Shri K.K. Modi And Anr. vs Shri K.N. Modi And Ors. on 5 October, 2007

Author: Vipin Sanghi

Bench: Vipin Sanghi

JUDGMENT

Vipin Sanghi, J.

1. By this order, I proceed to dispose of IA No. 47/2007 in CS(OS) No. 1394/96 and IA No. 36/07 in CS(OS) No. 434/1998, both filed under Order XXIII Rule 1 CPC by the respective plaintiffs in these suits for unconditional withdrawal of these suits.

2. The applications are vehemently opposed by defendant no. 12, Dr. B. K. Modi and defendant no.15, Dr. D. K. Modi in Suit No.1394/1996 and lengthy arguments have been addressed by both sides on the question as to whether the plaintiffs in these suits can be permitted to withdraw the suits unconditionally or not. Smt. Ginni Modi, defendant no.1A in the aforesaid suit has also opposed the said applications. In suit No.434/1998, Dr. D.K. Modi (Defendant no. 3A) and Ginni Modi (Defendant no. 3B) are the objecting defendants. Dr. B.K.Modi is not arrayed as defendant in the said suit. Background Facts:

3. Late Shri Gujjar Mal Modi had five sons;

(i) Sh. K.K. Modi, (ii) Shri V.K. Modi, (iii) Shri S. K. Modi,

(iv) Dr. B. K. Modi and (v) Shri U.K. Modi.

4. His younger brother Kedar Nath Modi (K.N. Modi) has three sons;

(i) Shri M. K. Modi, (ii) Shri Y.K. Modi and (iii) Dr. D. K. Modi.

5. The Modi family has been in control of a large number of public limited companies, which hold properties, assets and businesses. The family also holds various other assets. Disputes surfaced between the members of the family and two groups were formed. Group 'A' comprises of Shri K.N. Modi and his three sons, and Group 'B' comprising of 5 sons of Late Gujjar Mal Modi.

6. A settlement was arrived at, and reduced to a Memorandum of Understanding (MOU) dated 24.1.1989 with the intervention of Financial Institutions, such as Industrial Finance Corporation of India Ltd. (IFCI), who also had a stake in seeing that the disputes get amicably resolved, as they

have heavily invested in the various companies in question. Parties began implementing the understanding so arrived at. Clause 9, inter alia, stated that all disputes, clarifications etc. in respect of the implementation of the understanding shall be referred to the Chairman, IFCI or his nominee whose decision will be final and binding on the groups. In this process various representations were made to the Chairman and Managing Director of IFCI. The Chairman, IFCI submitted his report on 8th December, 1995 on the disputes referred to him, indicating therein that the MOU already stood implemented to a large extent. As per the said report Rs.2135.55 lacs was payable by Group 'B' to Group 'A' by 1st January, 1996.

7. On 20.5.1996 suit No. 1394/96 was filed by Shri K.K. Modi and Shri S.K. Modi (Group B) to seek various reliefs of declaration and injunction, inter alia, to enforce the MOU dated 24.1.1989 and in respect of the decision of the Chairman, IFCI. In 1998, Sh. M.K. Modi (Group'A') filed suit No. 434/98. This suit primarily pertained to one of the companies viz. Modipon Ltd. Subsequently, Sh.U.K. Modi and Sh. V.K. Modi (of Group 'B') filed suits bearing nos. 2712/1998 and 2694/1998 respectively. These suits also sought, inter alia, the declaration that the MOU dated 24.1.1989 is binding on all the parties and also sought reliefs regarding the decision of the Chairman IFCI. On 28.9.1999, the above four suits were consolidated.

8. Common issues have been framed in all the suits, and all the parties have made a statement that they do not wish to lead any evidence and that the suits may be decided on the basis of the record.

9. Shri. K. K. Modi (Group B) and Shri. M. K. Modi (Group A) signed an 'Aide Memoire' on 22.3.2003 to resolve their inter se disputes. Clause 1 (3) of the Aide Memoire provides for withdrawal of pending cases including in particular, suit Nos. 1394/96 and suit No. 434/98 by the respective plaintiffs.

