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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO. 139 OF 2024
WITH
INTERIM APPLICATION NO. 14302 OF 2024
IN
WRIT PETITION NO. 3121 OF 2024**

Akhilesh Khedwal ... Applicant

IN THE MATTER BETWEEN

Mrs. Shweta w/o. Akhilesh Khedwal ... Petitioner

vs.

The State of Maharashtra and Ors ... Respondents

Mr. Ankit Tripathi a/w. Ms. Hritika Shroff i/b. Filji Frederick for FF and Associates for Applicant/Review Petitioner.

Mr. A.M. Saraogi a/w. Mr. Shushil Upadhyay a/w. Mr. Amit G. Dubey a/w. Mr. Anand Mishra a/w. Mr. Siddharth Singh for Respondents (original petitioner in WP/3121/24)

CORAM : GAURI GODSE, J.

DATED : 26th NOVEMBER 2024

ORDER:

1. Heard learned counsels for the parties.
2. The review petition is filed by respondent no.2 in the writ

petition (“respondent”), seeking a review of the order permitting the framing of additional issues in the marriage petition pending in the family court between the parties. This review petition is filed by a new advocate making allegations against the earlier advocate that the consent given by the respondent’s counsel was without obtaining his permission.

3. The respondent’s wife (“petitioner”) had filed the writ petition to challenge the order passed by the family court, rejecting her application to frame additional issues. This court allowed the writ petition and directed the family court to frame issues regarding her entitlement for maintenance, accommodation, and return of ornaments. In paragraphs 2 and 4 of the order under review, this court recorded reasons for allowing the application to frame additional issues. In paragraph 5 of the order, this court recorded that since the respondent agrees to frame additional issues, no further reasons on the contentions raised by the respondent before the family court were required to be dealt with. Hence, by consent, the application for framing additional issues was allowed. It is this consent given by the counsel for the respondent that he objects to in this review petition.

4. The submission on behalf of the respondent is that such

consent was given by his advocate without his permission being obtained. The respondent further submits that the affidavit in reply to the petition was ready; however, his advocate did not file the affidavit in reply in this court. To support the grounds of review, learned counsel for the respondent submits that even in the family court, the respondent objected to framing the additional issues by filing an exhaustive reply. He submits that even in the writ petition, the affidavit in reply was kept ready, and instructions given to his advocate were to argue the petition on merits.

5. Learned counsel for the respondent submits that the concession given by his advocate has resulted in passing the order under review, which, according to the respondent, is not an order on merits. He, therefore, requested that the order be recalled and the petition be heard on merits. To support the objections raised in the review petition, learned counsel for the respondent relies upon internal communication between the respondent and his counsel, who argued the writ petition.

6. Learned counsel for the petitioner submits that the review petition is not maintainable. He submits that the grounds raised in the review petition would not fall under any grounds contemplated under Order XLVII Rule 1 of the Civil Procedure Code, 1908('CPC').

To support his submissions, learned counsel for the petitioner relies upon the decision of the Hon'ble Apex Court in the case of the ***State of West Bengal and Ors Vs Kamal Sengupta and Anr***¹. He submits that the Hon'ble Apex Court has outlined the legal principles for exercising powers under Order XLVII Rule 1 of CPC. He submits that the Hon'ble Apex Court held that the expression in other sufficient reason appearing in Rule 1 of Order XLVII of CPC has to be interpreted in the light of their specific grounds. Learned counsel for the petitioner, thus, submits that the grounds raised by the respondent regarding concession given by his counsel without his permission would not fall under any of the grounds of review contemplated under Rule 1 of Order XLVII of the CPC.

7. Learned counsel for the petitioner relies upon the decision in the case of ***Smt. Kaniz Fatma and Others Vs. Additional District Judge, Meerut and Others***². He submits that the Allahabad High Court held that the counsel who appears for the parties has full authority, including to make a statement to withdraw the writ petition or file a compromise. He submits that this power is derived by the counsel in terms of the contract enumerated in the Vakalatnama filed by his client. Learned counsel for the petitioner thus submits

1 [2008] 10 SCR 4

2 2007 SCC Online All 811

that even if it is assumed that the concession given by the counsel for the respondent was without taking his express permission, it cannot be said that the respondent's counsel had no authority to give such a concession.

