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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 18th August, 2025*
Date of Decision: 15th December, 2025

+ CS(OS) 2495/2001

NARENDER KUMAR AGARWAL AND ORS.Plaintiffs
Through: Mr. Arvind Kumar Gupta, Mr.
Abhiesumat Gupta, Mr. Ishan Parashar and Mr.
Arun Bhattacharya, Advocates

versus

PRADEEP GUPTA AND ORS.Defendants
Through: Mr. Darpan Wadhwa, Senior
Advocate with Mr. Amer Vaid, Ms. Divita Vyas,
Mr. B.S. Mathur, Mr. Rajat Mathur, Mr. Pranjali
Tripathi and Mr. Areen Gulati, Advocates for D-1.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT**JYOTI SINGH, J.****I.A. 507/2007**

1. This application is filed on behalf of Applicant/Plaintiff No.5 Sh. Sushil Gupta for recall of judgment and decree dated 19.09.2006 passed on an application under Order XXIII Rule 3 CPC being I.A. No.10515/2006, purportedly jointly filed by Plaintiffs and Defendant No.1.
2. To the extent necessary, the facts are that Plaintiffs No. 1 to 5 and Defendants No. 3 and 4 are sons of late Sh. Radhey Lal Gupta. Defendants No. 5 to 7 are daughters and Defendants No. 1 and 2 are sons of Defendant No. 3. Plaintiffs No. 1 to 5 filed suit for partition, rendition of accounts and declaration *qua* two properties viz., (i) 188, Katra Beriyan, Fatehpuri, Delhi



(‘Fatehpuri property’); and (ii) AG-63, Sanjay Gandhi Transport Nagar (‘Transport Nagar property’) through Sh. Sharad K. Agrawal and Sh. Atul Gupta, Advocates. Sh. Atul Gupta is the son of Sh. Mahesh Kumar Gupta, Plaintiff No. 4. Applicant herein, Sushil Gupta instituted the plaint and signed and verified the pleadings on his behalf and as authorized representative of Plaintiffs No. 1 to 4.

3. Summons were issued in the suit on 06.12.2001 and Court directed Defendants No. 1 to 4 not to create third party rights in the suit properties. As per the plaint, estate of Radhey Lal included Fatehpuri property measuring around 200 sq. yards in the name and style of HUF M/s Anant Ram Radhey Lal Transport Company, operating a transport company. Radhey Lal executed a registered Will whereby Fatehpuri property, which was let out to the Partnership Firm, was to devolve on the 8 sons to the exclusion of the daughters and if any son desired to surrender his tenancy, he could do so only in favour of the other brothers.

4. It was pleaded in the plaint that Radhey Lal expired on 20.06.1974. On 03.12.2001, Plaintiffs entered into a family settlement, as per which 50% of the total 71% share of the parties came to the Applicant and out of the remaining 21%, share to the extent of 20% was distributed equally among Plaintiffs No. 1 to 4 and the remaining 1% was kept towards expenses incurred for executing the family settlement. As per the Plaintiffs, Transport Nagar property measuring 200 sq. yards was purchased by the sons of Radhey Lal from their own resources. Apprehending that Defendants would create third party rights in the two properties, present suit was filed.

5. Defendant No. 1 filed a written statement contesting the suit and claiming that no HUF was in existence at any stage as none was created



either by Radhey Lal or his father Anant Ram. The plaint did not disclose the essential ingredients of existence of an HUF and is devoid of any cause of action in favour of the Plaintiffs, since no particulars were given as to who created the HUF or the date of its creation and/or who were the coparceners as also which were the properties acquired by HUF. The suit was wholly frivolous and filed at the behest of Atul Gupta, Advocate who is the son of Plaintiff No. 4 and nephew of Plaintiff No.5/Applicant in collusion with Sharad K. Agrawal, Advocate with whom Atul Gupta was associated. It was also stated that Defendant No. 1 was the absolute and lawful owner of Fatehpuri property, which he purchased from his own funds by a duly registered Sale Deed executed on 29.10.2001. The property was earlier under tenancy and was surrendered by Radhey Lal in 1970 in favour of Defendant No.1, who commenced his goods transport business in the name and style of M/s Anant Ram Radhey Lal Goods Transport Company. In 1990, as a part of Rehabilitation Scheme framed by MCD, Defendant No. 1 was allotted Transport Nagar property as an alternative site for his transport business given that he was a genuine occupant and business operator at Fatehpuri property. Plaintiffs never challenged the registered Sale Deed nor initiated any proceedings for its cancellation and therefore, their claim to partition or declaration was legally untenable.

6. During the pendency of the suit, Defendants No. 2 to 7 were proceeded *ex parte*. An application being I.A. No. 10515/2006 was filed under Order XXIII Rule 3 CPC for recording settlement/compromise, purportedly entered into between the Plaintiffs and Defendant No. 1. It was stated in the application that Plaintiffs had agreed to withdraw their claims in both the suit properties in favour of Defendant No. 1 on receipt of Rs. 10



lacs in full and final settlement of their claims. Out of the sum of Rs. 10 lacs, Rs.3 lacs was to be paid to Atul Gupta by Demand Draft and the remaining amount was to be divided between Plaintiffs No. 1 to 5 as follows:-

Name	Amount
Narender Kumar (Plaintiff No. 1)	Rs. 1,00,000/-
Ravi Kumar (Plaintiff No. 2)	Rs. 50,000/-
A.K. Gupta (Plaintiff No. 3)	Rs. 1,50,000/-
Mahesh Kr Gupta (Plaintiff No. 4)	Rs. 2,00,000/-
Sushil Kumar (Plaintiff No. 5)	Rs. 2,00,000/-

7. The application was allegedly signed by the Applicant as authorized representative of all 4 Plaintiffs and on his own behalf; Defendant No. 1; and Sharad K. Agrawal, Sangeeta Grover and Sanjeev Srivastava, Advocates. When the application was listed before Court on 19.09.2006, Court noted that the application was signed by the Applicant, who was authorized by other Plaintiffs to file and compromise and/or withdraw the suit in terms of family settlement as also by Defendant No. 1 and was supported by affidavits of Applicant and Defendant No. 1 and the terms of settlement were set out in paragraph 4 (A) to (F) of the application. Along with the application, Special Power of Attorney ('SPA') executed on 16.06.2006 by the Applicant in favour of Atul Gupta was enclosed. The application was allowed and a compromise decree was passed directing that Annexure 'A' shall form part of the decree. It was recorded in the judgment that 6 Bank Drafts bearing Nos. 108021, 108022, 108023, 108024, 108025 and 108026 in terms of settlement were handed over by Defendant No. 1 to Atul Gupta as SPA holder of the Plaintiffs. The interim order was vacated.



