

(2003) 07 SC CK 0043

In the Supreme Court Of India

Case No : Civil Appeal No's. 4782 and 4783 of 1996 and W.P. (C) No. 527 of 1993

Dwarka Prasad Agarwal (D) by LR's. and Another APPELLANT
Vs

B.D. Agarwal and Others RESPONDENT

Date of Decision : 07-07-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, Order 23 Rule 3, 141
Constitution of India, 1950 — Article 14, 19, 19(1), 225, 226
Press and Registration of Books Act, 1867 — Section 19B, 4, 5(5), 6, 8B

Citation : AIR 2003 SC 2686 : (2003) AIRSCW 3346 : (2003) 5 ALD 14 : (2003) 3 ALLMR 1158 : (2003) 117 CompCas 1 : (2003) 4 LW 263 : (2003) 3 RLW 451 : (2003) 5 SCALE 138 : (2003) 6 SCC 230 : (2003) 1 SCR 336 Supp : (2003) 4 Supreme 513

Hon'ble Judges : V. N. Khare, C.J.;S. B. Sinha, J;AR. Lakshmanan, J

Bench : Full Bench

Advocate : A.M. Singhvi, P.P. Rao, Shanti Bhushan, R.C. Srivastava, Sunil Gupta, T.L.V. Iyer and Kailash Vasdev, P.D. Tyagi, Vivek Vishnoi, Gaurab Banerjee, Niraj Sharma, Ankur Modi, N.K. Mody, Y.P. Mahajan, Hemant Sharma, S.W.A. Quadri, S.N. Terdol, J.K. Bhatia, B.K. Prasad, P. Parmeswaran, Syed Ali Ahmad, Syed Tanweer Ahmad, G.D. Upadhyay and R.D. Upadhyay, for appearing parties, for the Appellant;

Final Decision : Disposed off

Judgement

S.B. Sinha, J.—Whether settlement of a private dispute between the parties to a writ proceeding is permissible in law, is the prime question involved in these batch of appeals which arise out of judgments and orders passed by Madhya Pradesh High Court in M.P. No. 802 of 1992 and M.C.C. No. 477 of 1992 and the connected writ petition.

The factual matrix involved in these matters may be noticed in brief.

2. A partnership firm known as M/s. Dwarka Prasad Agarwal & Brothers (The firm) was constituted with Dwarka Prasad Agarwal (since deceased), Bishambhar

Dayal Agarwal (since deceased), Mahesh Prasad Aggarwal - all sons of Keshav Dev Agarwal and Ramesh Chandra Agarwal, son of Dwarka Prasad Agarwal in the year 1972 as a partners thereof. Each partner contributed towards the capital of the Firm in share to the extent of 25%, 30%, 30% and 15% respectively. Prior to the constitution of the Firm, a newspaper known as 'Dainik Bhaskar' was being published by Dwarka Prasad Agarwal and his name was recorded in the Registrar of Newspapers for India (for short 'RNI'). The said Dwarka Prasad Agarwal was the karta of a larger HUF consisting of himself and his partners. He had two wives, namely, Kasturidevi and Kishoridevi. Allegedly, the firm transferred the business of publication of Dainik Bhaskar at Gwalior to a newly incorporated company, M/s. Bhaskar Publication and Allied Industries Pvt. Ltd. of which Dwarka Prasad Agarwal was the lifetime Managing Director and Chairman and therein Bishambhar Dayal Agarwal and his son, Ramesh Chandra Agarwal were shareholders and directors. A printing press of which Dwarka Prasad Agarwal was the owner is said to have been transferred to the said company for the purpose of printing of the aforementioned newspaper. According to the appellants, in the Annual Reports of the RNI, the name of the said firm was shown as the owner of the said newspaper. It is not disputed that in the year 1982, Dwarka Prasad Agarwal suffered from a paralytic attack and was unable to attend to business actively.

