



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

**REVIEW PETITION No. 588 of 2022  
*VIRENDRA SINGH MEHTA AND OTHERS*  
*Versus*  
*HEMANT MEHTA AND OTHERS***

**Appearance:**

*Shri Amit Agrawal- Senior Advocate with Shri Arjun Agrawal-  
Advocate for the petitioners.*

*Shri Nilesh Agrawal- Advocate for respondent Nos.1 to 3.*

*Shri Vishal Baheti- Advocate for respondent Nos.11 to 13.*

.....  
Reserved on : 23.07.2024  
Pronounced on : 20.09.2024  
.....

*This petition having been heard and reserved for orders, coming  
on for pronouncement this day, the court passed the following:*

**ORDER**

- 1] Heard finally, with the consent of the parties.
- 2] This petition has been filed by the petitioners under Order 47 Rule 1 of the CPC for review of the order passed by this Court on 04.05.2022, in A.A. No.20 of 2018. The petitioners have prayed for the following reliefs:-

“It is therefore, prayed that **Para 37 and 38** of the judgement under review **Annexure-RP/1** may be recalled and reviewed and relief of specific performance may kindly be granted subject to consideration of Reply to **IA No. 5320/2019** to mitigate the possible financial loss to Respondent No.10 to 13.”

- 3] Although various grounds have been raised by the review



petitioners, however, Shri Amit Agrawal, learned senior counsel appearing for the petitioners has confined his submissions to the refund of Rs.54 lakh, and compensation of Rs.25 lakh , which have been directed to be given by this Court in para 38 of the judgement under review, to the parties of the *first part*, which include appellant and respondent Nos.1 to 3, and LR of respondent No.3(a), *i.e.*, respondent Nos.4 to 9. It is submitted that the grant of refund and the compensation as aforesaid are factually incorrect, for the reason that even in the pleadings, in the statement of Claims, Annexure-A/9 Page 87 –para 1), the reply to statement to claim of Respondent 1 to 3A (Annexure - A/11 page 112-para 2) and rejoinder to their reply (Annexure A/14 page 190-para 1, 4, 11), admittedly show that although Respondent No.1 to 3A (including LR) were parties of the “first part” yet not a single penny was contributed by these Respondents in payment of Rs.1.62 Crores to Respondent Nos.10 to 13, therefore, refund of money and award of compensation to these Respondent No.1 to 3A including LR – Respondent Nos.4 to 9 is contrary to record.

**4]** Thus, Shri Agrawal has submitted that the payment of refund, as also the compensation to the appellant Nos.1 to 3 and respondent No.3(a), including the LR of respondent No.3(a), *i.e.*, the respondent Nos.4 to 9, deserves to be recalled, and the amount of compensation and refund be directed to be paid only to the present petitioners, who have paid the entire amount as aforesaid.

**5]** The prayer is opposed by Shri Nilesh Agrawal, learned counsel for the respondent Nos.1 to 3. and it is submitted that no case for



interference is made out, as no documentary proof has been placed on record by the petitioners in support of their claims. It is also submitted that the initial MoU dated 31.05.2002, also provides for the terms to be agreed by the parties and time was granted to the first party, i.e., the petitioners and the respondent No.1 to 3(a) to decide the payment schedule, whereas, the petitioner No.1 was just a representative on behalf of the first party and merely, because he was the representative, it does not mean that he has acted in his sole capacity whereas, he has acted on behalf of the principal. It is also submitted that the supplementary MoU dated 16.04.2004 also provides in para 3 that the amount has to be paid by the party of the first part, which includes the petitioners and the respondent No.1 to 3(a) and in such circumstances, the refund and compensation has been rightly directed by this Court to be paid to the respondent Nos.1 to 3(a) also, and there is no error on the face of record. It is also submitted that there was no issue framed by the sole arbitrator that whether the payment was made by the petitioners alone or by the petitioners and the respondent Nos.1 to 3(a) jointly, as all the three MoUs are admitted by all the parties. Thus, it is submitted that no case for interference is made out and the petition deserves to be dismissed.

6] Heard counsel for the parties and perused the record.

7] So far as the pleadings in this regard, as referred to by the counsel for the petitioners are concerned, the same read as under:-

**“Annexure- A/9 (Statement of Claim )**

1/ That, the applicants represent the one Branch of the Family along with respondents no. 1 to 3 and 3-A. Now respondent no. 3-A is 95 years old and bed ridden. She lives with respondent no. 1 to 3 who have prevented her from joining with applicants in this claim



petition, therefore, she is joined as respondent no. 3-A. For this reason in the MOU dated 31/05/2002 **Annexure P/10** they were arrayed as party of the First Part. For the reasons stated hereinafter, respondent no. 1 to 3 who formed parties of the First Part in the MOU ibid, did not perform their part of the contract and did not contribute half of the money payable to parties of the Second and Third Part, arrayed herein as respondent no. 4, 5, 6 and 7. Since being parties of the First Part respondent no. 1 to 3 did not co-operate with the applicants, the applicants have been constrained to file this claim petition arraying respondent no. 1 to 3 as respondents, though they were arrayed as party of First Part in the MOU.