Judgment dated 19.09.2006 reflects the presence of Sharad K. Agrawal and Atul Gupta, Advocates as also counsels for Defendant No. 1 with Defendant No. 1 in person.

8. After the judgement was passed on 19.09.2006, Applicant filed the present application for recall of the compromise judgement and decree stating that he was kept in the dark and never informed of the status and progress of the case despite the fact that Applicant had reposed complete faith in Atul Gupta. Ultimately, Applicant hired a new counsel and discussed the matter and on inspection of the Court file, he learnt of the compromise decree. It is Applicant's case that he never executed the SPA dated 16.06.2006 in favour of Atul Gupta nor authorized him to enter into any compromise and the SPA filed by Atul Gupta was a forged and fabricated document. It was also asserted in the application that the alleged signatures of the Applicant on the supporting affidavit were also forged and Applicant had filed an application under Section 340 Cr.P.C., 1973. Notice was issued in the application and looking at the nature of allegations in the recall application, Court directed Economic Offences Wing ('EOW') to conduct investigation vide order dated 24.01.2007 and all relevant documents such as the compromise application, supporting affidavits and SPA dated 16.06.2006, were handed over to the Investigating Officer ('IO'). While the investigation was ongoing, Status report was submitted by EOW giving details of the 6 Bank Drafts obtained from ICICI Bank. Further status report was submitted giving the details of the account numbers, banks and identities of the account holders as also dates of encashment of the various bank drafts. In one of the status reports, EOW disclosed the forensic opinion of Directorate of Forensic Science, Chandigarh dated 16.08.2007 in respect



of signatures on I.A. No. 10515/2006, affidavit in support of the application, terms and conditions of the settlement and the SPA, allegedly executed by Applicant in favour of Atul Gupta, as per which the specimen signatures of the Applicant matched with the signatures on these documents. Specimen signatures of Defendant No. 1 matched with his signatures on I.A. No. 10515/2006, affidavit and Terms of Settlement, both dated 18.09.2006. Specimen signatures of Sharad K. Agrawal matched with his signatures on I.A. No. 10515/2006 and Terms of Settlement dated 18.09.2006. Specimen signatures of Kuldeep Kumar, who was a witness in the SPA dated 16.06.2006, matched with his signatures appearing on SPA. Specimen signatures of Sanjeev Srivastava, Advocate matched with his signatures on I.A. No. 10515/2006 and Terms of Settlement dated 18.09.2006. No opinion could be given on the signatures of Sangeeta Grover, Advocate appearing on I.A. No. 10515/2006 and Terms of Settlement dated 18.09.2006.

9. A detailed status report dated 09.05.2008 was filed on 13.05.2008 disclosing details of the bank accounts in which the Demand Drafts were encashed and bringing forth that the bank accounts were fictitious and the monies were siphoned by Sharad K. Agrawal and Atul Gupta. It was also brought out in the report that during the investigation, Applicant denied his signatures on the application and accompanying documents and that even Sangeeta Grover, Advocate denied her signatures on the application and terms and conditions of the agreement. Some other crucial facts also came to light, which I shall advert to later.

10. On 10.01.2013, this application was dismissed in default and restoration application being I.A. No. 920/2013 was dismissed on the ground that the restoration application was signed by one Shivam claiming to be



Pairokar of the Plaintiffs and son of the Applicant, though no Power of Attorney was executed in his name. The matter travelled to the Division Bench and vide order dated 04.02.2016 in FAO (OS) 77/2015, impugned order dismissing the restoration application was set aside and present application was restored. The order also records the fact that while the appeal was pending, the Applicant expired. The Division Bench significantly observed that if what was pleaded in the present application was established, it would certainly be a lamentable miscarriage of justice if the case was allowed to rest. It was observed that it is incumbent on the Court to be scrupulous to see that no taint or touch of fraud or deception or misrepresentation was found in the conduct of the lawyers etc. and that it is the duty of the Court to ensure that proceedings before it do not fall below the standard of honesty as even the slightest suspicion of trickery affects the honour of the Court.

11. Arguing in support of the recall application, learned counsel for the Applicant submitted that Defendant No. 1 in collusion with Sharad K. Agrawal and Atul Gupta played a fraud on the Applicant in obtaining a compromise decree behind his back. Applicant never signed on the SPA dated 16.06.2006 or I.A. No. 10515/2006 and/or affidavit filed in support of the application. Noting that there was substance in the submission of the Applicant, Court directed investigation by EOW and the status reports submitted from time to time clearly disclosed the fraud. Clearly, the DDs were not prepared in the names of the Plaintiffs as per the Memo of Parties and all were handed over to Atul Gupta. The DD purportedly in the name of the Applicant was never handed over to the Applicant and in fact none of the bank accounts in which the DDs were encashed, were of the Plaintiffs. The



beneficiaries of the fraud were the counsels of the Plaintiffs and Defendant No.1 himself and since there was no consent of the Applicant, the compromise decree stands vitiated by fraud and is void.