8. Learned counsel for the petitioner also relied upon the decision of the Hon'ble Apex Court in the case of ***Tamil Nadu Electricity Board and Anr Vs. N. Raju Reddiar and Anr***³. He submits that the Hon'ble Apex Court held that it has become a new practice unbecoming and not worthy of or conducive to the profession by raising new grounds on behalf of a new advocate. He submits that the present review petition is filed by a new advocate making allegations against the earlier advocate. Learned counsel for the petitioner, thus, submits that in view of the observations made by the Hon'ble Apex Court in the said decisions, such practice is to be deprecated.

9. Learned counsel for the petitioner relied upon the decision of the High Court of Punjab and Haryana to support his submissions that filing a review petition by changing counsels is deprecated by the Hon'ble Apex Court. He submits that the legal principles settled by the Hon'ble Apex Court in the case of ***Tamil Nadu Electricity***

3 (1997) 9 SCC 736

Board are followed by the High Court of Punjab and Haryana in the decision of *Yuvraj Singh Vs. Harninder Singh and Anr*⁴. He submits that filing of the review petition by changing counsel has been repeatedly deprecated by the Hon'ble Supreme Court and the Hon'ble High Courts. Learned counsel for the petitioner thus submits that there is no ground to review the order passed by this court.

10. To support the contentions raised on behalf of the respondent (review petitioner), learned counsel for the respondent relied upon the decision of the Hon'ble Apex Court in the case of *Kirti and Anr Vs. Oriental Insurance Company Limited*⁵ and submitted that the Hon'ble Apex Court, in the said decision, held that the advocate cannot throw away legal rights by entering an arrangement on behalf of the parties, which is contrary to law. He submits that the concession given by the counsel, which is contrary to the law and affects the legal rights of the parties, is not accepted as a valid concession. Learned counsel for the respondent submits that in view of the concession given by his advocate, the petition was allowed; though, the respondent intended to oppose the application filed by the petitioner for framing additional issues. He thus submits

4 RA-CR-49-2024 in CR-606-2024, dated 12th August 2024

5 (2021) 2 SCC 166

that in view of the concession given by his counsel, the respondent's right to oppose the framing of additional issues is adversely affected. He submits that correspondence between the respondent and his counsel nowhere indicates that he had given any consent to his counsel to concede for allowing the writ petition.

11. In response to the submissions made on behalf of the writ petitioner regarding the observations of the Hon'ble Apex Court regarding the deprecating practice of filing review petition by changing counsel, the learned counsel for the respondent submits that the correspondence between the respondent and his counsel indicates that his counsel did not agree for filing review petition. Hence, the respondent had no other option but to file this review petition through another advocate. Learned counsel for the respondent further submits that the grounds for review are on the point that the respondent discovered new and important facts regarding the concession given by his counsel only after he received the copy of the order. He, thus, submits that the review petition be allowed as the grounds are squarely covered by clause (c) of Rule (1) of Order XLVII of the CPC.

12. Learned counsel for the respondent relied upon the decision of the Privy Council in the case of *Sheonanadan Prasad Singh Vs.*

Hakim Abdul Fateh Mohammad Reza⁶. He submits that in the said decision, the agreement between the parties based on the statements made on behalf of the counsel was declared void on the ground that the same would not bind the parties without their consent. He submits that even in the present case, the concession given by the counsel was without the consent of the respondent, which would not bind him.

13. I have considered the submissions. By the order under review, this court has allowed the writ petition and directed the family court to frame issues regarding the petitioner's entitlement to maintenance, accommodation and return of ornaments. Paragraphs 2 and 4 of the order clearly record the reasons for allowing the petition. This court had already recorded the findings that the petitioner's application for framing additional issues deserved to be allowed. The concession given by the respondent's counsel is referred to only as a ground for not recording any further reasons dealing with the contentions raised by the respondent in the family court.