10. In pursuance of the said mutual agreement between Shri. K.K. Modi and Shri M.K. Modi, the aforesaid applications have been filed by them to withdraw the respective suits filed by each one of them. Release of the amount of Rs. 5 crores deposited at the behest of Shri K.K. Modi the plaintiff in Suit No.1394/96 in this Court, on the direction of the Hon'ble Supreme Court given on 4.2.1988, as a condition for grant of an injunction restraining the sale of shares of Godfrey Philips (India) Ltd. is also prayed for. As aforesaid, these applications for unconditional withdrawal of suits have been opposed primarily by defendant nos. 12, Dr. B.K. Modi and 15, Dr. D.K. Modi (in suit no. 1399/1996) (herein also referred to as the objecting defendants) who have filed their replies to the said applications.

11. Since an application for unconditional withdrawal of a suit is generally granted, the plaintiff being the dominus litus, i.e., the master of the suit, subject, of course to the award of costs to the defendants if the court considers just in the facts and circumstances of the case (see , it would be appropriate to first set out the objections raised by the objecting defendants to such unconditional withdrawal, as their contentions are that there are legally recognised exceptions to the said general rule, and that the suits sought to be withdrawn fall within those exceptions.

OBJECTING DEFENDANTS CONTENTIONS

12. The objecting defendants contend that there is no absolute right of withdrawal of a suit. They content that in the peculiar facts and circumstances of the present case, as certain rights have got vested in favor of the defendants due to the pendency of these suits, plaintiffs cannot be permitted to withdraw the suits. The two suits in question have been filed to seek enforcement of the MOU dated 24.1.1989, which is in the nature of family settlement and is to be viewed differently. They rely on the observations of the Hon'ble Supreme Court in K.K.Modi v. K.N.Modi and Ors. , paragraph 52, which is a decision inter-parties, where they say, the Hon'ble Supreme Court observed that the MOU in question has been acted upon by some members of the family since 1989 and parties must be held to the settlement, which is in the interest of the family. They submit that all the parties have accepted the MOU, and have at no point in time sought to challenge the same. All the family members have been seeking the implementation of the said MOU. The respective rights and obligations of all the parties have to be determined in these suits. Each party has to receive something under the said MOU. The suits are akin to suits for partition of family property. Thus, each party is a plaintiff and therefore the suit cannot be permitted to be withdrawn. If the plaintiffs in these suits are permitted to withdraw the two suits, the defendants would be left remedeless, since their rights to claim enforcement of the MOU as a family settlement and seek partition in terms thereof would either get barred by limitation or, at least, they would be relegated to filing their own suits at this stage, when the present suits are ripe for final hearing. Defendant no. 15 contends that he has interest in determination of issues pertaining to the validity and enforceability of the decision of the Chairman, IFC Ltd. under Clause 9 of the Memo of Understanding and with regard to the scope and effect of the aforesaid 'Aid Memoire'. They have also referred to the order dated 29.11.2005 of the Hon'ble Supreme Court in Civil Appeal No.9195-96/2003 M.K.Modi v. K. K. Modi and Ors. with CA No.9197-9198/2003 - IFCI Ltd. v. K.K.Modi and Ors. Modipon Ltd. to contend that the said plaintiffs had led the Hon'ble Supreme Court to pass the said order on the premise that these suits would proceed and that they would be disposed off expeditiously. Withdrawal of these suits, when they are at the final stage of hearing is a dishonest and malafide attempt to scuttle the rights of the defendants. Defendant No. 15 particularly raised an objection to the withdrawal of the suit without a decision on the issue of transfer of seven lakhs shares of Modipon Ltd. which may result in collapse of the scheme sanctioned by BIFR and as approved by AAIFR.

13. It is also contended that the plaintiff Shri K.K. Modi has obtained an advantage/benefit under the suit inasmuch as, the plaintiff in suit nos. 1394/1996 opposed the transfer of seven lakhs shares of Modipon Ltd. in favor of Rajputana Distillaries Ltd. The Hon'ble Supreme Court passed an order on 7.1.1998 whereunder the transfer of the shares held by Group A companies in Godfrey Phillips India Ltd was stayed, subject to the plaintiff Shri K.K. Modi depositing Rs. 5 crores in this suit. The interim order pertaining to share holding in Modipon Limited was also continued.

14. Defendants contend that the plaintiffs have all this while prevented the transfer of these 7 lakhs shares of Modipon Ltd. in favor of Rajputana Distillaries Ltd. by keeping this suit pending. The defendants further contend that the plaintiff have prevented the AAIFR from pronouncing upon the Memorandum of Understanding on the ground that these suits are pending and that the said issue would be determined in these suits. Now that the time for determination has arrived, the plaintiffs in these suits are seeking to withdraw the suits to prevent the determination of the validity and enforceability of the Memorandum of Understanding and other related issues. It is argued that the

applications for withdrawal have been filed after the defendants had filed IA No. 13117/2006 in Suit No. 1394/1996 to seek a restraint against the implementation of the 'Aid Memoire', and merely to avoid a decision on that application.