12. It was urged that there are glaring discrepancies in I.A. No. 10515/2006 inasmuch as month and year are typed but the date is hand written. Terms and conditions nowhere mention the details of the parties between whom the terms and conditions were settled. The application is purportedly signed on 18.09.2006 but the supporting affidavit is signed, verified and attested on 17.09.2006, which means that on the date the affidavit was attested, Applicant was not aware of the settlement and moreover, it is not understood how a deponent can state on 17.09.2006 that the contents of an application, which is yet to be drafted and/or signed, are true to his knowledge. The affidavit bears the address of Fatehpuri, Delhi but is attested at Meerut, Uttar Pradesh and as per the investigation report, notary public was never traced. In contrast, affidavit of Defendant No. 1 is attested on 18.09.2006 at Delhi. Signature of the Applicant on the SPA is forged, which is evident from the fact that Kuldeep Kumar, who is the alleged witness, is a clerk of Sharad K. Agrawal and the address given by him was an incorrect. As per the status report Kuldeep had signed on the document on the asking of Atul Gupta and did not know the contents and purpose of the document. Sangeeta Grover, Advocate who allegedly signed the application and terms and conditions as a witness, denied her signatures. The seal of notary public on the affidavit and SPA was found to be fake. More importantly, Defendant No. 1 has admitted during the investigation that he asked Atul Gupta to help him out for the reason that Applicant was not relenting and compromising the matter and on this, Atul Gupta roped in



Sharad K. Agrawal and on their asking, Defendant No. 1 had got the DDs prepared in the sum of Rs. 1.60 lacs each in favour of the Plaintiffs and in the sum of Rs. 2 lacs in the name of Atul Gupta. Perusal of cross examination of the Applicant by Defendant No. 1 shows that no question was put that Applicant had signed the application and settlement terms. There was no suggestion that Applicant gave the Power of Attorney to Atul Gupta authorizing him to enter into the settlement. There was no suggestion that Rs. 3 lakh was given to Atul Gupta as litigation expenses on instructions of the Applicant. No evidence has come on record to show that Applicant came forward for the settlement or that anybody saw him signing the SPA.

13. It was further urged that the fact that the compromise application was nothing but a fraud is also evident from the fact that the DDs were never encashed by the Plaintiffs, a fact clearly emerging from the investigation. As per the police investigation, the bank accounts in which the DDs were encashed were either opened or introduced by Atul Gupta and/or Sharad K. Agrawal. It was strenuously argued that if the Applicant had executed an SPA in favour of Atul Gupta, then there was no requirement of the Applicant signing on the compromise application. If the settlement was indeed entered into by the Applicant along with other Plaintiffs with Defendant No.1, it was only a natural and ordinary course of conduct that the DDs would have been deposited in the existing bank accounts of these parties as they were in business and had independent running bank accounts. Clearly, as brought out by EOW new bank accounts were opened by the advocates in active connivance with Defendant No.1 only to encash the DDs and misappropriate the monies.

14. Learned counsel also argued that it is a settled law that where a



consent/compromise decree is obtained by fraud, a recall application is maintainable before the same Court which passed the decree and in support relied on the judgment of the Supreme Court in ***Pushpa Devi Bhagat (Dead) through LR Sadhna Rai (Smt.) v. Rajinder Singh and Others, (2006) 5 SCC 566***, wherein the Supreme Court held that the only remedy available to a party to a consent decree is to approach the same Court which recorded the compromise and establish that there was no compromise, in which event Court will itself consider and decide the question as to whether there was a valid compromise or not. Reliance was also placed on the judgment of the Supreme Court in ***Banwari Lal v. Chando Devi (Smt.) (Through LRs.) and Another, (1993) 1 SCC 581***, wherein the Supreme Court held that the Court before which it is alleged by one of the parties to the alleged compromise that no such compromise had been entered, has to decide whether the agreement or compromise was lawful and not void or voidable under the Indian Contract Act, 1872 and if it is found to be fraudulent, then it shall be deemed to be void within the meaning of explanation to the Proviso to Rule 3 Order 23 CPC and as such not lawful. In the present case, fraud committed on the Plaintiffs as also this Court is writ large and therefore, the decree obtained by fraud is a nullity and the judgment deserves to be recalled.

15. Learned Senior Counsel for Defendant No. 1 submitted that the suit filed by the Plaintiffs was without any cause of action and was at the instance and advice of Atul Gupta, who is the son of Plaintiff No. 4 and nephew of the Applicant and with connivance of Sharad K. Agrawal, with whom Atul Gupta was associated. This is evident from the statement of the Applicant in cross examination where he admitted that Atul Gupta had advised him to file the suit whereafter he approached Sharad K. Agrawal.



Applicant also stated that he had trust in Atul Gupta and used to sign on papers without seeing as also that he had signed on several blank papers. Applicant also admitted that he had not read the plaint before filing and had no knowledge of its contents. It is not even pleaded in the plaint that any HUF was created and if so by whom and when as also who are its coparceners and what properties were acquired by the HUF. The source of income of HUF, if any, is also not disclosed in the plaint and therefore, the suit itself was frivolous and not maintainable.

16. It was argued that Defendant No. 1 purchased Fatehpuri property vide registered Sale Deed dated 29.10.2001 from his own funds and was the lawful owner. The Sale Deed was never questioned by the Plaintiffs and the compromise decree only recognized the existing rights in favour of Defendant No. 1 and did not create any new right. Therefore, the question of Defendant No. 1 playing any fraud on the Plaintiffs or the Court, in collusion with Atul Gupta and Sharad K. Agrawal, Advocates does not arise. Significantly, it is only the Plaintiffs or their Advocates who have been the beneficiaries of the compromise decree and therefore, fraud if any, is *inter se* them. Admittedly, prior to 19.09.2006, Plaintiffs had no loss of faith *qua* their Advocates and this position is admitted in the pleadings of this application also where Applicant avers that Atul Gupta is the son of Plaintiff No. 4 and on whom Applicant had immense faith.

