

(2015) 07 RAJ CK 0165

In the Rajasthan High Court

Case No : Civil Misc. Application No. 202/2014 in Civil Writ Petition No. 6904 of 2013

National Automobiles

APPELLANT

Vs

Indian Oil Corpn. Ltd. and Others

RESPONDENT

Date of Decision : 13-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 2 Rule 2, Order 23 Rule 1(1), Order 23 Rule 3, Order 3 Rule 1
Constitution of India, 1950 — Article 136, 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2016) 1 RLW 414 : (2015) 3 WLN 465

Hon'ble Judges : Pratap Krishna Lohra, J

Bench : Single Bench

Advocate : M.S. Singhvi, Senior Advocate and Hemant Dutt, for the Appellant; O.P. Mehta, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Pratap Krishna Lohra, J—The applicant has laid this misc. application under Article 226 of the Constitution for recalling the order dated 28th May 2014, passed by this Court in Civil Writ Petition No. 6904 of 2013 (M/s. National Automobiles & Ors. Vs. IOCL & Ors.)

2. In the aforesaid writ petition, applicant made endeavour to be impleaded as respondent by way of laying application under Article 226 read with Order 1 Rule 10 CPC through her counsel Dr. Aklovy Bhansali. The matter came up on 28th May 2014 in presence of counsel for the applicant and after hearing him order was passed for which this recalling application is filed. It is true that on her application formal order of her impleadment was not passed by the Court but indulgence was granted to her and taking into account submissions made on her behalf by counsel, petition was disposed of by the aforesaid order.

3. Applicant Smt. Shanti Devi and other partners of the firm M/s. National

Automobiles are siblings as they are daughter and sons of Late Shri Bhanwarlal Jain. The applicant has set out her case for recalling the order taking shelter of under-mentioned facts:

1. The first objection for recalling the order, as set out in the application, is that Prakash Chandra unauthorizedly filed writ petition in the name of firm M/s. National Automobiles. As per version of the applicant, earlier it was a proprietorship firm run by sole proprietor Late Shri Bhanwarlal and being daughter of Late Shri Bhanwarlalji she is entitled to 1/7th share in the property together with her other siblings, i.e., the alleged partners of the firm. A ground for recalling order is also set out in the application by urging that order dated 28th of May 2014 was passed without deciding applicant's application for her impleadment as party respondent to the writ petition with a clear recital in the order that her counsel has accepted the proposal floated by the counsel for the petitioner. In order to wriggle out from the concessions offered by the counsel representing the cause of the applicant, she has made an attempt to castigate the lawyer by alleging in the application that she was never consulted by the counsel before conveying her consent for the agreed order. The whole trust of the applicant is that no such concession by her counsel was possible without her impleadment as party to the litigation. While taking a dig at the consensual order dated 28th May 2014, applicant has specifically averred in the application that demarcation and entitlement of 1/7th share in the profit of the petitioner firm has been made subject to the outcome of the suit for partition laid by her without any rhyme and reason inasmuch as subject matter of the suit for partition is having no nexus whatsoever with the profits/earnings of the petitioner firm and the said suit is confined to partition of other ancestral properties, therefore, as per version of the applicant, the order has virtually frustrated her cause.

2. An attempt is sought to be made by the applicant that M/s. National Automobiles was a proprietorship firm operated by Late Shri Bhanwarlalji, her father, and that an agreement was entered into between the firm and respondent IOCL for sale of SKO, i.e., kerosene and oil, and another with regard to retail outlet for sale of Motor Sprit and High Speed Diesel. In respect of retail outlet for sale of Motor Sprit and High Speed Diesel, according to the applicant, till the death of Late Bhanwarlalji, said firm was proprietorship firm and after his death her siblings, i.e., her brothers have constituted partnership firm for continuing business in the name of petitioner firm after forging her signatures on various affidavits and alleged No Objection. It is further reiterated that subsequently in the year 2008 also, affidavits were prepared on the strength of her spurious signatures for submission before IOCL. The requisite affidavits are also annexed with the application. A reference is also made by the applicant in regard to lodging of a criminal case against her siblings with a specific averment that for offence of forgery competent Court has taken cognizance against her siblings, the alleged partners of the firm. In totality, much emphasis is laid on the alleged act of forgery by the partners of the petitioner firm.

3. While advertng to SKO agency, which was the subject matter of writ petition, applicant has reiterated that earlier it was a proprietorship firm and deed of dealership was executed in between Late Shri Bhanwarlalji, as its sole proprietor and IOCL on 25th September 1957, and after death of Bhanwarlalji no partnership deed qua the firm was ever submitted before the Corporation which entailed termination of the dealership on 28th May 2013. In this regard, certain documents obtained by the applicant under the RTI Act are also placed on record with the application. Making scathing attack on the alleged dubious conduct of the petitioner, the applicant has asserted that petitioner had no locus to file petition in her name. Yet again, the applicant has reiterated her earlier stand that she has never consented for deposition of 1/7th share of firm's profit in bank account while agreeing that realization of the same shall remain subject to the outcome of suit.

4. Highlighting recitals in the order, the applicant has submitted in the application that a proposal was floated by counsel for the petitioner and the same was accepted by the counsel representing cause of the applicant without there being any deliberations with her and as a matter of fact she never consented for the said arrangement.

5. The applicant has also made an attempt to find fault with the order by alleging that without her impleadment as party, even if consent was there through her counsel, the same is of no consequence. It is also averred in the application that the applicant was made to understand by her counsel that by the order dated 28th May 2014 Court has allowed her 1/7th share in the profits of firm M/s. National Automobiles, and therefore while adhering to the instructions of the counsels she signed and submitted affidavits before IOCL on 4th of June 2014. For signing affidavits, applicant has urged in the application that she is an illiterate lady and her husband is also uneducated therefore both were unable to understand English and there was some communication gap between her and the counsel representing her case in the writ petition. The recitals of the affidavits submitted by her before the IOCL are also highlighted by placing on record the copies of affidavits.

6. The applicant has also averred that as per advice tendered by her counsel, she has submitted an application before the learned trial Court, where suit for partition is pending, for making necessary amendment in the suit, which is still pending consideration.

7. The applicant has made an attempt to project that for the first time she came to know about the real contents of order dated 28th May 2014 when she received a notice of contempt of this Court in a contempt petition filed by petitioner firm and so also by respondent IOCL, wherein it was alleged that she has not submitted the requisite affidavit in prescribed format in adherence of the directions of this Court.

Therefore, with all these averments, the applicant has made an attempt to

persuade this Court for recalling order dated 28th May 2014.

