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IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

&

HON'BLE SHRI JUSTICE PRANAY VERMA

ON THE 4th OF NOVEMBER, 2022

REVIEW PETITION No. 1736 of 2019

BETWEEN:-

MADHYA PRADESH FINANCIAL
CORPORATION FINANCE HOUSE, AB
ROAD, NEAR GEETA BHAWAN
CHOURAHA, INDORE (MADHYA
PRADESH)

.....PETITIONER

*(BY SHRI SHEKHAR BHARGAVA, SENIOR
ADV. WITH SMT. RITU BHARGAVA, ADVOCATE)*

AND

AVALANCHE MULTI TRADING PVT. LTD.
ACTING THROUGH AKSHAY GOYAL
DIRECTOR M-5, NAVNEET DARSHAN, OLD
PALASIA, INDORE (MADHYA PRADESH)

.....RESPONDENTS

*(BY SHRI MANOJ MUNSHI, ADV. &
SHRI R.C.SINHAL, ADVOCATE)*

.....

This petition coming on for order this day, JUSTICE SUBODH

ABHYANKAR passed the following:

ORDER

01. This Review Petition has been filed for recall/review of the order dated 01.11.2019 passed by this Court in W.P. No. 16372/2019. whereby the petition filed by the respondent Avalanche Multi Trading Pvt. Ltd. was allowed and the petitioner/respondent was directed to pay the compound interest to the respondent/petitioner @ 12% per annum, in the same manner and method as is being charged by the petitioner from its borrowers.

02. In brief, facts of the case are that W.P. No.16372/2019 was filed by the respondent, therein claiming interest @ 12% which is being charged by the petitioner Madhya Pradesh Financial Corporation (herein referred as the MPFC) from its borrowers on the amount of Rs.10,51,00,000/-already refunded to the respondent. While allowing the aforesaid petition, this Court has also recorded the admission on the part of the counsel appearing for the petitioner/MPFC, whereby he informed this Court that MPFC charges the interest compounded monthly from its borrowers and there is no dispute about it.

03. Shri Shekhar Bhargava, learned senior counsel appearing for the petitioner has submitted that the aforesaid admission was made by the counsel for the petitioner without taking any instructions from the MPFC and, thus, it is not binding on the petitioner.

Counsel has also drawn attention of this Court to the report submitted by Shri R.C. Sinhal, Advocate who was appointed as *Amicus Curie* by this Court in the petition vide order dated 13.1.2020 to ascertain the rate of interest charged by the MPFC from its borrowers. At the request of Shri Sinhal the petitioner/MPFC was directed to file the statements of five loan accounts of the year 2019-2020 duly supported by an affidavit of the responsible Officer so that Shri Sinhal, can assist the Court to form an opinion regarding the rate of interest charged by the MPFC from its borrowers.

Shri R.C. Sinhal, who is also subsequently arrayed as respondent No.2, has submitted his report on 29.2.2020, wherein after going through the 05 loan accounts furnished by the MPFC to him, he has opined that simple interest is being charged by the MPFC from its borrowers. But where interest has not been paid on due dates, compound interest has been charged.

04. Shri Bhargava has submitted that in the W.P. 16372/2019, on asking of this Court, when the counsel for the MPFC has informed that the interest is being charged from its borrowers as compound interest, there was absolutely no instruction received by him from the MPFC and as he was simply put a question during the course of the argument and had no occasion to discuss this matter with the Officers of the MPFC, the admission made by him on behalf of the

MPFC is not binding on them, and this fact is also supported by the report submitted by *Amicus Curie* - Shri R.C. Sinhal, advocate.

05. Shri Shekhar Bhargava has also submitted that when the aforesaid petition was being heard, the statement of the counsel appearing for the petitioner was recorded separately on 1.11.2019, which is also the date of final order and, as the aforesaid query made by this Court caught the counsel for the petitioner with surprise, and without time to seek instructions counsel felt obliged to answer the query raised by this Court on the basis of his own knowledge as a Chartered Accountant about commercial loans given by a financial Institution. Thus, it is submitted by Shri Bhargava, Sr. Advocate that the review be allowed and the order dated 01.11.2019 passed by this Court in W.P. No. 16372/2019 be recalled.

