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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 3499 OF 2022
IN
FIRST APPEAL NO. 574 OF 2021**

Prakash Balasaheb Chavan and Ors. .. Applicants.
Vs.
Anand Raju Koppella Aslo known as
Anand Jagpati Raju Kopella .. Respondent

**WITH
INTERIM APPLICATION NO. 3873 OF 2021
IN
FIRST APPEAL NO. 574 OF 2021**

Prakash Balasaheb Chavan and Ors. .. Applicants.
Vs.
Anand Raju Koppella Aslo known as
Anand Jagpati Raju Kopella .. Respondent

Mr. Vishwajeet Sawant, Senior Advocate i/by Mr. S.B. Deshmukh,
Advocate for Applicants.
Mr. Ashish Kamat a/w. Mr. Kunal Mehta, Mr. Gautam Sahni and Mr.
Kayomars Kerawalla, Advocates i/by Vesta Legal for Respondent.

**CORAM : A.S. GADKARI &
MILIND N. JADHAV, JJ.**

**RESERVED ON : 30th August 2022.
PRONOUNCED ON : 14th September 2022.**

JUDGMENT (PER : MILIND N. JADHAV, J.)

. On 18.01.2022, this Court passed the following Order:

“1. Heard the Learned Advocates appearing for the parties and the following order is passed, by consent :

(a) Appellant No. 3 undertakes to contribute a further sum of Rs.1,42,46,125/- towards his share in the firm and deposit the same in the account of the partnership firm within a period of eight (8) weeks from today;

(b) The Respondent undertakes to contribute a further sum of Rs.1,50,52,000/- towards his share in the firm and deposit the same in the account of the partnership firm within a period of eight (8) weeks from today;

(c) In the event, the aforementioned parties fail to deposit their respective further contributions, they shall cease to be partners of the firm from the date of default;

(d) As regards, the Appellants' case that interest is also liable to be contributed by the Respondent and Appellant No.3, the said issue will be referred to the Chartered Accountant of the partnership firm, who will determine additional contributions, if any, to be made by the partners, in terms of the Partnership Deed dated 14th March, 2017 read with the Supplementary Partnership Deed dated 20th July, 2019, including interest, if any, within a period of eight (8) weeks from today;

(e) In the event the parties are aggrieved by the determination arrived by the Chartered Accountant as noted above, the disputes in respect thereof be referred to a Sole Arbitrator to be mutually appointed between the parties;

(f) The Appellants unconditionally withdraw the letter dated 24th May, 2021 and likewise, the Respondent unconditionally withdraws his email dated 19th May, 2021;

(g) Both parties shall not rely upon the draft Retirement Deed or any correspondence in relation thereto;

(h) All notices given to the banks and the authorities arising out of the dispute pertaining to the present proceeding given by both the parties shall stand withdrawn;

(i) The Respondent also agrees to withdraw Civil Misc. Application No.368 of 2021 filed before the learned District Judge (Commercial Division), at Pune, and all parties further consent to withdraw all disputes which are arising out of the said proceeding within one (1) week from today.

2. In view of what is recorded above, the Impugned Order dated 31st August, 2021 is set aside.

3. All the undertakings recorded above are accepted as undertakings given to this Court.

4. The Appeal is disposed of in the aforesaid terms with no order as to costs."

2. This Interim Application by Appellant No.3 therein (Applicant No.3 herein) seeks enlargement of time by one day for compliance of the condition contained in para 1(a) of the said Order.

3. By the above Order, both original Appellant No.3 and Respondent by consent agreed to deposit their respective shares (amounts) which were outstanding, in the account of the partnership firm within a period of eight weeks from the date of the Order. This

was recorded by Court. Period of eight weeks expired on 15.03.2022 from date of Order. It is an undisputed position that the Order was uploaded on the website of the Bombay High Court on 20.01.2022 and only thereafter was available to both parties.