4. Petitioner M/s. National Automobiles opposed the application for recalling order dated 28.05.2014 by filing its detailed reply. At the threshold, in the reply certain precursory objections are raised. While resisting the application of the applicant, it is urged by the petitioner that review/recalling application through another counsel, who had not represented the application earlier till the order dated 28.05.2014 was passed, is not maintainable. Precisely, this objection is based on petitioner's assertion that the counsel presently appearing for applicant is having no knowledge about proceedings in the S.B. Civil Writ Petition No. 6904/2013 and he is totally unaware of the deliberations during proceedings in the Court and what transpired between Court and the respective Counsels. The second preliminary objection highlights misprision of the applicant with intent to mislead the Court. According to the petitioner, misstatement and concealment of material facts is the sole edifice of the application which merits summary rejection. In order to portray patent misstatement of facts and concealment of material information, petitioner has narrated the checkered history including steps taken by the applicant pursuant to order dated 28.05.2014. Taking serious exception to the plea of the applicant that she came to know the real purport of order on receipt of notice for contempt, petitioner has urged in the reply that this assertion is patently false. In support thereof petitioner has also placed on record communications dated 01.07.2014 and 16.07.2014, Annex.RA/1 & RA/2 respectively. Certain other objections are also incorporated in the reply to castigate the applicant for her reprehensible conduct in approaching the Court with tainted hands with a view to circumvent directions contained in order dated 28.05.2014. Delayed presentation of application is also canvassed as a valid reason for its dismissal.

5. While joining issue on merits with the applicant, the petitioner in its reply has refuted all the allegations with clarity and precision. It is also averred in the reply that against framing of charge, a revision petition is pending before Addl. Sessions Judge, Barmer and therefore the order has not attained finality.

6. Refuting the averments made in the application that writ petition on behalf of M/s. National Automobiles has been filed by an unauthorized person, the petitioner has submitted in the reply that petitioner firm is a registered partnership firm having three partners, viz., Prakash Chandra, Babulal and Hastimal, who are sons of Shri Bhanwarlal, and Shri Prakash Chandra has been authorized to file the writ petition. Mentioning the registration number of firm, it is also urged that partnership firm was originally constituted in the name and style of petitioner firm in the year 1984 and was duly registered. It is also urged that it was reconstituted in the year 1989 and is carrying on business of retail outlet of petroleum products so also SKO dealership. Petitioner has also stated in the reply that the whole endeavour of the applicant is to interfere with the administration of justice and lower the authority of the Court. It is also submitted in the reply that after due deliberations when the parties including the applicant

agreed for amicable settlement, order dated 28th May 2014 was passed, and the counsel representing the cause of the applicant had conveyed willingness of the applicant for an agreed order after due instructions from her. It is also stated in the reply that husband/son of the applicant used to remain present on each and every date of hearing and on 28th May 2014, son of the applicant was present in the Court. Petitioner has set out a specific case in its reply that whole endeavour of the applicant is to reopen the issue which has already been settled only with a view to blackmail the writ petitioner and the application is actuated by ulterior motive. A specific denial is made in the reply that counsel representing the cause of the applicant in the writ petition has accepted the proposal of the petitioner without prior consultation with her. It is also averred in the reply that copy of the order was obtained by applicant on 29th May 2014 and thereafter she submitted undertaking on 4.6.2014 contrary to the terms of the order and simultaneously moved an application for amendment of the suit for partition to incorporate prayer about her 1/7th share in SKO dealership. It is also pleaded in the reply that after service of notice of contempt petition, counsel appeared on her behalf and proceeded to argue contempt petition on 29.10.2014 without filing reply and even the Court expressed its doubts that No Objection submitted by her was contrary to order dated 28th May 2014 and observed that this application was designed to thwart contempt petition which is nothing but a blatant attempt to interfere with the administration of justice. Copy of the application under Order 6 Rule 17 read with Section 151, which is laid by the applicant for amendment of suit for partition before Addl. District Judge, Barmer, is also annexed with the reply. While joining issue on the cognizance order, it is pleaded by the petitioner that against that order, petition under Section 482 Cr.P.C. was filed at the behest of the petitioner and the same was disposed of with liberty to raise all objections at appropriate stage. Some of the facts, pertaining to recitals contained in Vakalatnama, are also highlighted in the return to refute the allegations leveled by applicant against her counsel, who represented her cause in the writ petition. Regarding civil suit for partition laid by the applicant, it is urged that same has been filed by the applicant in the year 2009, i.e., 34-35 years from the date of death of Late Shri Bhanwarlal, is yet another factor which clearly and unequivocally indicates the intention of the applicant. The petitioner has specifically pleaded in the reply that applicant agreed for amicable settlement and order dated 28th May 2014 was passed only when she was confronted with the situation that she would not get any relief if kerosene agency is not restored by the oil company or writ petition is dismissed by the Court. With this plea, the petitioner has reiterated that the counsel had agreed for order dated 28th May 2014 on instructions from the applicant. Some crucial facts are also woven to show that the counsel representing the cause of the applicant in the writ petition gave his consent after due deliberations and consultation with the applicant and meticulously incorporated in the return with a prayer for rejection of the application with exemplary costs.

7. On behalf of respondent Nos. 1 & 2 IOCL also, a reply to the application is

submitted.

8. Denying all the allegations, it is specifically averred in the reply that the whole purpose of filing this application by the applicant is to malign the counsel, who represented her cause in the writ petition and to castigate him for professional misconduct for which there is no material available on record. It is also stated in the reply that whole attempt of the applicant is to wriggle out of the order, which was passed in presence and with the consent of all the learned counsels, on wholly fallacious contentions. The IOCL has also pleaded that when the applicant did not file requisite affidavit in terms of order passed by this Court, it was constrained to file contempt petition against her. IOCL has also averred in the reply that insinuations hurled by the applicant against her counsel are per-se unbelievable and it is nothing but an afterthought to wriggle out from the contempt of Court for which petition at the behest of IOCL as well as petitioner is pending. On the issue that the order dated 28th May 2014 is passed without her impleadment, it is urged by the IOCL that the case was not discussed on merit and the Court has taken note of her contentions canvassed through her counsel, and therefore, her non-impleadment as party respondent while disposing of the writ petition is inconsequential and cannot furnish a cause for recalling of the order. It is also urged in the reply that contention of the applicant that her share in SKO dealership of the petitioner firm is not subject matter of suit for partition, was within her knowledge at the time of passing of order dated 28th May, 2014 and that being so, Court has also taken cognizance of this fact in the order, therefore, it is misnomer on the part of the applicant to contend that order dated 28th May 2014 has entirely frustrated her cause. The IOCL has also highlighted a relevant fact that applicant has already laid appropriate application before the competent civil Court in the suit for partition to include the property in question, i.e., SKO dealership, is sufficient to conclude that she was fully aware about order dated 28th May 2014 and the same has been passed with her concurrence which was conveyed through her counsel to the Court during the course of hearing of the writ petition. A communication addressed by IOCL to the applicant dated 1st July 2014 with draft affidavit is also enclosed with the reply and it is urged that application is vexatious and merits dismissal.