15. Moreover, vide order dated 28.9.1999 the above four suits were consolidated as raising interconnected issues. Consolidated issues have been framed in these four suits and therefore it is not possible to bifurcate these issues with regard to a particular case. Thus, the individual suits have lost their independent existence, and have became one suit for all practical purposes. To draw support, several decisions have been relied upon which I will deal with later. Plaintiffs contentions

16. The suits are being withdrawn unconditionally and without seeking any liberty to file a fresh suit on the same cause of action. The plaintiff has an unqualified right to abandon his claim at any stage and withdraw his suit. The present suits are not for partition, nor has any preliminary decree been passed in the suits for any vested right to come into existence in favor of any of the parties.

17. Moreover, the application filed by K.K. Modi for amendment of plaint, seeking to bring on record the said 'Aide Memoire' and praying for orders and directions in accordance therewith has already been allowed on 11.4.2005. No objection to the said amendment was taken by Dr. B.K. Modi, defendant No. 2 and having so acquiesced to the said 'Aide Memoire', it is not open to Dr. B.K. Modi to object to withdrawal of suit no. 1394/96. Said defendant No. 2 in suit No. 1394 of 1996 was expressly given the liberty to get himself imp leaded as a plaintiff in suit no. 1394/96. The offer is duly recorded in the order dated 16.4.1998 of S. N. Kapur, J. However, he did not choose to avail of the opportunity. Therefore, the said defendant cannot now object to the withdrawal of his suit by the plaintiff. Moreover, the said defendant has till date not even filed his written statement, and by his conduct he is dis-entitled from raising objections to the withdrawal of the suit.

18. Dr. B.K. Modi, defendant no. 12 has also filed an affidavit dated 14.1.2005 affirming that the 'Aide Memoire' provides for full and final settlement of all disputes between Shri K.K. Modi and Shri M. K. Modi, and the plaintiff contends that after having acquiesced in the said 'Aide Memoire', the said defendant cannot now seek to object to the withdrawal of the suit, since the withdrawal is in consonance with the terms of the 'Aide Memoire'.

19. Smt. Ginni Modi, one of the Legal representative of deceased defendant no. 1 Sh. K. N. Modi had also filed an affidavit dated 19.7.2005 unequivocally stating that she was not an interested party in determination of the issues by the Court in the suit. She has also signed a formal declaration dated 7.9.2005 relinquishing all her rights/interests in properties, assets, etc. of the deceased defendant no.1. She has also sought her deletion as a party defendant to the suit. Thus, she cannot object to the suit being withdrawn.

DISCUSSION and DECISION

20. Before dealing with the rival submissions made and the law cited by the parties, I may note that on 10.5.2007, with the consent of parties, the following order was passed with regard to the seven lakh shares of Modipon Ltd. and for that reason, objection of defendant no.15 to that extent has

become infructuous:

> +I.A.Nos. 11046/03, 931/04, 5821/04 and 6163/04 in CS(OS)434/1998 with I.A Nos.11047/03, 932/04, 6198/04,5292/04 in CS(OS)No.1394/96 With the consent of the parties this order is being passed in the aforesaid two suits and the same be placed in the files of both the suits.
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> The parties agree that 7 lakh shares of Modipon Ltd held by Modi Spinning and Weaving Mills Ltd be transferred to Rajputana Fertilisers Ltd, in terms of the scheme formulated by BIFR and as approved by the AAIFR in its order dated 11-8- 2006. Accordingly the interim order dated 13-9-2004 passed in Suit No.434/98 stands vacated.
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> There is no impediment on the transfer of 7 lakh shares of Modipon Ltd held by Modi Spinning and Weaving Mills Ltd to Rajputana Fertilisers Ltd., in terms of the scheme sanctioned by the BIFR on 24th March, 2004 and subsequently confirmed by the AAIFR in its order dated 11th August, 2006.
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> The aforesaid applications are accordingly disposed of.

21. On the same day an order was passed with regard to the withdrawal by the plaintiff of the amount of Rs.5.00 crores and the vacation of the stay on the transfer of shares of Godfray Phillips India Ltd. in the following terms.

