

A PAWAN KUMAR ARYA AND OTHERS

v.

RAVI KUMAR ARYA AND OTHERS

(Civil Appeal Nos. 945-946 of 2020)

B MARCH 02, 2020

[ASHOK BHUSHAN AND M. R. SHAH, JJ.]

- Suit – Relief against the transfer of property – Execution of consent decree – The dispute was with respect to a property – The dispute was between the appellants- original plaintiffs (PA Group) and respondent nos. 1 to 6-original defendant nos. 1 to 6 (RA Group) and also between original defendant no. 10-Developer/Builder – The disputed property was of K.F. Pvt. Ltd. – In the said Company, 25% of the shareholding was with M.P. Recycling Company (Jointly held by plaintiffs and defendants nos. 1 to 6) and the remaining 75% of the shareholding with defendants nos. 1 to 6 in their individual capacities – According to the plaintiffs, defendants nos. 1 to 6 entered into a purported Development Agreement with defendant no. 10, to develop the disputed property behind the back of plaintiffs – As per plaintiffs, the defendants nos. 1 to 6 received Rs. 45 crores from the developer and 15 flats & 72 car parking spaces under the development agreement – According to the plaintiffs, the defendant nos. 1 to 6 did not give any rights/ benefits in the said property to them – This led to the filing of the suit – During the pendency of the suit, the suit came to be settled and it was disposed of in accordance of the consent terms – As per plaintiffs, the developer had in accordance with the consent terms executed the letter of allotment in ‘Annexure E’ in respect of the 8 apartments, which were to fall in the share of the plaintiffs, but defendant nos. 1 to 6 refused to abide by the consent terms and counter-sign the letter of allotment as per ‘Annexure E’ – The plaintiff initiated proceedings for the execution of the consent decree viz. for execution of the document at ‘Annexure E’ – The execution application was rejected by the Single Judge of the High court and it was observed that unless and until the supplementary consent terms are entered into between the parties, there is no obligation on the part of defendant nos. 1 to 6 to execute the letter of allotment in the form of ‘Annexure E’ – The Division Bench of the High Court*

confirmed the judgment and order passed by the Single Judge of the High Court – On appeal, held: From the consent terms, it appears that both the parties – PA Group and RA Group decided to resolve and settle the other disputes also i.e. the other larger companies and its constituents – The entire consent terms/ consent decree is required to be acted upon and/ or implemented by both the parties otherwise, the object and purpose to resolve all the disputes will be frustrated – Thus, there cannot be any execution of partial consent terms/ consent decree – Also, the further execution of supplemental consent terms/ family arrangement is required to be executed between the parties, considering the relevant terms of settlement – The both Single Judge as well the Division Bench were justified in holding that the execution of the further supplemental consent terms/ family arrangement is must – Therefore, both the parties directed to fully comply with the consent terms/ consent decree and enter into the further supplemental consent terms/ family arrangement after following the modalities with respect to valuation, bidding etc. – Also, RA Group to counter-sign ‘Annexure E’ letter with respect to 8 flats as per list at ‘Annexure A’ to the consent terms for which the developer had issued letter – However, it is further directed that till the consent terms/consent decree is fully implemented by both the parties and the supplemental consent terms/family arrangement is entered into/executed, the PA Group shall not alienate in any manner the said 8 flats.

Disposing of the appeals, the Court

HELD: 1. Having heard the respective parties and considering the relevant terms of the settlement, this Court is of the opinion that further execution of supplemental consent terms/ family arrangement is required to be executed between the parties. For whatever reasons, the further supplemental consent terms have not been entered into between the parties. Therefore, as such, considering the fact that the parties entered into the consent terms/settlement for a complete parting of ways between the parties and so aimed at bringing about an eventual complete quietus to the disputes between the parties and even parties entered into the consent terms/settlement to resolve and settle the disputes in relation to the subject matter of AISCO, IMTC, Kash Foods, Orbit Arya Commercial Premises and the disputes

- A in relation to the larger Arya Group of Companies and its constituents, which were beyond the dispute in the civil suit, the entire consent terms/consent decree is required to be acted upon and/or implemented by both the parties. There cannot be any execution of partial consent terms/consent decree. If the submission on behalf of the plaintiffs is accepted and the 8 flats as per list at 'Annexure A' are transferred absolutely and without any condition in favour of PA Group without there being any further supplemental consent terms/family arrangement, in that case, the entire object and purpose of entering into the consent terms/settlement to resolve all the disputes between the parties will be frustrated. Both the parties to the consent terms/consent decree are required to fully comply with the terms of settlement/the consent terms and the consent decree. One party cannot be permitted to say that that portion of the settlement which is in their favour be executed and/or complied with and not the other terms of the settlement/consent terms/consent decree. Under the circumstances, as such, both, the Single Judge as well as the Division Bench of the High Court are justified in holding that the execution of the further supplemental consent terms/family arrangement is must and there cannot be any partial execution of the consent terms/consent decree.[Para 6][789 G-H; 790 A-F]
- E 2. Even in the case of *Hari Shankar Singhania*, the decision which has been relied upon by the appellants, this Court has observed that a family settlement is treated differently from any other formal commercial settlement as such settlement in the eye of the law ensures peace and goodwill among the family members. It is further observed that technicalities should not be put at risk of the implementation of a settlement drawn by a family, which is essential for maintaining peace and harmony in a family. It is further observed that it is the duty of the court that such an arrangement and the terms thereof should be given effect to in letter and spirit. [Para 7][790 F-H]
- G 3. On a conjoint reading of all the terms of the settlement, it can be said that there is an implied term that both the parties have intended that on one hand as agreed between the parties further supplemental consent terms/family arrangement is to be
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entered into and on the other hand there shall be transfer/allotment of 8 flats as per list at 'Annexure A' in favour of PA Group. Any other interpretation would lead to unworking of the consent terms/consent decree. As observed hereinabove, if the consent decree is partially executed and the other parts of the consent terms are not implemented and/or acted upon, the object and purpose to resolve all the disputes amicably between the parties and to put an end to all the disputes between the parties will be frustrated. [Para 8.1][791 D-F]