17. It was argued that in the present application and even subsequent thereto, the stand of the Applicant has been that his signatures on I.A. No. 10515/2006 and the accompanying affidavit as also SPA are forged, however, after FSL report was given by G.E.Q.D. on 16.08.2007 confirming that the specimen signatures of the Applicant matched with the signatures on



all these documents, there was a shift of stand and Applicant started claiming that he had signed on several blank papers, which implied that the earlier case set up by the Applicant was false. Significantly, Applicant has admitted in his cross examination that he was involved and participated in the negotiations to settle the matter. This position is also noted in orders of the Court passed on 08.11.2005, 16.02.2006, 16.05.2006 and 28.08.2006. Factually, from the date of filing the suit, Applicant, Atul Gupta and Sharad K. Agrawal have been together in filing as also negotiating a compromise with Defendant No. 1 and the only dispute with the Applicant was with respect to the quantum of settlement amount. In any event, if there was any fraud, it is between the Plaintiffs and their counsels for which Defendant No. 1 cannot be blamed. As per Sections 101, 102 and 106 of Indian Evidence Act, 1872, the burden of proof to show that fraud had been played and signatures of the Applicant were forged and/or obtained on blank papers was on the Applicant, which onus he has failed to discharge. In ***Pushpa Devi (supra)***, the Supreme Court held that a consent decree operates as an estoppel and is valid and binding, unless set aside by the Court which passed the decree by an order on an application under Proviso to Rule 3 of Order 23 CPC and therefore, the only remedy to avoid the consent decree was to approach the same Court and establish that there was no compromise before the same was accepted and decreed by the Court and acted upon by the parties, which the Applicant has failed to establish and rather Defendant No. 1 has established that there was a valid compromise between the parties after long deliberations/negotiations and the signatures of the Applicant have been proved to be genuine, firstly by his own affidavit in compliance of order dated 13.02.2008 and secondly, through CFSL report dated



16.08.2007. From the status report dated 09.05.2008, what emerges is that Plaintiffs' Advocates played fraud on the Plaintiffs by opening fake accounts in the name of similar persons after the judgement and decree was passed on 19.09.2006 and this cannot render a valid compromise decree a fraudulent decree.

18. It was further argued that the compromise application was duly signed by the parties and their Advocates and was supported by affidavits. Memorandum of Understanding as also SPA executed by the Applicant in favour of Atul Gupta, were also filed along with the application and it is only after the Court was satisfied that compromise was lawful, that the compromise decree was passed. All parties acted on the compromise and 6 DDs totalling to Rs. 10 lacs were handed over to Atul Gupta by Defendant No. 1 in Court. Therefore, as per Section 114(1) read with Illustration (e) of Indian Evidence Act, 1872, this Court shall presume that judicial and official acts have been regularly performed on 19.09.2006. Moreover, the suit was a civil proceeding and evidence is to be adjudged on the principle of preponderance of probabilities unlike a criminal trial where the evidence has to be appreciated on the principle of 'beyond reasonable doubt' and therefore, once Applicant admitted that he had affixed his signatures on several papers on the asking of his Advocates, the onus to prove that the signatures were not his, shifted on the Applicant and he has miserably failed to discharged the onus.

19. It was further argued that the present case is a classic case where Plaintiffs and their Advocates have conspired to cheat Defendant No. 1 after consenting to passing of a compromise decree and accepting money in full and final settlement of their claims. Atul Gupta in his examination-in-chief



stated that the entire fraud had been played by Sharad K. Agrawal, with whom he was working as a junior and to whom he had entrusted his family and other matters. He further stated that he was not involved in any manner in the settlement between Sharad K. Agrawal and Defendant No. 1 and was not even present before the Court when the compromise decree was passed on 19.09.2006. He also stated that it was Sharad K. Agrawal, who had conceived the idea of compromising and translated the same into action in September, 2006. In cross examination, Applicant confessed that he may have used different names at different places and had given 15 to 20 blank papers after signatures to Sharad K. Agrawal and signed on them wherever he was asked to. Applicant also stated that he was authorized on behalf of his brothers to compromise the matter and that in the months of June-July, 2006, he accompanied his brother Suresh Kumar to the house of Defendant No. 1 for talks of compromise, which he did not share with his Advocates. On being shown the affidavit filed with I.A. No. 10515/2006 (Mark-C), Applicant stated that it may or may not contain his signatures and this is enough to dismiss the application.

20. It was urged that the Applicant has been repeatedly changing his stand and pleas, which are mutually exclusive and self destructive. Having first denied his signatures on the compromise documents, Applicant changed his stand and adopted a position that he had signed on some blank papers, when faced with CFSL report dated 16.08.2007. This is impermissible in law, in view of the judgment of the Constitution Bench of the Supreme Court in ***Ladli Parshad Jaiswal v. Karnal Distillery Co. Ltd. and Others, 1962 SCC OnLine SC 38.***

21. It was contended that it is trite that counsel representing the party is



competent to sign the compromise on implied authority and valid compromise decree acts as *res judicata*. In other words, lawyer or a pleader or counsel has the power to enter into compromise, unless it is revoked by the client, which is not the case here. Even in cases where there is no express authorization to enter into a compromise, a duly instructed lawyer can enter into the compromise for the benefit of his or her client. The present case is on a better footing where the Applicant throughout maintained that he had faith in Atul Gupta and had entrusted him with the case and moreover, Plaintiffs were throughout involved in detailed negotiations before voluntarily entering into the compromise. At no stage, Applicant took a stand that he had not instructed the counsels from representing him and/or the other Plaintiffs till the compromise decree was passed and even thereafter in cross examination he admitted that the Advocates were authorized to represent the Plaintiffs. The only allegation in the recall application is that Applicant was not informed of the Court proceedings properly and was kept in dark, which cannot be a ground to negate a validly passed compromise decree. Defendant No. 1 being the owner of the suit properties had to litigate and even after the parties entered into a compromise pursuant to which Defendant No. 1 parted with Rs. 10 lacs way back in 2006, he has suffered prolonged litigation owing to this frivolous application. If a validly entered compromise decree is allowed to be challenged on frivolous grounds as in this case, no compromise decree will ever attain finality and this would be mockery of justice. Learned Senior Counsel relied on the following judgments:-

