASHA MENON, J.**

**OCTOBER 01, 2020**

*(Corrected and released on 12<sup>th</sup> October, 2020)*

‘gsr’..