+I.A. No.47/07 in CS(OS)1394/1996 Arguments have been heard by me at length on this application and they are still continuing.

Counsel for the plaintiff points out that in terms of the directions issued by the Hon'ble Supreme Court in its judgment in Civil Appeal No.613/98 and 614/98 along with T.C.13/97 decided on 4-2-1998, which is reported as and further order of this Court dated 5-3-1998, the defendants in the suit designated as Group `A' headed by Late Shri K.K.Modi, now by Shri M.K.Modi, Shri Y. K. Modi and Shri D.K.Modi were restrained from selling any shares held in Godfrey Philips India, provided the plaintiffs in the suit i.e. K.K. Modi and Ors. deposit a sum of Rs. 5 crores within four weeks from the date of the said order.

In accordance with that order, Indofil Chemical, the Chemical division of Modipon Limited, which is under the control of the plaintiff deposited for and on behalf of plaintiff no.1, an amount of Rs.5 crores in the name of the Registrar of this Court. The said amount was thereafter invested in a fixed deposit with Corporation Bank, Connaught Place, New Delhi. The fixed deposit matured on 23rd March, 2007, and counsel for the plaintiff states that the same has been renewed once again.

Counsel for the plaintiff submits that since the said deposit was made only with a view to secure the interim protection to prevent the parties designated as Group A as aforesaid from selling their shares held in Godfrey Philips India, they be permitted to withdraw the amounts deposited since

they are no longer pressing for continuance of the stay. Counsel appearing for defendants 2, 13 and 15 have no objection to the withdrawal of the deposit made by the plaintiffs since the interim injunction is also simultaneously vacated. Counsel for defendant no.12 however does not consent to the same.

In any event, in my view since the deposit was required to be made only as a condition for enforcement of an interim order and since the plaintiff has himself stated that he does not wish that the interim order should continue, I see no impediment in directing the return of the amounts deposited along with up to date interest to the plaintiff. The plaintiff prays that the amount to be returned, be paid through a cheque drawn in favor of Indofil Chemical Company.

Let the registry draw out a cheque in the name of Indofil Chemical Company for the entire proceeds lying deposited in the fixed deposit, details whereof are mentioned in para 4 of the application which is stated to have been renewed on its expiry on 23-3-2007. The plaintiff's counsel should collect the cheque from the Deputy Registrar(O) on 17-5-2007 at 2 p.m. This order is being passed without prejudice to the rights and contentions of the parties. Interim order dated 5th March, 1998 passed in CS(OS) 434/1998 stands vacated.

22. Consequently, the objections of the contesting defendants based on the stay of transfer of the shares of Modipon Ltd. and Godfrey Phillips India Ltd. no longer survive. Even otherwise, before the BIFR/AAIFR, as well as before the Supreme Court in I.A. No. 3/1997 in SLP (C) No.18711/1997, the issue pertaining to transfer of shareholding of Modipon Ltd. concerned only Shri K.K. Modi (plaintiff in Suit No.1394/1996 and Shri M.K. Modi (Plaintiff in Suit No.434/1998) and did not concern any of the contesting defendants The said order was neither obtained against the objecting defendants, nor obtained by them against the plaintiff in the two suits sought to be withdrawn. They were not concerned with the issue relating to the sale of the said shares of Modipon Ltd. Consequently, it cannot be said that Shri K.K.Modi or Shri M.K. Modi obtained any unfair advantage against the objecting defendants by filing or continuing with their suits. Therefore this objection is also without any merit.

23. I now proceed to deal with the remaining objections raised to the withdrawal of the suit unconditionally.

24. The defendants have sought to contend that vested rights have accrued in favor of the defendants. In support of this argument, reliance has been placed on Vidhydhar Dube and Ors. v. Har Charan and Ors. ; Kanhaiya and Ors. v. Mst. Dhaneshwari and Anr. ; Ram Dhan v. Jagat Prasad and Ors. . In my view, these cases are of little assistance to the defendants, as these decisions are based on the proposition that once a decree is passed, or final determination of rights is made in favor of one of the parties to the lis and certain rights get vested in favor of such parties, the other cannot seek to deprive the party the fruits of such determination by seeking to withdraw the proceeding. All these are cases in which withdrawal of the suit was sought to be made at the appellate stage by a plaintiff against whom the declaration of rights had been made in the suit. In the suits before me, no decree has been passed (preliminary or final) whereunder rights of the parties have been crystalised.