4. Original Appellant No.3 has filed the present Application, since the amount required to be deposited by him in the account of the partnership firm within the prescribed period of eight weeks from the date of the Order was deposited on 16.03.2022, instead of 15.03.2022. Hence, he has sought modification of the Order or in the alternative extension of time by one day to comply with the Order for the reasons stated in the Application.

5. Mr. Sawant, learned Senior Advocate appearing on behalf of Applicant submitted that though the above Order was passed with consent of parties and both were directed to deposit the amounts within eight weeks from the date of Order, there is delay of one day on the part of the Applicant to deposit the amount due to the following reason:

5.1. that Applicant No.3 had the amount lying in his back account in Kotak Mahindra Bank on 15.03.2022 and for complying with the Order approached his banker on 15.03.2022 for transferring the amount into the account of the partnership firm, maintained in the same branch, but it could not be transferred into the firm's account due to a system failure i.e. technical default in the Bank's system

prevalent on 15.03.2022. He submitted that his banker has given a letter dated 20.04.2022 to that effect explaining the prevalence of the technical problem on 15.03.2022, *inter alia*, pertaining resulting in delay for transfer of funds on 15.03.2022 due to system issue. He submitted that due to the aforesaid reason, there was delay of one day; Respondent has therefore construed that there is breach on the part of the Applicant in complying with the Order dated 18.01.2022 and has taken coercive steps, *inter alia*, and he has refused to sign audit documents or any other documents;

5.2. that hence this Court be pleased to consider the present application and clarify that the deposit made by Applicant on 16.03.2022 be construed to have been made as per the Order and pass appropriate directions to that effect or in the alternative extend the time for deposit of amount by Applicant by one day upto 16.03.2022 and pass appropriate directions to that effect.

6. It is contended by Applicant that on a proper reading of the Order dated 18.01.2022, it is seen that consent terms were not signed by the respective parties; all that the Court did was fixed the time for deposit and directed Appellant No.3 and Respondent to bring in their respective share in the firm's account and once that was done all issues were referred to Arbitration; he submitted that time fixed by Court could always be enlarged as by virtue of the said Order, the First Appeal came to be disposed of. He therefore submitted that for

seeking extension of time period fixed by the Court, consent of Respondent is not required; further, letter 20.4.2022 issued by Kotak Mahindra Bank attributes a system failure for non-transfer of the amount already available in Appellant's bank account on 15.03.2022 and the said reason is cogent and genuine; that most importantly on 15.3.2022 the amount required to be deposited by Appellant No.3 was admittedly available in the bank account of Appellant No.3; he therefore submitted that the reason given by the bank for not transferring the amount on 15.03.2022 deserves to be accepted and since the amount was transferred to the firm's account on 16.03.2022, the application be allowed.

7. Mr. Kamat, learned Advocate appearing for Respondent has vehemently opposed the present Application. He has drawn our attention to Respondent's Affidavit dated 16.01.2022 and contended that Order dated 18.02.2022 was consent Order passed by consent of parties having a self operating provision and consequence and it has been breached by Applicant. He submitted that the present Application seeking extension of time of the time mentioned in the consent Order is not maintainable without obtaining consent of Respondent. He submitted that Applicant was never in a position to deposit his stipulated amount as stated in the consent Order on 15.03.2022; that original Appellant Nos.1 and 2 withdrew the amount of

Rs.1,42,50,000/- from bank account of partnership firm and transferred the said amount to the account of Applicant to enable him to comply with the Order dated 18.01.2022 only on 16.03.2022; that since Applicant did not deposit the stipulated amount as per consent Order on or before 15.03.2022, there is breach of the deposit condition and therefore consequences stipulated in the Order would naturally follow. He argued that the consent Order required Applicant No.3 to bring his own funds into the partnership account; however Applicant did not have own funds on 15.03.2022 and has circuitously routed the firm's funds after receiving them from Original Appellant Nos.1 and 2 back into the firm's account. He submitted that conduct of Applicant is not bonafide; it is dishonest and in that view of the matter, the consent Order cannot be disturbed. He has therefore, prayed for dismissal of the Interim Application.

