

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

**INTERIM APPLICATION NO.3227 OF 2021
IN
FIRST APPEAL NO.70 OF 2021**

Shree Sidhambika Pharma Pvt. Ltd.
Through its Director
Devang Bipin Parikh ..Applicant

IN THE MATTER BETWEEN

Unicure (India) Pvt. Ltd. ..Appellant
Versus
Shree Sidhambika Pharma Pvt. Ltd.
Through its Director
Devang Bipin Parikh & Anr. ..Respondents

**WITH
INTERIM APPLICATION NO.225 OF 2024
IN
INTERIM APPLICATION NO.3227 OF 2021
IN
FIRST APPEAL NO.70 OF 2021**

Ajaay S. Jajodia ..Applicant
Versus
Shree Sidhambika Pharma Pvt. Ltd. & Ors. ..Respondents

Mr. Omprakash Parihar, for the Applicant in IA/3227/2021 & for Respondent Nos.1 & 2 in IA/225/2024.
Mr. Madhur Rai a/w Sachin Kanse i/by PRS Legal, for the Appellant.
Ajaay S. Jajodia, Applicant in Person in IA/225/2024 & Respondent N.2 in IA/3227/2021 – present.

CORAM : KISHORE C. SANT, J.

**RESERVED ON : 10th JANUARY, 2024
PRONOUNCED ON : 15th JANUARY, 2024**

PC.

1. This application is filed with the prayer to recall order dated 24th September, 2021 passed in First Appeal, whereby this Court recording the consent terms between the parties and disposing of the First Appeal.

2. The case in short is that the Applicant who happens to be original decree holder had filed a suit against Respondent No.1/ Unicure (India) Pvt. Ltd. The suit was decreed. The decree was passed directing Respondent No.1 to pay to the Applicant an amount of Rs.18,02,897.92 along with interest at the rate of Rs.24% per annum on the principal amount of Rs.11,05,590/- from the date of suit till realization of the amount.

3. The Appellant deposited an amount of Rs.51,46,940/- on 01.02.2021 pursuant to compliance of order dated 19.01.2021 passed in Civil Application No.311 of 2018 in the First Appeal.

4. As stated earlier, this Court recorded minutes of order on 24th September, 2021, which reads as under :-

- “1. Minutes of order signed by the parties to the Appeal is taken on record and marked “X-1” for identification. In terms of the minutes of order, the decree stands satisfied. The Appeal is disposed off.
2. With disposal of the Appeal, Interim Application No.1629/2021 does not survive. The same is disposed off as having become infructuous.

3. The trial Court shall act on the certified copy of the order and permit the the appellants to withdraw the amount deposited in terms of Clause-5(iv) of the Minutes of the order.”

5. The minutes of order were signed by present Respondent No.2 who was all along representing this Applicant in the proceedings. There is no dispute about this fact. From the orders passed in the First Appeal, it is seen that the Respondent No.2 appeared in person as a representative of the present Applicant.

6. After order came to be passed on 24.09.2021, it is alleged that the Respondent No.2 played fraud upon this Applicant and entered into settlement with Respondent No.1 and signed on the minutes of the order without knowledge and authority of the Applicant. The main allegation is that though initially Power of Attorney was executed in favour of Respondent No.2, the same was withdrawn by communication dated 27.08.2021 addressed to Respondent No.2 and was informed that all the powers given to Respondent No.2 stood withdrawn and revoked with immediate effect. This communication was sent pursuant to a board resolution was passed by the Applicant company on 27.08.2021. It is thus alleged that Respondent No.2 has played fraud upon the Court by misleading the Court and the Applicant company has never received amount of Rs.51,46,940/-. The Applicant therefore moved this application for recall of the minutes of order and prayer is made to initiate *suo-moto* criminal prosecution against Respondent No.2.

When the application was filed, Respondent No.2 was not joined as a party, after this Court passed an order dated 10th November, 2021, was joined as party.

7. Heard the parties.

8. Learned advocate for the Applicant vehemently argued that from the record, it is clear that there is order passed on consent terms is an outcome of a fraud committed by Respondent No.2 upon the Court. All the powers given to him were revoked by passing a board resolution and the same was communicated to the Respondent No.2. He invited my attention to the letter sent to Respondent No.2, so also, photocopy of the envelope sent through courier to Respondent No.2, where it was clearly informed that his power is withdrawn and prayed for recall of the order by allowing this interim application.

9. The Respondent No.2 vehemently opposed the application by submitting that he was given authority by letter dated 15.12.2012 by the Applicant company authorizing him to act on behalf of the Applicant company. At that point of time, there was no communication received by him as alleged by the Applicant withdrawing the authority given to him. He points out that there is one more letter of authority issued authorizing him to settle any difference/dispute with the company as the Respondent No.2 deems fit and proper considering the nature and circumstances. It is further