25. Reliance is also placed on R. Ramamurthi Aiyar(dead) by L.Rs v. Raja V. Rajeswara Rao and Ms. Hulas Rai Baij Nath v. Firm K.B.Bass and Co. to contend that even if a decree (preliminary or otherwise) has not been passed in the suit, if a vested right has come into existence court could refuse withdrawal of the suit.

26. In Hulas Rai (supra), the court refused to answer the question as to whether a court is bound to allow withdrawal of the suit to a plaintiff even after some vested right may have accrued in the suit in favor of the defendant, and noted that in the facts of the case before it, no vested rights existed in favor of the opposite party to deny the right of the plaintiff to withdraw the suit. The Court was dealing with the application for withdrawal of suit for rendition of accounts at the stage of recording of evidence where no preliminary decree had been passed. The Court rejected the proposition that in a suit for accounts, a defendant is always entitled to relief in his favor and that the withdrawal of such a suit by the plaintiff cannot be permitted. The Court observed that the plaintiff may not be necessarily permitted to withdraw the suit if the defendant has become entitled to a relief in his favor. Such a right can accrue only upon passing of a preliminary decree for rendition of accounts. Thus, unless a preliminary decree was passed the plaintiff's right to withdraw the suit would remain unbriddled.

27. An exception to the rule recorded in the decision is where a counter claim or a set off has been pleaded by a defendant. Otherwise there is no provision in the code which requires the Court to refuse permission to the withdrawal of the suit by the plaintiff unconditionally.

28. In Ramamurthi (supra) a two judge bench of the Apex Court recognized one more exception to the rule enunciated in Hulas Rai (supra) in the facts and circumstances of the case before it. The Court held that in a suit for partition, as soon as a shareholder applied for leave to buy at a valuation the share of a party asking for sale under Section 3 of the Partition Act, an advantage, a privilege or a benefit accrues in favor of such a shareholder, as the Court is thereafter bound to order a valuation and after getting the same done, bound to offer to sell the same to the shareholder who has so applied at the valuation made. Therefore, once a shareholder (defendant) so applied for purchase of the plaintiff's share, permitting the plaintiff to withdraw the suit would defeat the purpose of Section 3(i) of the Partition Act as also the right/privilege so accrued in favor of the defendant/shareholder.

29. In the two suits in question, no vested rights have been acquired by the defendants, which would entitle the defendants to a decision in their favor, since no preliminary decree or any other order declaring the rights of the parties, or determining any of the issues arising in the suits has been passed till date, and none has been brought to my notice. Even if the two suits are assumed to be akin to suits for partition of joint family property, that would not make a difference, since no preliminary decree has been passed in the suits declaring the rights/shares of the parties. Therefore these decisions are of no avail. I do not agree with the defendants submission that a defendant has a vested right to get the issues arising in a suit determined, since according to his assessment, the determination of the issues, or some of them, might lead to declarations, which would vest rights in his favor. The possibility of getting vested with a right in future is not a vested right. A vested right is a right that is complete and consumated, and of such character that it cannot be divested without the consent of the person to whom it belongs, and is fixed or established and no longer open to

controversy (Blacks Law Dictionary, 6th Edition). If the meaning ascribed by the defendants to 'vested rights' is accepted in the present context, no plaintiff would be able to withdraw his suit without the consent of the defendant. Such an interpretation would be contrary to the plain meaning of Order 23 Rule 1 CPC, substantive portion whereof read as 'At any time after the institution of the suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim.'

30. Defendants also rely on Executive Officer Arthanareshwarar Temple v. R Sathyamoorthy to contend that the plaintiffs had obtained an advantage by keeping the proceedings in these suits pending, and therefore they could not be permitted to withdraw the two suits.

31. In Sathyamoorthy (supra), 'on the ground that they would agree for an adjudication as to the nature of the property, the hereditary trustees prayed in this Court in Civil Appeal No. 1930 of 1990 that the proceedings initiated by the Commissioner against them under the Endowment Act, 1959 should be directed to be dropped. This Court thought that in view of the agreement by the trustees' to have an adjudication on merits, the Commissioner could and should drop the proceedings. In fact, by the date of the Memo filed for withdrawal of the CRP and the OP, the Commissioner had dropped the proceedings initiated against the hereditary trustees.'