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4. However, at the same time, one cannot lose sight of the fact that the 8 flats as per list at 'Annexure A' are allotted in favour of PA Group and rest of the 7 flats as per list at 'Annexure B' are allotted in favour of RA Group. At present, the RA Group is in possession of all the 15 flats. The RA Group is also the beneficiary of Rs.45 crores. Therefore, to strike the balance between the parties, the RA Group can be directed to countersign 'Annexure E' letter issued by the Builders with respect to 8 flats as per list at 'Annexure A' which are allotted in favour of PA Group. However, with a caveat that till the further supplemental consent terms/family arrangement as agreed between the parties under the consent terms/consent decree is not executed, PA Group may not be permitted to sell, transfer and/or deal with the said flats till the consent terms/consent decree is fully acted upon and implemented between the parties. At the same time, both the parties are required to be directed to fully implement the consent terms/consent decree and to enter into further supplemental consent terms/family arrangement, the modalities of which are mentioned in the consent terms itself, at the earliest and within a reasonable time. Until then, both the parties to abide as per the Restraint order as per clause 22 of the consent terms, except the 7 flats as per list at 'Annexure B', which are allotted in favour of RA Group. [Para 9][791-F-H; 792-A-C]

5. The impugned judgment and order passed by the Division Bench of the High Court and that of the Single Judge are hereby modified as under: i) Both the parties – PA Group & RA Group are directed to fully comply with the consent terms/consent decree

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- A and enter into the further supplemental consent terms/family arrangement after following the modalities to be worked out with respect to valuation, bidding etc. as mentioned in the consent terms itself. Both the parties are directed to cooperate to fully comply with the consent terms/consent decree and fulfil their respective part of obligation under the consent terms/consent decree; ii) that the RA Group shall counter-sign ‘Annexure E’ letter with respect to 8 flats as per list at ‘Annexure A’ to the consent terms for which the original defendant no.10 – Builder had already issued a letter. However, it is directed that till the consent terms/consent decree is fully implemented by both the
- B parties and further supplemental consent terms/family arrangement, as ordered hereinabove, is entered into/executed, the PA Group shall not alienate and/or transfer in any manner whatsoever the said 8 flats. At the same time, it will be open for original defendant nos. 1 to 6 – RA Group to deal with the 7 flats as per list at ‘Annexure B’ which are allotted to them. At the same time, both the parties to act as per the Restraint order as per clause 22 of the consent terms. The original injunction granted by the Single Judge which has been continued till date is directed to be continued till the execution of the further supplemental consent terms/family arrangement except the 7 flats as per the
- C list at ‘Annexure B’ which are allotted in favour of RA Group. [Para 10][792 B-H]

Saradamani Kandappan v. S. Rajalakshmi & Ors.
(2011) 12 SCC 18 : [2011] 8 SCR 874 – not applicable.

- F *Manish Mohan Sharma & Ors. v. Ram Bahadur Thakur Ltd. & Ors (2006) 4 SCC 416 : [2006] 3 SCR 97 ; Kale & Ors. v. Deputy Director of Consolidation & Ors. (1976) 3 SCC 119 : [1976] 3 SCR 202 ; Satya Jain & Ors. v. Anis Ahmed Rushdie & Ors. (2013) 8 SCC 131: [2013] 3 SCR 319 ; Hari Shankar Singhania & Ors. v. Gaur Hari Singhania & Ors. (2006) 4 SCC 658 : [2006] 3 SCR 726 – referred to.*
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Case Law Reference

[2006] 3 SCR 97	referred to	Para 3.2
[1976] 3 SCR 202	referred to	Para 3.2

[2013] 3 SCR 319	referred to	Para 3.6	A
[2011] 8 SCR 874	not applicable	Para 3.8	
[2006] 3 SCR 726	referred to	Para 3.10	

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 945-946 of 2020.

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From the Judgment and Order dated 21.12.2017 of the High Court of Judicature at Bombay in Appeal (L) No. 447 of 2017 with Notice of Motion (L) No. 2541 of 2017 in Appeal (L) No. 447 of 2017.

Dr. A.M. Singhvi, Mr. Dhruv Mehta, Sr. Advs., Ms. Alya Khan, Vivek A. Vashi, Advs. for the Appellants.

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Shyam Divan, Haresh M. Jagtiani, Sr. Advs., Bhargava V. Desai, Ms. Apurva Manwani, Rahul Gupta, Advs. for the Respondents.

The Judgment of the Court was delivered by:

M. R. SHAH, J.

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1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 21.12.2017 passed by the High Court of Judicature at Bombay in Appeal (L) No. 447 of 2017 with Notice of Motion (L) No. 2541 of 2017 in Appeal (L) No. 447 of 2017, by which the Division Bench of the High Court has dismissed the said intra court appeal preferred by the appellants herein – original plaintiffs and has confirmed the judgment and order passed by the learned Single Judge dated 30.11.2017 dismissing the execution petition, the original plaintiffs – decree holders have preferred the present appeals.

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2. The dispute is between the appellants herein – original plaintiffs (hereinafter referred to as ‘PAGroup’) and respondent nos. 1 to 6 herein – original defendant nos. 1 to 6 (hereinafter referred to as ‘RAGroup’) and also between original defendant no. 10 – Omkar Realtors and Developers Private Limited (hereinafter referred to as ‘Omkar Builders’). The dispute was with respect to the asset of Kash Foods Private Limited admeasuring 4134 square meters plot at Worli, Mumbai.