06. That, W.P.No.16372/2019 was filed pursuant to the order passed by this Court in Contempt Petition No.399/2019 dated 26.7.2019, whereby, on account of non-payment of the principal amount with interest, as directed by this Court in W.P.No. 21570/2017 dated 26.7.2018. But, after the contempt petition was filed, counsel for the respondent has informed the Court that the amount has already been paid along with simple interest @ 12% per annum (lending rate). And, thus, a liberty was granted by this Court to the respondent-Avalanche Multi Trading Pvt. Ltd. to take

recourse of law before the appropriate Forum, if they have any grievance against the order passed by the MPFC, and thus, W.P.No.16372/2019 was filed by the respondent to claim the interest at compounded rate.

07. Shri Manoj Munshi, learned counsel appearing for the respondent has vehemently opposed the prayer and it is submitted that no case for interference is made out, as the review petition itself is not maintainable, considering the fact that this Court has passed a reasoned order on the basis of the information provided by the counsel for the petitioner MPFC in W.P.No.16372/2019. It is further submitted that the report submitted by Shri R.C. Sinhal, *Amicus Curie* is also not correct as the MPFC also charges the interest at compounding rate from its borrowers, which is also apparent from the documents filed by the respondent along with the reply and the additional reply. In support of his submissions, Shri Munshi has relied upon the decisions rendered by the Supreme Court in the cases of *S. Madhusudhan Reddy vs. V. Narayana Reddy and others (Civil Appeals No.5503-04 of 2022)* and *S. Narsimha Reddy vs. V. Narayana Reddy and others (Civil Appeal No. 5505 of 2022)*; *Om Prakash vs. Suresh Kumar (Civil Appeal Nos. 833-834 of 2020)*. It is also submitted that the present Review Petition is the 8th round of litigation as earlier 07 other cases involving the same controversy have already been

contested by the parties up to the Supreme Court.

08. Heard the learned counsel for the parties and also perused the record.

09. The only question that falls for consideration of this Court is whether the admission made by the counsel for the petitioner MPFC is binding on them which relates to charging of interest from its borrowers.

10. To appreciate the submissions advanced by the counsel for the parties this Court has also requisitioned the record of Writ Petition No.16372/2019. The W.P. 16372/2019 was filed seeking the following reliefs:-

- (i) This petition may kindly be allowed;
- (ii) The respondent may kindly be directed to honour the observations and directions of this Hon'ble Court passed in W.P.No.21570/2017, R.P. No.1188/2018 and 1327/2018 and to pay the difference amount of interest between the current lending rate of interest @ 15.25% and the rate of interest granted @ 12% per annum immediately;
and
- (iii) Any other order which this Hon'ble Court deems fit be passed in favour of the petitioner.

11. A bare perusal of the record of W.P. No.16372/2019, it reveals that the petitioner-MPFC had also filed a detailed reply on 26.9.2019, traversing the averments made in the petitioner and

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specifically denying that the rate of interest is being charged from some of the borrowers between 10% to 17%. It was also stated that the petitioner itself, in W.P. 21570/2017 has claimed the loss @ of 12% per annum on simple rate of interest and, now they have changed their stand claiming the damages at compounded rate of interest. These facts have also been recorded by the writ court (**relevant para 8, 9 & 10**) in the following manner:-

“ 08. The Madhya Pradesh Financial Corporation has filed a reply in the matter and their contention is that the present writ petition is not at all maintainable. The Madhya Pradesh Financial Corporation has stated that there is no direction given by the High Court to pay interest at the highest lending rate and in fact the Corporation is charging interest even lower than 12%. The stand of the Corporation is that the rate of interest differs from 10% to 17%.

09. Documents have been filed by the Madhya Pradesh Financial Corporation to substantiate their claim and Annexure-R/9 clearly provides that rate of interest is being charged from some of the borrowers between 10% to 17%.

10. It has also been stated in the reply that this Court, while deciding the writ petition i.e. W.P. No.21570/2017, has categorically mentioned the rate to be 12% and the question of payment of any further interest does not arise.”

12. In the considered opinion of this Court when a detailed reply along with an affidavit of the Officer of the petitioner MPFC was filed in W.P. No.16372/2019, on a query made by this court, the oral concession made by the counsel for the petitioner during the course of arguments, without consulting the petitioner, would not be binding on the petitioner.