14. Unfortunately, the respondent has gone to the extent of relying upon the internal confidential conversation between him and

6 Vol.XIV Privy Council 545 (Patna Series)

his counsel. Since the internal conversation by way of e-mail and whatsapp messages are annexed to the petition, I have gone through the same. The counsel for the respondent has, in detail, explained the manner in which the matter was conducted. From the conversation, it is clearly seen that the respondent was insisting on the early decision of the writ petition, which had remained pending for quite sometime, and he also wanted an early decision before the family court. Learned counsel has fairly explained all the reasons for the concession recorded on behalf of the respondent.

15. The correspondence between the respondent and his counsel shows that the counsel has not only acted in the interest of the respondent but also explained it to him. It is sad and unfortunate that such allegations are made by the respondent against his counsel, who acted in the interest of the respondent.

16. The Allahabad High Court, in the decision of ***Smt. Kaniz Fatma and Ors*** held that the counsel has full authority to make a statement and even to withdraw the petition and file a compromise, which is accepted as a term of the contract enumerated in the Vakalatnama filed by his advocate on behalf of his client. It is held that after the decision on merits against the petitioner when the counsel requested time to vacate, it cannot be said that the counsel

did not act in a bonafide manner. Hence, the high court refused to entertain a review petition filed through a different advocate by making allegations against the earlier advocate.

17. Even in the present case, this court recorded reasons for allowing the writ petition; however, did not record any further reasons on the contentions raised by the respondent in the family court to oppose the application for framing additional issues, as the respondent's counsel consented to framing additional issues. Thus, after arguing the writ petition on merits and after this court recorded reasons to allow the writ petition, the concession given by the respondent's counsel cannot be faulted. The result of the writ petition is not based on the consent given by the respondent's counsel. Giving consent to framing additional issues has only resulted in this court not recording any further reasons by examining the contentions of the respondent to oppose framing of additional issues. There is no prejudice caused to the respondent by the consent given by his counsel. Another ground argued that the respondent's affidavit in reply was not filed is a frivolous argument. There is no necessity to file an affidavit in reply to such writ petitions.

18. The advocate has an implied authority to take decisions on

behalf of his client that are in the interest of his client. Most of the time, the clients, and especially the litigants in matrimonial disputes, do not understand what is in their interest. In the present case, the concession given by the respondent's counsel does not affect the respondent's legal rights. Thus, the decisions relied upon by the learned counsel for the respondent would not apply to the facts of this case.

19. The legal principles settled in the decision of the Hon'ble Apex Court in the case of the *State of West Bengal* support the submissions on behalf of the petitioner. In the facts of the present case, the grounds raised by the respondent regarding the concession given by his counsel without his permission would not fall under any of the grounds of review contemplated under Rule 1 of Order XLVII of the CPC.

20. The decision of the Hon'ble Apex Court in the case of *Tamil Nadu Electricity Board* is in an application filed by a different advocate to seek clarification of an order dismissing the review petition. The review petition was also filed by a different advocate who never appeared in the Special Leave Petition. The following observations of the Hon'ble Apex Court in paragraph 1 squarely apply to the facts of the present case:

“It is salutary to note that the court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits, Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the Advocate-on-record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession..... ”

21. In the present case, the order under review only permits the framing of additional issues by recording findings on merits in paragraph nos. 3 and 4. Thus, irrespective of the concession recorded in the order, this court has recorded the reasons on merits to allow the application to frame additional issues. The concession given by the respondent's advocate is in the interest of the respondent as it avoids the possibility of any adverse observations on the respondent's contentions. Thus, in the facts of this case, it is unfortunate that on the advice of a new advocate, this review petition is filed by making allegations against the counsel who acted in the interest of the respondent. Such a tendency to file a review petition by making allegations against an advocate who acted in the

interest of his client needs to be deprecated. As recorded hereinabove, no prejudice is caused to the respondent in view of the order under review. In the facts of the case, the review petition deserves to be dismissed by imposing heavy costs. However, considering that the review petition arises out of a matrimonial dispute and that the review petition is filed on the advice of a new advocate, I refrain from passing any order of costs.

22. In view of the facts of the case, as explained hereinabove, at the cost of repetition, I find it necessary to record that the internal communication between the respondent and his counsel is self-explanatory that the counsel has acted in the interest of the respondent.

23. The review petition is devoid of any merits. There is no ground for reviewing the order dated 2nd September 2024. Hence, for the reasons recorded above, the review petition is rejected.

(GAURI GODSE, J.)