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2.1 That the appellants herein – original plaintiffs filed a Suit (L) No. 194 of 2015 against the respondents herein/original defendants seeking the relief against the transfer of the property of Kash Foods Private Limited in favour of respondent no.10 herein – defendant no. 10

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- A - Omkar Developers. As observed hereinabove, the original plaintiffs Pawan Kumar Arya and others belong to PA Group and original defendant nos. 1 to 6 belong to RA Group, the brother of Pawan Kumar Arya. According to the original plaintiffs, original defendant no.7 – M.P. Recycling Company was jointly held by PA Group and RA Group with each credit or holding 50% of its shareholding. That M.P. Recycling held 25% of shareholding in Kash Foods. That Kash Foods owned a plot of land at Worli admeasuring about 4134.27 sq. meters. That 25% of the shareholding in Kash Foods was purchased by M.P. Recycling and the remaining 75% of the shareholding in Kash Foods was bought by RAGroup in 2011 in their individual capacities.
- C 2.2 That by conveyance deed dated 22.12.2012, a portion of the assets of Kash Foods was transferred to original defendant nos. 3 & 4 that are the members of the RA Group. A development agreement was executed between Omkar Builders – original defendant no.10, Kash Foods, original defendant no. 8 and defendant nos. 3 and 4, which was subjected to challenge by the plaintiffs in the suit. According to the original plaintiffs, original defendant nos. 1 to 6 in violation of the Right of First refusal clause in favour of M.P. Recycling to buy shares of Kash Foods as contained in the Articles of Association of Kash Foods, surreptitiously and behind the back of the plaintiffs bought 75% outsiders' shareholding in the names of defendant no.1's family. According to the plaintiffs, defendant nos. 1 to 6 entered into a purported Development Agreement dated 10.04.2013 with Omkar Builders, a third party developer, to develop the Worli property behind the back of M.P. Recycling and the plaintiffs. According to the plaintiffs, under the purported Development Agreement with Omkar Builders, defendant nos. 1 to 6 and Kash Foods received Rs. 25 crores from Omkar Builders and an additional Rs. 20 crores as security. That as per the case of the plaintiffs, defendant nos. 1 to 6 and Kash Foods also received 79,000 sq. ft. carpet area, i.e., 15 flats and 72 car parking spaces from Omkar Builders under the Development Agreement. According to the plaintiffs, 15 agreements for sale were registered and executed in favour of defendant nos. 1 to 6 and Kash Foods.
- H 2.3 According to the plaintiffs, defendant nos. 1 to 6 did not give any rights/benefits in the said consideration/carpet area received from Omkar Builders either to the plaintiffs and/or to M.P. Recycling. The aforesaid led to the filing of the suit by the plaintiffs against original

defendant nos. 1 to 6 seeking a 50-50 division of the benefits received by Kash Foods under the Development Agreement with Omkar Builders. That during the pendency of the suit, the suit came to be settled and the aforesaid suit came to be disposed of in accordance of the consent terms. As per the consent terms, out of 15 apartments that were to come up on the Worli land, 8 apartments admeasuring 27000 sq. meters in all were to fall to the share of the plaintiffs—PAGroup and 7 apartments with a total area of 52000 sq. meters were to go to defendant nos. 1 to 6—RA Group. According to the plaintiffs, as per the consent terms, the letter of allotment of their 8 apartments was liable to be executed by defendant no. 10 – Omkar Builders and the same was liable to be counter-signed by defendant nos. 1 to 6—RAGroup. According to the plaintiffs, defendant no. 10 – Omkar Builders had in accordance with the consent terms executed the letter of allotment in ‘Annexure E’ in respect of the 8 apartments, but defendant nos. 1 to 6 refused to abide by the consent terms and counter-sign the letter of allotment as per ‘Annexure E’.

2.4 Therefore, in view of the refusal on the part of defendant nos. 1 to 6 – RA Group to abide by the consent terms and counter-sign the letter of allotment as per ‘Annexure E’, the plaintiffs initiated the proceedings under Order 21 Rule 34 of the Code of Civil Procedure for the execution of the consent decree viz. for execution of the document at ‘Annexure E’ to decree dated 14.08.2015, by defendant nos. 1 to 6 – RA Group and defendant no. 10 – Omkar Builders jointly and/or severally. The execution application came to be rejected by the learned Single Judge by the judgment and order dated 30.11.2017 by holding that neither Omkar Builders nor defendant nos. 1 to 6 – RA Group could have been directed at this stage to execute ‘Annexure E’ to the consent terms nor could the RA Group be restrained from dealing with the properties that form the subject matter of Kash Foods property. The learned Single Judge also observed that unless and until the supplementary consent terms are entered into between the parties, there is no obligation on the part of defendant nos. 1 to 6 to execute the letter of allotment in the form of ‘Annexure E’.

2.5 Feeling aggrieved by the dismissal of the Chamber Summons/ Execution Petition, the appellants herein preferred appeal before the Division Bench. That by the impugned judgment and order, the Division Bench of the High Court has dismissed the said appeal and has confirmed the judgment and order passed by the learned Single Judge dated

