

RA-RS-34-2019 in RSA-820-1996 (O&M) [1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RA-RS-34-2019 in RSA-820-1996 (O&M)
Reserved on: 11.10.2023
Pronounced on: 05.01.2024

Tarsem Lal and another Appellants

Versus

Shadi Ram & Others Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Argued by:- Mr. Sumeet Goel, Sr. Advocate with
Mr. Samir Rathaur, Advocate,
Mr. Aarush Neeraj Vaid, Advocate,
Mr. Abhishai Alfred George, Advocate and
Mr. Mayank Bajaj, Advocate,
for non-applicants/appellants.

Mr. Naresh Prabhakar, Advocate &
Mr. A.K. Jain, Advocate
for the applicants-respondents.

HARKESH MANUJA, J.

CM-4447-C-2019 in RA-RS-34-2019 in RSA-820-1996

This is an application seeking condonation of delay of 2512 days in filing the review application.

It has been averred in the application that the applicant gained knowledge about the decision dated 27.03.2012 in the main appeal only when one of the tenants of the suit property, namely, Malkiat Singh informed him about the ejectment petition filed by Naveen Aggarwal before the Rent Controller, Chandigarh, claiming himself to be its 100 % owner. It has further been averred that Dr.Ravinder Pal Singh entered into compromise illegally on the basis of the power of attorney, whereas, he was never authorized in this regard. It was thus argued by learned counsel for the respondent /

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applicant that sufficient explanation was provided in the application which could not be termed as an “excuse”.

This application was vehemently opposed by learned counsel for the appellants/non-applicants while submitting that no sufficient reasons were specified for the delay and even the specific date on which the knowledge about the aforesaid decision was obtained was never disclosed and therefore, this application was liable to be dismissed. In support of his contentions, he placed reliance upon the following judgments:-

- i. **"Majji Sannemma @ Sanyasirao Vs. Reddy Sridevi & Ors."**, reported as 2022(1) RCR (Civil) 505
- ii. **"Ramlal and others Vs. Rewa Coalfields Ltd."**, reported as 1962 AIR (Supreme Court) 361
- iii. **"P.K. Ramachandran Vs. State of Kerala"**, reported as 1997(4) RCR(Civil) 242
- iv. **"T.Lakshmi Vs. 1.M. Vasantha"**, Judgment dated 30.03.2022 passed by Hon'ble Madras High Court in case bearing no C.M.P (MD) No.10954 of 2021
- v. **"The Uniono of India owning Southern Railway rep by its General Manager, Chennai 600003 Vs. Kommu Sumathi and Ors."**, Judgment dated 01.02.2021 passed by Hon'ble Madras High Court in case bearing M.P. No.1 of 2010 in CMA Sr. No.64708 of 2010
- vi. **"United India Insurance Company Ltd. Vs. Kandukuri Swarupa Rani and 5 others"**, reported as 2021(1) TAC 259
- vii. **"Deepak Bajpai vs State Government of NCT of Delhi & another"**, reported as 2017(4) JCC 2751

In a recent judgment titled as **"Sheo Raj Singh v. Union of India and another"**, reported as 2023 (10) SCC 531, the Hon'ble Apex Court observed that Courts must distinguish between an

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`explanation' and an `excuse' in the facts and circumstances of a particular case, while deciding an application for the condonation of delay. Relevant para of this judgement is reproduced below:

“29. Considering the aforementioned decisions, there cannot be any quarrel that this Court has stepped in to ensure that substantive rights of private parties and the State are not defeated at the threshold simply due to technical considerations of delay. However, these decisions notwithstanding, we reiterate that condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an `explanation' and an `excuse'. An `explanation' is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must however be taken to distinguish an `explanation' from an `excuse'. Although people tend to see `explanation' and `excuse' as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real. An `excuse' is often offered by a

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person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an 'excuse' would imply that the explanation proffered is believed not to be true. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication."