3. It is alleged that Ramesh Chandra Agarwal filed a Declaration on or about 13.10.84 along with an authority letter dated 10.1.83 from Dwarka Prasad Agarwal in respect of publication of Dainik Bhaskar at Indore for admitting him to be the owner of the newspaper and the company as a lessee. Certain documents were allegedly created on 13th March, 1985 by Ramesh Chandra Agarwal for the said purpose; one of them, being an Agreement of Sale alleged to have been entered by and between the Firm and a company called M/s. Writers & Publishers Pvt. Ltd., the genuineness or otherwise of which was the subject matter of a suit being suit No. 57A of 1988. Another document also came to be executed on the same day, the genuineness whereof was also disputed, is an alleged deed of partition/family settlement of the HUF; in terms whereof the firm's assets, several other properties, fixed deposits, money and business including those situated at Bombay, Delhi, Raipur, Indore, were divided between Dwarka Prasad Agarwal, Bishambhar Dayal Agarwal, Mahesh Prasad Agarwal and Ramesh Chandra Agarwal. According to the appellant, Dwarka Prasad Agarwal never signed the said deed of partition/family settlement nor was it acted upon and in fact was questioned as forged and non-existent by Bishambhar Dayal Agarwal in a proceeding before District Magistrate, Jabalpur and the same was also the subject matter of suit No. 57A of 1988 pending in the court of District Judge, Bhopal. Several other suits were filed by the parties at several places viz. Jabalpur, Bhopal, Raipur, Gwalior, etc. Several proceedings were also initiated before different forums with regard to publication of the said newspapers at different places. Some writ petitions were also filed by the parties before the High Court. Some proceedings by way of Special Leave Application were also

filed before this Court.

4. It may not be necessary to delve deep into the effect and purport of the said disputes for answering the issue involved in these matters, except a few.

5. It may, however, be noticed that Bishambhar Dayal Agarwal, questioning the authentication made by the Additional District Magistrate, Jabalpur of the Declaration filed by Sudhir Agarwal, son of Ramesh Chandra Agarwal for newspaper 'Nav Bhaskar' as regard its publication from Jabalpur as also a purported order passed thereupon by the said authority on 3.12.91 filed a writ petition before the Madhya Pradesh High Court. Dwarka Prasad Agarwal was made a proforma respondent herein. The said writ petition was marked as MP No. 802 of 1992 wherein the following reliefs were claimed:

"(i) That the Hon'ble Court be pleased to declare by an appropriate writ, order or direction that the power conferred on the District Magistrate/Additional District Magistrate u/s 4 and 6 of the Press and Registration of Books Act, 1867, in case of declarations submitted for same or similar titles as ultra vires to the petitioner's right under Article 14, 19(1)(a) and (g) of the Constitution of India.

(ii) That the Hon'ble Court be further pleased to declare by an appropriate writ that if a power is conferred on District Magistrate/Additional District Magistrate to grant declaration of title of same or similar nature, such a power cannot be exercised by the District Magistrate/Additional District Magistrate till an Appellate Authority is constituted to be able to oversee and review the exercise of powers by the District Magistrate/Additional District Magistrate. The non-provision of Appellate power violates the petitioner's fundamental rights under Article 14 and 19(1)(a) and (g) of the Constitution of India.

(iii) That the Hon'ble Court be further pleased to quash and set aside the declaration dated 11.10.1991 approved by the Additional District Magistrate, Jabalpur, of the title Nav Bhaskar submitted by publisher Sudhir Agarwal as void, illegal and contrary to law.

(iii-a) The Hon'ble High Court may be pleased to quash and set aside the declaration dated 14.2.1992 Annexure P.27 authenticated by the Additional District Magistrate, Jabalpur in favour of the respondent No. 1 Sudhir Agarwal for printing and publishing newspaper under the name and style of Nav Bhaskar as void, illegal and non-set in law.

(iv) That the Hon'ble Court be further pleased to set aside and quash the order dated 3.12.1991 passed by the Additional District Magistrate, Jabalpur, on an application/objection made by the petitioner u/s 8-B of the Press and Registration of Books Act, 1867 as void, illegal and contrary to law.

(v) That the Hon'ble Court may be further pleased to prohibit and restrain the respondent Sudhir Agarwal and his father Shri Ramesh Chandra Agarwal from using the title Nav Bhaskar and to restrain the A.D.M. Jabalpur from granting any such or similar title to Shri Sudhir Agarwal or Shri Ramesh Chandra Agarwal.

(vi) Any other appropriate writ, order or direction which the Hon'ble Court deems just and proper may also be passed in the facts and circumstances of the case as also in the interest of justice.

(vii) Cost of proceedings of this petition may also be awarded in favour of the petitioner."