9. Applicant, thereafter, filed rejoinder affidavit to meet the preliminary objections of the petitioner and also reiterated her stand which was canvassed in the original application on merits for recalling the order. Applicant has also made endeavour to dilate on merits of the case, more particularly Civil Writ Petition No. 6904 of 2013 and also laid emphasis on serious acrimony between siblings leading to lodging of criminal case by her against the partners of the petitioner firm. In substance, the applicant made an affirmative attempt to set out plausible grounds for recalling order dated 28th May 2014.

10. Learned counsel for the applicant, Mr. Sandeep Shah, has vehemently argued all the grounds set out in the application and reiterated in the rejoinder to persuade the Court for recalling order dated 28th May 2014 passed in Civil Writ

Petition No. 6904/2013. Mr. Shah would contend that acceptance of proposal by the counsel for the applicant during the course of arguments on Civil Writ Petition No. 6904 of 2013 was without proper instructions from the client and the same was also not in writing, which ought not to have been taken note by the Court. Elaborating his submissions, in this behalf, learned counsel has urged that this ground is sufficient to recall the order dated 28th May, 2014. Learned counsel for the applicant has also cited various litigations between the parties to highlight serious acrimony and has also pointed out that criminal case was lodged at her behest against partners of the petitioner firm which is pending therefore there was hardly any possibility for her to agree with the proposal of the petitioner. Lastly, learned counsel submits that acceptance of proposal also appears to be unusual for the simple reason that property of SKO dealership was not subject-matter of civil suit for partition laid by the applicant and as such the order dated 28th May, 2014 is liable to be recalled. During the course of arguments, learned counsel for the applicant has also referred to some documents, which were annexed to the application as well as rejoinder, and also placed heavy reliance on following legal precedents:

? Byram Pestonji Gariwala Vs. Union Bank of India and others, AIR 1991 SC 2234 : (1991) 2 BC 558 : (1991) 4 JT 15 : (1991) 2 SCALE 625 : (1992) 1 SCC 31 : (1991) 1 SCR 187 Supp

? Bakshi Dev Raj and Another Vs. Sudhir Kumar, AIR 2011 SC 3137 : (2011) 8 JT 520 : (2011) 8 SCALE 259 : (2011) AIRSCW 4650

? Shalu Ojha Vs. Prashant Ojha, AIR 2015 SC 170 : (2014) AIRSCW 5709 .

11. In Byram Pestonji Gariwala (supra), Hon"ble Apex Court, while construing Order 23 Rule 3 and Order 3 Rule 1 CPC observed that counsel should not ordinarily act on implied authority of parties except when warranted by exigency of circumstances. The Court held:

37. We may, however, hasten to add that it will be prudent for counsel not to act on implied authority except when warranted by the exigency of circumstances demanding immediate adjustment of suit by agreement or compromise and the signature of the party cannot be obtained without undue delay. In these days of easier and quicker communication, such contingency may seldom arise. A wise and careful counsel will no doubt arm himself in advance with the necessary authority expressed in writing to meet all such contingencies in order that neither his authority nor integrity is ever doubted. This essential precaution will safeguard the personal reputation of counsel as well as uphold the prestige and dignity of the legal profession.

38. Considering the traditionally recognised role of counsel in the common law system, and the evil sought to be remedied by Parliament by the C.P.C. (Amendment) Act, 1976, namely, attainment of certainty and expeditious disposal of cases by reducing the terms of compromise to writing signed by the parties, and allowing the compromise decree to comprehend even matters falling

outside the subject matter of the suit, but relating to the parties, the legislature cannot, in the absence of express words to such effect, be presumed to have disallowed the parties to enter into a compromise by counsel in their cause or by their duly authorised agents. Any such presumption would be inconsistent with the legislative object of attaining quick reduction of arrears in court by elimination of uncertainties and enlargement of the scope of compromise.

39. To insist upon the party himself personally signing the agreement or compromise would often cause undue delay, loss and inconvenience, especially in the case of non-resident persons. It has always been universally understood that a party can always act by his duly authorised representative. If a power-of-attorney holder can enter into an agreement or compromise on behalf of his principal, so can counsel, possessed of the requisite authorisation by vakalatnama, act on behalf of his client. Not to recognise such capacity is not only to cause much inconvenience and loss to the parties personally, but also to delay the progress of proceedings in court. If the legislature had intended to make such a fundamental change, even at the risk of delay, inconvenience and needless expenditure, it would have expressly so stated.

12. In *Bakshi Dev Raj & Anr. (supra)*, Hon'ble Apex Court examined issue relating to parties entering into compromise during the course of hearing of suit or appeal and insisted that the same should be reduced into writing in form of instrument and signed by parties. The Court held:

25. Now, we have to consider the role of the counsel reporting to the Court about the settlement arrived at. We have already noted that in terms of Order 23 Rule 3 CPC, agreement or compromise is to be in writing and signed by the parties. The impact of the above provision and the role of the counsel has been elaborately dealt with by this Court in *Byram Pestonji Gariwala v. Union Bank of India* and observed that courts in India have consistently recognised the traditional role of lawyers and the extent and nature of implied authority to act on behalf of their clients. Mr. Ranjit Kumar, has drawn our attention to the copy of the vakalatnama (Annexure R-3) and the contents therein. The terms appended in the vakalatnama enable the counsel to perform several acts on behalf of his client including withdraw or compromise suit or matter pending before the court. The various clauses in the vakalatnama undoubtedly gives power to the counsel to act with utmost interest which includes to enter into a compromise or settlement.

26. The following observations and conclusions in paras 37, 38 and 39 are relevant: (*Byram Pestonji case*, SCC pp. 46-47)

"37. We may, however, hasten to add that it will be prudent for counsel not to act on implied authority except when warranted by the exigency of circumstances demanding immediate adjustment of suit by agreement or compromise and the signature of the party cannot be obtained without undue delay. In these days of easier and quicker communication, such contingency may seldom arise. A wise

and careful counsel will no doubt arm himself in advance with the necessary authority expressed in writing to meet all such contingencies in order that neither his authority nor integrity is ever doubted. This essential precaution will safeguard the personal reputation of the counsel as well as uphold the prestige and dignity of the legal profession.