An examination of the present application reveals that the applicant has tried to escape from providing the exact details regarding knowledge of aforesaid decision. Neither any specific date has been provided on which the applicant came to know about the ejectment proceeding; nor any effort has been made to substantiate the factum of filing review application after such an inordinate delay. Though in replication, effort has been made to provide some details wherein month has been specified, but again, this averment has been made without any support in the shape of any affidavit from any tenant as alleged in the application so as to *prima-facie* substantiate the cause.

In the facts of the present case, obligation on the applicant to come forward with reasonable explanation was higher on

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account of the fact that third party rights are also involved which becomes more problematic with passage of such long duration.

Since no sufficient cause has been given by the applicant while seeking condonation of such an inordinate delay in filing the review application, therefore, the same is hereby dismissed.

REVIEW APPLICATION:

Though, the application seeking condonation of delay of 2512 days in filing the review application has been declined, yet the main review application having been heard in detail, its merits are being dealt with as well.

2. The facts leading to the present review application are that the appellants/ plaintiffs / non-applicant Tarsem Lal and Chaman Lal (now deceased) sons of late Sh. Ram Sarup son of Late Sh.Rulia Ram filed a Civil Suit No.576 of 5.8.1983 in the Court of Sub-Judge, Ist Class, Chandigarh seeking declaration to the effect that they were the only owners of Industrial Plot No.12, Industrial Area, Phase I, Chandigarh, against Shadi Ram, Ram Murti, Devi Dayal all sons of Late Sh.Rulia Ram i.e. the brothers of their father-late Sh.Ram Sarup. The basis of their claim was a family settlement dated 11.05.1971 besides a Will dated 05.11.1976 executed by late Sh. Ram Sarup registered in the office of Sub-Registrar, Chandigarh at Serial No.206, Book No.3, whereby the suit property was bequeathed in their favour. Further, prayer was also made to grant permanent injunction, restraining the defendants from interfering in their peaceful use and occupation and not to forcibly dispossess them from the suit property

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and further not to forcibly alienate the plot to defendant No.4 on the basis of agreement to sell dated 01.06.1976.

3. Trial Court vide its judgment and decree dated 01.02.1994 dismissed the suit. Aggrieved thereof, first appeal filed before learned Additional District Judge, Chandigarh was also dismissed vide judgment & decree dated 16.12.1995. Thereupon, appellants filed R.S.A No.820 of 1996 against the judgments and decrees passed by the Courts below, which was admitted by this Court vide order dated 17.11.1997.

4. Subsequently on 23.2.2012, a compromise was relied upon before this Court, wherein the appellants were represented by Shri Naveen Aggarwal, while respondents were represented by Dr.Ravinder Pal Singh; who entered into the compromise on the basis of three separate Power of Attorneys (PoA) issued in their favour by the respective parties. It was agreed between the parties that Dr.Ravinder Pal Singh (on behalf of the respondents/defendants) will have no objection, if the R.S.A. No.820 of 1996 is allowed and the judgment and decree dated 16.12.1995 passed by Additional District Judge, Chandigarh as well as Judgment & Decree dated 01.12.1994 passed by Sh.Kamal Kant, Sub Judge, First Class, Chandigarh are set-aside and the Civil Suit filed by the plaintiffs/appellants is decreed. It was also agreed that a declaration be made that Ram Sarup (now deceased) is the sole and absolute owner of Plot No.12, Industrial Area, Phase-I, Chandigarh on the basis of family settlement dated 11.05.1971 and after his death, Sh.Tarsem Lal and Late Sh.Chaman Lal became the owners being

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his legal heirs on the basis of registered Will dated 05.11.1976 and the defendants would have no right, title or interest in the said plot.

Importantly, in furtherance of said compromise, the appellants/ plaintiffs paid a sum of Rs.36.67 lacs (Rupees Thirty Six Lacs Sixty Seven Thousand only) as full and final settlement towards all claims of the defendants in the said plot. On the basis of the said compromise, this Court vide order dated 27.03.2012 allowed RSA No 820 of 1996.