32. Paragraph 17 and 18 of the judgment being relevant are reproduced here-in-below:

> 17. It is, therefore, clear that this Court by consent of the parties wanted an adjudication by the High Court on the questions whether there was a dedication of the corpus of the property or only a charge on the income, and even if it was so, whether there was a specific endowment vested in the Commissioner, HRandCE and whether the property could be permitted to be sold when there was a prohibition in the trust deed, whether permission of the District Court under Section 34 of the Trusts Act was sufficient and whether permission under Section 34 of the Endowments Act, 1959 was necessary. Further, the Courts have a general 'parens patriae' jurisdiciton over trusts for charitable and religious purposes and a question of public interest was involved because of the contentions raised by the Commissioner, HRandCE.
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> 18. Therefore, we are of the view that the High Court should go into the above aspects on merits and in accordance with law.

33. In my view, the aforesaid decision has no application in the facts of the present case. In Sathyamoorthy (Supra), Respondent No. 1 and 2 had earlier, by agreeing that the issue as to whether there was a dedication of the corpus of the property or only a charge on the income and other related issues would be decided by the High Court in revision proceedings, caused the proceedings initiated against them under the Endowment Act to be dropped. Moreover, that was a case involving properties belonging to a charitable and religious organisation, and, therefore, the Supreme Court held that the Court have a general 'parens patriae' jurisdiction. However, in the present case, it cannot be said that the plaintiffs in these two suits have lead any court or other

forum to drop any proceedings against them, or that they have obtained any favorable order by projecting or representing that they would proceed with the final determination of the two suits in question. The order dated 29.11.2005 was passed by the Supreme Court in an appeal filed by Shri M.K. Modi, (plaintiff in Suit No.434/1998) against Shri K.K. Modi (plaintiff in Suit No.1394/1996). It pertained to the issue of transfer of the shares of Godfrey Phillips India Ltd. (GPI) and Modi Rubber Ltd. (MRL) by Modipon Ltd. This Court had vide order dated 8.10.2001 permitted Modipon Ltd. to sell 50% of GPI and MRL shares to repay its debts to the Banks and Financial Institutions so that the company, Modipon Ltd., could be saved from becoming sick. The Division Bench of this Court had reversed the aforesaid order of the learned Single Judge. The Supreme Court, in the aforesaid appeal decided not to interfere with the order of the Division Bench by observing:

> After hearing the counsel for the parties at length, and keeping in view the overall interests of the parties, the Financial Institutions and the fact that the following four suits (i) C.S. (OS) No.1394/96 filed by the Respondents (ii) C.S. (OS) No. 434/98 filed by the appellants and the other two suits being C.S. (OS) No. 2712/98 and 2694/98 filed by the two brothers of K.K. Modi, pending in the High Court of Delhi, are ripe for arguments, we are not inclined to go into the dispute arising in the present appeals and dispose them of with the following directions:

34. Firstly it is to be noted that the said appeal was preferred before the Supreme Court by Shri M.K. Modi against Shri K.K. Modi who are the two plaintiffs in the aforesaid two suits. The contesting defendants were neither the appellants nor the contesting respondents before the Hon'ble Supreme Court in the said appeals. This was so because issue of transfer of shareholdings held by Modipon Ltd. concerned Shri M.K. Modi and Shri K.K. Modi and not the contesting defendants herein. Thirdly, the issue of transfer of shares of GPI no longer remains in view of the aforesaid order dated 10.5.2007.

35. The contention that the defendants would be precluded from getting a determination on the question of binding nature of the Memorandum of Understanding, if the suit is withdrawn, inasmuch as, institution of a fresh suit by them for that purpose would be barred is also not relevant.

36. The defendants own stand is that none of the parties have till date sought to challenge the MOU and all have been seeking its implementation. A person claiming a right before a court of law must stand on his own legs and cannot be permitted to ride piggy back on the shoulders of his adversary. If the defendants were keen on determination of any of their rights under the MOU dated 24.1.1989, nothing preclude them from filing their own suit or from seeking transposition as plaintiffs in the present suits. Having so failed to get themselves arrayed as plaintiffs, when the opportunity was granted to them, they cannot now turn around and claim that they have a right to force the plaintiff to continue to prosecute the same, which the plaintiff is no longer interested in pursuing.

37. The issue, whether such a suit if now filed by the defendants would or would not be barred by limitation would be for the Court, before which such a suit may subsequently brought to decide and is not a matter in issue before me. Even if the suit of the defendant would be barred by limitation, no vested right can be said to have accrued in favor of the defendants, inasmuch as, the defendants

themselves are to be blamed for the situation in which they find themselves.