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27. In *Jineshwardas v. Jagrani* this Court, by approving the decision taken in *Byram Pestonji* case held: (*Jineshwardas* case, SCC p. 377, para 8)

"8....that a judgment or decree passed as a result of consensus arrived at before court, cannot always be said to be one passed on compromise or settlement and adjustment. It may, at times, be also a judgment on admission...."

28. In *Jagtar Singh v. Pargat Singh* it was held that the counsel for the appellant has power to make a statement on instructions from the party to withdraw the appeal. In that case, Respondent 1 therein, elder brother of the petitioner filed a suit for declaration against the petitioner and three brothers that the decree dated 4-5-1990 was null and void which was decreed by the Subordinate Judge, Hoshiarpur on 29-9-1993. The petitioner therein filed an appeal in the Court of the Additional District Judge, Hoshiarpur. The counsel made a statement on 15-9-1995 that the petitioner did not intend to proceed with the appeal. On the basis thereof, the appeal was dismissed as withdrawn. The petitioner challenged the order of the appellate court in the revision. The High Court confirmed the

same which necessitated the filing of SLP before this Court.

29. The learned counsel for the petitioner in Jagtar Singh case contended that the petitioner had not authorised the counsel to withdraw the appeal. It was further contended that the court after admitting the appeal has no power to dismiss the same as withdrawn except to decide the matter on merits considering the legality of the reasoning of the trial court and the conclusions either agreeing or disagreeing with it. Rejecting the said contention, the Court held as under: (Jagtar Singh case, SCC p. 587, paras 3-4)

"3. The learned counsel for the petitioner has contended that the petitioner had not authorised the counsel to withdraw the appeal. The court after admitting the appeal has no power to dismiss the same as withdrawn except to decide the matter on merits considering the legality of the reasoning of the trial court and the conclusions either agreeing or disagreeing with it. We find no force in the contention. Order 3 Rule 4 CPC empowers the counsel to continue on record until the proceedings in the suit are duly terminated. The counsel, therefore, has power to make a statement on instructions from the party to withdraw the appeal. The question then is whether the court is required to pass a reasoned order on merits against the decree appealed from the decision of the Court of the Subordinate Judge? Order 23 Rules 1(1) and (4) give power to the party to abandon the claim filed in the suit wholly or in part. By operation of Section 107(2) CPC, it equally applies to the appeal and the appellate court has coextensive power to permit the appellant to give up his appeal against the respondent either as a whole or part of the relief. As a consequence, though the appeal was admitted under Order 41 Rule 9, necessarily the court has the power to dismiss the appeal as withdrawn without going into the merits of the matter and deciding it under Rule 11 thereof.

4. Accordingly, we hold that the action taken by the counsel is consistent with the power he had under Order 3 Rule 4 CPC. If really the counsel has not acted in the interest of the party or against the instructions of the party, the necessary remedy is elsewhere and the procedure adopted by the court below is consistent with the provisions of CPC. We do not find any illegality in the order passed by the Additional District Judge as confirmed by the High Court in the revision."

30. The analysis of the above decisions make it clear that the counsel who was duly authorised by a party to appear by executing the vakalatnama and in terms of Order 3 Rule 4, empowers the counsel to continue on record until the proceedings in the suit are duly terminated. The counsel, therefore, has the power to make a statement on instructions from the party to withdraw the appeal. In such a circumstance, the counsel making a statement on instructions either for withdrawal of appeal or for modification of the decree is well within his competence and if really the counsel has not acted in the interest of the party or against the instructions of the party, the necessary remedy is elsewhere.

31. Though the learned counsel for the appellant vehemently submitted that the

statement of the counsel before the High Court during the course of hearing of Second Appeal No. 19 of 2005 was not based on any instructions, there is no such material to substantiate the same. No doubt, Mr. Garg has placed reliance on the fact that the first appellant was bedridden and hospitalised, hence, he could not send any instruction. According to him, the statement made before the Court that too giving of certain rights cannot be sustained and is beyond the power of the counsel.

32. It is true that at the relevant time, namely, when the counsel made a statement during the course of hearing of the second appeal one of the parties was ill and hospitalised. However, it is not in dispute that his son who was also a party before the High Court was very much available. Even otherwise, it is not in dispute that till the filing of the review petition, the appellants did not question the conduct of their counsel in making such statement in the course of hearing of second appeal by writing a letter or by sending notice disputing the stand taken by their counsel. In the absence of such recourse or material in the light of the provisions of CPC as discussed and interpreted by this Court, it cannot be construed that the counsel is debarred from making any statement on behalf of the parties. No doubt, as pointed out in *Byram Pestonji*, in order to safeguard the present reputation of the counsel and to uphold the prestige and dignity of legal profession, it is always desirable to get instructions in writing.

13. In *Shalu Ojha* (supra), Hon''ble Apex Court, while dilating on practice and procedure, observed that under certain circumstances statement made by counsel on behalf of party requires verification by the Court prior to acceptance. Considering the glaring facts of the case, wherein counsel made statement for not pressing her claim for maintenance, the Court observed:

23. In a matter arising under a legislation meant for protecting the rights of women, the High Court should have been slow in granting interim orders, interfering with the orders by which maintenance is granted to the appellant. No doubt, such interim orders are now vacated. In the process the appellant is still awaiting the fruits of maintenance order even after 2 years of the order. We find it difficult to accept that in a highly contested matter like this the appellant would have instructed her counsel not to press her claim for maintenance. In our view, the High Court ought not to have accepted the statement of the counsel without verification. The impugned order is set aside.