5. Present Review Application has been filed by Ramesh Kumar being legal representative of one of the defendants/ respondents late Shri Devi Dayal, praying for reviewing/recalling the order dated 27.03.2012, primarily on the ground that in terms of power of attorney dated 08.08.1995, Dr. Ravinder Pal Singh was not authorized to enter into a compromise on behalf of its donors.

6. Learned counsel for the applicant contended that Dr.Ravinder Pal Singh, who entered into compromise on behalf of legal heirs of one of the brothers, namely, Devi Dayal, was not authorized to enter into any such compromise in terms of the power of attorney given to him on 08.08.1995. Taking this Court towards the contents of PoA, issued to Dr. Ravinder Pal Singh, he further contended that PoA was only for the purpose of sale of their share & its registration and this PoA, in no way entitled him to enter into a compromise on behalf of respondents in any litigation pertaining to said property. He also submitted that the intention in this regard can also be deduced from the fact that power of attorney was dated

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08.08.1995, while the first appeal was filed in this case on 16.12.1995.

6.1 In support of his contentions, learned counsel for the applicant placed reliance upon "**Chatterjee Brahmin v. Durgadutt Agarwalla & others**", reported as 1916 AIR (Calcutta) 507, wherein, in a partnership firm, partner was granted power of attorney (PoA/GPA) to manage firm, business, and institute suits, but even then, Calcutta High Court held that power to enter into compromise was not given; and so compromise effected by him was not binding on the partnership firm. Relevant para of judgment reads as under:-

"5. As regards the second ground, it is equally plain that the decree cannot be sustained. An extract from the power-of-attorney, dated the 22nd June, 1909, is on the record. Thereby the plaintiff authorised his partner to manage the partnership business, to continue, institute, prosecute, defend or oppose, as the case might be, all the suits that were or might be brought by or against the executant in respect of his business and property. On behalf of the plaintiffs-respondents no endeavour has been made to support the view that the compromise of suit can by any stretch of language be included within any of the terms of the power-of-attorney. It is plain beyond controversy that the partner of the plaintiff had no authority to bind him by the compromise."

6.2 Learned counsel also placed reliance upon "**Timblo Irmaos Ltd., Margao v. Jorge Anibal Matos Sequeira & another**", reported as 1977 AIR (SC) 734, to contend that while reading a document of power of attorney, meaning had to be drawn from the

words used in the document itself; and in case of any ambiguity in the language, inference can be drawn from the facts and circumstances.

Relevant para of the same is reproduced hereunder:-

“11. We think that perhaps the most important factor in interpreting a power of attorney is the purpose for which it is executed. It is evident that the purpose for which it is executed must appear primarily from the terms of the power of attorney itself, and, it is only if there is an unresolved problem left by the language of the document, that we need consider the manner in which the words used could be related to the facts and circumstances of the case or the nature or course of dealings. We think that the rule of construction embodied in proviso 6 to Section 92 of the Evidence Act, which enables the Court to examine the facts and surrounding circumstances to which the language of the document may be related, is applicable here, because we think that the words of the document, taken by themselves, are not so clear in their meanings as the learned Judicial Commissioner thought they were.”

6.3 Learned counsel placed reliance upon "**D.H.M. Framji & Others v. The Eastern Union Bank**", reported as 1951 AIR (Punjab and Haryana) 371, to submit that Power-of-attorney must be strictly pursued and construed as giving only such authority as was conferred expressly or by necessary implication and it was one of the rules of construction that the operative part of the deed was to be controlled by the recitals

6.4 Learned counsel further placed reliance upon "**Syndicate Bank, Bangalore v. I.K. Amitha & Others**", reported as **1985 AIR (Karnataka) 213**, to contend that where authority was given to do particular acts, followed by general words, that general words were restricted to what was necessary for the proper performance of the particular acts. Relevant paras of the same are reproduced hereunder:-

"13. Like any other document a power of attorney may also need judicial interpretation. on the facts and circumstances of each case. Normally the donor of power will either give restricted qualified power in favour of the agent or he may give absolute and general power. One has to look at the manner in which the power is given to the agent by the principal and the purpose for which it is given in order to ascertain the extent of power.