8. We have perused the Order dated 18.01.2022 carefully. Submissions made by learned Advocates have received due consideration of the Court. Order dated 18.01.2022, if seen in para Nos.1(a) and 1(b) requires Applicant No.3 and Respondent to contribute their share respectively and deposit the same in the firm's account within the period of eight weeks from the date of Order. Paragraph 1(c) states that if the parties fail to deposit their respective contributions, they shall cease to be partner of the firm. All other

issues have been referred to arbitration.

9. Mr. Kamat has drawn our attention to para Nos. 21 and 22 of application and contended that reason stated therein is malafide and sham; he submitted that Appellant No.3 did not disclose to the court at the time of passing of Order dated 18.01.2022 that he did not have the wherewithal and capacity to deposit the amount as directed by Court within the period of 8 weeks; that Appellant No.3 did not have more than Rs.75,000/- in his bank account on 14.03.2022 and the amount deposited by Respondent in compliance of Order dated 18.01.2022 was itself routed through Appellant Nos. 1 and 2 (other partners of the firm) in a circuitous transaction to Appellant No.3, to enable him to deposit his share in the firm's account. He submitted that Appellant No.3 in his rejoinder dated 22.08.2022 has admitted that he received the amount of Rs.1,42,50,000/- from Appellant No.2 and he intended to deposit it into the firm's account on 15.03.2022 to comply with the Order, however due to system failure in the Bank on that day, the amount was transferred to the firm's account on 16.03.2022.

10. Mr. Kamat has further submitted that in the present case Order dated 18.01.2022 was passed by consent of both parties and contemplated deposit of amounts by Appellant No.3 and Respondent respectively; however in fact the firm's account was replenished with

the amount deposited by Respondent only. He submitted that this aspects is crucial and Court should consider the same as the Order dated 18.01.2022 stands flouted by Appellant No.3; that despite being a consent order he failed to deposit his share as directed by court. He submitted that time granted for deposit was clearly the essence of the consent Order and application for enlargement for time to deposit by Appellant is not bonafide. In support his submissions he relied upon the decisions of the Apex Court in the case of ***Compack Enterprises India Private Limited Vs. Beant Singh***¹ and after drawing our attention to para Nos. 19 to 21 and para 28 of the decision contended that this Court should be slow to unilaterally interfere in, modify, substitute or enlarge the terms of consent decree, unless it is done by consent of all parties thereto and only in exceptional or glaring cases where it is apparent on the face of record. He has also referred to the decision of the Apex Court in the case of ***Shivshankar Gurgar Vs. Dilip***² and drawn our attention to para No. 13 of same and argued that in view of the consent Order dated 18.01.2022, benefit of the provision of Section 148 of Code of Civil Procedure, 1908 pertaining to enlargement of time is not available to Appellant No.3 without consent of Respondent. He has next referred to the decision of ***State of Goa Vs. Placido Braganza***³ and drawn our attention to para Nos.11 to 13 of the said

1 (2021) 3 SCC 702

2 (2014) 2 SCC 465

3 2002 Vol.104(2) Bom.L.R.137

decision and contended that it is settled law that a consent decree is binding upon the parties thereto as the decree is passed by invitum. He therefore submitted that the court is not competent to alter the terms of a compromise decree unless the other party agrees thereto. However the said judgement itself clarifies that the Apex court has observed that a judgement by consent or default is as effective as estoppel between the parties as a judgement whereby the court exercises its mind in a contested case. He has next referred to the decision of the Apex Court in the case of *D.V. Paul Vs. Manisha Lalwani*⁴ and drawn our attention to para Nos. 28, 29, 32, 33 of the said decision to emphasise that only if the Court is satisfied that a bonafide application for enlargement of time is made, then this Court can examine the request made by Applicant and only thereafter come to the conclusion whether Applicant has made out a bonafide case for seeking extension of time; that according to him Applicant has failed to make out any bonafide case to the satisfaction of this Court; that Applicant has suppressed from this Court that he was not in a position bring his amount (share) as directed by this Court within the stipulated period of 8 weeks and most importantly Applicant deposited his share only after Respondent had deposited his share, by using the same money.

