

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

IA NO. GA/2/2026
IN EC/494/2019
In
APOT/7/2024

SUNEEL SWAIKA AND ORS
VS
RAJEEV SWAIKA AND ORS

BEFORE:
THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA
AND
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date: March 18, 2026.

Appearance:

Mr. Sarvapriya Mukherjee, Adv.
Mr. ShounakMukhopadhyay, Adv.
Mrs. Iram Hassan, Adv.
Mr. HimanshuBhawsinghka, Adv.
...for the petitioners/respondents.

Mr. Sakya Sen, Sr. Adv.
Mr. Ankan Rai, Adv.
Mr. SarosijDasgupta, Adv.
Mr. Ratnesh Kr. Rai, Adv.
Ms. DevanshiDeora, Adv.
Ms. Nabanita Manna, Adv.
...for the respondents/appellants.

The Court:1. Affidavit of service and Notice of Motion filed today be taken on record.

2. The present application is for clarification of an order dated December 17, 2025 passed in connection with GA/1/2024 arising out of APOT/7/2024 in EC/494/2019. By the said order, passed in presence of learned counsel for both parties, the Court had proceeded on the premise that there was consensus between the parties and recorded that the said APOT and GA were

disposed of by directing the Special Officer who had already been appointed to take immediate steps for registration of “the deed of family arrangement in question, which has been circulated under cover of the letter dated April 29, 2025”. The parties were to share equally the registration charges, fees and stamp duties for the purpose of such registration.

3. Learned counsel for the petitioners submits, by placing reliance on communications between the parties, primarily by emails, that there was a minor dispute still subsisting on the said order, as to whether the expression “since dissolved”, qualifying the HUF, of which the parties are members, as suggested in the draft of the present respondents (appellants therein), would remain in the draft deed for the purpose of registration or not.

4. Learned counsel for the petitioners submits that a specific objection was taken by the present petitioners to the said expression “since dissolved” remaining in the draft deed.

5. Learned counsel places before the Court an order dated February 17, 2026 passed by this Bench in connection with FMAT/55/2026, an appeal arising out an injunction order passed in a partition suit pending at the behest of the petitioners, to point out that this Court had categorically recorded therein the stand of the present petitioners to the effect that the HUF had not been dissolved as yet.

6. Learned counsel also relies on certain emails between the parties, in particular an email dated February 11, 2025 sent by the Special Officer to both parties, wherewith a draft schedule was shared by the learned Special Officer, requesting the law firm representing the present respondents to check

the same and let the Special Officer know their views by 2 p.m. the next day. As per the said email, the learned Special Officer also proposed to send the document to the Registrar of Assurances, Calcutta for assessment of stamp duty and registration charges.

7. On February 12, 2025, in reply to the Special Officer's email dated February 11, 2025, the present petitioners wrote to the Special Officer that they had made minor changes in the said draft deed of family arrangement which were in "track mode".

8. Learned counsel also places reliance on a subsequent email dated January 21, 2026 where the present petitioners referred to the email dated February 12, 2025, whereby the draft of family arrangement had allegedly been enclosed, with the edits suggested by the present petitioners.

9. Thus, learned counsel submits that it was the consistent stand of the present petitioners that the words "since dissolved", qualifying the HUF, should be deleted from the deed of family arrangement which was to be presented for registration.

10. However, unfortunately, on December 17, 2025, when the order (of which clarification is now sought) was passed, the present petitioners could not point out to the Court that the deed of family arrangement, which accompanied the covering letter dated April 29, 2025 sent to the Registrar for the purpose of assessment of stamp duty and registration charges, was the unedited copy of the deed of family arrangement, to which the present petitioners did not agree in principle insofar as the words "since dissolved" were concerned.

11. Even otherwise, learned counsel for the petitioners submits that any agreement contrary to law cannot stand the scrutiny of judicial review, in particular since the clause whereby the HUF was indicated to have been deleted is contrary to Section 171 of the Income Tax Act, which envisages that unless there is a partition by metes and bounds, an HUF does not stand dissolved.