- (i) ***Sagar Gambhir v. Sukhdev Singh Gambhir (Since Deceased) Thr His Legal Heirs & Anr., 2017 SCC OnLine Del 7305;***



- (ii) *Santosh Kumar Jain v. Mehtab Singh Jain & Ors., Kiran Jain and Others, 2019 SCC OnLine Del 12567;*
- (iii) *Byram Pestonji Gariwala v. Union Bank of India and Others, (1992) 1 SCC 31;*
- (iv) *Kamlesh Jha v. Praveen Kumar Gupta, 2021 SCC OnLine Del 4746;*
- (v) *Amit Johri v. Deepak Johri & Ors., 2014 SCC OnLine Del 822;*
- (vi) *Sh. Deepak Aggarwal v. Sh. Raj Goyal and Ors., 2015 SCC OnLine Del 13106;*
- (vii) *Sunny (Minor) & Anr. v. Sh. Raj Singh & Ors., 2015 SCC OnLine Del 13446;*
- (viii) *Sh. Surender Kumar Khurana v. Tilak Raj Khurana & Ors., 2016 SCC OnLine Del 336;*
- (ix) *Pushpa Devi (supra);*
- (x) *Avitel Post Studioz Limited and Others v. HSBC PI Holdings (Mauritius) Limited, (2021) 4 SCC 713;*
- (xi) *Saurav Das v. Union of India and Others, (2023) 11 SCC 154;*
- (xii) *Ravinder Kaur Grewal and Others v. Manjit Kaur and Others, (2020) 9 SCC 706;*
- (xiii) *Ladli Parshad Jaiswal (supra);*
- (xiv) *Shanti Budhiya Vesta Patel and Others v. Nirmala Jayprakash Tiwari and Others, (2010) 5 SCC 104;*
- (xv) *K. Srinivasappa and Others v. M. Mallamma and Others, (2022) 17 SCC 460;*
- (xvi) *Jamilabai Abdul Kadar v. Shankarlal Gulabchand and*



Others, (1975) 2 SCC 609; and

(xvii) Banwari Lal (supra).

22. Heard learned counsel for the Applicant and learned Senior Counsel for Defendant No. 1.

23. The suit from which the present application emanates was instituted by the Plaintiffs, who are the sons of Radhey Lal, seeking partition, declaration and rendition of accounts against Defendants No. 3 and 4, who are sons of Radhey Lal and Defendants No. 5 to 7, who are daughters as also Defendants No. 1 and 2, who are sons of Defendant No. 3, in respect of Fatehpuri and Transport Nagar properties. Applicant herein who was Plaintiff No. 5 in the suit instituted the suit on his behalf as also on behalf of Plaintiffs No. 1 to 4 as their authorized representative. On an application filed under Order 23 Rule 3 CPC, purportedly signed by the Applicant, Defendant No. 1 and three counsels, namely, Sharad K. Agrawal, Sanjeev Srivastava and Sangeeta Grover, compromise decree was passed by the Court on 19.09.2006.

24. As the facts unfold, the application was filed for recording an out of Court settlement between the Plaintiffs and Defendant No.1. Defendants No.2 to 7 were proceeded *ex parte*. The terms of settlement, as mentioned in the application, are reproduced hereunder:-

“(A) That the Plaintiff withdraw all their claims in the title of properties bearing No.188, Katra Baryan, Fatehpuri, Delhi and property bearing No.AG-63, Sanjay Gandhi Transport Nagar, Delhi in favour of Pradeep Gupta, who is Defendant No.1 in the present case one full and final payment of Rs.10 lacs to be delivered in the following manner :-

i) Rs.3 lacs by way of demand draft to be handed over to Mr. Atul Gupta, who is the son of Plaintiff No.4 in the Court towards the expenses of litigation.

ii) Five bank drafts in the name of Plaintiffs bearing names as Narender Kumar Agarwal, Ravi Kumar, A.K. Gupta, Mahesh Kumar



Gupta and Sushil Gupta to the tune amounts as mentioned below:-

<i>Narender Kumar (Plaintiff No.1)</i>	<i>Rs.1,00,000/-</i>
<i>Ravi Kumar (Plaintiff No.2)</i>	<i>Rs.50,000/-</i>
<i>A.K. Gupta (Plaintiff No.3)</i>	<i>Rs.1,50,000/-</i>
<i>Mahesh Kr Gupta (Plaintiff No.4)</i>	<i>Rs.2,00,000/-</i>
<i>Sushil Kumar (Plaintiff No.5)</i>	<i>Rs.2,00,000/-</i>

(B) That property bearing No.188, Katra Baryan, Fatehpuri, Delhi has been purchased by Defendant No.1 – Shri Pradeep Gupta and presently stands in the name of Shri Pradeep Gupta alone. The Plaintiffs hereby declare that the Plaintiffs have no right, title or interest towards the said property and the same shall continue to be the exclusive property of Defendant No.1- Pradeep Gupta.

(C) That the Plaintiffs give up their right, title or interest in property No. AG-63, Sanjay Gandhi Transport Nagar, Delhi and hereby acknowledge that the same shall be the property exclusively of Mr. Pradeep Gupta - Defendant No.1.

(D) That Defendant No.1 shall hand over in the Hon'ble Court a demand draft of the abovementioned amount in favour of (a) Shri Atul Gupta, (b) Shri Narender Kumar, (c) Shri Ravi Kumar, (d) Shri A.K. Gupta, (e) Shri Mahesh Kumar Gupta and (f) Shri Sushil Kumar, at the time of recording the present settlement and passing of the decree by the Hon'ble Court.

(E) That the Plaintiffs shall withdraw all the suits pending anywhere in Delhi Courts and shall not press their claim by way of fresh suit or application with respect to above mentioned properties as shown in Clause (A) of this application. The present compromise is made with respect to properties situated in Delhi only and is not meant for other properties outside Delhi.

