A HIMALAYAN CO-OPERATIVE GROUP HOUSING SOCIETY

v.

BALWAN SINGH

(Civil Appeal Nos. 4360-61 of 2015)

B

APRIL 29, 2015

[H.L. DATTU, CJI, S.A. BOBDE AND ARUN MISHRA, JJ.]

C *Constitution of India, 1950: Articles 227 – Jurisdiction under – Scope – Respondents-members of appellant-society enrolled for allotment of apartments defaulted in payment of deposit amount – Society passed resolution expelling them from membership – Registrar of Co-*
D *operative Societies approved the resolution – Revisional Authority confirmed the expulsion order – Writ court held that the respondents had not made out a case for interference with orders of the authorities – However, on a request of respondents and concession given by the counsel for the*
E *society, the Writ court gave directions to society for construction of additional quarters – On appeal, Held: The prayer in the writ petition was to set aside the orders passed by the authorities below – Even if the said petitions were styled as petition u/Art.226, the content and the prayers*
F *thereunder being one requiring exercise of supervisory jurisdiction only could be treated as petitions filed u/Art.227 of the Constitution only – Writ court held that expulsion of respondents from society was justified – Having said so, the Court ought not to have issued the impugned directions*
G *merely because a request was made for the respondents – Court while exercising its power u/Art.227 ought to have confined itself to the subject matter and the issues raised by parties in the writ petition – Moreover, Court ought to have*

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made query whether the counsel for the appellant-society was authorised to make such a statement by society or whether any such resolution was passed by society giving concession in matters of this nature – Since caution was not exercised by writ court, the directions issued by writ court suffer from infirmity and hence set aside – Concession – Cooperative Societies – Delhi Cooperative Societies Rules, 1973.

Jaisingh and Ors. v. Municipal Corporation of Delhi and Anr. **(2010) 9 SCC 385 : (2010) 12 SCR 358 – relied on.**

Advocate: Duty of lawyers towards client – Lawyer-client relationship – Held: Lawyers owe fiduciary duties to their clients – Lawyers to follow client's instructions rather than substitute their judgment for that of the client – An Advocate has to conduct himself and his duties in an extremely responsible manner – It is solemn duty of advocate not to transgress the authority conferred on him by the client – Client is not bound by a statement or admission which he or his lawyer is not authorised to make – Bar Council of India Rules, 1975 – rr.15, 19 – Advocates Act.

Periyar & Pareekanni Rubber Ltd. v. State of Kerala **(1991) 4 SCC 195;** *Sourendra Nath Mitra v. Tarubala Dasi* **AIR 1930 PC 158 – relied on.**

Case Law Reference

(2010) 12 SCR 358	**relied on.**	**Para 16**
(1991) 4 SCC 195	**relied on.**	**Para 30**
AIR 1930 PC 158	**relied on.**	**Para 31**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 4360-4361 of 2015.

A From the Judgment and order dated 12.10.2012 and 25.11.2010 of the High Court of Delhi at New Delhi in RP No. 188/2011, in WP(C) No. 7546/2005.

WITH

B Civil Appeal Nos. 4363-4364, 4347-4348, 4365-4366, 4353-4354, 4351-4352 and 4355-56 of 2015.

Jayant Bhushan, Ravikesh Sinha, Abhijat P. Medh for the Appellant.

C Huzefa Ahmadi, N. Prabhakar, Gopal Jha, Kaushik Poddar, Ranjeeta Rohtagi, Pragya Baghel, Jaya Khanna for the Respondent.

The Order of the Court was delivered

ORDER

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1. Leave granted.

2. These appeals are directed against the judgment and order passed by the High Court in Writ Petition No.7546 of 2005 and connected matters, dated 25.11.2010 and in Review E Petition No.138 of 2010 and connected matters, dated 12.10.2012. By the impugned judgment and order in the Writ Petition, the High Court has affirmed the orders passed by the Courts/authorities below and, on the basis of a concession made by the counsel appearing on behalf of the appellant, F issued certain directions to the appellant.

3. For convenience, we would only notice the facts in Civil Appeals arising out of S.L.P.(C) Nos.9302-9303 of 2013.

4. The appellant is a co-operative society registered under G the provisions of the Delhi Cooperative Societies Act, 1972 (for short, "the Act"). The appellant-Society comprised of 150 members, including the respondents, who had enrolled themselves with the said Society for allotment of residential quarters/ apartments. The appellant-Society raised a demand H

for payment towards allotment of residential quarters/ apartments on 28.05.1998. The respondents failed to comply with the demand. They continued to be defaulters in spite of continuous demand notices. In view of the default in payment of initial deposit amount, the appellant-Society after following the due procedure had passed a resolution expelling the respondents from the membership of the Society.