6. During pendency of the said writ proceedings, on 29.6.92 the petitioner therein, Ramesh Chandra Agarwal son of Dwarka Prasad Agarwal and Mahesh Prasad Agarwal along with their sons Kailash, Sudhir and Sanjay purported to have entered into a deed of settlement. Dwarka Prasad Agarwal admittedly was a proforma respondent therein and although his rights as partner were directly affected thereby he was neither a party to the said settlement nor a signatory to the said deed. The said purported agreement was filed on the same day before the Madhya Pradesh High Court by the petitioner therein alleging that he and the contesting respondents had reached a full and final settlement of 'the disputes raised in the petition and other connected matters' pending before various courts and bodies and the writ petition be disposed of in terms of the said purported comprehensive agreement. The said settlement was accepted and the writ petition was disposed of in terms thereof on 29.6.1992 which was also the date of filing of the compromise memo. The said order dated 29.6.92 is the subject matter of civil Appeal No. 4782 of 1996.

7. Pursuant to or in furtherance of the said purported compromise, RNI altered the name of owner of title Dainik Bhaskar in his Register from the Firm to M/s. Writers on or about 3.9.1992 stating:

"This is to state that in accordance with the notice issued on the above subject in the matter of ownership of Dainik Bhaskar, as per the decision in Case No. 1182/92 dated 29.6.92 of the High Court of Madhya Pradesh, at Jabalpur and agreement dated 19.6.92 M/s. Writer & Publishers Pvt. Ltd., Bhopal, has become the owner of Dainik Bhaskar.

You are, therefore, requested that if you have any objection to this decision then you may approach the High Court at Jabalpur."

8. Dwarka Prasad Agarwal having come to learn the said order of RNI dated 3.9.1992 filed an application for review of the order dated 29.6.1992 passed by the High Court which was marked as MCC No. 477 of 1992. The said review petition was dismissed by an order dated 13.11.1992 and the same is the subject matter of civil Appeal No. 4783 of 1996.

9. The High Court in its order dated 13.11.92 refusing to review its earlier order dated 3.9.92 inter alia held:

(i) The agreement in question is a lawful one.

(ii) As Dwarka Prasad Agarwal was not a signatory thereto, he was not bound thereby.

(iii) The order recording compromise was legal as no other party including the learned advocate of Dwarka Prasad Agarwal objected thereto.

(iv) No writ was issued by the High Court in terms of the said order against the Additional District Magistrate, Jabalpur or any other authority.

10. Pursuant to or in furtherance of the said order dated 29.6.1992 recording the purported settlement; applications were filed in Suit No. 74A of 1987 and 75A of 1987 in Bhopal by M/s. Writers and Ramesh Chandra Agarwal for withdrawal thereof, whereupon the suits were dismissed. Bishambhar Dayal Agarwal also, who had filed suit No. 57A of 1988, moved an application to the effect that pursuant to the compromise the suit be dismissed. This plea was also accepted.

11. Dwarka Prasad Agarwal filed Writ Petition No. 527 of 1993 in this Court questioning the aforementioned order dated 3.9.92 passed by RNI wherein inter alia the following reliefs were prayed for:

"(a) issue writ, order or direction quashing the order dated 3rd September, 1992 whereby the Registrar, Newspapers has changed the name of the owner of the title Dainik Bhaskar from M/s. D.P. Agarwal and Brothers to M/s. Writers and Publishers Private Limited;

(b) issue writ, order or direction directing Respondent No. 1 and 2 not to allow Respondent No. 7 to use the title Dainik Bhaskar for its publication;

(c) issue writ, order or direction directing the Respondents not to publish newspaper Dainik Bhaskar under the alleged title of Respondent No. 7;

(d) issue writ, order or direction directing the Respondent No. 2 to exercise its authority not to allow Respondents No. 3 to 7 to publish newspaper Dainik Bhaskar under the title of writers and publishers Private Limited;

(e) issue writ, order or direction directing the Respondent No. 8 not to allow the Respondents No. 3 to 7 to publish newspaper Dainik Bhaskar in contravention of the provisions of the Press and Registration of Books Act, 1867; and

(f) pass such other and further orders as may be deemed fit and proper in the facts and circumstances of the case."