alleged that the Power of Attorney was given by one of the partners who left the company in 2017 itself and is seen that this letter of authority was given in 2012. He further invited attention to the minutes of the meeting of the board of directors of the Applicant company dated 15.12.2012, whereby it was resolved to authorize Respondent No.2 to represent the company specifically authorizing him to act, appear and plead in any matter before any Court or any other authority and deposing in any matter and give evidence therein as and when necessary for and on behalf of the company in the best interest of the company. He is further authorized to settle the matter with the opposite party of the company and to enter into compromise agreement with such opposite party of the company and in the best interest of the company. He further pointed out that he was specifically given a letter that the company had settled a dispute with Respondent No.1 and directed him to sign minutes of order by communication dated 07.09.2021, wherein it was specifically instructed to appear before this Court whenever circulation is granted and extend all necessary assistance with instructions to allowed to withdraw Respondent No.1 an amount of Rs.51,46,940/- from City Civil Court. He further immediately on order, by communication dated 25.09.2021 communicated the present Applicant about the order passed by this Court based on minutes of meeting. It was submitted that he has acted as per the instructions, there was no any communication received by him withdrawing his authority by the Applicant at any point of time. He

has merely acted under the directions. He categorically denied the allegations against him.

10. Learned advocate for the Respondent No.1 vehemently opposed the application submitting mainly that the settlement was genuinely arrived at. There was no knowledge to this Respondent of revocation of Power of Attorney/authorization. Assuming that the Power of Attorney is revoked, it is still valid so far as Respondent No.1 is concerned, as there is no communication with Respondent No.1, when the minutes of order were signed by the party was properly represented as all along the Respondent No.2 was appearing on behalf of the Applicant. He submits that the application is frivolous and no ground is made out to invoke powers of this Court under review. There is no allegation against Respondent No.1. The allegations of fraud are only against Respondent No.2. The Applicant can take action against the Respondent No.2 independently and prays for dismissal of the Application.

11. Learned advocate for Respondent No.1 relied upon the judgment reported in *MANU/PH/0697/2008 (Ram Asri Vs. Rakesh Chand and Ors.)*, *1996 DGLS (SC) 1378 (Dilip Kumar Deka Vs. State of Assam)* and *1997 DGLS(SC) 815 (Dwarikesh Sugar Industries Vs. Prem Heavy Engineering Works Private Limited)*.

12. Pending this application, various orders were passed and

in view of the same, affidavits were filed by the parties on the direction of this Court such as to produce the original documents of revocation of Power of Attorney, communication letter, board resolution resolving to withdraw the Power of Attorney etc. The Respondent No.1 was also directed to file an affidavit stating as to in what manner and how much amount was paid to the Respondent No.2. The Respondent No.2 also filed an Application bearing No.225 of 2024 praying for taking action against the Applicant and cost of Rs.10,00,000/- for filing misleading application etc.

13. From the rival contentions and the submissions, this Court needs to consider as to whether a case is made out to recall the order dated 24.09.2021 passed by this Court on minutes of order. The case of the Applicant is only that the Respondent No.2 had mislead the Court and played fraud. He was not authorized to enter into compromise for settlement on the day of passing of the order, as the authority given to him was withdrawn by board resolution dated 25.09.2021 and the communication was addressed to him which he has received. The further question is as to whether the said revocation was to the knowledge of Respondent No.1 and whether such revocation would be binding on the Respondent No.1 for want of knowledge and specific communication addressed to it. Whether the ground is made out to recall the order dated 24.09.2021.

14. Though the matter was heard at length, the Applicant

could not demonstrate that there was valid communication to Respondent No.2. Admittedly, there is no communication addressed to Respondent No.1 company informing that authorization given to Respondent No.2 is withdrawn. Coming to the judgment cited by Respondent No.1, the High Court of Punjab and Haryana considered the question as to whether the written notice of cancellation of General Power of Attorney by the Principal is essentially required to be issued to the person holding such GPA and the subsequent vendee. In that case a sale-deed was executed in favour of defendant Nos.1 and 2 by the Power of Attorney. The same was challenged on the ground that the Power of Attorney was terminated before the execution of the sale-deed. Later on, the executant of the Power of Attorney executed a will in favour of his grandson. A suit thereafter was filed for possession of the land after the death of the executor of the Power of Attorney. It was alleged that the person who executed sale-deed was not given Power of Attorney. In case of the defendant and subsequent purchasers, there was bonafide purchaser from the Power of Attorney holder, there was no notice of cancellation given to purchaser of the Power of Attorney. The High Court held that there was no communication of termination of authority to the purchaser. The Power of Attorney though terminated did not affect the right of the third party. It was necessary to show that even purchasers had knowledge of cancellation of genuine Power of Attorney. This Court finds that this judgment is applicable to the facts of the case in hand.

15. At the averments in the application, there is no pleadings to show that even the Respondent No.1 was given a notice in time before entering into the consent terms. This Court had passed the order on the minutes of the order as at that time Respondent No.2 was duly representing the Applicant company.

16. This Court thus finds that when no case is made out to show that the Respondent No.1 had knowledge about alleged revocation of the power, the Applicant has failed to sufficiently show that even Respondent No.2 was having notice of the alleged letter revoking Power of Attorney. Even if it is accepted that there was communication to Respondent No.2, still the question arose as to whether that communication was binding on the Respondent No.1, to whom there was no communication. Answer is clearly no. For all these reasons, this Court finds that no case is made out to allow Application.

17. Needless to say that Applicant is at liberty to take any action independently against Respondent No.2, if so advised.

18. The Application as such stands dismissed.

19. In view of this, all pending Applications do not survive and stand disposed of as such.

[KISHORE C. SANT, J.]