5. The resolution requires confirmation of the Registrar of Co-Operative Societies (respondent No.2-herein) under Rule 36 of the Delhi Co-Operative Societies Rules, 1973 (for short, "the Rules") and therefore, was placed before the Registrar for his consideration and approval. The Registrar, after due verification of the records of the appellant-Society and in compliance with the procedure as contemplated under the provisions of the Act and the Rules, by an order dated 29.01.2004, has approved the resolution passed by the appellant-Society. However, in the interest of justice the Registrar has provided a last opportunity to the respondents to pay their outstanding dues to the appellant-Society within four weeks, failing which their expulsion from the appellant-Society would come into effect. The respondents not having complied with the aforesaid order, the said resolution stood confirmed and the respondents ceased to be members of the appellant- Society.

6. The aforesaid order of the Registrar was carried in appeal by the respondents before the Presiding Officer, Delhi Co-operative Tribunal under Section 86(4) of the Delhi Co-operative Societies Act, 2003. However, on a later date, the respondents withdrew the said appeal and preferred Revision Petition before the Financial Commissioner, Government of NCT of Delhi under Section 80 of the Act. The Revisional Authority has carefully considered the documents on record and the submissions made by parties to the *lis* and concluded

A that the Registrar has rightly confirmed the expulsion of members of the Society. The Revisional Authority, while dismissing the revision petitions, by its order dated 24.02.2005 has noticed that despite ample opportunity provided to the respondents, they have failed to pay the outstanding amount
B and therefore, their expulsion is proper and justified.

7. The respondents, aggrieved by the aforesaid orders passed by the Registrar and the Revisional Authority, had approached the Writ Court. In the Writ Petition filed, their main
C prayer was to set aside the orders passed by the Registrar and the revisional authority by exercising supervisory jurisdiction of the Court.

8. The Writ Court, after duly considering the contentions
D raised in the Writ Petition has come to the conclusion that the Registrar and the revisional authority have not committed any error in arriving at their respective conclusions and have rightly confirmed the resolution expelling the respondents from the membership of appellant-Society. The Writ Court has observed
E that the respondents have not made out a case for interference with the orders of the authorities below. However, on a request made by the respondents seeking issuance of direction to the appellant-Society for consideration of their request to construct and allot the additional quarters/ apartments to them, the same
F being agreeable to by the learned counsel appearing for the appellant- Society, the Court has issued certain directions to the appellant-Society for construction of additional quarters/ apartments and their allotment to the respondents, by judgment and order dated 25.11.2010.

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9. Being of the firm view, that, the appellant-Society had not authorized the learned counsel who had appeared for them before the Writ Court to make any concession in favour of the respondents had preferred Review Petitions against the
H aforesaid common judgment and order of the Writ Court. The

said Review Petitions were confined to the limited question of feasibility of implementation of the directions issued by the Writ Court in the impugned judgment and order. The High Court after considering the merits of the Review Petitions has dismissed the same by its order dated 12.10.2012.

10. Aggrieved by the aforesaid judgment and order passed by the High Court in the Writ Petitions as well as in the Review Petitions, the appellant-Society is before us in these appeals.

11. We have heard learned counsel appearing for the parties to the *lis*.

12. Shri Jayant Bhushan, learned counsel appearing for the appellant-Society contends that in the Writ Petitions filed under Article 226 read with Article 227 of the Constitution of India, the Writ Court was not justified in passing the incidental and ancillary directions in respect of construction and allotment of the additional flats/apartments to the respondents. In support of his contention, Shri Bhushan would rely upon the concurrent finding of the Registrar, Revisional Authority and the Writ Court and submit, that, the respondents are indeed the defaulters and, therefore, they were not entitled to continue as members of the appellant- Society. Further, Shri Bhushan would submit that appellant-Society at no point of time had authorized the learned counsel for the appellant-Society to make any concession before the Writ Court and such being the case, the Writ Court ought not have issued any further direction to the appellant-Society solely on the basis of a concession made by the lawyer appearing on its behalf without any express consent by the appellant-Society.