12. Learned senior counsel appearing for the respondents herein (appellants in APOT/7/2024), on the other hand, submits that the order, of which clarification is sought, was passed on consent of both parties and in presence of counsel for both the parties. As such, the application for clarification is not maintainable at all in law. Moreover, it is pointed out that the main matter had been disposed of on the basis of such consent and the same cannot be reopened afresh postfacto.

13. Learned senior counsel further submits that in the garb of a clarification application, the present application seeks a substantive modification going to the roots of the order dated December 17, 2025.

14. Learned senior counsel also places before the Court server copies of two orders, respectively dated November 12 and November 19, 2025, passed in APOT/7/2024, wherein it was clearly recorded by the Court that learned senior counsel appearing for the appellants had submitted that the parties had agreed in principle to the terms of settlement and the matter hinged only on the prayer for a direction to be passed by the Court for registration of the terms of settlement agreed to between the parties through the Special Officer. It was further recorded in the earlier order dated November 12, 2025 that the Court had granted an adjournment in order to enable learned senior counsel appearing

for the respondents to take instruction on such submission of the appellants therein.

15. In the order dated November 19, 2025, the Court clearly recorded that learned senior counsel appearing for the appellants had submitted that since the parties were *ad idem* on the registration and stamping of the document in question, the appeal itself may be disposed of by directing such registration to be made by the Special Officer appointed for such purpose. To the above submissions, learned counsel appearing for the respondents (present petitioners) submitted that there was no difficulty on the part of the respondents in acceding to the above proposal. However, since the partition suit was pending where an injunction order was subsisting then, such injunction order was required to be modified for the purpose of going ahead with the registration. Accordingly, the matter was further adjourned.

17. Thus, it is submitted that all along, there was a consensus between the parties as to the deed in question being registered.

18. Learned senior counsel further submits that at this subsequent juncture, the order recording consent cannot be recalled merely for the asking. Furthermore, upon being asked by the Court as to his response to the petitioners' argument of legality of the clause indicating that the HUF stood dissolved, it is contended by learned senior counsel that the legal submission on the validity and legality of the deed sought to be advanced by the respondents can be canvassed by them if otherwise available in law and this is not the forum where such contention can be decided.

19. Upon a careful consideration of the submissions of the parties, we find that there cannot be any doubt as to the order dated December 17, 2025 having been passed on consent of the parties.

20. From the consistent stand of the parties, in particular as reflected in the order dated November 19, 2025, both sides submitted that they agreed to the deed of family arrangement being registered.

21. Hence, there is no scope of recall of the said order merely since there was some allegedly erroneous perception on the part of the respondents/present petitioners as to the contents of the said deed of family arrangement which was directed to be registered.

22. We fully appreciate that there might have been some embarrassment on the part of the respondents and/or the present petitioners and/or their counsel inasmuch as in their perception, the deed of family arrangement which they agreed to be registered was not the one which was circulated under cover of the letter dated April 29, 2025. However, such postfacto wisdom of the present petitioners cannot be a ground for recalling an order which was passed specifically on consent of both parties.

24. In the event the respondents/ present petitioners had even an inkling of doubt as to the contents of the deed of family settlement which had been circulated under cover of the letter dated April 29, 2025 and was directed to be registered, it was open for the present petitioners to point it out before this Court even on December 17, 2025, when the order in question was being passed. We distinctly remember, as is also reflected from the order in question, that the

said order was passed in open Court and in presence of counsel for both the parties.

25. Thus, this Court is of the opinion that whatever might be the stand of the present petitioners in any other litigation, including the partition suit mentioned above, the same cannot be a justification for recalling the order dated December 17, 2025 in the garb of clarification.

26. As rightly submitted by learned senior counsel for the respondents herein (appellants in APOT/7/2024), the legal arguments sought to be made on the purported validity of the deed of family settlement, which was directed to be registered by the order dated December 17, 2025, can very well be canvassed by the present petitioners before any competent forum/court if they are otherwise entitled to do so in law.

27. In view of the above observations, we are not inclined to modify, recall, 'clarify' and/or make any further observations on the order dated December 17, 2025.

Accordingly, GA/2/2026 is dismissed on contest, without any order as to costs, in the light of the above observations.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)