12. Dwarka Prasad Agarwal died during the pendency of these proceedings.

13. Both the wives of the said Dwarka Prasad Agarwal applied for substitution of their names in place of the deceased. The rival contentions on substitution by the two wives of Late Dwarka Prasad Agarwal came to be considered by this Court. Kishori Devi pressed her application. Kasturi Devi, however, was not sure that, she, having regard to her stand taken in the litigation, would be able to defend the action on behalf of her husband. Upon consideration of the said question, this Court directed Kasturi Devi to be impleaded as a respondent in the proceeding whereas Kishori Devi and her daughters Hemlata and Anuradha were directed to be substituted in place of Late Dwarka Prasad Agarwal. While passing the said

order, however, an observation was made that the said question shall be finally decided at the time of hearing. We may, however notice that in the said proceedings for substitution, Ramesh Chandra Agarwal filed a counter affidavit calling Smt. Kishori Devi a concubine of Dwarka Prasad Agarwal. Keeping in view the stand taken by the parties before us we have no hesitation in holding that this Court rightly substitute Kishori Devi and her daughters Hemlata and Anuradha in place of Late Dwarka Prasad Agarwal.

14. Mr. Sunil Gupta, the learned senior counsel appearing on behalf of the appellants, as also the writ petitioner would submit that the impugned orders passed by the High Court are ex facie bad, illegal as by reason thereof the right title interest of Late Dwarka Prasad Agarwal, as specified hereunder, were directly and adversely affected although he was not a party or signatory to the said agreement.

(i) By reason of the said purported compromise, the firm was sought to be dissolved of which Dwarka Prasad Agarwal was a partner.

(ii) The firm's assets were to be sold as per the alleged agreement dated 13.3.85 and divided as per alleged partition deed of 13.4.85 which had not been signed and accepted by Dwarka Parsad Agarwal, karta of HUF and the genuineness whereof was also the subject matter of dispute.

(iii) The properties of the aforementioned firm, including the goodwill and ownership of Dainik Bhaskar over different territories were distributed by M/s. Writers Ltd. floated by Ramesh Chandra Agarwal amongst the three partners, namely, Ramesh Chandra Agarwal, Bishambhar Dayal Agarwal and Mahesh Chand Agarwal to the exclusion of Dwarka Prasad Agarwal, the 4th and the remaining partner.

(iv) Although several suits, namely Suit No. 74A of 1987, 75A of 1987, 57A of 1988, 22A of 1988, 99A of 1991 and Writ Petition, MP No. 802 of 1992 were filed by the parties, the disputes involved therein were sought to be resolved thereby which was impermissible in law.

15. The learned counsel would contend that the High court committed a serious error insofar as it failed to notice that Dwarka Prasad Agarwal could not have any knowledge of the said unjust agreement, whence the same was accepted. Although he had not instructed any lawyer to appear on his behalf and merely one blank Vakalatnama executed by him bona fide was used therefore, and thus, there was no question of his taking part in the proceeding for acceptance of the purported settlement. In any event as his lawyer admittedly recorded merely 'no instructions' in the said proceeding, the same could not have been treated as a consent/no objection to the recording of the compromise on his behalf and in that view of the matter the observations made by the High Court that the agreement was not opposed on behalf of the parties must held to be per se unreasonable and unjustified.

16. Our attention, in this regard, has been drawn to various disputed factual aspects of the matter for the purpose of showing that several mis-representation of fact had been made in the aforementioned agreement of settlement and the application dated 29.6.92 filed for recording the compromise before the High Court.

17. The learned counsel would further contended that the compromise was, in any event, not lawful as thereby right of ownership of an existing title in newspaper was sought to be determined in violation of Section 19B, the proviso appended to Section 6 and Section 8B(ii) of the Press and Registration of Books Act, 1867 as in terms thereof the authorities were under a statutory obligation to preserve and protect the right of the firm as regard ownership of title Dainik Bhaskar and to prevent any person from using the same without the authorization of the firm.