14. Our attention has been drawn to the decision of the Privy Council in the case of Bank of Bengal v. Ramanathan Chetty, AIR 1915 Privy Council 121. In that case it was said that:

"Where an act purporting to be done under a power of attorney is challenged as being in excess of the authority conferred by the power, it is necessary to show that on a fair construction of the whole instrument the authority in question is to be found within the four corners of the instrument either in express terms or by necessary implication. Where under a power of attorney the agent had express authority to borrow on behalf of the principal for

purposes of lending money to others....."

15. *Similarly Bowstead on Agency - 12th Edn. - in Article 35 at page 52 has pointed out the rules of construction applicable to the construction of powers of attorney, Therein Rules 1 and 2 state :*
- (1) *The operative part of the deed is controlled by the recitals where there is ambiguity.*
- (2) *Where authority is given to do particular acts, followed by general words, the general words are restricted to what is necessary for the proper performance of the particular acts.*
16. *Rule 1 referred to above will come into operation only when there is ambiguity. If there is no ambiguity in the conferment of power then the first principle extracted above need not be applied or referred to."*

6.5 Learned counsel for the applicant even relied upon **"Antonio Shunit Joao & Others v. Revisional Authority & Others"**, reported as **2012 AIR (Bombay) 170**, and relevant para of the same is reproduced hereunder:-

- “9. *The approach of the Revisional Authority in revision application preferred by the petitioners against the order passed by the State Government refusing to renew the lease, is obviously unsustainable in law. The Revisional Authority on the basis of the power of attorney, could not have recorded the above finding. It is pertinent to note that the power of attorney only gives power to the attorney to take various steps in respect of the matters, but that by itself does not mean that the rights in respect of the said mine, have been transferred in favour of the constituted*

attorney. That is the matter to be investigated by the appropriate authority. Therefore, in my considered opinion, the Revisional Authority ought to have dealt with the matter on merits on the basis of the contentions raised before it by the petitioners.”

7. In view of the position of law referred hereinabove, learned counsel for the applicant contended that while entering into a compromise on behalf of respondents, in an affidavit filed by Dr. Ravindra Pal Singh in CM-2503-C-2012 in RSA 820-1996, it was not mentioned as to in what capacity or on whose behalf the affidavit was being filed. He further submitted that in compromise, there was no recital regarding rights of applicant and other plaintiffs and how Dr. Ravindra Pal Singh claimed himself to be the sole owner, which raises suspicion towards its genuinity.

7.1 It was also contended that if PoA was for sale in favour of Dr. Ravindra Pal Singh, then there was no need to be written in compromise deed dated 28.03.2012 that all money against settlement was to be paid to defendants and at least a part of it should have gone to attorney holder also. Learned counsel added to this argument by submitting that nothing was brought on record to show that any amount was actually paid by the appellants to the applicant in pursuance of the said compromise. He rather pointed out that by virtue of this power of attorney, no agreement or sale was ever effected by the Donee.

7.2 Learned counsel for the applicant further pointed out that even in order dated 27.03.2012, it was clarified by this Court that the

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compromise deed and the decree passed thereupon shall bind signatories only and since the compromise was not signed by the applicant, it cannot be made binding on him. It was also pointed out that in order dated 05.03.2012, when the application regarding compromise deed was filed, Mr. Rajender Goel, Advocate appeared for the respondents, but it was not mentioned as to for which respondent he appeared or did he appear for all the respondents. In addition, learned counsel also pointed out that though in order dated 27.11.2008, it was specifically ordered that LR's of respondent No 1 be brought on record, however, they were never brought on record.

Learned counsel for the applicant concluded his arguments by submitting that as a cumulative effect of all these incidences, applicant was deprived of his valuable right, by an act of individual who was not exactly authorised or competent enough in this regard.

