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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 13 November 2024
Judgment pronounced on: 07th January, 2025

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CM(M) 450/2022 & CM APPL. 23050/2022 (stay)

SUNITA SHARMA & ANR.Petitioners

Through: Mr. Anil Sharma, Adv.

versus

OM PRAKASH SHARMA & ANR.Respondents

Through: Ms. Nisha Mohandas, Amicus
Curiae.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. This is a petition under Article 227 of the Constitution of India against the order dated 21.04.2022 passed by the Trial Court in MISC. DJ 559/2017 arising out of Civil Suit No. 12767/2026, titled as, "Om Prakash Sharma vs. Sunita Sharma Sharma".

2. Petitioners are the defendants before the learned Trial Court in the civil suit for partition, possession and declaration filed by the respondent No. 1. The limited point of contention in the present petition relates to the order dated 21.04.2022, passed by the Trial Court, whereby the suit filed by respondent No. 1 has been restored to its original number.

3. By order dated 30.08.2017, the suit was dismissed as withdrawn



by respondent No. 1 with liberty to file a separate suit on the same cause of action in the event the petitioners (defendants in the Trial Court) fail to make the payment in accordance with the terms of compromise. The respective statements of the petitioners and the respondents were recorded before passing the aforesaid order.

4. Subsequently, an application dated 27.09.2017 under Section 151 CPC was filed by the respondent seeking review of the order dated 30.08.2017 and for revival of suit, contending that the counsel of respondent No. 1 had settled the matter without authorisation and has also caused the statement of respondent recorded. Paragraphs 3 and 4 of the application list the grounds for filing the review and are reproduced thus:-

“3. That on the last date of hearing i.e 30.08.2017 the counsel for the Plaintiff by misrepresenting the facts got recorded the statement of the Plaintiff that the Plaintiff got settled the matter with the Defendant No. 1 and 2 as the Plaintiff will receive the amount of Rs. 21,25,000/- from Defendant No. 1 and 2 which will be paid by the Defendant No. 1 and 2 to the Plaintiff as 50% amount will be paid in 45 days and balance will be paid in eight months and the suit was dismissed as withdrawn.

4. That soon after when the Plaintiff asked his counsel that what he has done and why the statement has been got recorded as the Plaintiff was not inclined to settle the matter that too on receiving amount as the plaintiff has always sought share in the suit property as the Plaintiff is fighting the case for more than 10 years and even in mediation earlier the matter could not be settled and now when the stage was on final stages as defendant witnesses were being examined and short dates were being given, the Plaintiff in no manner could have settled the matter.”

5. Predicated on the aforesaid averments alongwith the assertion that respondent No. 1 has proceeded against the previous counsel by filing complaint against him on 14.09.2017 in the Bar Association Office and with Tis Hazari Courts, Chowki Incharge and also with Bar



Council of Delhi on 15.09.2017, respondent No. 1 sought review of the order dated 30.08.2017.

6. Based on the aforesaid contentions, the impugned order dated 21.04.2022 was passed by the Trial Court primarily holding that it would be futile for the Court to examine the veracity of the allegations of the respondent No.1 that the compromise was recorded without authorisation or the respondents were misled by their counsel, especially when the Bar Council is already ceased of the matter. The relevant portion of the order dated 21.04.2022 is extracted below:-

“ This court is of the considered opinion that it will be exercise in futility to find out the truth in the allegations when Bar Council is already ceased with the matter. Moreover, the plaintiff has not accepted the settled amount.

Considering the fact that when the impugned compromise took place, the matter was at the stage of defence evidence. Further, this is a suit for partition, possession, declaration alongwith permanent injunction. Without going into the allegations made by the plaintiff against his counsel, it will be appropriate to proceed with the matter on merits.

In these circumstances, review application is allowed and the order dated 30.08.2017 is set aside and the suit is restored to its original number and stage.”

7. Learned counsel for petitioners has vehemently argued that the order of the Trial Court sans merits and is also bereft of any reasoning. It is further contended that the compromise was voluntarily arrived at between the petitioners and the respondents and it is only after the Court was satisfied of the genuineness of compromise and parties free will, that the respondents were permitted to withdraw the suit.

8. Learned counsel for respondents, on the other hand, has submitted that the previous counsel failed to explain the statement to the respondents and also the technical implications regarding the



withdrawal of the suit. It is also contended that respondent No.1 being an uneducated layman, was unable to comprehend the statements recorded before the Court.

9. I have gone through the material on record including the statements of parties recorded before the Court and the impugned order dated 21.04.2022. The order dated 30.08.2017, whereby the suit was dismissed as withdrawn after recording the statements of parties is reproduced below:-

“ Ld. counsel for the plaintiff submits that the plaintiff has finally settled the disputes with defendant nos. 1 and 2 who have agreed to pay a total amount of Rs.21,25,000/- to the plaintiff, out of which they have agreed to pay 50% of the amount within 45 days and rest of the amount would be paid thereafter within eight months. The plaintiff requests to withdraw his suit against all the defendants. Statement of the plaintiff and joint statement of defendant nos. 1 and 2 have been recorded separately in this regard.

In view of the statements made by both, the parties, the suit is dismissed as withdrawn with the liberty to the plaintiff to file separate suit on the same cause of action if the defendants do not make the aforesaid payment. Both the parties shall remain bound by their statements.

File be consigned to Record Room as per rules after compliance of necessary legal formalities.”

10. It is apparent that the statements of parties were duly recorded in Court, which also bear their signatures. Such statements were made in the presence of their respective advocates, who identified them. Respondent No.1's sole contention before the Trial Court was that he was unable to understand the repercussions of the settlement and his previous counsel, against whom he has filed complaint with Bar Council of Delhi played fraud upon him, however, Trial Court failed to address both these aspects and has mechanically passed the impugned order stating that ascertaining the truth of the respondent's



claim would be futile, and thereby restored the suit to its original number.

11. This is a case where the respective statements of the parties were duly recorded before the Court and their signatures have also been appended on the same. In this backdrop, it was incumbent upon the Trial Court to determine whether the parties were fully aware of the settlement when they were recorded and signed, a finding which the learned Trial Court failed to return in the assailed order. It was for the Trial Court to ascertain the truth of allegations. Bar Council is only concerned with taking disciplinary action for the misconduct of the Advocate, if any. The Trial Court erroneously left the task of ascertaining the truth of allegations to the Bar Council and restored the suit only on the basis of allegations.

12. Consequently, this Court has no option but to set aside the order dated 21.04.2022 and remand the matter to the Trial Court for fresh consideration of the respondents' review application, addressing all the relevant aspects. However, it is made clear that while passing such order, the Trial Court shall not be prejudiced by any observation made in this order.

13. Parties are directed to appear before the learned Trial Court on 15.01.2025.

14. Petition is disposed of accordingly alongwith pending application in terms of aforesaid order. No order as to cost.

RAVINDER DUDEJA, J.

07th JANUARY, 2025

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