38. The argument that the Apex Court had held the MOU had been substantially acted upon by the parties, and they must be held to the settlement and for that reason the suit to enforce the said settlement could not be withdrawn is also fallacious. The above statement has been read out of context and relied upon as a finding/determination of fact by the Apex Court, though it was only recorded as a submission made on behalf of the Group A parties. The Court instead of commenting on the said submission, directed the parties to raise the same before the High Court. The said paragraph from the copy of the judgment placed amongst the order sheets in the Part I file of suit no. 1394/96 is reproduced herein for the sake of ready reference. 'Group A also contends that there is no merit in the challenge to the decision of the Chairman of IFCI which has been made binding under the Memorandum of Understanding. The entire Memorandum of Understanding-including Clause 9 has to be looked upon as a family settlement between various members of the Modi family. Under the Memorandum of Understanding, all pending disputes in respect of the rights of various members of the Modi family forming part of either Group A or Group B have been finally settled and adjusted. Where it has become necessary to split any of the existing companies, this has also been provided for in the Memorandum of Understanding. It is a complete settlement, providing how assets are to be valued, how they are to be divided, how a scheme for dividing some of the specified companies has to be prepared and who has to do this work. In order to obviate any dispute, the parties have agreed that the entire working out of this agreement will be subject to such directions as the Chairman, IFCI may give pertaining to the implementation of Memorandum of Understanding. He is also empowered to give clarifications and decide any differences relating to the implementation of the Memorandum of Understanding. Such a family settlement which settles disputes within the family should not be lightly interfered with especially when the settlement has been already acted upon by some members of the family. In the present case, from 1989 to 1995 the Memorandum of Understanding has been substantially acted upon and hence the parties must be held to the settlement which is in the interest of the family and which avoids disputes between the members of the family. Such settlements have to be viewed a little differently from ordinary contracts and their internal mechanism for working out the settlement should not be lightly disturbed. The respondents may make appropriate submissions in this connection before the High Court. We are sure that they will be considered as and when the High Court is required to do so whether in interlocutory proceedings or at the final hearing.

39. The Hon'ble Supreme Court after recording the submissions of the Group 'A' parties, left it to the High Court to decide these issues 'as and when...required'. The aforesaid does not lead to the inference that the plaintiffs in these suits cannot be permitted to withdraw the suits where these issues have been raised. A mere withdrawal of these suits does not lead to the inference that the plaintiffs in these suits are walking out of the MOU or acting contrary to it. Even if they were to act contrary to the terms of the Memo of Understanding, the other parties to the Memo of Understanding, who may feel aggrieved by such conduct would be free to agitate their rights under the Memo of Understanding. Therefore, I do not consider that the decision of the Hon'ble Supreme Court in Kale v. Dy.Director Consolidation can be pressed into service by the objecting defendants at this stage.

40. The fact that these suits have been consolidated is also of hardly any significance for the present purpose. Consolidation of suits is done under the inherent powers of the Court and there is no specific provision of law which lays down the guidelines for, and the legal effect of consolidation of suits. The purpose of consolidation of suits is 'to save costs, time and effort and to make the conduct of several actions more convenient by treating them a one action.' [See 'Consolidation of suits is ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses.... The parties are relieved of the need of adducing the same or similar documentary and oral evidence twice over in the two suits at two different trials.' [See JT 2004(2) SC 533]. In State of Rajasthan v. Moti Ram , which has been relied upon by this Court in S.C.Jain v. Bindeshwari Devi , relied upon by the defendant, the Rajasthan High Court held:

> The learned Counsel for the plaintiff respondent also contended that since the two suits were consolidated during the course of the trial, the trial court should have passed one judgment and decree and the State should have filed one appeal instead of two appeals. The learned Counsel was however not able to point out how the two separate judgments and decrees and the two appeals there from prejudiced the plaintiff and resulted in failure of justice. He was also not able to show how separate judgments and decrees could be deemed to be void or ineffective. It may be mentioned here that the Code of Civil Procedure provides no specific provision for consolidation of suits. It is under the inherent powers of the Court under Section 151 C.P.C. that the suits are consolidated. The whole object behind consolidation of suits is to avoid multiplicity of proceedings and to prevent delay and avoid unnecessary costs and expenses. By consolidation, it cannot be inferred that the court after consolidation ceased to have jurisdiction to dispose of consolidated suits separately without any objection, then, after consolidation, the court would be debarred from doing so even if separate decisions are desirable for the sake of convenience to the parties as well as to the court. It is true that ordinarily the court after consolidation should dispose of consolidated suits by one judgment if separate judgments and decrees are passed, such decrees are illegal or void or ineffective. The fact that separate judgments and decrees are passed in the consolidated suits, at best shows an irregularity in following a correct and ideal procedure and not lack of jurisdiction. This contention of the learned Counsel for the plaintiff has therefore no force.