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- A 30.11.2017 dismissing the chamber summons/execution petition. That while dismissing the chamber summons, the learned Single Judge as well as while dismissing the appeal, the Division Bench has observed that no direction against the RA Group to execute the letter of allotment in the form of 'Annexure E' can be issued on the basis of clause 28 of the consent terms relied upon by the plaintiffs as there is nothing in clause 28 of the consent terms that casts an obligation upon defendant nos. 1 to 6 – RA Group to execute the letter of allotment in the form of 'Annexure E'.
 - 2.6 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court dismissing the appeal, confirming the judgment and order passed by the learned Single Judge dismissing the chamber summons/execution petition and refusing to issue any direction against defendant nos. 1 to 6 – RA Group to execute the letter of allotment in the form of 'Annexure E' with respect to 8 apartments, the original plaintiffs have preferred the present appeals.
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- D 3. Dr. Abhishek Manu Singhvi and Shri Dhruv Mehta, learned Senior Advocates have appeared on behalf of the appellants herein – original plaintiffs and Shri Shyam Divan and Shri Haresh Jagtiani, learned Senior Advocates have appeared on behalf of the respondents herein – original defendants.
- E 3.1 Dr. Singhvi, learned Senior Advocate appearing on behalf of the appellants – original plaintiffs has vehemently submitted that in the facts and circumstances of the case, both, the learned Single Judge as well as the Division Bench have materially erred in dismissing the notice of motion and not issuing the directions as prayed against original defendant nos. 1 to 6 and defendant no. 10. It is vehemently submitted that by not issuing the directions as prayed in the notice of motion, both, the learned Single Judge as well as the Division Bench have virtually nullified the consent terms and the consent decree.
 - 3.2 It is further submitted by the learned Senior Advocate appearing on behalf of the appellants – original plaintiffs that the absurd consequence of the impugned order is that though in terms of the consent terms/ decree flats were allotted to both, the appellants and respondent nos. 1 to 6, the appellants have got nothing under the consent decree till date. It is submitted that on the other hand respondent nos. 1 to 6 have got not only 7 flats of double the area of the PA Kash Foods Property, but also
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Rs. 45 crores and are enjoying the above since about 2015 by mortgaging and dealing with their flats by raising large finances. It is submitted that as held by this Court in the case of *Manish Mohan Sharma and others v. Ram Bahadur Thakur Ltd. and others* (2006) 4 SCC 416 (paragraphs 31 & 32), the effort of the executing court must be to see that the parties are given the fruits of the decree. It is submitted that it is further observed in the said decision that the mandate is reinforced when it is a consent decree and doubly reinforced when the consent decree is a family settlement. It is submitted that it is further observed in the aforesaid decision that family settlements are governed by a special equity and are to be enforced if honestly made. Reliance is also placed upon the decision of this Court in the case of *Kale and others v. Deputy Director of Consolidation and others* (1976) 3 SCC 119.

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3.3 It is further submitted by the learned Senior Advocate appearing on behalf of the appellants – original plaintiffs that the net result as of today is that both the consent terms and the consent decree in effect result in a zero-sum game with no transaction accruing to the benefit of the appellants. It is submitted that if that was so, there was no purpose to enter into the consent terms at all.

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3.4 It is further submitted by the learned Senior Advocate appearing on behalf of the appellants – original plaintiffs that there is no basis, in any event, for the Division Bench to ignore the clear recognition of the appellants' entitlement under the consent terms/consent decree.

3.5 Now so far as the observations made by the learned Single Judge on the necessity to have supplementary consent terms, before the other terms of the consent decree are acted upon is concerned, it is vehemently submitted that the same is erroneous. It is submitted that the reliance placed upon clauses 13, 22, 23 and 27 of the consent terms by the learned Single Judge is absolutely misplaced. It is submitted that there is not a single clause in the entire consent terms and/or the consent decree which either expressly or impliedly postpones or in any manner makes the appellants' entitlement to get 'Annexure E' letter contingent upon respondent nos. 1 to 6's specious plea of simultaneity with the supplementary consent terms.

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3.6 It is further submitted by the learned Senior Advocate appearing on behalf of the appellants – original plaintiffs that the learned Single Judge ought not to have read an implied term into the consent decree

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- A and/or consent terms which was never intended by the parties and thereby making the issuance of ‘Annexure E’ letter to the appellants conditional and/or subject to the happening of an event, i.e., filing of the supplementary consent terms, when no such clause finds place either in the consent decree or consent terms. It is submitted that it is a settled law that an implied term can be read into a contract only when it is so obvious that the parties intended something but inadvertently the same was left out. In support, reliance is placed upon the decision of this Court in the case of *Satya Jain and others v. Anis Ahmed Rushdie and others (2013) 8 SCC 131* (paragraphs 32 to 35).
- C 3.7 It is further submitted by the learned Senior Advocate appearing on behalf of the appellants – original plaintiffs that as such there is no such contingency supplied anywhere in the consent terms and/or consent decree and in fact clause 28 of the consent terms read with paragraphs 2, 3 and 6 of the consent decree is an antithesis of the finding that ‘Annexure E’ is contingent upon the supplementary consent terms. It is submitted that ‘Annexure E’ shall not depend upon the supplementary consent terms to be executed/entered into as observed by the learned Single Judge. It is submitted that clause 28 of the consent terms read with paragraphs 2, 3 and 6 of the consent decree unambiguously and unequivocally makes it clear that respondent no. 10 and respondent nos. 1 to 6 were to provide ‘Annexure E’ letter immediately and not at the RA Group’s convenience and/or at a later date, as per the whims and fancies of respondent nos. 1 to 6 or contingent upon the supplementary consent terms.
- F 3.8 It is further submitted by the learned Senior Advocate appearing on behalf of the appellants – original plaintiffs that none of the clauses in the consent terms and/or the consent decree provides the supplementary consent terms contingent upon ‘Annexure E’ letter and/or vice versa. It is submitted that as held by this Court in the case of *Saradamani Kandappan v. S. Rajalakshmi and others (2011) 12 SCC 18*, the order of performance should be expressly stated or provided, i.e., the agreement should say that only after performance of obligations of the vendors, the purchaser will have to perform her obligations.
- H 3.9 It is further submitted by the learned Senior Advocate appearing on behalf of the appellants – original plaintiffs that even otherwise because of the total non-cooperation on the part of respondent nos. 1 to 6 and with a malafide intention respondent nos. 1 to 6 are not co-operating

in execution of supplementary consent terms. It is submitted that out of the four items listed for valuation at clause D9(d) of the consent terms, item no. (a) is a company in which both brothers hold 25.5% of the shareholding each and the balance 49% is held by a third party; item no. (b) and (c) is a company and a property respectively which are held 50:50 by both brothers; item no. (d) is the PA Kash Foods Property which was to be valued for the purposes of adjustment. It is submitted that the valuation was not done despite numerous reminders by the appellants. It is submitted that several without prejudice emails were addressed to respondent nos. 1 to 6 calling upon them to execute and agree to the draft of the supplementary consent terms, which has not been done till date.