18. The goodwill of a firm, the learned counsel would urge, would also be a subject matter of division of assets of partnership firm irrespective of the fact as to whether the firm had thence been carrying on business or not. Furthermore, as by reason of the said compromise, transfers were sought to be made without registering the same in terms of Indian Registration Act, the same was illegal. It was further submitted that impact of the impugned order can be noticed from the fact that by reason of the said purported consent order dated 29.6.92, even the RNI also found himself compelled to forgo his statutory obligation and found itself to be bound to alter the name of the owner of the title in the register maintained by the said authority in terms of Section 19B of the Act from M/s D.P. Agarwal & Bros. to M/s Writers & Publishers Pvt. Ltd. Recording of the said compromise, it was urged, must be held to amount to practising of fraud on the court by the parties to the agreement, as thereby they had achieved their purpose indirectly which law prohibits them achieving directly and furthermore, as a large number of proceedings in relation to the disputes amongst the parties were pending before different forums, they could not have been given a go bye by reason thereof.

19. The learned counsel would contend that public law remedy by way of a writ petition could not have been taken recourse to for resolution of a private dispute. It was submitted that in that view of the matter, the observations of the High Court that its order did not amount to issuance of a writ by the Court against any of the parties must be held to be illegal and without jurisdiction.

20. Drawing our attention to the applications for withdrawal of the suits in terms of the said compromise petition, the learned counsel would submit that the order accepting the compromise was misused inasmuch as the said suits were purported to have been withdrawn on the ground that the same was a necessary fallout of the judgment of the judgment of the High Court, which in effect and substance, it was not.

21. On the writ petition filed by Late Dwarka Prasad Agarwal under Article 32 of

the Constitution of India in this Court, the learned counsel would submit that having regard to the fact that the official respondents had changed the entries in the register maintained under the Act is a clear pointer to show as to how the order of high Court was misunderstood by the statutory authorities. It was submitted that in terms of the provisions of the Press and Registration of Books Act, 1867, late Dwarka Prasad Agarwal had acquired various rights coupled with the common law right as a partner of the partnership firm which could not have been taken away only with his consent or by operation of law. According to the learned counsel, in terms of the provisions of the said Act, it is one thing to say that somebody is the owner of the title in relation to the newspaper in question and it is another thing that somebody is the printer and publisher thereof.

22. As regard maintainability of the writ petition, Mr. Gupta vehemently urged that the cause of action therefore had arisen in view of illegal action on the part of the official respondents resulting from misuse of judicial process. He would urge that publication of a newspaper is a fundamental right in terms of Article 19(1) of the Constitution of India and as the action of the official respondents directly resulted in infringement of the right of the said writ petitioners. Reliance, in this connection, has been placed on *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*, and *Jhumman Singh and others Vs. Central Board of Investigation and others*, .

23. Dr. A.M. Singhvi, learned senior counsel appearing on behalf of respondent Sudhir Kumar Agarwal, on the other hand, would submit that as by reason of the order recording the settlement entered into by and between the parties thereto, by the High Court, the right of Dwarka Prasad Agarwal was not affected as he was not bound thereby and further in view of the fact that no writ was issued against the A.D.M. Jabalpur, the question of appellants' being prejudiced by reason of the impugned order would not arise. Drawing our attention to the order dated 13.11.1992 whereby and whereunder the High Court refused to review its order dated 29.6.1992, the learned counsel would contend that the correct legal position has been clarified by the High Court, Late Dwarka Prasad Agarwal could have taken recourse to appropriate legal proceeding to protect his own interest and, thus, the impugned orders need not be interfered with. As regard the writ petition filed by Shri Bishambhar Dayal Agarwal, Dr. Singhvi would contend that from a perusal thereof it would appear that main prayer against the A.D.M., Jabalpur, was dependent upon the authenticity of the declaration made by one of the respondents therein and in view of the fact that the parties had buried their private disputes, at least prayers (3) and (4) could be granted by the High Court, more so when prayers (1) and (2) thereof had not been pressed.

24. Dr. Singhvi would urge that having regard to the provisions contained in Section 5(5) of the said Act, the writ petition also became infructuous and, thus, there was no occasion for the High Court to issue any writ. Referring to certain documents, the learned counsel would argue that as prior to the filing of the writ petition, Dwarka Prasad Agarwal had given up his own right in the newspaper

and acknowledged the right of his respondents and the company; he had no locus standi to prefer appeals against the impugned orders of High Court or file the writ petition. As regard the effect of the consent order the learned counsel relied upon the decision of this Court in Salkia Businessmen's Association and Others Vs. Howrah, Municipal Corporation and Others, .

