

Ravi Kumar Bajaj vs Ashok Bajaj & Ors on 27 January, 2023

Author: Amit Bansal

Bench: Amit Bansal

\$~A-2-3 (connected)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM(M) 537/2019

RAVI KUMAR BAJAJ

..... Petitioner

Through:

Mr. Wasim Ashraf, Advocate.

versus

ASHOK BAJAJ & ORS

..... Respondents

Through:

Respondent no.3 in person.

Mr. Vikrant N. Goyal with Mr. Tesu

Gupta and Ms. Ayushi Garg,

Advocates for R-5/UOI.

+ CM(M) 1168/2021

GAYATRI BAJAJ & ORS.

..... Petitioners

Through:

Petitioner no. 2 in person.

versus

RAVI KUMAR BAJAJ & ORS.

..... Respondents

Through: Mr. Wasim Ashraf, Advocate for R-1.

Ms. Pratima N. Lakra, CGSC with

Mr. Apoorv Sharma, Advocate for R-

3/L&DO.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% 27.01.2023 CM APPL.48561/2022, CM APPL.48564/2022, CM APPL.48653/2022 & CM APPL.49955/2022 (all for exemption) in CM(M) 537/2019 CM APPL.48566/2022, CM APPL.48569/2022, CM APPL.48570/2022 & CM APPL.49948/2022 (all for exemption) in CM(M) 1168/2021

1. Allowed, subject to all just exceptions.

2. The applications are disposed of.

Signing Date: 30.01.2023 18:45:33 CM APPL.48563/2022 (for condonation of delay) in CM(M) 537/2019 CM APPL.48568/2022 (for condonation of delay) in CM(M) 1168/2021

3. For the reasons stated in the applications, the same are allowed. CM APPL.48560/2022 & CM APPL. 49954/2022 IN CM(M) 537/2019 CM APPL.48565/2022 & CM APPL.49947/2022 In CM(M) 1168/2021

4. In order to decide the present applications, it is deemed necessary to give a brief background leading to the filing of the present applications:

4.1 Vide judgment dated 7th February, 2022, the suit filed by the non-applicant/plaintiff, Ravi Kumar Bajaj [hereinafter "plaintiff"] was decreed by this Court in terms of prayer B in the suit.

4.2 A review petition, being Review Petition 53/2022, seeking review of the judgment dated 7th February, 2022 was preferred on behalf of the applicants/defendants no.2 to 4 [hereinafter defendants no.2 to 4], which was dismissed vide order dated 4th March, 2022. 4.3 The defendants no.2 to 4 preferred special leave petitions, being Special Leave Petition (Civil) Nos.11202-11203/2022 and 11196-

11197/2022, against the final judgment dated 7th February, 2022 and the order dated 4th March, 2022 dismissing the review petition. The aforesaid SLPs were dismissed by the Supreme Court vide speaking order dated 17th October, 2022.

4.4 Subsequently, CM Appl.48560/2022 in CM(M) 537/2019 and CM Appl.48565/2022 in CM(M) 1168/2021 were filed on behalf of the defendants no.2 to 4 under Section 151 of the Code of Civil Procedure, 1908 (CPC). Vide order dated 14th November, 2022, the Bench of C. Hari Shankar, J. directed that the said applications be listed before me, noting that the said applications, though styled as recall applications, Signing Date:30.01.2023 18:45:33 essentially seek review of the judgment dated 7th February, 2022. 4.5 Thereafter, the defendants no.2 to 4 moved CM Appl. 49954/2022 in CM(M) 537/2019 and CM Appl.49947/2022 in CM(M) 1168/2021 under Section 151 of the CPC seeking modification of the order dated 14th November, 2022, which were also directed to be listed before me.

4.6 Once again, CM Appl.51158/2022 and CM Appl.51146/2022 seeking recall of the order dated 14th November, 2022 were filed on behalf of the defendants no.2 to 4 seeking recall of the order dated 14th November, 2022.

4.7 Vide order dated 28th November, 2022, CM Appl.51158/2022 and CM Appl.51146/2022 were dismissed by the Bench of Tushar Rao Gedela, J. after hearing Mr. Sidharth Bajaj/the defendant no.3 in the suit.

4.8 Hence, the present applications have been listed before me.

5. I have heard Mr. Siddharth Bajaj/defendant no.3 on the present applications.

6. Mr. Sidharth Bajaj/defendant no.3, who is appearing through video conferencing, seeks recall of the order dated 14th November, 2022 passed by the Bench of C. Hari Shankar, J. on the ground that the CM No.48560/2022 and CM No.48565/2022 have not been filed seeking review of the judgment dated 7th February, 2022 and only seek recall of the said judgment.

7. I do not find any merit in the aforesaid submission. A reading of CM Appl.48560/2022 and CM Appl.48565/2022 leaves no doubt in my mind that by way of the aforesaid applications, a review is being sought of the judgment passed by this Court on 7th February, 2022. Hence, there are no grounds made out for modification of the order dated 14th November, 2022.

8. CM Appl.48560/2022 and CM Appl.48565/2022 have been filed under Section 151 of the CPC seeking recall of the final judgment dated 7th February, 2022. Section 151 of the CPC cannot be pressed into service when there is an express remedy of review provided in the CPC and in the present case, this Court has already dismissed Review Petition 53/2022 filed by the defendant no.2 to 4 against the judgment dated 7th February, 2022 of this Court.

9. In any case, the grounds taken in CM Appl.48560/2022 and CM Appl.48565/2022 for recall of the judgment dated 7th February, 2022 are substantially identical to the grounds taken in the earlier review petition, being Review Petition 53/2022, filed by the defendants no.2 to 4. As noted above, Review Petition 53/2022 has already been dismissed by me on 4th March, 2022 and the SLPs filed by defendants no.2 to 4 against the aforesaid order as well as the final judgment dated 7th February, 2022 have been dismissed by the Supreme Court by a speaking order. There cannot be any further review of an order dismissing a review petition.

10. It is clear from the conduct of the defendants no.2 to 4 that they are attempting to protract the matter in order to delay compliance of the directions passed by this Court in the judgment dated 7th January, 2022 by repeatedly filing frivolous applications.

11. In view of the discussion above, no grounds, either for review or for recall of the judgment dated 7th February, 2022 or the order dated 4th March, 2022, are made out.

12. In light of the above, the present applications are dismissed with costs of Rs.25,000/- to be paid by the applicants/defendants no.2 to 4 to the Signing Date:30.01.2023 18:45:33 AASRA Fund, Account No.15530110140468, UCO Bank, Delhi High Court, IFSC Code: USBA0001553.

CM APPL.48562/2022 (for stay) in CM(M) 537/2019 CM APPL.48567/2022 (for stay) in CM(M) 1168/2021

13. In view of the order passed above, these applications have become infructuous.

14. Accordingly, these applications are disposed of as infructuous.

AMIT BANSAL, J.

JANUARY 27, 2023 sr/dk Signing Date:30.01.2023 18:45:33