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3.10 It is further submitted by the learned Senior Advocate appearing on behalf of the appellants – original plaintiffs that as such the plaintiffs entered into the consent terms to buy peace and to resolve the overall family dispute between the parties. It is submitted that as held by this Court in the case of *Hari Shankar Singhania and others v. Gaur Hari Singhania and others* (2006) 4 SCC 658 (para 42 and 43), a family settlement is treated differently from any other formal commercial settlement as such settlement in the eye of the law ensures peace and goodwill among the family members. It is submitted that it is further observed in the said decision that even technicalities of limitation, etc. should not be put at risk of the implementation of a settlement drawn by a family, which is essential for maintaining peace and harmony in a family.

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3.11 Making the above submissions and relying upon the aforesaid decisions of this Court, it is prayed to allow the present appeals.

4. Shri Shyam Divan, learned Senior Advocate appearing on behalf of respondent nos. 1 to 6 and 8 & 9 has vehemently submitted that as such the notice of motion/execution proceedings by the appellants herein itself was premature and was for execution of only part of the consent decree dated 14.08.2015 and therefore the same was not maintainable at all being premature execution proceedings.

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4.1 It is further submitted that the appellants are seeking to execute a particular clause of consent terms dated 14.08.2015, which under the said consent terms itself is required to be implemented after the parties thereto arrived at a supplementary agreement which till date has not been arrived at or entered into. It is submitted that therefore the learned

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- A Single Judge rightly dismissed the said execution petition. It is submitted that by these proceedings the appellants are seeking to execute a part of the consent decree without entering into the supplementary agreement.
- 4.2 It is further submitted that the orders interpreting the consent decree are *per se* reasonable and based on sound reasoning taking into account all relevant facts and material and submissions advanced by both the sides and therefore does not warrant any interference by this Court.
- 4.3 It is further submitted that as such the consent terms went well beyond the dispute raised in Civil Suit No. 191/2015 and seeks to comprehensively resolve all disputes such as those pertaining to the factories owned by the parties, namely, AISCO, IMTC, Orbit Arya Commercial Premises and overall family settlement.
- 4.4 It is further submitted that parties entered into the consent terms and the consideration for the RA Group agreeing to allot 8 flats ('Annexure A' properties) in favour of the PA Group was that the RA Group would be rid of the minority status of AISCO – one of the group companies of both the groups wherein RA Group was in a minority and whose rights were being oppressed in the said company and the disputes qua all the other group companies would also achieve quietus. It is submitted that in fact the 8 flats ('Annexure A' properties) were as such belonged to RA Group. It is submitted that by the present execution proceedings the appellants want to execute that part of the consent decree which favours them – allotment of 8 flats ('Annexure A' properties), but without in any manner complying with their obligations under the consent terms/consent decree, i.e., the execution of supplementary consent terms, as defined in clause 13. It is submitted that the appellants cannot be permitted to get the consent decree executed in part and which is in their favour and without in any way complying with their obligations under the consent decree.
- 4.5 It is further submitted that neither under the consent terms nor under the consent decree, there is an obligation on the part of the RA Group to issue 'Annexure E' forthwith upon signing of the consent terms. It is submitted that if the submission on behalf of the appellants that 'Annexure E' is to be executed forthwith and that vesting/allotment of PA Kash Foods Property immediately upon signing of the consent terms is accepted, in that case, it would defeat the plain language of
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clauses 9, 13, 14, 17 and 18, all of which mandate that matters relating to PA Kash Foods Property are to be contained in the supplemental consent terms. It is submitted that the settlement between the parties in all respects was to be crystallized in the supplemental consent terms. It is submitted that therefore the present consent terms/consent decree can be described only as a “framework” in clauses 2, 3 and 30.

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4.6 Now so far as reliance placed upon clause 28 of the consent terms by the appellants is concerned, it is vehemently submitted that clause 28 provides for no direction to RA Group to sign ‘Annexure E’ on execution of the consent terms. It is submitted that in the absence of a direction in a clause dealing with a “direction/request” to Omkar Builders regarding ‘Annexure E’ completely militates against PA Group’s submission and their interpretation. It is submitted that if the intention was for ‘Annexure E’ to be issued by the RA Group “forthwith”, clause 28 would have been the obvious and natural pace to provide for it. It is submitted that even the Omkar Builders was not a party to the consent terms/decree and therefore the contents of clause 28 would not bind it. It is submitted that it is only with a view for securing compliance of Omkar Builders that the High Court passed an order on the same day enabling Omkar Builders to issue ‘Annexure E’.

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4.7 Now so far as the reliance placed upon clause 22 of the consent terms by the appellants, it is vehemently submitted that as per clause 22 RA Group will be free to deal with PA Kash Foods Property as their exclusive and absolute owners thereof with effect from the filing of the consent terms and the PA Group does not have any claim direct, derivative or otherwise of whatsoever nature upon the same. It is submitted that therefore there may not be any restrain against RA Group from dealing with the properties that form the subject matter of Kash Foods Property.

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4.8 It is further submitted that as both the learned Single Judge as well as the Division Bench have succinctly interpreted the consent terms/consent decree and upon understanding and comprehending the intention of the parties have held that RA Group was not obligated to execute ‘Annexure E’ at this stage and that independently there was no fetter on the RA Group from dealing with its properties.

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4.9 Making the above submissions, it is prayed to dismiss the present appeals.