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**Annexure- A/11 (Reply to statement of claim by Respondent 1 to 3A)**

**2. Reply to Para 1:** It is admitted that, the applicants represent the one Branch of the Family along with respondents no. 1 to 3 and 3-A. Also, Now respondent no. 3-A is 95 years old and bed ridden. She lives with respondent no. 1 to 3, but, it is specifically denied on the part of respondents that, they have prevented her from joining with applicants in this claim petition, therefore, she is joined as respondent no.3-A. Also, it is denied that, for this reason in the MOU dated 31/05/2002 Annexure P/10 they were arrayed as party of the First Part. It is also denied that, For the reasons stated hereinafter, respondent no. 1 to 3 who formed parties of the First Part in the MOU ibid, did not perform their part of the contract and did not contribute half of the money payable to parties of the Second and Third Part, arrayed herein as respondent no. 4, 5, 6 and 7. It is also denied that, Since being parties of the First Part respondent no. 1 to 3 did not co-operate with the applicants, the applicants have been constrained to file this claim petition arraying respondent no. 1 to 3 as respondents, though they were arrayed as party of First Part in the MOU.

Actually, Applicants has Cunningly tried to shift the burden of part performance solely over Respondents No. 1 to 3 and is trying to take undue advantage of the same. Whereas, Respondents No. 1 to 3 had never avoided to perform the duties on their part and they had been always very co-operative and has even kept the proposal in past that, if in any case the amount due to be paid to the other respondents is not available then they are also ready to sale the suit property and pay the same. Apart from this answering Respondents were also ready and willing to pay the balance amount but, Applicant No. 1. was not at all interested in doing the same and as he was the elder of the answering respondents so he was always bullish over them and always carried the stuffs on his own will, which was reluctantly



heard by the answering respondents looking to their family arrangements and family values.

Also, it is pertinent to mention herein that, the amount exlaimed by the claimant which has been paid by them to other respondents as of their own contribution is totally false and frivolous. As, The said amount was paid from the firm which was of the joint ownership of Applicants as well as answering respondents, where, Applicants Cunningly transferred the said funds from the said firm in their personal account and tried to show off as if they have paid the said amount from their independent source, whereas, no any independent source was available with them at that moment of time.

Also, it is pertinent to mention herein that, it is the admitted fact that, after the execution of MoU i.e. Annexure P/10 the suit property as well as the business of the firm over the same was of the joint ownership of the Applicants and answering respondents only and they were holding the shares of the same in equal ratio and were liable to bear expenses or enjoy profit on the same basis, even then Applicant No. 1 Cunningly avoided answering respondents on account of his bullish nature and tried to keep complete management in his hands in spite of the fact that, answering respondents spendd their whole life for the sake of the business of the said firm.

Also, it is pertinent to mention herein that, Applicant No. 1 has dishonestly cheated answering respondents by keeping them in dark and making them to entrust Applicant No. 1, Who fraudulently misappropriated the income being generated from the suit property viz. income from rent by lending different parts of the said property and also by earning money from the utilization of the parts of the said property, in which answering respondents were having equal share of 50% from the date of execution of the said MoU Annexure P/10.

Also it is pertinent to mention herein that, Applicant no. 1 in his complete claim has claimed as if he is the only one to carry and manage all the business of the family, whereas this fact is totally false and imaginary, which has been pleaded to take undue advantage with malafide intentions, which is evident from the fact that, Applicant no. 1 was totally out of the family business for several years, as he was working in company Kinetic Honda, Pithampur at that moment of time and Answering Respondent No. 1 and his father only took care of the family business and flourished the same with their laborious efforts.

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**Annexure- A/14 (Rejoinder to the reply filed by respondents no. 1 to 3 A)**

**1. The contents set out in this paragraph are emphatically denied. The respondents No. 1 to 3-A be put to strict proof to substantiate**



their plea that they were ready and willing to contribute half of the amount of money payable under the MOU (**Annexure P-10-A**). The respondents No. 1 to 3- A, should be asked to produce any document by which their willingness to pay the half money and availability of money was communicated to the claimants. In fact, the respondents No.1-3-A neither had money nor ever expressed willingness to contribute any amount of money much less half the money payable to respondents No. 4 to 7. It is denied that the claimant No.1 was reluctant to accept the money from respondent no. 1 to 3A for paying the same to respondents No. 4 to 7.

