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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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INTERIM APPLICATION NO. 189 OF 2025
IN
WRIT PETITION NO. 11453 OF 2018

Shri. Raju Bhatkar

... Applicant

Versus

M/s. Ish Home Pvt. Ltd

... Respondent

Mr Tanvir Shaikh, for Applicant.

Mr Javed A. Khan, for Respondent.

CORAM : M.S. Sonak, J.

DATED : 03 APRIL 2025

PC:-

1. Heard learned Counsel for the parties.
2. This is an application for recall of the order dated 22 November 2018, disposing of Writ Petition No.11453 of 2018.
3. The perusal of the order dated 22 November 2018 would show that it was a consent order. One of the consents granted on behalf of the Applicant herein was that, apart from the 74 documents, which the Applicant had sought to rely upon in support of his application for setting aside the ex-parte decree,

he does not intend to rely upon any further documents in respect of the Application for setting aside the ex-parte decree. This is clear from para-No.2 of the order dated 22 November 2018.

4. As if this was insufficient, para No.2 of the order dated 22 November 2018 clarifies that this statement about not relying on any additional documents will not apply if the ex-parte decree is ultimately set aside and the matter goes to trial.

5. Now, after almost six years, an Application has been filed for recall. The explanation is that despite the statement in the order dated 22 November 2018, leave was sought before the trial Court to amend the Application for setting aside the ex-parte decree and to rely upon medical documents to show that the Applicant was not in a proper state of health and mind. This amendment application was rejected by the trial Court and the learned Single Judge of this Court dismissed the challenge to such rejection.

6. The Applicant carried the matter to the Hon'ble Supreme Court but the SLP was rejected by order dated 05 August 2024. However, The Hon'ble Supreme Court clarified *"that if it is permissible in law, the Petitioner shall be free to seek recall of the order dated 22 November 2018 passed in Writ Petition No. 11453 of 2018"*.

7. Based on the liberty granted this application has been filed.

8. Learned counsel for the Applicant submitted that the medical records show that the Applicant was suffering from jaundice and diabetes and had some brain injury, as a result of which, he was not in a proper state of mind.

9. The learned counsel admitted that instructions were given to the counsel who appeared when the order dated 22 November 2018 was made, but at that time the Applicant thought that such a statement applied only to giving inspection of 74 documents. Learned counsel, who appears in this Application for recall, was incidentally the same counsel who appeared when the order dated 22 November 2018 was made. The learned counsel explained that the applicant was under an erroneous impression instructions were given to make such a statement, and the statement was made. He submitted that under such circumstances, the case is made out for recall of the order of 22 November 2018.

10. The learned counsel for the Applicant relied upon **Haroom Haji Abdulla V/s. State of Maharashtra¹ and Sheo Prakash Kajaria and Anr. Vs. Shreelal Kajaria** decided by the Division Bench of the Calcutta High Court, on 9 September 2010, in **G.A No. 1564 of 2010** and connected matters.

¹ *AIR 1968 SC 832*

11. The Application for recall, unfortunately, makes allegations against the Advocates, both past and present. It states that the Applicant was not in a proper state of mind and, on this ground, seeks to wriggle out from the statements made before this Court and based on which the consent order was obtained. This Application was not made at the earliest instance. The only response was that the Applicant and his Advocate were under the impression that notwithstanding the statement made and recorded in the order of this Court, there would be no difficulties in amending the Application and seeking to produce additional documents in support of this Application for setting aside the *ex-parte* decree.

12. All these reasons are difficult to accept. Therefore, an order obtained with both parties' consent cannot be easily recalled. The argument of brain injury cannot be raised whenever it is convenient or expedient.

13. In **Haroom Haji Abdulla** (supra), the issue was about a retracted confession of one of the accused being used as evidence against some other accused. This decision is entirely irrelevant to the facts of the present case. In **Sheo Prakash Kajaria** (supra), an amendment application was filed after 25 years of seeking to withdraw or explain the admissions made. Considering the peculiar facts, such an amendment was allowed by compensating the opposite party with costs. Again, these

decisions turn on their facts and based on these decisions, I do not see how this Application for recall should be allowed.

14. The Applicant's Application for setting aside the *ex-parte* decree is still pending. Learned counsel for the Applicant states that there is a reference to the Applicant's ill health as one of the grounds for setting aside the *ex-parte* decree in the Application. There are also other grounds raised. There is no reason to doubt that this Application will be considered following law. However, no case has been made for recalling the order dated 22 November 2018.

15. None of the observations in this order should influence the Court to consider the pending application to set aside the *ex-parte* decree. The said application must be considered following the law on its own merits.

16. For the above reasons, this Application is dismissed without any cost order.

(M.S. Sonak, J)