13. This Court is of the view that the admission/concession of fact made by the counsel for the petitioner/MPFC which runs contrary to the reply filed by them cannot be said to be binding on the respondents and, appears to be an error on the face of the record which needs to be corrected.

14. Reference in this regard may be had to a decision of the Supreme Court in the case of *Himalayan Coop. Group Housing Society v. Balwan Singh, (2015) 7 SCC 373* has held as under:-:-

“**14.** The issues that would arise for consideration and decision are:

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

14.2. (ii) Whether the counsel appearing for an appellant Society could make concession for or on behalf of the appellant Society without any express instructions/authorisation in that regard by the Society?

14.3. (iii) Whether such a concession would bind the appellant Society and its members?

14.4. (iv) Since the subject-matter of the concession made by the counsel was not the issue before the writ court, whether the same would bind the appellant Society and its members?

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21. If for any reason, the writ court perceived the oral request made by the respondents to have justified the ends of justice and desired to accept the concession so made by the counsel for the appellant Society, the said request not being the subject-matter of the writ petition required the Court to query whether the counsel for the appellant Society has been authorised to make

such a statement by the appellant Society or whether any such resolution has been passed by the appellant Society giving concession in matters of this nature. Since the required caution was not exercised by the learned Judges of the writ court, the directions issued by the writ court suffer from infirmity and hence require to be set aside.

22. Apart from the above, in our view lawyers are perceived to be their client's agents. The law of agency may not strictly apply to the client-lawyer's relationship as lawyers or agents, lawyers have certain authority and certain duties. Because lawyers are also fiduciaries, their duties will sometimes be more demanding than those imposed on other agents. The authority-agency status affords the lawyers to act for the client on the subject-matter of the retainer. One of the most basic principles of the lawyer-client relationship is that lawyers owe fiduciary duties to their clients. As part of those duties, lawyers assume all the traditional duties that agents owe to their principals and, thus, have to respect the client's autonomy to make decisions at a minimum, as to the objectives of the representation. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. The law is now well settled that a lawyer must be specifically authorised to settle and compromise a claim, that merely on the basis of his employment he has no implied or ostensible authority to bind his client to a compromise/settlement. To put it alternatively that a lawyer by virtue of retention, has the authority to choose the means for achieving the client's legal goal, while the client has the right to decide on what the goal will be. If the decision in question falls within those that clearly belong to the client, the lawyer's conduct in failing to consult the client or in making the decision for the client, is more likely to constitute ineffective assistance of counsel.

23. The Bar Council of India Rules, 1975 (for short "the BCI Rules"), in Part VI Chapter II provide for the "Standards of Professional Conduct and Etiquette" to be observed by all the advocates under the Advocates Act, 1961 (for short "the 1961 Act"). In the Preamble to

Chapter II, the BCI Rules provide as follows:

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

(emphasis supplied)

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24. The Preamble makes it imperative that an advocate has to conduct himself and his duties in an extremely responsible manner. They must bear in mind that what may be appropriate and lawful for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity, may be improper for an advocate in his professional capacity.

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

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

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

26. While Rule 15 mandates that the advocate must uphold the interest of his clients by fair and honourable means without regard to any unpleasant consequences to himself or any other. Rule 19 prescribes that an advocate shall only act on the instructions of his client or his authorised agent. Further, the BCI Rules in Chapter I of the said Section II provide that the Senior Advocates in the matter of their practice of the profession of law mentioned in Section 30 of the 1961 Act would be subject to certain restrictions. One of such restrictions contained in clause (cc) reads as under:

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

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

whose partner or associate acts for the client.

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

29. While the BCI Rules and the Act, do not draw any exception to the necessity of an advocate obtaining instructions before making any concession on behalf of the client before the court, this Court in *Periyar & Pareekanni Rubber Ltd. v. State of Kerala* has noticed the sui generis status and the position of responsibility enjoyed by the Advocate General in regard to the statements made by him before the courts. The said observation is as under: (SCC p. 209, para 19)

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

(See: *Joginder Singh Wasu v. of Punjab.*)

30. The Privy Council in *Sourendra Nath Mitra v. Tarubala Dasi*, has made the following two observations which hold relevance to the present discussion: (IA pp. 140-141)

“Two observations may be added. First, the implied authority of counsel is not an appendage of office, a dignity added by the

courts to the status of barrister or advocate at law. It is implied in the interests of the client, to give the fullest beneficial effect to his employment of the advocate. Secondly, the implied authority can always be countermanded by the express directions of the client. No advocate has actual authority to settle a case against the express instructions of his client. If he considers such express instructions contrary to the interests of his client, his remedy is to return his brief.”