25. Mr. P.P. Rao, the learned senior counsel appearing on behalf of Smt. Kasturi Devi, inter alia, would submit that the writ petition filed before this Court by Dwarka Prasad Agarwal (since deceased) was not maintainable. Mr. Rao, would contend that having regard to the prayers contained in Clause (1) and (2) thereof, there cannot be any doubt whatsoever that the writ petition before the High Court was maintainable and only because at a later stage the private dispute between the parties was resolved, the same by itself would not lead to a conclusion that the writ petition ceased to be so. Mr. Rao would submit that legality or otherwise of the said compromise cannot be held to have been questioned by Late Dwarka Prasad Agarwal as no illegality in relation thereto was pointed out by anybody.

26. Mr. Shanti Bhushan, learned Senior Counsel appearing on behalf of Mahesh Agarwal, however, conceded that the order dated 29.6.1992 of the High Court based on compromise must be set aside and consequently prayer (a) in the writ petition may also be granted. However, according to the learned counsel the petitioner is not entitled to any other relief.

27. Several questions of importance, as noticed hereinbefore, have arisen for consideration in these appeals and the writ petition.

28. A writ petition is filed in public law remedy. The High Court while exercising a per of judicial review is concerned with illegality, irrationality and procedural impropriety of an order passed by the State or a statutory authority. Remedy under Article 226 of the Constitution of India cannot be invoked for resolution of a private law dispute as contra distinguished from a dispute involving public law character. It is also well-settled that a writ remedy is not available from resolution of a property or a title dispute. Indisputably, a large number of private disputes between the parties and in particular the question as to whether any deed of transfer was effected in favour of M/s. Writer & Publishers Pvt. Ltd. as also whether a partition or a family settlement was arrived or not, were pending adjudication before the civil Courts of competent jurisdiction. The reliefs sought for in the writ petition primarily revolved round the order of authentication of the declaration made by one of the respondents in terms of the provisions of the said Act. The writ petition, in the factual matrix involved in the matter, could have been held to be maintainable only for that purpose and no other.

29. An agreement recording terms of settlement between the parties on their private dispute was executed on 29.6.1992. The application for disposal of the writ petition in terms of the said agreement as also the order of the High Court in M.P. No. 802 of 1992 was passed on the same day. The writ petition was not

ready for hearing on the said date. Admittedly, Dwarka Prasad Agarwal was not a signatory to the said agreement. He was also not put on notice there-about. Assuming that he had engaged an Advocate, keeping in view the fact that he was a proforma respondent therein, the said learned Advocate was merely required to watch the proceedings as no relief had been claimed against him. The question of the learned advocate of Dwarka Prasad Agarwal not arising any objection as regard legality or otherwise of the said agreement dated 29.6.1992 neither directly nor indirectly arose for consideration before the High Court. He also did not make any submission as regard the lawfulness or otherwise of the said compromise. He merely stated that he had no instruction in the matter. In that view of the matter, it was obligatory on the part of the High Court to issue notice to Late Dwarka Prasad Agarwal in respect thereof or to allow sufficient time to the learned Advocate to obtain proper and adequate instructions.

30. In the aforementioned premise, the High Court was furthermore required to apply its own mind for the purpose of arriving at a finding as to whether it, in public law remedy, could record the compromise and dispose of the said writ petition in terms thereof. The order dated 29.6.1992 passed in M.P. No. 280 of 1992 was purported to have been clarified by the High Court in its order dated 13.11.1992 in the review petition being MCC No. 477 of 1977. The said order clearly demonstrates to total non-application of mind on the part of the High Court.

31. Several issues of grave importance were required to be addressed by the High Court. The High Court sought to take a short cut in holding that the said compromise was not binding upon Dwarka Prasad Agarwal and thereby no writ was issued. The consequence of recording of the said compromise was tell-tale. Not only pursuant thereto or in furtherance thereof the Registrar of Newspapers, New Delhi, passed an order dated 3.9.1992; it was construed to be a judgment of the High Court which had been taken aid of by the respondents herein for the purpose of withdrawal of suits wherein various disputed questions of facts and law including the genuineness or otherwise of the agreements were in question and required adjudication. The High Court was also required to address itself, more so while disposing of the review application, as to whether the purported settlement on the grounds raised by the appellants herein, was a lawful one. Without any application of mind, the High Court proceeded to hold that the agreement was lawful. It did not pose unto itself the right question so as to enable himself to arrive at a finding of fact resulting in correct answer thereto and, thus, the same would amount to a misdirection in law. While doing so, the High Court did not take into consideration the provisions of the Registration Act or the said Act and, in particular, Section 19B, proviso appended to Section 6 and Section 8-B(ii) of the Press & Registration of Books Act, 1867.

