



2026:DHC:1435-DB



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

Reserved on: 06.02.2026
Pronounced on: 19.02.2026

+ **FAO(OS) 16/2026, CM APPL. 8462/2026 & CM APPL. 8466/2026**

SHRI LALIT MOHAN SHARMAAppellant

Through: Dr. Bharat Bhushan, Sr. Adv.
with Ms. Sonam Priya & Mr.
Ayush Kumar Singh, Advs.
along with Appellant in person.

versus

SHRI DIVAKAR SHARMARespondent

Through: Mr. M. Dutta, Sr. Adv. with
Mr. Aayush Goyal & Mr.
Aditya Guha, Advs.

CORAM:
HON'BLE MR. JUSTICE VIVEK CHAUDHARY
HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

RENU BHATNAGAR, J.

1. The present appeal is directed against the order dated 25.07.2025 (herein after referred to as 'Impugned Order') passed by the learned Single Judge in I.A. No. 17718/2025 in CS(OS) No. 691/2023, whereby the application filed by the Appellant under



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Section 151 of the Code of Civil Procedure, 1908, seeking modification of the order dated 20.02.2025 was dismissed.

2. The appellant and the respondent are real brothers, being sons of late Shri Pran Nath Sharma and late Smt. Radha Rani Sharma. Disputes have arisen between the parties in relation to partition and distribution of assets stated to be owned by their parents as well as properties and assets claimed to belong to Pran Nath Sharma HUF, which disputes are the subject matter of CS(OS) No. 691/2023 pending before learned Single Judge.

3. During the pendency of the said suit, an order dated 20.02.2025 came to be passed by learned Single Judge to the following effect:

- “1. Plaintiff and defendant are brothers and the matter relates to distribution of the properties which have been inherited from their deceased parents.*
- 2. Both the parties agree that all the assets, irrespective of the status, shall be put in a common pot and they have agreed to divide the said assets, in 50% each, i.e. equal shares.*
- 3. There are certain aspects relating to the existence of the HUF ('Hindu Undivided Family') and the taxation relating to the same, which is a matter of detail and can be discussed between the parties, as well as the counsels appearing for the parties, to resolve.*
- 4. The defendant appears in-person and states that he doesn't have the resources to engage a counsel.*
- 5. Accordingly, Ms. Phalguni Nigam, Advocate (Enrolment No. D/5425/2020; Ph. No. 9873122789), who is present in Court, has been appointed as an Amicus Curiae to assist the defendant in this regard.*
- 6. She is at liberty to seek help of a senior member of the Bar, in case she so requires.*



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7. For the purposes of parties to achieve a consensus regarding distribution of the properties and the management of the estate, re-list on 20th March 2025.

8. Order be uploaded on the website of this Court.”

4. Thereafter, the appellant filed an affidavit dated 15.03.2025 stating that he had not agreed to any such equal division and that disputes continued to subsist in respect of certain properties and assets. On that basis, the appellant filed I.A. No. 17718/2025 seeking modification of the order dated 20.02.2025, which application was dismissed *vide* the Impugned Order, giving rise to the present appeal.

5. The relevant portion of the Impugned Order is extracted below:

“1. This application has been filed by defendant seeking modification of order dated 20th February 2025 to the extent that the defendant never agreed that all assets, irrespective of the status, shall be put in a common pot and have been agreed to be divided in 50% each, equal shares...

...3. The Court is not inclined to allow the application for the reason that this order was dictated in open Court, duly signed and uploaded soon thereafter. In fact, on the persuasion of the Court, both the plaintiff and defendant had appeared in person and considering it was a dispute between brothers, an effort was made by the Court with the assistance of the counsel, in order to resolve and telescope the disputes. It was in this context that the agreement of the parties was recorded in paragraph no.2.

4. Today, defendant’s attempt to try and displace the statement, is in the opinion of the Court, mala fide; an attempt to retract and to displace what had been resolved in the open Court and accordingly recorded.

5. Attempt of plaintiff by this application (filed in July 2025), five months after the order have been



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dictated, passed and uploaded is ex-facie specious and unacceptable.

6. Moreover, none of the other counsels including Mr. M. Dutta, Senior Counsel who appears for plaintiff, who is also an Officer of the Court, states that the said agreement between the parties was wrongly recorded.

7. It is also noted that on 20th February 2025, the Court appointed Ms. Phalguni Nigam, Advocate as an Amicus Curiae for the defendant to legally assist him in the matter. However, order dated 20th March 2025 notes that Amicus Curiae expressed her difficulty and sought discharge from the matter. 8. In view of the same, the application is dismissed.