14. Mr. M.S. Singhvi, learned Senior Counsel, on the other hand, made scathing attack on the conduct of the applicant and persisted with all the preliminary objections raised in reply to the application for recalling. Mr. Singhvi would contend that counsel representing the cause of the applicant in the writ petition has agreed with the proposal of the petitioner in the best interest of the client after due instructions and therefore his integrity and credentials cannot be questioned by the applicant by way of resorting to such frivolous application laid through other counsel. Mr. Singhvi has further urged that in fact after due instructions from his client (the applicant), her counsel agreed for the proposal

while realizing the fact that unfavourable outcome of the writ petition would not benefit either the petitioner firm or the applicant. Mr. Singhvi would contend that the application has been designed by the applicant to wriggle out from contempt proceedings, which is laid by the petitioner firm as well as IOCL, after an inordinate delay of five months; therefore, it deserves no credence. Addressing on the issue relating to review/recalling the order, learned counsel submits that scope is very much limited and the grounds set out in the application are falling short of the requirements for reviewing or recalling the order in terms of the law propounded by the Hon''ble Apex Court and followed by this Court. In support of his contentions, Mr. Singhvi has placed reliance on following legal precedents:

? Dalip Singh Vs. State of U.P. and Others, (2009) 15 JT 201 : (2009) 14 SCALE 473 : (2010) 2 SCC 114 : (2009) 16 SCR 111 : (2010) AIRSCW 50 : (2009) 8 Supreme 485 .

? Bhaskar Laxman Jadhav and Others Vs. Karamveer Kakasaheb Wagh Education Society and Others, (2013) 2 ABR 117 : AIR 2013 SC 523 : (2012) 12 JT 372 : (2012) 12 SCALE 87 : (2013) AIRSCW 34 .

? Sow Chandra Kante and Another Vs. Sheikh Habib, AIR 1975 SC 1500 : (1975) 1 SCC 674 : (1975) 3 SCR 933 : (1975) 7 UJ 324 .

? Uda Ram v. The Central State Farm and Ors., 1998 (2) SCC 256.

? Tamil Nadu Electricity Board and another Vs. N. Raju Reddiar and another, AIR 1997 SC 1005 : (1997) 1 Crimes 182 : (1997) 1 JT 486 : (1997) 1 SCALE 286 : (1997) 9 SCC 736 : (1996) 10 SCR 915 Supp .

? Uda Ram Vs. Central State Farm and Others, AIR 1998 Raj 186 : (1998) 2 WLC 256 : (1998) 1 WLN 560 .

? Mohan Bai Vs. Jai Kishan, 1983 WLN 283.

15. In Dalip Singh (supra), Hon''ble Apex Court has strongly deprecated abuse of process by the new creed of dishonest litigants for resorting to unethical means for achieving their goals. The Court held:

1. For many centuries Indian society cherished two basic values of life i.e. "satya" (truth) and "ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort

to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

16. In *Bhaskar Laxman Jadhav & Ors.* (supra), Hon'ble Apex Court, while dilating on practice and procedure, has reiterated on the sacrosanct duty of litigant to disclose material facts. While referring to Order 6 Rule 2 CPC, Court observed that a litigant must come to the Court with clean hands and disclose all material facts relating to the case. Speaking for the Court, Justice Madan B. Lokur held:

42. While dealing with the conduct of the parties, we may also notice the submission of the learned counsel for Respondent 1 to the effect that the petitioners are guilty of suppression of a material fact from this Court, namely, the rejection on 2-5-2003 of the first application for extension of time filed by the trustees and the finality attached to it. These facts have not been clearly disclosed to this Court by the petitioners. It was submitted that in view of the suppression, special leave to appeal should not be granted to the petitioners.

43. The learned counsel for the petitioners submitted that no material facts have been withheld from this Court. It was submitted that while the order dated 2-5-2003 was undoubtedly not filed, its existence was not material in view of subsequent developments that had taken place. We cannot agree.

44. It is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of a case and leave the decision-making to the court. True, there is a mention of the order dated 2-5-2003 in the order dated 24-7-2006 passed by the JCC, but that is not enough disclosure. The petitioners have not clearly disclosed the facts and circumstances in which the order dated 2-5-2003 was passed or that it has attained finality.

45. We may only refer to two cases on this subject. In *Hari Narain v. Badri Das* stress was laid on litigants eschewing inaccurate, untrue or misleading statements, otherwise leave granted to an appellant may be revoked. It was observed as follows: (AIR p. 1560, para 9)

"9....It is of utmost importance that in making material statements and setting forth grounds in applications for special leave care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. That is why we have come to the conclusion that in the present case, special leave granted to the appellant ought to be revoked. Accordingly, special leave is revoked and the appeal is dismissed. The appellant

will pay the costs of the respondent."

46. More recently, in *Ramjas Foundation v. Union of India* the case law on the subject was discussed. It was held that if a litigant does not come to the court with clean hands, he is not entitled to be heard and indeed, such a person is not entitled to any relief from any judicial forum. It was said: (SCC p. 51, para 21)

"21. The principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every court is not only entitled but is duty-bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have a bearing on adjudication of the issue(s) arising in the case."

47. A mere reference to the order dated 2-5-2003, en passant, in the order dated 24-7-2006 does not serve the requirement of disclosure. It is not for the court to look into every word of the pleadings, documents and annexures to fish out a fact. It is for the litigant to come upfront and clean with all material facts and then, on the basis of the submissions made by the learned counsel, leave it to the court to determine whether or not a particular fact is relevant for arriving at a decision. Unfortunately, the petitioners have not done this and must suffer the consequence thereof.

17. In *Sow Chandra Kante and Anr. (supra)*, a celebrated decision on the nature and scope of review, speaking for the Court, Justice V.R. Krishna Iyer, observed:

Mr. Daphtary, learned counsel for the petitioners, has argued at length all the points which were urged at the earlier stage when we refused special leave thus making out that a review proceeding virtually amounts to a re-hearing. May be, we were not right in refusing special leave in the first round; but, once an order has been passed by this Court, a review thereof must be subject to the rules of the game and cannot be lightly entertained. A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these factors is the rationale behind the insistence of counsel's certificate which should not be a routine affair or a habitual step. It is neither fairness to the Court which decided nor awareness of the precious public time lost what with a huge backlog of dockets waiting in the queue for disposal, for counsel to issue easy certificates for entertainment of review and fight over again the same battle which has been fought and lost. The Bench and the Bar, we are sure, are jointly concerned in the

conservation of judicial time for maximum use. We regret to say that this case is typical of the unfortunate but frequent phenomenon of repeat performance with the review label as passport. Nothing which we did not hear then has been heard now, except a couple of rulings on points earlier put forward. May be, as counsel now urges and then pressed, our order refusing special leave was capable of a different course. The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.

18. In T.N. Electricity Board & Anr. (supra), Hon"ble Apex Court deprecated the practice of laying application for clarification filed with the change of Advocate on record. The Court made strong observations for dismissing such applications with exemplary costs, as follows:

2. Once the petition for review is dismissed, no application for clarification should be filed, much less with the change of the Advocate-on-Record. This practice of changing the advocates and filing repeated petitions should be deprecated with a heavy hand for purity of administration of law and salutary and healthy practice.