(F) That no party shall raise any objection to any personal comment on each other and shall maintain cordial relation among each other. Both the parties shall not malign each other in future with respect to suit properties as mentioned in the present matter.”

25. As per the judgment/decreed dated 19.09.2006, six DDs were handed over by Defendant No. 1 to Atul Gupta claiming to be SPA holder of the Plaintiffs. Sharad K. Agrawal and Atul Gupta as also Advocates for Defendant No. 1 with Defendant No. 1 in person were present in Court when the suit was decreed, but the Applicant was not present. After the



compromise decree was passed, Applicant filed the present application for recall of the decree on the ground that fraud was played on him and the Court in obtaining the compromise decree as he had neither authorized Atul Gupta to enter into the compromise nor signed the terms of any settlement, compromise application, supporting affidavit and SPA, as alleged.

26. Looking into the allegations levelled in the recall application, Court ordered investigation by EOW, which in turn sent the questioned signatures on the compromise application and accompanying affidavits and documents to G.E.Q.D., Chandigarh for comparison with specimen signatures. As per this forensic report, signatures of the Applicant matched. G.E.Q.D. Hyderabad, however, held otherwise that the signatures did not match. Status reports were filed by EOW from time to time as the investigation progressed. At the cost of repetition, be it noted that Applicant expired during the pendency of this application and later the application was dismissed in default and the restoration application was not entertained. In appeal, the Division Bench set aside the order and restored the application with an observation that if the allegations of fraud were true, it was the bounden duty of the Court to ensure that necessary action is taken to uphold the majesty of the Courts.

27. On close scrutiny of the status reports, pleadings and documents as also opinions of G.E.Q.D.s, I find merit in the case of the Applicant. As per the forensic opinion of G.E.Q.D., Chandigarh, the signatures of the Applicant on the compromise application being I.A. No. 10515/2006 and accompanying affidavit, SPA etc., matched with the specimen signatures but G.E.Q.D., Hyderabad opined otherwise, save and except, with respect to the affidavit dated 17.09.2006 *albeit* the application is dated 18.09.2006 and this



affidavit though signed at Delhi, is attested at Meerut. Therefore, insofar as the signatures are concerned, there are two contrasting forensic opinions and in this backdrop, the plea of the Applicant that he was made to sign on blank papers seems plausible and explains why some signatures matched.

28. Had the matter rested here, possibly there was substance in the case of Defendant No.1 that the compromise was valid. But unfortunately for Defendant No.1, thorough investigation by EOW has revealed startling facts pertaining to opening of bank accounts, encashment of DDs, authenticity of notary's stamp, address of the witnesses on the SPA, etc. Relevant part of status report dated 09.05.2008 filed on 13.05.2008 by EOW is extracted hereunder for ready reference:-

"3. That in compliance of the said order, details of the bank drafts were obtained from the issuing bank i.e. ICICI Bank, Meerut Branch, U.P. as under:-

DD No.	IN FAVOUR OF	PRESENTING BANK	DATE
108021	Narendra Kumar	ICICI Bank Ltd., Ghaziabad	21.11.06
108022	Ravi Kumar	UCO Bank, Delhi High Court, Delhi	28.9.06
108023	A.K. Gupta	ING VYSYA Bank, Delhi	27.9.06
108025	Atul Gupta	UCO Bank, Delhi High Court, Delhi	20.9.06
108026	Sushil Kumar	Mahmedha Urbank Cooperative Bank	7.10.06
108024	Mahesh Kumar Gupta	Not Paid till date	

4. That all these drafts were issued from a/c NO. 628501029298 of Sh. Ashish



Goel r/o 221/1, Street No. 5, Thapar Nagar, Meerut Cantt., who is stated to be brother in law of Sh. Pradeep Gupta (Defendant No. 1) Certified copies of 4 bank drafts were obtained from the ICICI Bank, Connaught Place, New Delhi and details of three bank accounts in which 3 of the 5 bank drafts were encashed obtained from the banks concerned as under:-

SN	ACCOUNT NUMBER	NAME OF THE ACCOUNT HOLDER	NAME AND ADDRESS OF THE BANK	BANK DRAFT No. & AMOUNT
1.	SB-11505	Sushil Kumar s/o Sh. Navkanth c/o D-22, Dayanand Nagar Ghaziabad, UP.	Mahamedha Cooperative Bank Ltd. Ghaziabad, UP.	108026 Rs. 2,00,000/-
2.	SB-50504	Ravi Kumar S/o Sh. Sadhu Lal r/o, RZ-D-l/35, Sita Puri, New Delhi	UCO Bank, Delhi High Court.	108022 Rs. 50,000
3.	SB-39802	Atul Gupta s/o M.K. Gupta r/o A-39, Daya Nand Colony, Lajpat Nagar-IV, New Delhi and Sharad K. Aggarwal s/o R.K. Aggarwal r/o A-39, Dayanand Colony Lajpat Nagar-IV, New Delhi.	UCO Bank, Delhi High Court.	108025 Rs. 3 lacs

5. That Sh. Sushil Kumar Gupta, plaintiff No. 5 was shown the certified copies of account opening forms and enclosures of accounts pertaining to Ravi Kumar and Sushil Kumar whereupon he stated that both the account holders are persons other than the plaintiffs of the same names. The plaintiff alleged that Atul Gupta s/o Mahesh Kumar is an advocate and was, therefore, looking after the matter in



the Hon'ble Court. That said Atul Gupta had engaged his senior Sh. Sharad Kumar Aggarwal, advocate to pursue the case of the plaintiffs. That said Atul Gupta, in conspiracy with others, committed the whole fraud by forging a Special Power of Attorney in his favour from Sh. Sushil Kumar in order to secure a Court order in favour of Pradeep Gupta, defendant no. 1. Based on the statement of Sh. Sushil Kumar and the enquiries made from the banks concerned, a criminal case vide FIR No. 139/07 U/s 419/420/467/471/120-B IPC at police station Tilak Marg, New Delhi was registered and investigation was in progress. First interim status report stating the above position was submitted in the Hon'ble Court on 18-04-07.