41. The closing lines in the aforesaid extract have to be understood in the context of the two or multiple suits proceeding and culminating in judgments at the same time. However, in the present case, since the two suits aforesaid are sought to be withdrawn, leaving the other two suits pending, the said observation is not of any relevance in the present context. It is not that suits which have been consolidated cannot be subsequently separated for any purpose whatsoever. In Halsbury's Laws of England, (Fourth Edition, Vol. 337, para 69), the learned author observes that 'the Court has the power to deconsolidate actions which have been consolidated, in other words, to restore the separate identity of each of the actions comprised in the consolidation order. This has been noticed in the aforesaid decision in S.C.Jain (supra). The consolidation of two or more suits whereby it is stated that the individual suits loose their identity is primarily for the purpose of trial. In Manohar Vinayak and Ors. v. Laxman Anandrao Deshmukh and Ors. AIR 1947 Nagpur 248 which is also

relied on by this Court in S.C.Jain (supra), it is observed that there is no specific provision of law in the Civil Procedure Code for consolidation of two suits as is contained in Order 49 of the Rules of Supreme Court requiring one trial and one judgment in consolidated actions. It is under the inherent powers of the Court under Section 151, C.P.C. that the suits are consolidated. The legal effect of a de facto consolidation is usually achieved by two suits being tried together by consent of parties and with the approval of the Court. After consolidation there is only one case, and the suit consolidated has no independent existence for trial.

42. After consolidation, the multiple suits which are consolidated are treated as one for purposes of trial, judgment and decree. However, consolidation is not to be looked at too technically.

43. Right to withdraw his suit, which is specifically vested in a plaintiff under Order XXIII Rule 1 C.P.C, being a statutory right cannot be denied on the basis of a procedure of consolidation which is evolved by the Courts with a view to save time, costs, conflicting decisions and from other such like considerations. The real test to decide the issue whether the plaintiff should be permitted to withdraw his suit has to be decided by the application of the test of prejudice that such withdrawal may cause to any of the defendants.

44. It may be noted that none of the decisions cited by the defendants have been rendered in similar fact situation as is placed before me, and none of them deal with the issue of withdrawal of a suit after its consolidation with another suit. The decisions in Ram Kishore and Ors. v. UOI S.C.Jain (supra) relied upon by the contesting defendants to contend that upon consolidation, the consolidated suits lose their independent existence or identity and become one suit, have to be understood in the light of the aforesaid decision in Manohar Vinayak (supra). Both Ram Kishore (supra) and S.C.Jain (supra) have expressly relied upon Manohar Vinayak (supra).

45. Admittedly the suits retain their independent identity as they are registered as different suits and continue to be so registered even after consolidation. The plaintiffs in all the suits are different. In fact some of the reliefs prayed for are also distinct. The Court found it appropriate that these 'suits should be consolidated and tried together' (see order dated 28.9.1999) and common issues have been framed by the Court in all the four suits in hand. The dismissal as withdrawn of the two suits in question out of the four suits which have been consolidated by this Court would therefore not require this Court to proceed to hear those specific suits alone any further. However the remaining two suits would still have to be proceeded with by the Court. Since all the four suits were consolidated with the consent of parties, the pleadings and documents filed in the two suits being withdrawn would continue to be available to the Court for deciding the two pending suits which are not being withdrawn and it would still be open to the parties to the remaining two suits to refer to and rely upon the pleadings and the documents filed on the record of the two suits which are being withdrawn. While exercising its inherent power under Section 151 C.P.C to consolidate the four suits, the Court could not be assumed to have intended to deprive any of the parties of their statutory rights including those under Order 23 C.P.C.

46. In this view of the matter, there is no impediment in the withdrawal of these suits. The IAs are accordingly allowed and the suits treated as unconditionally withdrawn, subject to the aforesaid

observations with regard to the rights of the parties in the two surviving suits to rely upon the pleadings and documents filed in the two withdrawn suits. In view of the fact that the contesting defendants have not filed their written statements, I do not consider it a fit case to award any costs.