3. The application is dismissed with exemplary costs of Rs. 20,000 as it is an abuse of the process of court in derogation of healthy practice. The amount should be paid to the Supreme Court Legal Aid Services Committee within four months from today. If the amount is not paid, it should be recovered treating this direction as decree of the Court by the Supreme Court Legal Services Committee. The Registry is directed to communicate this order to the Supreme Court Legal Services Committee.

19. In Uda Ram (supra), Hon"ble Mr. Justice B.S. Chauhan (as then he was) reiterated the principle enunciated in T.N. Electricity Board (supra), and deprecated the practice of filing review petition, by changing counsels, in following words:

5. Even if a party does not pray for the relief in the earlier writ petition, he cannot file a successive petition claiming same relief, which he ought to have claimed in the earlier one, as it would be barred by the principle enshrined in Order 2, Rule 2 of the Code of Civil Procedure, (Vide Commissioner of Income Tax, Bombay Vs. T.P. Kumaran, (1996) 6 AD 620 : (1996) 2 CTC 699 : (1996) 74 FLR 2522 : (1996) 8 JT 98 : (1997) 1 LLJ 117 : (1996) 6 SCALE 403 : (1996) 10 SCC 561 : (1996) 4 SCR 732 Supp : (1996) 3 SLJ 101 : (1996) 88 TAXMAN 206 and Union of India (UOI) Vs. Punnial and Others, (1996) 8 AD 438 : (1997) 75 FLR 367 : (1996) 9 JT 740 : (1997) 2 LLJ 53 : (1996) 8 SCALE 208 : (1996) 11 SCC 112 : (1997) SCC(L&S) 215 : (1996) 7 SCR 629 Supp . In the instant case, petitioner had already claimed the same relief in writ petition No. 2175/88. The said petition has also been disposed of and no argument was made for this issue either in the earlier petition, nor in the subsequent one at the time of hearing by the counsel appearing for applicant-petitioner. It is difficult to understand how the review petition is maintainable as the case certainly does not fall within the ambit of principle enshrined in Order 47, Rule 1 of the Code of Civil Procedure. A

party may raise various points in the petition but if all of them are not agitated at the time of hearing, the Court is under no obligation to decide all the issues taken in the petition. The Court is not supposed to find out all the issues involved in a given case, conduct full fledged research on them and then decide all of them on merit. Rather, it is not permissible for the Court to deal with such issues as other party could not have been in a position to reply the submissions so raised by the Court suo motu. The principle of fairness, equity, justice and good conscience requires that other party must be given an opportunity to answer the line of reasoning adopted on a particular issue and if an issue not agitated by a party at the time of hearing is dealt-with by a Court, it may cause grave injustice to the other party. This view stands fortified by a judgment of nine Judges Bench of Hon"ble Supreme Court in New Delhi Municipal Committee Vs. State of Punjab, etc. etc., AIR 1997 SC 2847 : (1997) 1 JT 40 : (1996) 9 SCALE 613 : (1997) 7 SCC 339 : (1996) 10 SCR 472 Supp : (1997) AIRSCW 2851 : (1997) 4 Supreme 90 .

6. In Smt. Kamlesh Kumari Vs. State of Uttar Pradesh and Others, AIR 1982 SC 1248 : (1982) 3 SCC 315 , it has been held by the Hon"ble Apex Court that if point raised and agitated, is not dealt-with by the Court in its judgment, the appropriate course for a party is to file a review petition before the same bench. In Union of India (UOI) and Others Vs. N.V. Phaneendran, (1995) 5 SCALE 355 : (1995) 6 SCC 45 : (1995) 3 SCR 141 Supp , the Hon"ble Apex Court has held that where various contentions had been raised and the Court/Tribunal does not deal-with some of them because the same were not agitated at the time of hearing, it does not warrant remittance to the same Court for rehearing for review by such a party. The same view has been taken by the Hon"ble Supreme Court in Kanwar Singh Vs. State of Haryana and Others, (1997) 3 JT 732 : (1997) 2 LLJ 34 : (1997) 3 SCALE 177 : (1997) 4 SCC 662 : (1997) SCC(L&S) 934 : (1997) 2 SCR 617 .

7. In the instant case, Mr. R.S. Saluja, advocate, had appeared and argued the matter for the applicant petitioner. The review petition has been filed by other counsel, namely Mr. J.K. Kaushik and Mr. B.M. Kayamkhani, who did not appear at the time of the hearing of the review petition nor anybody asked for adjournment of the case on any ground on their behalf. Dismissal of the application in default would give one more opportunity to such a crafty litigant to move an application for recall of the order of dismissal, on some manufactured pretext/ground. It is not fair to the court to change a counsel and file a review petition because the counsel engaged for filing the review petition may not be aware of what had transpired in the Court while deciding the petition. It may amount to embarrassment to the Court to hear the grievance of a party, which has no basis and where a party does not furnish any material to substantiate the grounds taken in the review petition. The conduct of such a party is reprehensible and deserves not only to be deprecated but censured. A litigant cannot be permitted to drag the Court in such a manner and force it to decide the case in a particular manner he wants. This Court expresses its grave concern

over the procedure adopted by the applicant for redressal of his grievances. In Tamil Nadu Electricity Board and another Vs. N. Raju Reddiar and another, AIR 1997 SC 1005 : (1997) 1 Crimes 182 : (1997) 1 JT 486 : (1997) 1 SCALE 286 : (1997) 9 SCC 736 : (1996) 10 SCR 915 Supp , the Apex Court has observed as under:

"Once an appeal/special leave petition is dismissed, except in rare cases where error of law or fact is apparent on the record, no review can be filed, that too by the Advocate on record who neither appeared nor was a party in the main case. It is salutary to note that Court spent valuable time in deciding the case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petition as a routine, that too with change of counsel. Once the petition for review is dismissed, no application for clarification should be filed..... This practice of changing the Advocate and filing repeated petition should be deprecated with heavy hand for purity of administration of Jaw and salutary healthy practice..... The application is dismissed with costs of Rs. 20,000/- as it is an abuse of process of Court in derogation of healthy practice."