In the reply at (**page No.3 para No.2**), the averment that whatever amount has been paid by the claimants to the respondents No. 4 to 7, was paid from the firm of the ownership of the claimants and respondents No. 1 to 3. This averment is emphatically denied and the respondents No. 1 to 3- A be put to strict proof in support of this plea. It is also denied that claimants transferred the funds from that ownership firm in their personal accounts and then paid to respondent no. 4 to 7.

Rest of the contents of para No.2 are emphatically denied regarding mis-appropriation of income generated from the suit property.

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**4. REGARDING PARA NO.10:**( of reply filed by respondents)

The contents of this paragraph that respondent No.1 was taking active participation in the business as a partner is emphatically denied. The respondent No.1 was never a partner of Mehta Motors prior to 11/10/2002. The MOU (**Annexure P-10**) dated 31/05/2002 and the supplemental MOU (**Annexure P-11**) dated 10/10/2002, before these two MOUS were entered into, the respondent No.1 was never a partner of Mehta Motors, therefore, the plea that he was actively participating in the business of Mehta Motors is blatant lie and is false. It is also denied that respondent No.1 and his late father Rajendra Singh have devoted their full life to the family business. In fact, late Rajendra Singh Mehta throughout his life remained uneducated, unemployed and his family needs were taken care of by Shri Sajjan Singh Mehta till he was alive and thereafter the claimant No.1 use to help him financially throughout his life. The respondents No. 1 to 3-A may be put to strict proof to produce any document to show any income earned by late Rajendra Singh Mehta and by Respondent no. 1 himself.

Rest of the contents of para No.10 are emphatically denied.

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**11. REGARDING PARA NO.27** (of reply filed by respondents)



The contents of this paragraph are emphatically denied. The respondents No. 1 to 3 have stated that they are willing to contribute half of the amount payable to respondents No.4 to 7 along with interest and have undertaken on affidavit to pay the same. The claimants have produced two charts AnnexureP-23 (page 167) which demonstrates interest paid for delayed payment already paid and Annexure P-24, contains all details of principal payment made. As per Annexure P-24, a sum of Rs.1,66,20,000/- has been paid in principal. Similarly, as per Annexure P-23 Rs.11,46,235/- has been paid as delayed interest up to 31/12/2004 and with effect from 01/01/2005 till 31/12/2015 Interest @ 12% of Rs.1,46,25,600/-, is payable to respondents No. 4 and 5 and interest of Rs.73,12,800/- is payable to respondents No.6 and 7. Covering these two amounts the claimants had produced cheques in Article A and B which is recorded by this Tribunal on 15/12/2015. However, respondents have refused to accept the same. If, the undertaking on oath as stated in paragraph No.27 (at page No.17 of the reply) is true then the respondents No. 1 to 3-A should furnish the cheques of half the amount i.e. interest already paid as per Annexure P-23 i.e. (Rs.57,31,175/- Similarly they should also deposit half the amount payable to respondents No. 4 to 7 with interest up to 31/12/2015 i.e. Rs.1,92,79,200/-. Under the law the best way of showing readiness and willingness to perform part of contract by a party is to tender the money payable if the part relates to payment of money. Under these circumstances, looking to the undertaking given by respondents No. 1 to 3-A they should furnish documents to show their willingness with document of availability of money and produce the aforesaid amount by cheque before the Hon'ble Tribunal, failing which an adverse inference should be drawn. “

*(Emphasis Supplied)*

8] A perusal of the aforesaid pleadings would clearly demonstrate that the entire amount of transaction between the parties has been given by the present petitioners only, on behalf of the party of the 'first part', and the amount was not shared by the respondent Nos.1 to 3 and the LR's of respondent No.3(a), i.e., the respondent Nos.4 to 9. In such circumstances, the amount of refund and compensation can also not be granted to the respondent Nos.1 to 3 and the LR's of respondent No.3(a), i.e., the respondent Nos.4 to 9. Accordingly, the aforesaid order passed by this Court on 04.05.2022, in A.A. No.20 of



2018 is modified to the extent that the entire amount of refund and compensation shall be paid by the respondent Nos.10 to 13 to the review petitioners only, instead of the respondent Nos.1 to 3 and the LRs of respondent No.3(a), *i.e.*, the respondent Nos.4 to 9.

9] With the aforesaid modification, the petition stands *partly allowed* and *disposed of*.

**(SUBODH ABHYANKAR)**  
**JUDGE**

**Bahar**