8. Per contra, learned Senior counsel for the non-applicants / plaintiffs / appellants contended that from the contents of the power of attorney, it could be seen that the PoA holder was completely authorized to take consideration as well as deliver possession against the transfer of property being its subject. He further contended that it was nowhere mentioned in the power of attorney that the consideration against transfer was to be given to the owner. He also contended that even possession was to be delivered by GPA holder directly and not after taking it from the owner / donor meaning thereby that the GPA was kind enough of giving absolute right in the property to the holder, and was not limited to only permitting to do

certain acts on behalf of the donor qua execution of agreement or sale only. He also brought to the attention of the Court that as per the terms of the compromise deed, Rs.36.67 Lakhs were paid to the GPA holder and out of that amount Rs.16.67 lakh were paid in the Court itself vide two separate demand drafts which was also recorded in the order dated 27.03.2012.

8.1 Learned Senior Counsel further contended that there was an agreement between the GPA holder and Mr. Naveen Agrawal against consideration and this transaction was also corroborated from the contents of the order dated 27.03.2012 as well, wherein, receipt of Rs.20 lakh by the GPA holder was also recorded and this was never disputed by GPA holder or the applicant. He further submitted that compounded with the circumstance that on account of *lis pendens*, sale of the demised property was not a tenable option, the Court could always lift the veil and see through the intention behind the power of attorney, which was clearly a sale/transfer and not executed only on account of pendency of litigation, particularly when the power of attorney was given by the applicant/ defendant after filing of the suit by appellants/ plaintiffs. Learned counsel further submitted that in view of the above submissions and in the facts and circumstances of the present case, law cited by learned counsel for the applicant can very well be interpreted in favour of appellants as well.

8.2 Learned Senior counsel also drew attention of the Court towards the fact that the Regular Second Appeal filed in 1996 was never contested by the applicant; merely memo was given on behalf

of the respondents and even no power of attorney was ever filed by them. This conduct, if seen along with GPA given by them in favour of Dr Ravindra Pal Singh, categorically shows that they were no more interested in the outcome of the case.

8.3 In favour of the extended scope of an agent including a counsel or a power of attorney holder, to enter into a compromise on behalf of principal, learned counsel placed reliance upon the following judgments:-

- i. **"Bryam Pestonji Gariwala Vs. Union Bank of India"**, reported as 1991 AIR (Supreme Court) 2234
- ii. **"Pushpa Devi Bhagat (D) Th. LR. Smt Sadhna Rai Vs. Rajinder Singh & Ors"**, reported as 2006(5) SCC 566
- iii. **"Jineshwardas (D) through L.Rs. and ors Vs. Smt. Jagrani and Anr"**, reported as 2003 (11) SCC 3721.

9. Arguments made by the learned Senior counsel for the appellants/non-applicant were even rebutted by learned counsel representing the applicant while submitting that in view of Order 23 Rule 3 of CPC, Dr Ravindra Pal Singh was neither a party to the RSA; nor authorised representative, and therefore, he was not competent to enter into any such compromise. He further put stress on the fact that GPA never authorized sale and the compromise entered was only a diversion for which Dr. Ravinder Pal Singh was never authorised.

10. I have heard learned counsel for the parties and perused the paper-book as well as records of this case. In the given facts, I

am unable to find merits in the contentions raised on behalf of the applicant/ respondent.

11. In view of the judgments cited by both the parties, it is settled law that to draw the intention of the parties in a Power of Attorney, its language has to be given primary importance, however, if there still remains any ambiguity, the intention can be drawn from the surrounding circumstances as well. In that eventuality, it becomes imperative to have a look at the power of attorney dated 08.08.1995 issued by applicant and other owners, in favour of Dr.Ravindra Pal Singh with respect to the demised plot. The relevant part of the power of attorney is reproduced below:-

*“To enter into sale agreement with anybody, to enter into execution of sale agreement, to sign and verify the same to purchase the stamps and to get the same refunded, if no longer required, to execute the **necessary deed(s)/Sale-Deed** to present the **said deed** for registration before the sub-registrar/Registrar or any other authority concerned, to admit the due execution of the **deed** and contents therein to be true and correct, to received the earnest money/ consideration money to issue receipt thereof and to complete all formalities required under the Indian Registration Act, 1908 to execute the necessary papers for the transfer of the ownership of the said plot in favour of the intending purchaser and **deliver the possession of the same** and to complete all formalities required for this purpose.*