20. In Mohan Bai (supra), the learned Single Judge of this Court held that Order 23 Rule 3 CPC does not debar a counsel from signing a compromise petition nor it interferes with his inherent right to enter into an agreement or compromise on behalf of his client. The Court held:

9. Learned counsel for the appellant placed reliance on the decision of a learned single Judge of the Andhra Pradesh High Court in Kesarla Raghuram V. Dr. Navasipalle Vasundara in support of the proposition that recent amendment introduced in Order 23 Rule 3 C.P.C. made it incumbent that the compromise memo should not only be in writing but it should be by the parties and the compromise memo filed before the court and signed by the advocates of both the parties concerned, without being signed by the parties themselves, cannot be acted upon. With great respect to the learned Judge, who decided the aforesaid case, I would like to observe that the object with which the recent amendment has been introduced in Order 23 Rule 3 C.P.C., as mentioned in its objects and reasons is of avoiding the setting up of oral agreements or compromises to delay the progress of the suit and not to cut down the implied authority of the counsel. It was thought proper by the Parliament in its wisdom that in order to avoid delay in the progress of the suit, often counsel on account of setting up of oral compromises and taking lot of time in trying to prove the same, a compromise which can be given effect to by the court must be in writing. Once the compromise is required to be in writing, then naturally it must be signed by the parties, which expression includes the advocates for the parties. It may be respectfully submitted that there is no indication in the amended provisions that signatures by the counsel on behalf of the parties were excluded, or that the parties were personally required to sign compromise petitions. In case the legislature intended to depart from the accepted proposition laid down in the Full

Bench judgments of the Nagpur and Kerala High Courts and approved by their Lordships of the Supreme Court in the cases referred to above, regarding the implied authority of the Advocate to enter into a compromise on behalf of his client, then specific provision would have been made to indicate that the parties should personally sign the compromise petitions, like the provisions contained in Order 6 Rule 14 C.P.C. about signing the pleadings. Where it has been made obligatory that the party should himself sign the pleadings; and if it is shown that by reasons of absence or otherwise, the party was unable to sign the pleadings then it should be signed by a person duly authorised by him in this behalf. The signatures of the pleader would not be enough, so far as the pleadings is concerned, as has been made explicit in the provisions contained in Order 6 Rule 14 C.P.C. In the absence of any such specific provisions, it would not be proper to cut down the inherent or implied authority of a counsel derived by him on the basis of the provisions of Order 3 Rule 4 C.P.C., to act on behalf of the party. In my humble view, Order 23 Rule 3 C.P.C. does not debar a counsel from signing a compromise petition nor it interferes with his inherent right to enter into an agreement or compromise on behalf of his client. Thus, the court can act upon such a compromise petition which is signed only by the counsel for the parties and has not been signed by the parties themselves personally.

21. Mr. O.P. Mehta, learned counsel for the IOCL has by and large adopted the arguments of learned Senior Counsel Mr. M.S. Singhvi. Mr. Mehta has also made sincere endeavour to canvass all points in opposing the application for recalling the order dated 28th May 2014 which are mentioned in the reply filed on behalf of IOCL.

22. I have heard learned counsel for the parties, bestowed my consideration to the pleadings and the legal precedents on which learned counsels have placed reliance, and also scanned the available material.

23. Applicant's quest in this application is daunting and Herculean task but then as a litigant she has a right to agitate the cause by choosing appropriate forum/ remedy if it is perceived that somewhere the shoe pinches. However, while examining afflictions of such an overzealous litigant like applicant, the Court is bound to make judicial scrutiny of the lis on the touchstone of sound legal principles and not on mere misplaced sympathies. The whole endeavour of the applicant in her application is for recalling order dated 28th May 2014, which was passed by the Court, while disposing of Writ Petition No. 1904 of 2013, with the consent of all the parties. From the tenor of the application and the grounds set out therein, it is unequivocally clear that the applicant has made an affirmative attempt to castigate her lawyer to impress upon the Court for acceding to her prayer. May be at the time of passing of the order the lawyer representing her cause has agreed to the proposal of the petitioner without instructions but the pivotal question is that who can clarify the fact situation which was available at the relevant point of time. There cannot be two opinions that the best person to divulge requisite information about the Court proceedings of the day can be the

lawyer who represented her cause in the writ petition. Whatever transpired in the Court during the course of hearing is within the knowledge of the lawyer representing her cause in the writ petition and no other incumbent including the lawyer presently representing the cause of the applicant can make any comment about the same. Moreover, communication between the applicant and the lawyer representing her cause in the writ petition is also solely within the knowledge of concerned lawyer. Therefore, it is not possible to infer that the counsel representing the cause of the applicant has agreed with the proposal of the petitioner firm without consulting the applicant solely on the basis of unilateral version of the applicant.

24. In that background, for appreciating and analyzing the grievances of the applicant, the only course open to the Court is to examine the subject matter of the writ petition. If the subject matter of writ petition is examined threadbare, then it would ipso facto reveal that essentially the petitioner firm has craved for setting aside order dated 28th May, 2013 passed by the IOCL terminating SKO agency of the firm. The endeavour of the applicant for being impleaded as party was to stake her claim in the profit of the firm. Therefore, in that background, it appears quite probable that learned counsel representing the cause of the applicant has agreed to the proposal of the petitioner firm for reconstitution of dealership in the name of petitioner firm by realizing that dismissal of writ petition would not benefit or yield anything fruitful to her. Although there are reasons to believe that the counsel representing the cause of the applicant had due instructions for conceding to the proposal of the petitioner firm but assuming it without admitting and even if it is taken to be without consent, it is rather difficult to accept that the counsel has not acted bona fide or in the best interest of client, i.e., applicant. The contention of the applicant, that her 1/7th share in the profit of the petitioner firm has been kept subject to the decision of civil suit for partition is of no consequence for the reason that property of SKO dealership is not part of the claim in the property dispute, appears to be quite attractive but the same deserves judicial scrutiny on the touchstone of order dated 28th of May 2014. In this behalf, suffice it to observe that said point was canvassed by Mr. Bhansali, the learned counsel representing the cause of the applicant, at the time of hearing of the writ petition. Therefore, it cannot be said that this fact was not brought to the notice of the Court at the time of hearing. The contention of learned counsel for the applicant in this behalf finds mention in the order itself.

25. Be that as it may, the fact remains that pursuant to the order dated 28th May, 2014 passed in Civil Writ No. 6904 of 2013, the applicant has also laid appropriate application under Order 6 Rule 17 CPC before the competent Civil Court where her property dispute, i.e. the suit for partition is pending for amending her suit to include the property of firm M/s. National Automobiles, Barmer (SKO) and, as such, the apprehension of the applicant, that the order has frustrated her cause, is per-se misplaced. Apparently, it appears to be an afterthought and therefore, it is rather difficult to comprehend that applicant has not construed true purport of order for five long months when this application for

recalling the order is filed. Moreover, in the given circumstances, it cannot be said that order dated 28th May, 2014 has resulted in failure of justice.