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- A 5. We have heard the learned Senior Advocates for the respective parties at length.
- 5.1 At the outset, it is required to be noted that as such the present proceedings arise out of the execution proceedings initiated by the appellants herein, who were also parties to the consent terms/consent decree. The consent decree came to be passed in Suit No. 194/2015 filed by the PA Group. It is also required to be noted that the dispute in Civil Suit No. 194/2015 filed by the appellants/PA Group was for seeking 50:50 division of the benefits received by Kash Foods under the development agreement with Omkar Builders. However, from the consent terms dated 14.08.2015, it appears that both the parties – PA Group and RA Group decided to resolve and settle the other disputes also, i.e., over and above the dispute in the suit. From the consent terms, it appears that both the parties unconditionally and unequivocally amicably resolved and settled the disputes in relation to the subject matter of Arya Iron and Steel Company Private Limited (“AISCO”); International Minerals Trading Company Private Limited (“IMTC”); Kash Foods Private Limited’s premises in the Omkar 1973 Project at Worli (“Kash Foods”), which forms the subject matter of the present Suit; Orbit Arya Commercial Premises (“Orbit Arya Commercial Premises”); and Disputes in relation to the larger Arya Group of Companies and its constituents (collectively “the Dispute”). Further, in the consent terms in para 2, it has been specifically mentioned that the said consent terms are an identified and mutually agreed framework for a complete parting of ways between the parties and is aimed at bringing about an eventual complete quietus to the disputes. Clause 3 of the consent terms further provides that the parties shall execute a definitive “Family Arrangement and Settlement” and/or writings as may be required and/or as may be advised for a complete parting of ways, which shall work on the basis of the said mutually agreed framework (“Family Arrangement and Settlement”). Other terms and conditions provide for modalities to be worked out to enter into a further “Family Arrangement and Settlement”. Clause 13 also provides for execution of supplemental consent terms. Clause 21 also further provides that until conclusion of the transfer, the parties shall not affect each other’s rights, in any way in AISCO and/or IMTC. As per clause 22 of the consent terms, RA Group and/or Kash Foods shall not in any manner directly and/or indirectly or derivatively be entitled to sell and/or transfer, and/or dispose of and/or encumber and/or otherwise deal with the PA Kash Foods Property. It further

provides that the modification, if any, of the Restraint, shall be identified in the supplementary consent terms. Clause 23 of the consent terms further provides that the RA Group and/or Kash Foods shall publish a Public Notice within 3 days of filing of the supplemental consent terms, withdrawing their claims in relation to PA Kash Foods Property (more particularly described at ‘Annexure C’). Clause 25 also further provides that similarly the PA Group shall publish a Public Notice within 3 days of filing of the supplemental consent terms, as more particularly described at ‘Annexure D’. Clause 28 of the consent terms further provides that Omkar Builders be directed/requested to issue a separate letter in relation to the PA Group’s entitlement to the PA Kash Foods Property in Omkar 1973 Project (more particularly ‘Annexure A’) as per draft at ‘Annexure E’. Under the said clause, Omkar Builders was also further directed to strictly abide by the Restraint in relation to the PA Kash Foods property. The relevant terms of the settlement are as under:

“The parties have unconditionally and unequivocally amicably resolved and settled the disputes in relation to the subject matter of:

a. Arya Iron and Steel Company Private Limited (“AISCO”);
b. International Minerals Trading Company Private Limited (“IMTC”)

c. Kash Foods Private Limited’s premises in the Omkar 1973 Project at Worli (“Kash Foods”), which forms the subject matter of the present Suit;

d. Orbit Arya Commercial Premises (“Orbit Arya Commercial Premises”); and

e. Disputes in relation to the larger Arya Group of Companies and its constituents (collectively “the Dispute”)

2. The present Consent Terms is an identified and mutually agreed framework for a complete parting of ways between the Parties and is aimed at bringing about an eventual complete quietus to the Disputes.

3. The Parties shall on or before November 1, 2015 (or such date as may be mutually extended in writing by the Parties) execute a definitive Family Arrangement and Settlement and/or writings (including such documents, writings, undertakings and agreements)

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- A as may be required and/or as may be advised for a complete parting of ways, which shall work on the basis of the said mutually agreed framework (“Family Arrangement and Settlement”).
- B 13. As to the (i) PA Kash Foods Property and (ii) Orbit Arya Commercial Premises the Parties have agreed that they would mutually decide the modalities of brief to the Valuers and the Third Valuer and mode of adjustment/payment on or before August 29, 2015; and Supplemental Consent Terms recording the same (“Supplemental Consent Terms”) shall be filed in this Court on August 30, 2015.
- C 14. On arriving at a final valuation for the Orbit Arya Commercial Premises the PA Group agrees to take over the RA Group’s 50% share in the Orbit Arya Commercial Shop as per the modality identified in the Supplementary Consent Terms.
- D 18. The Parties further agree that if there is any dispute or difference of opinion with respect to modalities for valuation, method of adjustment/payment, Bidding Process and subsequent Transfer Process, modalities for consummation of transaction and/or guidelines for Valuers then the Parties have agreed that their respective nominated Attorneys will be authorized to respective Parties to resolve such dispute/difference of opinion. The Parties undertake not to, at any stage, raise any objection relating to conflict of Interest against the said Attorneys for assisting in resolving such matters.
- E 21. Until conclusion of the transfer the Parties shall not affect each other’s rights in any way in AISCO and/or IMTC.
- F 22. RA Group and/or Kash Foods shall not in any manner, directly and/or indirectly or derivatively, be entitled to sell and/or transfer and/or dispose of and/or encumber and/or otherwise deal with the PA Kash Foods Property (more particularly defined in the schedule of Annexure A) (the “Restraint”). The modification, if any, of the Restraint, shall be identified in the Supplementary Consent Terms. It is expressly agreed and understood between the Parties that the RA Group is free to deal with RA Kash Foods Property (as more particularly defined in Annexure B) as their exclusive and absolute owners thereof with effect from the filing of these consent terms and the PA Group does not have any claim
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direct, derivative or otherwise of whatsoever nature upon the A same.

23. The RA Group and/or Kash Foods shall publish a Public Notice within 3 days of filing of the Supplemental Consent Terms, withdrawing their claims in relation to PA Kash Foods Property (as more particularly described at Annexure C). B

24. The PA Group withdraws all allegations against the Defendants in the captioned Suit and confirms that the PA Group does not have any further interest in Kash Foods Pvt. Ltd or any of its properties save and except properties described in PA Kash Foods Portion, more particularly described at Annexure A herein. C

25. The PA Group shall publish a Public Notice within 3 days of filing of the Supplemental Consent Terms, as more particularly described at Annexure D.