13. Learned counsel, Shri N. Prabhakar, appearing for one set of the respondents submits that the Writ Court had only issued the impugned directions in light of the concession made by the learned counsel for the appellant-Society. Shri

A Prabhakar would state that the appellant-Society having made a concession before the Writ Court, cannot now dispute the authority of the lawyer to settle and compromise a claim before this Court and therefore, submits that the Writ Court was justified in issuing the said directions to the appellant- Society.

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14. Shri Huzefa Ahmadi, learned counsel appearing for some of the respondents contends that the jurisdiction exercised by the Writ Court was not under Article 227 of the Constitution but only under Article 226 of the Constitution of C India and therefore, such directions could be issued and have been rightly issued by the Writ Court. Shri Ahmadi, would submit that since, the appellant-Society in the affidavit filed before this Court has stated that certain apartments are still lying vacant, the same may be allotted to the respondents in D the interest of justice. Further, Shri Ahmadi would support the directions issued by the Writ Court and submit that the counsel who had appeared for the appellant-Society had not only given his consent for the same before the Writ Court but also not disputed the same in the Review Petition preferred by the E appellant-Society and therefore, the appellant- Society now cannot resile from the concession made by its counsel before the Writ Court.

15. The issues that would arise for consideration and F decision are:

(a) What is the jurisdiction of the Court while dealing with a petition filed under Articles 226 and 227 of the Constitution of India?

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(b) whether the counsel appearing for an appellant-Society could make concession for or on behalf of the appellant-Society without any express instructions/ authorisation in that regard by the Society?

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(c) Whether such a concession would bind the appellant-Society and its members? A

(d) Since the subject matter of the concession made by the counsel was not the issue before the Writ Court, whether the same would bind the appellant-Society and its members? B

16. The first issue need not detain us for long. It is the stand of the learned counsel for the respondents, that, since the Writ Petition that was filed was both under Articles 226 and 227 of the Constitution of India, the Court apart from C examining the merits of the Writ Petition could also issue incidental and ancillary directions to do complete justice between parties litigating before it. We do not agree. The issue in our view is no more debatable in view of the decision of this Court in the case of *Jaisingh and Ors.* vs. *Municipal* D *Corporation of Delhi and Anr.* (2010) 9 SCC 385. The Court has stated:

> "15. ...we may notice certain well recognised principles governing the exercise of jurisdiction by the High Court E under Article 227 of the Constitution of India. Undoubtedly the High Court, under this article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court F has the power and the jurisdiction to ensure that they act in accordance with the well-established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. *The* G *jurisdiction under this article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India.* It is, however, well to remember the well-known adage that greater the power, greater the H

A care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well- recognised constraints..."

B (emphasis supplied)

17. The scope and extent of power of the Writ Court in a petition filed under Article 226 and 227 of the Constitution came up for consideration before three Judge Bench of this Court in C the recent case of *Radhey Shyam and Anr v. Chhabi Nath & Ors.*, Civil Appeal No.2548 of 2009. This Court observed that the Writ of Certiorari under Article 226 though directed against the orders of a inferior court would be distinct and separate from the challenge to an order of an inferior court under Article D 227 of the Constitution. The supervisory jurisdiction comes into play in the latter case and it is only when the scope and ambit of the remedy sought for does not fall in purview of the scope of supervisory jurisdiction under Article 227, the jurisdiction of the Court under Article 226 could be invoked.

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18. In the present case, what was challenged by the members of the Society was an order passed by the Registrar and the Revisional Authority under the provisions of the Act and the Rules framed thereunder. The prayer was to set aside F the orders passed by the authorities below. Even if the said petitions(s) were styled as a petition under Article 226, the content and the prayers thereunder being ones requiring exercise of supervisory jurisdiction only, could be treated as petitions filed under Article 227 of the Constitution only.

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19. Having said so, we will now consider the issues that falls for our consideration and decision in the present appeals.

20. In the present case, the subject matter of the petitions

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was the orders passed by the Registrar and the Revisional Authority under the provisions of the Act and the Rules framed thereunder. The Registrar and the Revisional Authority in their order have considered the validity of the expulsion of the respondents from the membership of the appellant-Society for having defaulted in paying the principal amount to the appellant-Society. The Registrar and the Revisional Authority have recorded a concurrent finding that despite notice and repeated opportunities to deposit the required amounts to the appellant-Society, the respondents have continued to be in default and hence, the said authorities have confirmed the resolution passed by the appellant-Society expelling the respondents from the membership of the appellant-Society. The Writ Court, in the impugned judgment and order, has also reached the conclusion that since the respondents had defaulted in paying the principal amount to the appellant-Society, the appellant-Society was justified in expelling them from the membership of the appellant-Society and hence, confirmed the orders passed by the authorities below.