26. While disposing of the writ petition, the Court has consciously taken note of the grievances of the applicant by directing the petitioner firm to keep 1/7th share of the profit earned by the petitioner firm intact and to deposit the same in a separate bank account. In that background, disowning the concession made by the counsel at her behest with due instructions is really a cause of grave and serious concern. Recalling application or review petition is not a routine proceeding and a party resorting to such proceedings is required to make out a cast-iron case indicating an error apparent on the face of record in the order sought to be reviewed or recalled. Moreover, I am afraid, there is no cogent reason to believe that it is necessary to exercise inherent powers for recalling the order to prevent miscarriage of justice in the instant matter. An error apparent on the face of record is not an error which is required to be fished out or probed by re-examining the matter afresh. Error must be such as would be apparent on mere looking of the record without requiring any long-drawn process of reasoning. As requirement of an error on the face of record is sine-qua-non for maintaining an application for review or recall of the order, in absence of such an error, a prayer of this sort is not tenable. The Court is constrained to observe that it is not expected of a litigant to act at its whims and fancy for resorting to such application at the cost of targeting the counsel representing its cause and hurling insinuations against the counsel without any rhyme and reason. In substance, it may not be an exaggeration that applicant by this application has propelled mountain out of mole hill which is quite perplexing.

27. The argument of the learned counsel for the applicant that there was no written instruction, suffice it to observe that there is a presumption that lawyer has acted on the instructions of the applicant and furthermore there are umpteen reasons to believe that the lawyer has acted in good faith and in the best interest of client while agreeing to the proposal of the petitioner firm. This being the situation, even the ratio-decidenti of *Byram Pestonji Gariwala* (supra), on which the learned counsel for the applicant has placed reliance, cannot render any assistance to the applicant, wherein Hon"ble Apex Court has held that normally a counsel is not to act on implied authority except when warranted by exigency of circumstances demanding immediate adjustment of suit by agreement or compromise and signature of the party cannot be obtained without undue delay. In the present case, as such, it was not an agreement or compromise which the counsel has consented to the detriment of the interest of the applicant; rather it was in the best interest of the applicant.

28. In *Bakshi Dev Raj* (2) (supra), Hon"ble Apex Court has reiterated the same view and observed that if there is no material to substantiate the allegations of a litigant that his/her counsel has acted beyond his authority without instructions, such order is not liable to be reviewed or recalled. The Court has also observed that the various clauses in the Vakalatnama undoubtedly gives power to the

counsel to act with utmost interest which includes to enter into a compromise or settlement in the interest of parties. Therefore, ratio-decidendi of this judgment too has not rendered any assistance to the applicant, more particularly, when the insinuations hurled by the applicant against the counsel representing her cause in the writ petition are absolutely vague, cryptic and baseless being founded on unsubstantiated averments.

29. In Shalu Ojha (supra), the facts were glaring inasmuch as the counsel representing the cause of a lady in that case under the Protection of Women from Domestic Violence Act, 2005 conceded on her behalf for her claim for maintenance. Therefore, in that background, Hon"ble Apex Court, while accepting the contention of the applicant wife that no such instructions could have been given by her to the counsel, set aside the order of the High Court. The facts, in the instant case, are clearly topsy-turvy inasmuch as in the present case contrary to the fact situation in Shalu Ojha's case, counsel for the applicant has chosen a right path while agreeing to the proposal of the petitioner in the best interest of his client as such this judgment too cannot render assistance to the applicant.

30. The second limb of argument of the applicant is that the order dated 28th May 2014 was passed without deciding her application under Article 226 read with order 1 Rule 10 CPC for being impleaded as party respondent. It is true that while disposing of the writ petition, no formal order is passed to implead applicant as party respondent but then counsel representing her cause was given due audience by the Court and the submissions put-forth by the counsel were taken note of by the Court as well as by the counsels representing the cause of the petitioner and respondent IOCL. Therefore, for all practical purposes the Court has treated applicant as party to the litigation and thereafter on acceptance of proposal of the petitioner firm by her counsel the writ petition was disposed of by a consent order. In that background, non-impleadment of the applicant formally as party to the litigation has not caused any prejudice or detriment to the applicant, nor it has in any way adversely affected her right which she would have agitated on her impleadment as party to the writ petition. Therefore, this contention of the applicant may be quite alluring but in the backdrop of facts and circumstances of the case is inconsequential and cannot be construed a valid ground for review or recalling order dated 28th May 2014.

31. The applicant has also set out her case for recalling the order on the anvil of serious acrimony between the litigating parties and has further made endeavour to dilate on the merits of the case. In this behalf, it would be just and proper to observe that acrimony between the parties and litigation between them, civil or criminal, is having no ramification whatsoever on the order dated 28th May 2014 and the same in the considered opinion of the Court cannot be cited as a ground for recalling the order. The principal condition of reviewing or recalling the order is availability of an error apparent on the face of record which is conspicuously missing in the instant case and while exercising powers for recalling or reviewing

the order, it is not desirable for this Court to delve deep into the matter to find out grounds and reasons for recalling or reviewing the order. Reliance in this behalf can be profitably made to the decision in *Sow Chandra Kante and Anr.* (supra) on which counsel for the petitioner has placed reliance. The practice of engaging other lawyer for reviewing or recalling an order has been censured by Hon''ble Apex Court in *T.N. Electricity Board & Anr.* (supra) and same principle is reiterated by this Court in *Uda Ram's case* (supra). Therefore, on this count also no indulgence can be granted to the applicant in her pursuit for recalling the order. Castigating a lawyer casually by a litigant without any justifiable reason cannot be countenanced more particularly when the edifice of justice delivery system is based on equity, justice and good conscience. The observations made in *Dilip Singh's case* (supra), on which learned counsel for the petitioner has placed reliance are therefore of great significance and can be applied in the instant case to non-suit the applicant.

32. It may also be observed here that this Court in *Mohan Bai's case* (supra) has elaborately discussed the right of the counsel to enter into compromise and even sign compromise on behalf of parties and has approved such action of a counsel in terms of Order 23 Rule 3 CPC. Therefore, in totality, there remains no room of doubt that the counsel representing the cause of the applicant has acted with due instructions and good faith in agreeing with the proposal of the petitioner and furthermore the counsel has also acted in the best interest of the applicant in accepting the proposal of the petitioner firm. As such, in my opinion, no case for recalling order dated 28th May 2014 is made out.

33. The application for recalling is, therefore, rejected with costs.