26. In so far as the eventual and complete parting of ways between the Parties, the Parties agree that the larger group matters, which shall be mutually identified in the Supplementary Consent Terms, shall be finally determined, decided and settled by 4 Mediators – 2 appointed by PA Group and 2 appointed by RA Group. The Mediators shall be appointed on or before August 29, 2015. D

27. The Parties hereto agree that for the purpose of giving effect to and/or implementing these Consent Terms, each party unconditionally irrevocably undertakes that it shall, from time to time and at all times at the request of the other party provide full and complete co-operation and do all such further acts, matters, debts and/or things that are in any manner required and/or necessary, and/or may be necessary and/or as may be and/or are reasonably required by the other Party including executing Supplementary Consent Terms hereto. E F

28. Omkar Realtors and Developers Private Limited (“Omkar” or “Defendant No. 10”) is hereby directed /requested to issue a separate letter in relation to the PA Group’s entitlement to the PA Kash Foods Property in Omkar 1973 Project (more particularly annexed at Annexure A hereto) as per draft at Annexure E hereto. Omkar is hereby further directed to strictly abide by the Restrains in relation to the PA Kash Foods Property. G H

- A 30. The present Consent Terms provide a frame work for resolution of all matters. The Parties are at liberty to suitably amend and/or modify the frame work by mutual consent for the purpose of more effectively dealing with modalities as may be required from time to time.”
- B From the aforesaid terms of settlement, it can be seen that it was an overall settlement of all the disputes between the parties in relation to the subject matter of AISCO, IMTC, Kash Foods, Orbit Arya Commercial Premises and the disputes in relation to the larger Arya Group of Companies and its constituents. As observed hereinabove and so stated in clause 2 of the terms of settlement, the consent terms is an identified and mutually agreed framework for a complete parting of ways between the Parties and is aimed at bringing about an eventual complete quietus to the Disputes Considering the aforesaid terms of the settlement which subsequently became part of the consent decree, further entering into the family arrangement/supplemental consent terms was required to be entered into between the parties and the modalities to be worked out with respect to the valuation, bidding etc. are also mentioned in the consent terms. At the same time, under the consent terms/consent decree and as agreed between the parties, 8 flats as mentioned in the list at ‘Annexure A’ to the consent terms are agreed to be allotted under the re-developed building to the PA Group and the flats mentioned in the list at ‘Annexure B’ to the consent terms are agreed to be allotted to RA Group. For the 8 flats allotted to PA Group, Omkar Builders – original defendant no.10 was required to issue a separate letter in relation to the PA Group’s entitlement to the PA Kash Foods Property in Omkar 1973 project as per draft at ‘Annexure E’ to the consent terms. Allotment of the 8 flats as per list at ‘Annexure A’ to the consent terms in favour of PA Group is not disputed and cannot be disputed. Even in paragraph 3 of the consent decree, the submissions of the learned counsel appearing on behalf of the respective parties have been recorded and as per the submissions made by the learned counsel appearing on behalf of both the parties – PAGroup & RA Group, the division in ‘Annexure A and Annexure B’ is final, viz-a-viz defendant no.10 – Omkar Builders. Para 3 of the consent decree reads as under:
- “3. Mr. Samdani, learned Senior Advocate on behalf of Defendant No. 10, the developer, states that this division of flats in Annexures “A” and “B” is between the two Arya groups *inter se*. For their

part, Mr. Dwarkadas, learned Senior Advocate for the Plaintiffs, and Mr. Jagtiani, learned Senior Advocate for Ravi Arya Group, agree that the division in Annexures "A" and "B" is final *vis-a'-vis* Defendant No. 10. They also agree that allotments made and possession given in terms of Annexure "A" and Annexure "B" would constitute a full, sufficient and complete discharge of the 10th Defendant's obligations under the Development Agreement, as also the individual flat agreements already executed in favour of the parties. In view of these statements made by Mr. Dwarkadas and Mr. Jagtiani, which are on instructions, Mr. Samdani states, on instructions, that his clients, Defendant No. 10, will issue the letter a proforma of which is at Exhibit "E" to the consent terms."

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It appears that as such original defendant no.10 – Omkar Builders had already issued the letter in the proforma as per 'Annexure E' to the consent terms in favour of PA Group with respect to 8 flats allotted to PA Group. Therefore, it appears that so far as original defendant no. 10 is concerned, original defendant no.10 has already complied with its obligation under the consent decree. However, RA Group is not counter-signing the said 'Annexure E' and therefore there is not complete transfer of 8 flats in favour of PA Group which as such are allotted to them. Therefore, making a grievance by not counter-signing the letter of allotment as per 'Annexure E', the original defendant nos. 1 to 6 – RA Group have refused to abide by the consent terms/consent decree. It is the case on behalf of original defendant nos. 1 to 6 – RA Group that unless and until there is a total compliance of the consent terms/consent decree including entering into or execution of the supplemental consent terms/family arrangement as agreed between the parties as per the consent terms/consent decree the defendant nos. 1 to 6 – RA Group are justified in not counter-signing the letter of allotment as per 'Annexure E'. On the other hand, it is the case on behalf of the appellants – plaintiffs that further execution of supplemental consent terms/family arrangement has nothing to do with the allotment of 8 flats in favour of PA Group.