6. That during the course of investigation, the original record pertaining to the five bank accounts, in which 5 out of the 6 Demand Drafts were encashed, was seized. The details of the bank accounts in which the said bank drafts were encashed and the identity of the account holders was found as under:-

(a).

DD No. & AMOUNT	ISSUED IN THE NAME OF PLAINTIFF	DETAILS OF THE ACCOUNT NUMBER, BANK AND IDENTITY OF THE ACCOUNT HOLDER	DATE OF ENCASHMENT
108021	Narendra Kumar	A/c no. 628601517137 was opened at ICICI Bank, Raj Nagar Ghaziabad, U.P. On 13.11.06 in the joint name of Sharad Kumar Aggarwal Advocate and Narender Kumar, shown as blood relative (brother) of Sh Sharad Kumar Aggarwal. The account was Self introduced by Sh Sharad Kumar Aggarwal being holder of another account with ICICI bank at Preet Vihar, Delhi branch. Demand Draft No. 108021 was credited in the said account on 21.11.06. Rs. 90,000 was debited on 21.11.06 & 22.11.06 by Sh. Sharad Kumar Agarwal Advocate who	21.11.06



		<p><i>admits that the signatures in the account opening form and annexure 'A' thereto i.e. Format of Declaration of Blood Relative are his but denies to have filled the details in the said forms including the name of the joint account holder. The bank officials claim that the all the relevant details were filled by Sh Sharad Kumar Agarwal. Joint account holder Narender Kumar has been identified to be one Kuldeep Kumar s/o Late Sh. Rajpal r/o N-7, Patel Nagar, Near Purana Bus Adda, Ghaziabad, UP. He is employed as Munshi (Assistant) with Sh. Sharad Kumar Aggarwal, Advocate. This Kuldeep Kumar has also signed as witness in the Special Power of Attorney dt. 16.6.06 shown to have been executed by Sh. Sushil Kumar (Plaintiff) in favour of Sh. Atul Gupta Advocate.</i></p>	
<p><i>108022 for Rs 50000/-</i></p>	<p><i>Ravi Kumar</i></p>	<p><i>A/c No. 50504 was opened with the UCO Bank, Delhi High Court Branch, Delhi on 23.6.06 in the name of Ravi Kumar s/o Sh. Sadhu Lal r/o RZ-D-135, Sita Puri, New Delhi. The account has</i></p>	<p><i>28.9.06</i></p>



		<i>been introduced by Sh. A.S. Chandhok, 361, Lawyers' Chamber being holder of current a/c no. 66 in the said bank. Sh. Ravi Kumar is an employee in the Delhi High Court Canteen. Sh. Chandhok is Senior Advocate and President of the Delhi High Court Bar Association. Demand Draft No. 108022 for Rs. 50,000/- was credited in this account on 28.9.06 and Rs. 49,000/- were withdrawn on 5.10.06. Sh. Ravi Kumar has stated that the said Demand Draft was deposited in his account by Sh Atul Gupta, advocate and the amount of Rs 49000/- was taken back by said Sh. Atul Gupta.</i>	
<i>108023 for Rs 1.5 lakh</i>	<i>A.K. Gupta</i>	<i>A/c No. 508010084552 was opened with the ING VYSYA Bank, Navyug Market, Ghaziabad, UP on 9.10.2000. This account was introduced by Sh. Sharad Kumar Aggarwal. Demand Draft no. 108023 was credited in this account on 27.9.06. Photocopy of an agreement to sale between Atul Gupta and Sh. Sharad Kumar Aggarwal dt. 21.9.06 in respect of lower ground</i>	<i>27.9.06</i>



		<i>floor of property No. A-39, Dayanand Colony, Lajpat Nagar-IV, New Delhi wherein part payment of Rs. 1.50 lac is shown to have been made through DD No. 108023 dt. 18.9.06 in the name of AK Gupta has been submitted to the bank to accept them the said Demand Draft in the account of Sh. Atul Gupta, Advocate. Sh Shushil Kumar Agarwal has denied the genuineness of this document and attributes fabrication of this document on the part of Atul Gupta.</i>	
<i>108025 for Rs 3. lakh</i>	<i>Atul Gupta</i>	<i>A/c No. 39802 was opened with the UCO Bank, Delhi High Court Branch, Delhi on 27.1.04 in the joint name of Sh. Atul Gupta, Advocate and Sh. Sharad Kumar Aggarwal, Advocate. The account was introduced by Sh. Sohan Lal holder of a/c no. 7776 in the same branch. DD 108025 was credited in this account on 20.9.06. Rs. 1.85 lacs were withdrawn from this account by Sh. Sharad kumar Aggarwal and Smt. Purnima Aggarwal on 22.9.06 and Rs. 80,000/- was withdrawn by Atul Gupta.</i>	<i>20.9.06</i>



108026 for Rs. 2 lacs	Sushil Kumar	A/c No. 11505 was opened on 6.9.06 at Mahmedha Urban Cooperative Bank, 36, Nair Basti, GT Road, Ghaziabad, UP in the name of one Sushil Kumar s/o Sh. Navkant r/o D-22, Dayanand Nagar, Ghaziabad, UP. He was introduced to the bank by his landlord Sh Sanjay Tyagi. Sh Shushil Kumar is working as driver of Sh. Sanjay Tyagi, who knew Sh. Atul Gupta Advocate as Junior of Shri Sharad Kumar Aggarwal Advocate. This account was opened on the asking of Sh. Atul Gupta Advocate. Demand Draft No. 108026 was deposited in this account on 7.10.06 and withdrawn by 30.10.06. Sushil Kumar and Sanjay Tyagi have stated that the total amount of Rs. 2 lacs was given back to Sh. Atul Gupta.	7.10.06
108024 For Rs. 2 lacs	Mahesh Kumar Gupta	Not encashed	

(b) That Sh. Sushil Kumar Plaintiff denied to have signed I.A. no. 10515/06 and all other documents filed with the said I.A. Ms. Sangeeta Grover Advocate whose signature were in the said I.A and the 'terms and condition of agreement' also denied the same to be hers. Sh. Sushil Kumar and Ms. Sangeeta Grover have attributed the forging of their signatures to Atul Gupta Advocate.