21. The Writ Court after considering the merits of the case has come to the conclusion that the expulsion of respondents from the appellant- Society was justified. Having said so, in our view, the Court ought not to have issued the impugned directions merely because a request was made by the learned counsel appearing for the respondents-herein. The same would hold true even if a concession was made by the counsel for the appellant-Society. The Court, while, exercising its powers under Article 227 of the Constitution of India, ought to have confined itself to the subject matter and the issues raised by parties in the Writ Petition. The digression of or expansion of the supervisory jurisdiction under Article 227 of the Constitution of India, would open precarious floodgates of litigation should the limitation on the supervisory jurisdiction

A not be observed mindfully.

22. If for any reason, the Writ Court perceived the oral request made by the respondents to have justified the ends of justice and desired to accept the concession so made by the B counsel for appellant-Society, the said request not being the subject matter of the Writ Petition required the Court to query whether the counsel for the appellant-Society has been authorized to make such a statement by the appellant-Society or whether any such resolution has been passed by the C appellant-Society giving concession in matters of this nature. Since the required caution was not exercised by the learned Judges of the Writ Court, the directions issued by the Writ Court suffer from infirmity and hence require to be set aside.

D 23. Apart from the above, in our view lawyers are perceived to be their client's agents. The law of agency may not strictly apply to the client – lawyer's relationship as lawyers or agents, lawyers have certain authority and certain duties. Because lawyers are also fiduciaries, their duties will sometimes more E demanding than those imposed on other agents. The authority-agency status affords the lawyers to act for the client on the subject matter of the retainer. One of the most basic principles of the lawyer-client relationships is that lawyers owe fiduciary duties to their clients. As part of those duties, lawyers assume F all the traditional duties that agents owe their principals and, thus, have to respect the client's autonomy to make decisions at a minimum, as to the objectives of the representation. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions G rather than substitute their judgment for that of the client. The law is now well settled that a lawyer must be specifically authorised to settle and compromise a claim, that merely on the basis of his employment he has no implied or ostensible authority to bind his client to a compromise/ settlement. To put

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it alternatively that a lawyer by virtue of retention, has the authority to choose the means for achieving the client's legal goal, while the client has the right to decide on what the goal will be. If the decision in question falls within those that clearly belong to the client, the lawyers conduct in failing to consult the client or in making the decision for the client, is more likely to constitute ineffective assistance of counsel.

24. The Bar Council of India Rules, 1975 (for short, "the BCI Rules"), in Part VI, Chapter II provide for the 'Standards of Professional Conduct and Etiquette' to be observed by all the advocates under the Advocates Act, 1972 (for short, "the Act, 1972"). In the preamble to Chapter II, the BCI Rules provide as follows:

"An advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an advocate. *Without prejudice to the generality of the foregoing obligation, an advocate shall fearlessly uphold the interests of his client and in his conduct conform to the rules hereinafter mentioned both in letter and in spirit.* The rules hereinafter mentioned contain canons of conduct and etiquette adopted as general guides; yet the specific mention thereof shall not be construed as a denial of the existence of others equally imperative though not specifically mentioned."

(emphasis supplied)

25. The Preamble makes it imperative that an advocate has to conduct himself and his duties in an extremely responsible manner. They must bear in mind that what may be

A appropriate and lawful for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity, may be improper for an advocate in his professional capacity.

B 26. Section II of the said Chapter II provides for duties of an advocate towards his client. Rules 15 and 19 of the BCI Rules, has relevance to the subject matter and therefore, they are extracted below:

C "15. It shall be the duty of an advocate fearlessly to uphold the interests of his client by all fair and honourable means without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the
D guilt of the accused, bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence.

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19. An advocate shall not act on the instructions of any
F person other than his client or his authorised agent."