32. The High Court also failed and/or neglected to take into consideration the fact that the compromise having been entered into by and between the three out of four partners could not have been termed as settlement of all disputes and in

that view of the matter no compromise could have been recorded by it. The effect of the order dated 29.6.1992 recording the settlement was brought to the notice of the High Court, still it failed to rectify the mistake committed by it. The effect of the said order was grave. It was found to be enforceable. It was construed to be an order of the High Court, required to be implemented by the Courts and the statutory authorities.

33. In *Salkia Businessman's Association* (supra), this Court observed:

"8. We have carefully considered the submissions of the learned Senior Counsel on either side. The learned Single Judge as well as the Division Bench of the High Court have not only oversimplified the matter but seem to have gone on an errand, carried away by some need to balance hypothetical public interest when the real and only question to be considered was as to whether the respondent Authorities are bound by the orders passed by the Court on the basis of the compromise memorandum and whether the proposed move on their part did not constitute flagrant violation of the orders of the Court - very much binding on both the parties. The High Court failed to do justice to its own orders. If courts are not to honour and implement their own orders, and encourage party litigants - be they public authorities, to invent methods of their own to short-circuit and give a go-by to the obligations and liabilities incurred by them under orders of the court - the rule of law will certainly become a casualty in the process - a costly consequence to be zealously averted by all and at any rate by the highest courts in the States in the country. It does not, in our view, require any extraordinary exercise to hold that the memorandum and terms of the compromise in this case became part of the orders of the High Court itself when the earlier writ petition was finally disposed of on 13-2-1991 in the terms noticed supra, notwithstanding that there was no verbatim reproduction of the same in the order. The orders passed in this regard admit of no doubt or give any scope for controversy. While so, it is beyond one's comprehension as to how it could have been viewed as a matter of mere contract between the parties and under that pretext absolve itself of the responsibility to enforce it, except by doing violence to the terms thereof in letter and spirit. As long as the earlier order dated 13-2-1991 stood, it was not permissible to go behind the same to ascertain the substance of it or nature of compliance when the manner, mode and place of compliance had already been stipulated with meticulous care and detail in the order itself. The said decision was also not made to depend upon any contingencies beyond the control of parties in the earlier proceedings."

34. We may, however, hasten to add that we do not intend to put a seal of our approval to those observations but only wish to point out that as to how courts or the statutory authority may construe a consent order.

35. In terms of Section 141 of the Code of civil Procedure, the provisions thereof are not applicable in a writ proceeding. No provision of the CPC has been made applicable in terms of the rules framed by the High Court of Judicature at Nagpur dated 25.9.1951 framed under Article 225 of the Constitution of India. In any

event the applicability of the provisions of the Code of civil Procedure, if any, would be only with regard to the procedural and machinery provisions contained therein but thereby no new right could be created. Even if the provisions of Order 23, Rule 3 of the CPC and/or principles analogous thereto are held to be applicable in a writ proceeding, the Court cannot be permitted to record a purported compromise in a casual manner. It was suo motu required to address itself to the issue as to whether the compromise was a lawful one and, thus, had any jurisdiction to entertain the same. It may be true, as has been contended by Mr. Rao, that the writ petition was maintainable at the threshold. But once it is held that by reason of the purported settlement between the private parties, the High Court was not required to issue any writ, it could only either permit the petitioner to withdraw the writ petition and dismiss the same as having become infructuous. The High Court derives its jurisdiction in terms of Article 226 of the Constitution of India, if an occasion arises therefore, to make judicial review of the order passed by a statutory authority. It is beyond any cavil that no writ can be issued if the disputes involve private law character. The writ court has also no jurisdiction to determine an issue on private dispute over a property or right under a partnership. While purporting to record a compromise, the writ court cannot enlarge its jurisdiction by directing that the suits pending in different courts filed or different causes of action would also stand compromised. By reason thereof the writ court would be entrenching upon the jurisdiction of the civil court indirectly which it could not do directly. For the purpose of granting permission even for withdrawal of suit in terms of Order 23, Rule 1 of the Code of civil Procedure, the civil courts themselves were required to apply their mind as to whether having regard to the dispute between the parties, a case therefore has been made out or not. The civil court is required to act on its own and not on the basis of any direction of any other court determining a totally foreign issue.