(See: *Jamilabai Abdul Kadar v. Shankarlal Gulabchand and Svenska Handelsbanken v. Indian Charge Chrome Ltd.*)

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

32. Generally, admissions of fact made by a counsel are binding upon their principals as long as they are unequivocal; where, however, doubt exists as to a purported admission, the court should be wary to accept such admissions until and unless the counsel or the advocate is authorised by his principal to make such admissions. Furthermore, a client is not bound by a statement or admission which he or his lawyer was not authorised to make. A lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of the client unless such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was employed. We hasten to add neither the client nor the court is bound by the lawyer’s statements or admissions

as to matters of law or legal conclusions. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. We may add that in some cases, lawyers can make decisions without consulting the client. While in others, the decision is reserved for the client. It is often said that the lawyer can make decisions as to tactics without consulting the client, while the client has a right to make decisions that can affect his rights.

33. We do not intend to prolong this discussion. We may conclude by noticing a famous statement of Lord Brougham:

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

34. In view of the above, while allowing these appeals, we set aside the directions issued by the writ court to the appellant Society as also the judgment and order passed by the High Court in the review petition. Ordered accordingly.”

(emphasis supplied)

Similarly, the *Supreme Court in the case of Krishnanand Govindanand v. Managing Director, Oswal Hosiery (Regd.), (2002) 3 SCC 39*, has held as under:-

“3. Mr Jaspal Singh, learned Senior Counsel appearing for the appellant, has vehemently contended that statement made by the learned counsel of the respondent across the Bar is indeed an admission of the party and, therefore, the Additional Rent Controller recorded his satisfaction on the basis of the admission; the order of the Additional Rent Controller cannot thereby be treated as being without jurisdiction. We are afraid we cannot accede to the contention of the learned counsel. Whether the appellant is an institution within the meaning of Section 22 of the Act and whether it required bona fide the premises for furtherance of its activities, are questions touching the jurisdiction of the Additional Rent Controller. He can record his

satisfaction only when he holds on these questions in favour of the appellant. For so holding there must be material on record to support his satisfaction otherwise the satisfaction not based on any material or based on irrelevant material, would be vitiated and any order passed on such a satisfaction will be without jurisdiction. There can be no doubt that admission of a party is a relevant material. But can the statement made by the learned counsel of a party across the Bar be treated as admission of the party? Having regard to the requirements of Section 18 of the Evidence Act, on the facts of this case, in our view, the aforementioned statement of the counsel of the respondent cannot be accepted as an admission so as to bind the respondent. Excluding that statement from consideration, there was thus no material before the Additional Rent Controller to record his satisfaction within the meaning of clause (d) of Section 22 of the Act. It follows that the order of eviction was without jurisdiction.”

(emphasis supplied)

15. So far as the decisions relied upon by the counsel for the respondent are concerned, in the case of **Suresh Kumar (supra)**, it is distinguishable on facts as it was a dispute between the landlord and the tenant in respect of a shop admeasuring 36.53 square meters only and a concession was made by the counsel appearing for the landlord in respect of the said area, which the Supreme Court held to be binding on the landlord. Whereas, in the present case, even after a detailed reply was filed by the petitioner, the counsel has given a concession running contrary to the said reply, leading to heavy financial burden to the petitioner, a State Financial Corporation. The other decision cited by the counsel for

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the respondent are of no avail to the respondent.

16. Resultantly, on the aforementioned discussion, this court is of the considered opinion that sufficient reasons are made out to invoke the review jurisdiction of this court and thus, the **Review Petition stands allowed** and the order 1.11.2019 passed by the Writ Court in W.P. No.16372/2019 is hereby recalled and the **W.P.No.16372/2019** is restored to its original number. Office is directed to list the same for final hearing **in the last week of February, 2023**, in the final hearing list.

Review Petition stands *disposed of*.

No costs.

(Subodh Abhyankar)
Judge

(Pranay Verma)
Judge

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