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6. Having heard the learned Senior Advocates for the respective parties and considering the relevant terms of the settlement, reproduced hereinabove, we are of the opinion that further execution of supplemental consent terms/family arrangement is required to be executed between the parties. For whatever reasons, the further supplemental consent terms have not been entered into between the parties. Therefore, as such,

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- A considering the fact that the parties entered into the consent terms/ settlement for a complete parting of ways between the parties and so aimed at bringing about an eventual complete quietus to the disputes between the parties and even parties entered into the consent terms/ settlement to resolve and settle the disputes in relation to the subject matter of AISCO, IMTC, Kash Foods, Orbit Arya Commercial Premises
- B and the disputes in relation to the larger Arya Group of Companies and its constituents, which were beyond the dispute in the civil suit, the entire consent terms/consent decree is required to be acted upon and/or implemented by both the parties. There cannot be any execution of partial consent terms/consent decree. If the submission on behalf of the plaintiffs
- C is accepted and the 8 flats as per list at ‘Annexure A’ are transferred absolutely and without any condition in favour of PA Group without there being any further supplemental consent terms/family arrangement, in that case, the entire object and purpose of entering into the consent terms/settlement to resolve all the disputes between the parties will be frustrated. Both the parties to the consent terms/consent decree are required to fully comply with the terms of settlement/the consent terms and the consent decree. One party cannot be permitted to say that that portion of the settlement which is in their favour be executed and/or complied with and not the other terms of the settlement/consent terms/ consent decree. Under the circumstances, as such, both, the learned
- E Single Judge as well as the Division Bench are justified in holding that the execution of the further supplemental consent terms/family arrangement is must and there cannot be any partial execution of the consent terms/consent decree.

7. Even in the case of *Hari Shankar Singhania (supra)*, the decision which has been relied upon by the learned senior counsel appearing on behalf of the appellants, this Court has observed that a family settlement is treated differently from any other formal commercial settlement as such settlement in the eye of the law ensures peace and goodwill among the family members. It is further observed that technicalities should not be put at risk of the implementation of a settlement drawn by a family, which is essential for maintaining peace and harmony in a family. It is further observed that it is the duty of the court that such an arrangement and the terms thereof should be given effect to in letter and spirit.
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7.1 In the case of *Manish Mohan Sharma (supra)*, this Court has observed and held that effort of the executing court must be to see that the parties are given the fruits of the decree. It is further observed that mandate is reinforced when it is a consent decree and doubly reinforced when the consent decree is a family settlement.

8. Now so far as the relied placed upon the decision of this Court in the case of *Saradamani Kandappan (supra)*, relied upon by the learned Senior Advocate appearing on behalf of the appellants – plaintiffs, more particularly reliance placed upon paragraph 54 of the said judgment in support of his submission that in the consent terms/consent decree, it is expressly stated or provided the order of performance, namely, that the further supplementary settlement is to be executed and only after such execution the 8 flats as per list at ‘Annexure A’ to the consent terms shall be allotted in favour of PA Group is concerned, on considering conjoint reading of the terms of the settlement, the said decision shall not be applicable to the facts of the case on hand.

8.1 Even on conjoint reading of all the terms of the settlement, more particularly the clauses referred to hereinabove, it can be said that there is an implied term that both the parties have intended that on one hand as agreed between the parties further supplemental consent terms/ family arrangement is to be entered into and on the other hand there shall be transfer/allotment of 8 flats as per list at ‘Annexure A’ in favour of PA Group. Any other interpretation would lead to unworking of the consent terms/consent decree. As observed hereinabove, if the consent decree is partially executed and the other parts of the consent terms are not implemented and/or acted upon, the object and purpose to resolve all the disputes amicably between the parties and to put an end to all the disputes between the parties will be frustrated.

9. However, at the same time, one cannot lose sight of the fact that the 8 flats as per list at ‘Annexure A’ are allotted in favour of PA Group and rest of the 7 flats as per list at ‘Annexure B’ are allotted in favour of RA Group. At present, the RA Group is in possession of all the 15 flats. The RA Group is also the beneficiary of Rs.45 crores. Therefore, to strike the balance between the parties, the RA Group can be directed to counter-sign ‘Annexure E’ letter issued by Omkar Builders with respect to 8 flats as per list at ‘Annexure A’ which are allotted in favour of PA Group. However, with a caveat that till the further supplemental consent terms/family arrangement as agreed between the parties under the

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- A consent terms/consent decree is not executed, PA Group may not be permitted to sell, transfer and/or deal with the said flats till the consent terms/consent decree is fully acted upon and implemented between the parties. At the same time, both the parties are required to be directed to fully implement the consent terms/consent decree and to enter into further supplemental consent terms/family arrangement, the modalities of which are mentioned in the consent terms itself, at the earliest and within a reasonable time. Until then, both the parties to abide as per the Restraint order as per clause 22 of the consent terms, except the 7 flats as per list at 'Annexure B', which are allotted in favour of RA Group.
- C 10. In view of the above and for the reasons stated above, the impugned judgment and order passed by the Division Bench of the High Court and that of the learned Single Judge are hereby modified as under:
 - i) Both the parties – PA Group & RA Group are directed to fully comply with the consent terms/consent decree and enter into the further supplemental consent terms/family arrangement after following the modalities to be worked out with respect to valuation, bidding etc. as mentioned in the consent terms itself, within a period of four months from today. Both the parties are directed to cooperate to fully comply with the consent terms/consent decree and fulfil their respective part of obligation under the consent terms/consent decree;
 - E ii) that the RA Group shall counter-sign 'Annexure E' letter with respect to 8 flats as per list at 'Annexure A' to the consent terms for which the original defendant no.10 – Omkar Builders had already issued a letter, within a period of two weeks. However, it is directed that till the consent terms/consent decree is fully implemented by both the parties and further supplemental consent terms/family arrangement, as ordered hereinabove, is entered into/executed, the PA Group shall not alienate and/or transfer in any manner whatsoever the said 8 flats. At the same time, it will be open for original defendant nos. 1 to 6 – RAGroup to deal with the 7 flats as per list at 'Annexure B' which are allotted to them.
 - G At the same time, both the parties to act as per the Restraint order as per clause 22 of the consent terms. The original injunction granted by the learned Single Judge which has been continued till date is directed to be continued till the execution of the further supplemental consent terms/ family arrangement except the 7 flats as per the list at 'Annexure B' which are allotted in favour of RA Group.
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11. With the aforesaid observations and directions, both these appeals stand disposed of. However, in the facts and circumstances of the case, there shall be no order as to costs. A

Ankit Gyan

Appeals disposed of.