27. While Rule 15 mandates that the advocate must uphold the interest of his clients by fair and honourable means without regard to any unpleasant consequences to himself or any other.
G Rule 19 prescribes that an advocate shall only act on the instructions of his client or his authorized agent. Further, The BCI Rules in Chapter I of the said Section II provide that the Senior advocates in the matter of their practice of the profession of law mentioned in Section 30 of the Act, 1972 would be
H subject to certain restrictions. One of such restrictions

contained in clause (cc) reads as under: A

> "(cc) A Senior Advocate shall, however, be free to make concessions or give undertaking in the course of arguments on behalf of his clients on instructions from the junior advocate." B

28. Further, the '*Code of Ethics*' prescribed by the Bar Council of India, in recognition of the evolution in professional and ethical standards within the legal community, provides for certain rules which contain canons of conduct and etiquette C which ought to serve as general guide to the practice and profession. Chapter of the said Code provides for an 'Advocate's duty to the Client'. Rule 26 thereunder mandates that an "a*dvocate shall not make any compromise or concession without the proper and specific instructions of his/ her client.*" It is pertinent to notice that an advocate under the D Code expressly includes a group of advocates and a law firm whose partner or associate acts for the client.

29. Therefore, the BCI Rules make it necessary that E despite the specific legal stream of practice, seniority at the Bar or designation of an advocate as a Senior advocate, the ethical duty and the professional standards in so far as making concessions before the Court remain the same. It is expected of the lawyers to obtain necessary instructions from the clients F or the authorized agent before making any concession/ statement before the Court for and on behalf of the client.

30. While the BCI Rules and the Act, does not draw any exception to the necessity of an advocate obtaining instructions G before making any concession on behalf of the client before the Court, this Court in *Periyar & Pareekanni Rubber Ltd. v. State of Kerala, (1991) 4 SCC 195* has noticed the sui generis status and the position of responsibility enjoyed by the H

A Advocate General in regards to the statements made by him before the Courts. The said observation is as under:

> "19. ...Any concession made by the government pleader in the trial court cannot bind the government as it is
> B obviously, always, unsafe to rely on the wrong or erroneous or wanton concession made by the counsel appearing for the State unless it is in writing on instructions from the responsible officer. Otherwise it would place undue and needless heavy burden on the public exchequer. But the
> C same yardstick cannot be applied when the Advocate General has made a statement across the bar since the Advocate General makes the statement with all responsibility."

D (See: *Joginder Singh Wasu v. State Of Punjab*, 1994 SCC (1) 184).

31. The Privy Council in the case of *Sourendra Nath Mitra v. Tarubala Dasi*, AIR 1930 PC 158 has made the following two observations which hold relevance to the present
E discussion:

> "Two observations may be added. First, the implied authority of counsel is not an appendage of office, a
> F dignity added by the Courts to the status of barrister or advocate at law. It is implied in the interests of the client, to give the fullest beneficial effect to his employment of the advocate. Secondly, the implied authority can always be countermanded by the express directions of the client.
> G No advocate has actual authority to settle a case against the express instructions of his client. If he considers such express instructions contrary to the interests of his client, his remedy is to return his brief."

(See: *Jamilabai Abdul Kadar v. Shankarlal*

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Gulabchand, (1975) 2 SCC 609, *Svenska Handelsbanken vs Indian Charge Chrome Ltd,* 1994 SCC (2) 155) A

32. Therefore, it is the solemn duty of an advocate not to transgress the authority conferred him by the client. It is always better to seek appropriate instructions from the client or his authorized agent before making any concession which may, directly or remotely, affect the rightful legal right of the client. The advocate represents the client before the Court and conducts proceedings on behalf of the client. He is the only link between the Court and the client. Therefore his responsibility is onerous. He is expected to follow the instructions of his client rather than substitute his judgment. B C

33. Generally, admissions of fact made by a counsel is binding upon their principals as long as they are unequivocal; where, however, doubt exists as to a purported admission, the Court should be wary to accept such admissions until and unless the counsel or the advocate is authorised by his principal to make such admissions. Furthermore, a client is not bound by a statement or admission which he or his lawyer was not authorised to make. Lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of the client unless such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was employed. We hasten to add neither the client nor the Court is bound by the lawyer's statements or admissions as to matters of law or legal conclusions. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. We may add that in some cases, lawyers can make decisions without consulting client. While in others, the decision is reserved for D E F G H

A the client. It is often said that the lawyer can make decisions as to tactics without consulting the client, while the client has a right to make decisions that can affect his rights. We do not intend to prolong this discussion. We may conclude by noticing a famous statement of Lord Brougham:

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> "an advocate, in the discharge of his duty knows but one person in the world and that person is his client."

34. In view of the above, while allowing these appeals, we C set aside the directions issued by the Writ Court to the appellant-Society as also the judgment and order passed by the High Court in Review Petition.

Ordered accordingly.

D Devika Gujral Appeals allwoed.