36. Furthermore, a writ court can pass an effective order provided it has jurisdiction in relation thereto. With the enlargement of the power of the court recording compromise in view of the CPC (Amendment) Act, 1976, the responsibility and duty of the court also has increased. By reason of Order 23, Rule 3 of the Code of civil Procedure, a party can challenge the legality of the compromise only before the same court and in that view of the matter the court was enjoined with a solemn duty to decide such controversy in a lawful manner. A question as to whether a compromise is void or voidable under the India Contract Act or any other law for the time being in force, would have, thus, to be determined by the court itself. Once it is held that the agreement or the compromise was fraudulent, the same per se would be unlawful and the court is required to declare the same as such.

37. It is now well-settled that an order passed by a court without jurisdiction is a nullity. Any order passed or action taken pursuant thereto or in furtherance thereof would also be nullities. In the instant case, as the High Court did not have any jurisdiction to record the compromise for the reasons stated hereinbefore and in particular as no writ was required to be issued having regard

to the fact that public law remedy could not have been resorted to, the impugned orders must be held to be illegal and without jurisdiction and are liable to be set aside. All order and actions taken pursuant to or in furtherance thereof must also be declared wholly illegal and without jurisdiction and consequently are liable to be set aside. They are declared as such.

38. There is another aspect of the matter which must also be taken notice of. A party cannot be made to suffer adversely either indirectly or directly by reason of an order passed by any court of law which is not binding on him. The very basis upon which a judicial process can be resorted to is reasonableness and fairness in a trial. Under our Constitution as also the International Treaties and Conventions, the right to get a fair trial is a basic fundamental /human right. Any procedure which comes in the way of a party in getting a fair trial would be violative of Article 14 of the Constitution of India. Right to a fair trial by an independent and impartial Tribunal is part of Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (See *Clark (Procurator Fiscal, Kirkcaldy) v. Kelly* [2003] 1 All ER 1106). Furthermore, even if the Petitioner herein had filed a writ petition before the High Court in terms of Article 226 of the Constitution of India the same would not have been entertained as the impugned order had been passed consequent to and in furtherance of the purported consent order passed by the High Court. Ordinarily, the High Court would not have issued a writ of certiorari for quashing its own order. Even in that view of the matter too, it is apposite that this petition under Article 32 should be entertained.

39. We may, however, hasten to add that as at present advised we do not intend to enter into the contention of the petitioners that their fundamental right under Article 19 of the Constitution of India had been infringed. This Court would have entered into the question, if the facts were undisputed or admitted. The question as regard infringement of fundamental right and that too under Article 19 of the Constitution of India cannot be gone into when the facts are disputed. Whether Dwarka Prasad Agarwal and consequently the substituted petitioners are owners of the newspapers and if so to what extent being disputed, it cannot be said, that by reason of the impugned order dated 3.9.1992 passed by the first respondent herein alone, the fundamental right of the petitioner under Article 19 had been infringed.

40. We are, therefore, of the opinion that the interest of justice would be subserved if the appeals and the writ petition are allowed and the impugned orders dated 26.9.1992 and 13.11.1992 passed by the High Court as also the order dated 3.9.1992 passed by the first Respondent, Registrar, Newspapers for India, are quashed. All action taken and all orders passed by the statutory authorities and the civil courts as referred to hereinbefore shall also stand quashed. As a logical corollary to our order, it must also be held that the writ petition filed by Late Bishambhar Dayal Agarwal does not survive and must, therefore, be dismissed. The consequence of this order would be that the parties shall be

relegated to the same position in which they were immediately prior to the passing of the order dated 26.9.1992. All parties, statutory authorities and courts including the civil courts are directed to act accordingly.

41. These appeals and writ petition are disposed of accordingly with costs. Counsel's fee assessed at Rs. 25,000/- (Rupees twenty five thousand only).