11. We may usefully quote para Nos. 32 and 33 of this decision to

4 (2010) 8 SCC 546

decide the present application.

“32. It is not in the light of the above decisions open to the respondent to argue that a Court can fix time for the doing of an act like making of a deposit, in the instant case, but has no jurisdiction to extend the said period even when a case for such extension is clearly made out. The power to fix the time for doing of an act must in our opinion carry with it the power to extend such period, depending upon whether the party in default makes out a case to the satisfaction of the Court who has fixed the time. There is nothing in Section 148 of the CPC or in any other provisions of the code to suggest that such a power of extension of time cannot be exercised in a case like the one at hand. The argument that the power to extend time cannot be exercised where the act in question is stipulated in a conditional decree has not impressed us. We see no reason to draw a distinction depending on whether the prayer for extension is in regard to a conditional order or a conditional decree. The heart of the matter is that where the Court has the power to fix time and that power is not regulated by any statutory limits, it has in appropriate cases the power to extend the time fixed by it. It is common ground that neither the CPC nor the provisions of M.P. Accommodation Control Act place any limitation on the power of the Court in case like the one in hand.

33. Coming then to the second aspect, namely, whether the appellant has made out a case for extension, our answer is in the affirmative. That the appellant had misunderstood the order of the High Court leading to the preparation of the bank draft of Rs.10,000/- in the name of the respondent and its dispatch under Registered AD cover to the respondent has not been seriously disputed before us. We are satisfied that the appellant did get a bank draft prepared and dispatched to the address of the respondent. This may not have been a strict compliance with the direction issued by the High Court regarding the deposit before the Trial Court but this certainly establishes the bonafides of the appellant, which is a weighty consideration while examining the request for extension of time. It is true that the respondent denied the receipt of the bank draft but that is not of much significance. What is important is whether the appellant has made out a case for extension based on what he had done in discharge of his obligation - no matter on an erroneous understanding of the direction of the Court.”

12. We may usefully quote from the decision of the Apex Court in the case of ***Popular Muthiah Vs. State***⁵, what the Apex Court has held about the jurisdiction i.e. revisional as well as inherent

5 (2006) 7 SCC 296

jurisdiction of the High Court which can be exercised both in relation to substantive as also procedural matters irrespective of the nature of the proceedings and without any procedural restrictions. Paragraph Nos.27 to 30 are relevant and are quoted hereunder:-

“27. While exercising its appellate power, the jurisdiction of the High Court although is limited but, in our opinion, there exists a distinction but a significant one being that the High Court can exercise its revisional jurisdiction and/or inherent jurisdiction not only when an application therefor is filed but also suo motu. It is not in dispute that suo motu power can be exercised by the High Court while exercising its revisional jurisdiction. There may not, therefore, be an embargo for the High Court to exercise its extraordinary inherent jurisdiction while exercising other jurisdictions in the matter. Keeping in view the intention of the Parliament, while making the new law the emphasis of the Parliament being “a case before the court” in contradistinction from “a person who is arrayed as an accused before it” when the High Court is seized with the entire case although would exercise a limited jurisdiction in terms of Section 386 of the Code of Criminal Procedure, the same, in our considered view, cannot be held to limit its other powers and in particular that of Section 482 of the Code of Criminal Procedure in relation to the matter which is not before it.

28. In certain situations, the court exercises a wider jurisdiction, e.g., it may pass adverse remarks against an investigator or a prosecutor or a judicial officer, although they are not before it. Expunction of such remarks may also be directed by the High Court at a later stage even suo motu or at the instance of the person aggrieved.

29. The High Court while, thus, exercising its revisional or appellate power, may exercise its inherent powers. Inherent power of the High Court can be exercised, it is trite, both in relation to substantive as also procedural matters.

30. In respect of the incidental or supplemental power, evidently, the High Court can exercise its inherent jurisdiction irrespective of the nature of the proceedings. It is not trammled by procedural restrictions in that

(i) Power can be exercised suo motu in the interest of justice. If such a power is not conceded, it may even lead to injustice to an accused.

(ii) Such a power can be exercised concurrently with the appellate or revisional jurisdiction and no formal application is required to be filed therefor.

(iii) It is, however, beyond any doubt that the power under Section 482 of the Code of Criminal Procedure is not unlimited. It can inter alia be exercised where the Code is silent where the power of the court is not treated as exhaustive, or there is a specific provision in the Code; or the statute does not fall within the purview of the Code because it involves application of a special law. It acts ex debito justitiae. It can, thus, do real and substantial justice for which alone it exists.”

13. Perusal of the above decisions show that in appropriate cases, civil court has power to extend the time (period) depending upon whether the party in default makes out a case to the satisfaction of the court who has fixed the time (period). In the present case Applicant (Appellant No.3) has come with a request for seeking enlargement of time by one day; admittedly perusal of Order dated 18.01.2022 reveals that this court has fixed the time to deposit the amounts with consent of both parties. The question therefore that falls for consideration is whether the application made by Appellant No. 3 is bonafide or otherwise.

14. On perusing the Interim Application and pleadings we are of the considered view that the Applicant has made out a bonafide case for seeking extension for more than one reason. Applicant No.3 has approached this Court by stating that he visited his banker on 15.03.2022 for the purpose of complying with the Order dated 18.01.2022. However, on that date his banker could not transfer the funds due to system failure in the bank's branch. In this regard, he has placed on record letter dated 20.04.2022 at Exhibit “E” issued by

his banker stating the reason of system failure on 15.03.2022 which prevented transfer of funds from Applicant No.3's account to the firm's account maintained in the same branch. The said letter cannot be disbelieved nor is it challenged by Respondent. That apart, Applicant No.3 cannot be held responsible for one day delay in transferring the amount from his account to the firm's account due to the aforesaid reason. Admittedly, immediately on the next day i.e. 16.03.2022, funds were transferred to the firm's account. Respondent has come up with a case that Applicant did not have funds for depositing the same in the firm's account on 15.03.2022 and the funds were routed through Applicant Nos.1 and 2. This ground raised by Respondent cannot be countenanced as the Order dated 18.01.2022 does not delve upon the source of funds by Applicant No.3 and Respondent nor are we suppose to countenance such submission on behalf of Respondent. We do not find any reason as to why the Application of the Applicant therefore could not be allowed as prayed for. We are fully satisfied with the reasons stated in the application and the Applicant has made out a bonafide case for seeking enlargement of time by one day.

15. That apart, it is pertinent to note that copy of Order dated 18.01.2022 was uploaded on the official website of the Bombay High Court on 20.01.2022. Though the Order does say that parties had to deposit the amount within eight (8) weeks from the date of the Order,

admittedly on 18.01.2022 the Order was not signed. In fact, it was signed only on 20.01.2022, after which it was uploaded.

16. In view of the above, we are inclined to modify paragraph Nos.1(a) and 1(b) of the Order dated 18.01.2022 as under:

“1(a) Appellant No.3 undertakes to contribute a further sum of Rs.1,42,46,125/- towards his share in the firm and deposit the same in the account of the partnership firm within a period of eight (8) weeks from the date of uploading of this Order.

1(b) The Respondent undertakes to contribute a further sum of Rs.1,50,52,000/- towards his share in the firm and deposit the same in the account of the partnership firm within a period of eight (8) weeks from the date of uploading of this Order.”

17. Rest of the Order dated 18.01.2022 remains as it is.

18. Both Interim Applications are accordingly disposed of in above terms.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]

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