9. Parties are at liberty to raise their contentions in Suit, which is already pending before the Roster Bench."

6. The learned Senior Counsel for the appellant submitted that on 20.02.2025, when the alleged consent order was recorded, appellant was appearing in person before the Court and was not represented by any counsel. It is that upon being informed by the learned *Amicus Curiae* on 25.02.2025 about the contents of the order dated 20.02.2025, the appellant immediately communicated his disagreement through WhatsApp messages and emails, and subsequently filed a sworn affidavit dated 15.03.2025 reiterating that disputes continued to subsist in respect of the properties.

7. It is further submitted that on the subsequent date of hearing i.e. 20.03.2025, the learned *Amicus Curiae* recused herself from the matter and did not file her *vakalatnama*. The appellant, therefore, continued to remain without legal assistance.

8. *Per contra*, the learned counsel for the respondent submits that



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on 15.01.2025, the learned Single Judge had recorded that the parties, along with their respective counsels, were exploring the possibility of settlement. It is contended that after hearing the parties, the learned Single Judge duly recorded the agreement arrived at between them, which culminated in the order dated 20.02.2025, and that the said order correctly reflects the consensus between the parties. He further submitted that the application seeking modification of the order dated 20.02.2025 was filed after a lapse of approximately four months, and such delay clearly demonstrates the mala fide intention of the appellant to resile from a settlement already recorded by the Court.

9. We have heard learned counsel for the parties and have carefully examined the record.

10. The principle issue which arises for consideration is whether the learned Single Judge has rightly dismissed the application of the appellant in treating the said order dated 20.02.2025 as recording a concluded settlement within the meaning of Order XXIII Rule 3 of the CPC.

11. It is well settled that a consent order or compromise decree stands on a higher pedestal than an adjudicated decree, being founded on the agreement of the parties. Such an order partakes the character of both a contract between the parties and a command of the Court. However, the Court's jurisdiction to record a compromise is strictly governed by Order XXIII Rule 3 CPC, which mandates that the compromise must be *in writing and signed by the parties*. This



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requirement is mandatory and not merely procedural.

12. The expression “*in writing and signed by the parties*” was brought into the Code of Civil Procedure, 1908 by the Code of Civil Procedure (Amendment) Act, 1976 to remedy recurring disputes regarding alleged oral or inaccurately recorded settlements. The legislative intent was to ensure certainty, authenticity, and voluntariness in compromises. The statutory safeguard is thus designed to prevent precisely such controversies and cannot be diluted as a technical formality.

13. In the present case, the order dated 20.02.2025 records that both parties agreed that all assets, irrespective of status, shall be placed in a common pool and divided equally. However, no written compromise signed by the parties was placed before the Court.

14. Further paragraph 3 of the order dated 20.02.2025 itself indicates that issues relating to the HUF and taxation were matters yet to be discussed. This demonstrates that the understanding between the parties was not fully crystallised or reduced into definitive terms.

15. Mere recording of submissions in the order sheet, in absence of a written and signed compromise, does not satisfy the mandatory requirement of Order XXIII Rule 3 CPC.

16. Even otherwise, the record reveals that the Appellant was unrepresented at the relevant time when the order dated 20.02.2025 was recorded; that the learned *Amicus Curiae* did not continue to represent him thereafter; that objections were promptly raised and



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placed on record by way of a sworn affidavit; and that no conclusive settlement *qua* all the issues had been agreed upon between the parties. In such circumstances, the refusal to examine the matter on merits is unsustainable.

17. Furthermore, though it is correct that the application seeking modification of the order dated 20.02.2025 came to be filed after a period of approximately four months, the learned Single Judge, while dismissing the said application, did not consider the fact that the appellant had already placed his objection on record by filing an affidavit dated 15.03.2025. The filing of the affidavit at the earliest available opportunity assumes significance while examining whether the appellant had actually consented for compromise.

18. Accordingly viewed in the given scenario, the so-called consent recorded on 20.02.2025 cannot be elevated to the status of a concluded settlement. The oral statement made on that date at best, can be construed as submission made before the Court towards peaceful resolution of their all disputes, which were subject to finalisation upon the settlement of other controversies as reflected in Para no. 3 of the order dated 20.02.2025 by submitting a written compromise and could not, by themselves, bind the parties in respect of disputed rights.

19. In our considered view, the alleged consent recorded on 20.02.2025 does not fulfil the mandatory requirements of Order XXIII Rule 3 CPC. The learned Single Judge, therefore, erred in treating the said order as recording a concluded settlement. The matter deserves to



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be proceeded on merits.

20. In view of the foregoing discussion, the present appeal is allowed and the impugned order dated 25.07.2025 is hereby set aside. The matter is remanded to the learned Single Judge for hearing and deciding CS(OS) No. 691/2023 on merits.

21. The present appeal along with the pending applications stand disposed of in the aforesaid terms.

22. Parties to appear before the learned Single Judge on 19.03.2026.

RENU BHATNAGAR, J.

VIVEK CHAUDHARY, J.

FEBRUARY 19, 2026/ bs/my/kp