And we do hereby undertake and agree to ratify and confirm all the acts, deeds and things done by my said attorney by virtue of these presents, as if the same were done by me.” (Emphasis supplied)

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A careful perusal of this power of attorney reveals following facts regarding the intention of the parties:

- The entitlement of Donee was not limited only to sale-deed, as sale-deed and deed which is a generic term, have been used interchangeably and the word 'deed would include any type of document required to be executed for transferring rights in the property;
- Authorization was also to enter into sale agreement which undoubtedly included oral as well; further authorization was also there to present it before any authority concerned (not only Sub-Registrar or Registrar only);
- Authorization also included permission to execute the necessary deed; to admit the due execution of the deed and present the said deed before any other authority concerned (not only a sale deed);
- Authorization to receive the consideration was also vested in Donee only and there was no obligation to forward the consideration to the donor,
- Even the duty of delivering possession to the prospective buyer lied with the Donee only

11. A conjoint reading of these stipulations in the power of attorney substantiates that the intention was to vest absolute power with the Donee to dispose of/ transfer the property as per his convenience which could include a compromise deed as well. Further, its language also signifies that even the possession was

delivered to the Donee to be further delivered to intending buyer, since the contents did not show that Donee was supposed to take possession from Donar and then deliver it to the buyer. These conditions went on to show upto a great extent that power vested in Donee was not merely to enter into a sale agreement but it was a virtual sale entitling him to deal with the property in every possible manner by executing, admitting or presenting any kind of deed-document before the authority concerned and the actual sale in the given circumstances was being averted only on account of *lis pendens*.

12. Argument by learned counsel for the applicant that the compromise cannot be termed as a sale-deed and also that it does not contain any averment regarding consideration being paid to them is also devoid of any merit in the facts and circumstances of the present case wherein it definitely is a mode of transfer of right in the property which was undoubtedly permissible. Further at best this would entitle the applicant to file a suit for recovery, but in view of GPA given by him besides others, the compromise decree cannot be nullified. Another contention raised by him that even as per order dated 27.03.2012 the compromise was made binding only on the signatories of the compromise and therefore, he cannot be bound by the same; also does not hold much substance, as the signatory being GPA holder on behalf of applicant, any act done by him would have the effect as if it has been done by the applicant himself. His another submission that as directed vide order dated 27.11.2008, LR's of respondent No.1 have not been brought on record also does not have

much force. There is no reason for applicant being concerned if LRs of Shadi Ram are not brought on record as he is not legal representative of Shadi Ram and his natural heirs never came forward to raise any objection.

13. A lot of concern has been raised regarding the fact that the authorised advocate of the respondents/applicant was neither present; nor any notice was given when compromise application was filed before this Court and the Advocate who appeared was not authorised by applicant or known to him. Similarly, it has also been argued that even Dr.Ravindra Pal Singh was not an authorised person in this regard. But neither any material has been brought on record; nor any submission was made during arguments that any criminal proceedings have been initiated by the applicant against the Advocate or Dr.Ravindra Pal Singh. Additionally, this review application has been filed by Sh. Ramesh Kumar alone, while there were two other natural heirs of late Sh.Devi Dayal who though alive but did not come forward. Even no reason has been specified regarding their absence, though if the case as projected by applicant is believed, they are also equally affected by this transaction and would have the same reason to be aggrieved. From all these factual scenarios, it appears that this review application is merely a belated attempt to get the compromise decree nullified.

14. In view of the fact that nothing substantial has been brought on record to cross the hurdle at the threshold of a review application to succeed that there was either a patent error or a glaring omission, while passing the order dated 27.03.2012, on the

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basis of a compromise between the parties, there is no illegality or irregularity warranting interference by this Court and therefore, the present review application is dismissed.

15. Pending application(s), if any, shall also stand disposed of.

05.01.2024
sanjay

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes