

IRESH SIDDHARAM
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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 4247 OF 2022
IN
APPEAL NO. 99 OF 2022
IN
NOTICE OF MOTION NO. 955 OF 2018
IN
SUIT NO. 493 OF 2018**

Daulatbanoo Sadruddin Nanavati ...Applicant

IN THE MATTER BETWEEN

Daulatbanoo Sadruddin NanavatiAppellant

Versus

Tazaldin Sadruddin Nanavati & Ors ...Respondents

**WITH
APPEAL NO. 141 OF 2022
IN
NOTICE OF MOTION NO. 955 OF 2018
IN
SUIT NO. 493 OF 2018**

Tazaldin Sadruddin Nanavati & OrsAppellants

Versus

Amin Abdul Aziz Rajwani & OrsRespondents

**Mr Aspi Chinoy, Senior Advocate, Mr Vineet Naik, Senior
Advocate, with Mutahhar Khan, Amit Mehta, Vinayak Shukla**

*& Omkar Dalvi, i/b Amit Mehta for the Applicant in
IA/4247/2022.*

Mr Cyrus Ardeshir, *with Ziyad Madon, i/b VN Gupta for Appellant
in APP/99/2022 & for Respondents Nos. 1 to 4 in APP/141/2022.*

Mr Navroz Seervai, Senior Advocate, *with Prasad Shenoy & Nirav
Shroff, i/b Nirav Shroff for Respondents Nos. 7 & 8 in
IA/4247/2022 & in APP/99/2022, & for Respondents Nos. 3 & 4
in APP/141/2022*

Dr Birendra Saraf, Senior Advocate, *with Chaitanya Kotnis for
Respondents 5 & 6 (a) to (c) in IA/4247/2022*

Mr Chaitanya Kotnis, *for Respondents Nos. 1 & 2 in APP/141/2022*

**CORAM G.S. Patel &
 Gauri Godse, JJ.**

DATED: 22nd September 2022

PC:-

1. We had heard the matter before 11th August 2022. An order of 10th August 2022 notes that we stood it over to 11th August 2022 for further hearing at 2.30 pm. On 11th August 2022, we made an order saying that the matter would be listed for orders on 18th August 2022.

2. On 18th August 2022 we noted the following:

“Parties have arrived at overall settlement and need some time for fixing modalities.

Hence, S.O. to 07-09-2022 (High on Board) for filing consent terms.

Ad-interim/interim, if any, to continue till then.”

3. The Respondents to the Appeal have made it clear ever since 18th August 2022 — as they do today — that there is in fact no concluded settlement whatsoever. The reasons are unimportant.

4. The present Interim Application is entirely mischievous and in our view is a gross abuse of the process of the Court. What is sought in the Interim Application at page 10 is the following:

“(A) Order and direct that the settlement and compromise of the Appeal and the said Suit No. 493 of 2018 and Suit No. 263 of 2019 as contained in the said Order dated 18th August 2022 read with the “Terms of Proposed Settlement as on 10th August 2022” (Exhibit ‘A-2’) be recorded by this Hon’ble Court and this Hon’ble Court be pleased to order that the said Appeal and the said Suits be disposed off in accordance therewith.

(B) Order and direct the Respondents to do all acts, things and execute all such deeds as are necessary to implement such settlement.

(C) Pending the hearing and final disposal of this Application the further hearing and disposal of the said Appeal and Suit No. 493 of 2018 and Suit No. 263 of 2019 be stayed by this Hon’ble Court.”

5. The Interim Application annexes at Exhibit ‘A’ our order of 18th August 2022 extracted above. What it does not mention or annex is our order of 7th September 2022, when we stood the matter over to today “for passing orders”. The reason is that even on 7th September 2022 we were clearly informed that the parties had not in fact reached a concluded settlement.

6. The submission before us is that the ‘settlement’ can be recorded under Order XXIII or under Order XII Rule 6 of the Code of Civil Procedure, 1908.

7. Mr Chinoy relies on the decision of a Supreme Court in *Saroj Anand & Ors v Pralhad Rai Anand & Ors*.¹ This dealt with the effect of a statement made by counsel — and this is important — on “the merits of a *lis* in question”. The Advocate for the defendants made a statement as noted in paragraph 3 and this statement was noted in paragraph 4 of the Supreme Court decision. Paragraphs 3 and 4 read thus:

“3. One Shri Y.K. Kapoor, learned Advocate, appeared for all the defendants. **He made a statement on their behalf that they were not disputing the share of the appellant (*sic* plaintiff) in all the properties in the suit.** On that premise, the question which arose for consideration of the Court was to explore the possibilities of partition by metes and bounds and/or sale of the joint properties. The counsel stated that the defendants were ready and willing to get the property sold and the first respondent-plaintiff may take his share therefrom.

4. The learned Single Judge recorded the order as under:

“It is stated by the counsel for the defendants that the defendants do not dispute the share of the plaintiff in respect of all the properties. He further states that it is not possible to partition the property. The defendants are ready and willing to get it sold, allowing the plaintiff to take his own share. In case the properties are not partible, the parties may get

1 (2009) 15 Supreme Court Cases 505

a joint advertisement published in the newspaper in the name of all the parties, giving their contact numbers after consulting each other within two weeks, so that the family property brings better price instead of making it a disputed property and selling it at a lower price.

Interim order to continue till the next date subject to the above modification.”

(Emphasis added)

8. Then followed an application based on the statement as noted in paragraph 8. In paragraph 11, the Court made some observations regarding some of the Defendants and the authority of the Advocate to appear. In paragraph 20, the Supreme Court said that a decree can be passed on the basis of a *concession* of the parties. The concession in the *Saroj Anand* case was about the shares of the plaintiff in all the properties in the suit being undisputed.

9. Mr Chinoy contends that this decision is on *para materia* and applicable to the facts of this case. It is not. There is no concession and there never was.

10. What this Application really seeks to do is to twist and distort a routine order of the court and deploy it to the disadvantage of the other side. Worse, it seeks to drag the Court into the controversy between the parties and to use an order of this Court as leverage. We refuse to be dragged into the arena like this. What the Application does not say is that advocate after advocates appeared before us and said repeatedly, even after 18th August 2022, that

there was no settlement. Ms Panda said so. Dr Saraf said so. And most recently, Mr Seervai said so as well. At no point were we persuaded even remotely that the Respondents were attempt to renege on any concluded settlement. Our order of 18th August 2022 only notes what we were then told. It does not record a settlement. In fact, we had orally made it very clear that we would not allow a settlement unless we had seen its terms and satisfied ourselves as to these. We said so because the litigation has been as long as it has been fruitless, and it involves very many individuals. We had also said that should the parties need assistance in resolving disputes — and we are perfectly clear about what was offered (including two bundles and the choice of one with a monetary compensation to the other), we would do so. We had indicated, for instance, that any issues involving the MCGM, permissions, divisions of lands, etc., might be better addressed by orders of this court than agreement of parties. None of this particularization has come before us. To the contrary: every counsel for the contesting Respondents has maintained, and still do, that no settlement is possible. Mr Seervai, for instance, says that his clients, two ladies in one group, have been entirely cut out. To suggest therefore that our order notes a concluded settlement is blatantly incorrect; and we ourselves know it to be incorrect because the Respondents have repeatedly agitated that issues to be settled have not been settled.

11. We have recorded no concession. We have merely noted a statement made across the bar and as reported to us on that date that there was an overall settlement but that modalities needed to be worked out. We were not told what those modalities were nor were

we told the terms of the settlement. None of this is recorded in our order.

12. The attempt today clearly is to overreach this court and to force it into taking a position that it was never prepared to take. It is simply unthinkable that a routine and innocuous order noting what was once said should now be attempted to be literally twisted to become an actionable cause in the hands of one party to the detriment of the other. We refuse to allow our orders to be abused in this fashion. We record now with all possible emphasis that both sides have never confirmed to us after 18th August 2022 or any time earlier that the disputes have been settled. Our order dated 10th August 2022 records that the Appeal is part heard and the same is adjourned for further hearing. It was only by way of indulgence that the Appeal was thereafter adjourned to enable the parties to work out the modalities, if at all there was any amicable settlement amongst them. Such indulgence shown is clearly misused by making this application.

13. These are disputes between two families that have been connected for a very long time in business and, we believe, by marriage. We felt it would be appropriate if a negotiated settlement could be worked out. That there are a large number of properties in dispute and each of these would have to be covered by any settlement. There would be different rights regarding different members of the two families for each of these properties.

14. Given the nature of Interim Application, the submissions sought to be made, and the entire lack of bona fides in the application, we have declined to hear Mr Chinoy on merits.

15. The Interim Application is, in our view, entirely misconceived, not maintainable and possibly even mischievous. It is dismissed.

16. Clearly there is no settlement. We concluded arguments long time ago. We now proceed to list the Appeal for Orders/Judgment on 30th September 2022.

17. At this stage, Mr Chinoy requests that copy of this order be expedited; indeed, that it be released immediately. We see no reason to make an exception to our routine for this Application. In the normal course, our orders are transcribed, corrected, signed, and uploaded either the next day itself or very shortly thereafter. The suggestion seems to be that we should put aside all other work, get this order immediately transcribed, spend time correcting it and release it on a priority basis today itself. In the meantime, everything else must be kept on hold. For what purpose and by what entitlement we do not understand. The request is emphatically rejected. The order will be uploaded when it is ready and not a minute before.

(Gauri Godse, J)

(G. S. Patel, J)