(c) That Affidavit dt. 17.9.06 purported to have been executed by Sh. Sushil Kumar bears stamp of Notary 'R.B. Advocate', Kachheri Meerut, UP. The



seal of the said notary does not bear any registration number. However, no such Notary was found at Kachheri, Meerut.

(d) That the Special Power of Attorney is shown to have been executed on 16.6.06 by Sh. Sushil Kumar. The date, month and the year of execution seemed apparently altered as white fluid is applied and overwriting has been made over there. Witness Kuldeep Kumar stated to be an assistant (Munshi) of Sh. Sharad Kumar Aggarwal admitted his signature. The residential address of this witness is given different then his actual address i.e. N-7, Patel Nagar, Ghaziabad, UP. The address of the other witness Vinod Kumar is incomplete and not verifiable.

(e) That the plaintiffs stated that no compromise had taken place between them and Sh. Pradeep Gupta, the defendant. The plaintiffs also stated that none of them had received any money out of the amounts purported to have been paid through the six demand drafts submitted by Sh. Pradeep Gupta, defendant in the Hon'ble Court on 19.9.06 and handed over to Sh. Atul Gupta, advocate. Plaintiff Narender Kumar Aggarwal stated that the fraud came to his notice on receipt of a letter dt. 26.10.06 issued from the office of Director, Municipal Corporation of Delhi Sanjay Gandhi Transport Nagar, Delhi regarding handing over of the possession of plot no. AG-63, Sanjay Gandhi Transport Nagar, Delhi to Pradeep Gupta on the basis of the decree issued by the Hon'ble High Court of Delhi vide its order dt. 19.9.06 in suit no. 2495/2001.

(f) That all the 5 demand drafts that were encashed were taken into police possession from the ICICI Bank, Connaught Place, New Delhi.

(g) That all the original documents suspected to be forged and admitted and specimen signatures and handwriting of all the persons concerned were sent to GEQD, Directorate of Forensic Science, Chandigarh for expert opinion.

(h) That progress in the investigation was submitted in the Hon'ble court through 2nd interim status report on 09-07-07.

7. That the report of GEQD, Directorate of Forensic Science, Chandigarh was received vide No. dated 16.8.07. As per the said report:-

(a) The specimen signatures of Sh. Sushil Kumar, plaintiff, matched with his signatures appearing in IA No. 10515/2006 in C.S. (OS) NO. 2495/2001, affidavit of Sh. Sushil Kumar dated 17.9.06, the Terms and Conditions of Settlement dated 18.9.06 & the Special Power of Attorney executed by Sh Sushil Kumar in favour of Sh. Atul Gupta.

(b) The specimen signatures of Sh. Pradeep Gupta, defendant, matched with his signatures appearing in IA No. 10515/2006 in C.S. (OS) NO. 2495/200, affidavit of Pradeep Gupta dated 18.9.06 & the Terms and Conditions of Settlement dated 18.9.06.

(c) The specimen signatures of Sh. Sharad Kumar Aggarwal, counsel for the plaintiffs, matched with his signatures appearing in IA No. 10515/2006 & Terms and Conditions of Settlement dated 18.9.06.

(d) The specimen signatures of witness Kuldeep Kumar matched with his signatures appearing in Special Power of Attorney executed by Sh Sushil



Kumar Gupta, plaintiff, in favour of Sh. Atul Gupta.

(e) The specimen signatures of Sh. Sanjeev Srivastava, counsel for the defendant, matched with his signatures appearing in the IA No. 10515/2006, the Terms and Conditions of Settlement dated 18.9.06.

(f) That no opinion could be given about the signatures of Ms. Sangeeta Grover, counsel for plaintiffs, appearing in IA No. 10515/2006 & Terms and Conditions of Settlement dated 18.9.06.

8. Sh. Sushil Kumar Gupta, plaintiff reiterated that he had not signed the I.A. No. 10515/2006 and all the other documents submitted with the said I.A. On the other hand, the following facts that had been found during the investigation were not consistent with the proposition that the I.A.No. 10515/2006 was filed by Sushil Kumar, plaintiff.

(a) Four pay orders which were in the names of the 4 plaintiffs were not given to them. Instead the same were encashed fraudulently in different bank accounts in the following manner:-

DD No. & AMOUNT	ISSUED IN THE NAME OF PLAINTIFF	DETAILS OF THE ACCOUNT NUMBER, BANK AND IDENTITY OF THE ACCOUNT HOLDER	DATE OF ENCASHMENT
108021	Narendra Kumar	The pay order was encashed in A/c no. 628601517137 at ICICI Bank, Raj Nagar, Ghaziabad, UP on 13.11.06. The account is in the joint names of Sharad Kumar Aggarwal Advocate and Narender Kumar. This account has been opened joint with Narender kumar fraudulently since one Kuldeep Kumar has signed	21.11.06



		<i>as Narender Kumar. This fact has been confirmed by the report of GEQD.</i>	
<i>108022 for Rs 50000/-</i>	<i>Ravi Kumar</i>	<i>The pay order was encashed in a/c No. 50504 at UCO Bank, Delhi High Court Branch, Delhi on 23.6.06. This account is in the name of Ravi Kumar s/o Sh. Sadhu Lal r/o RZ-D-135, Sita Puri, New Delhi. The account holder has stated that he opened this account on the asking of Sh. Atul Gupta.</i>	<i>28.9.06</i>
<i>108023 for Rs 1.5 lakh</i>	<i>A.K. Gupta</i>	<i>The pay order was encashed in a/c No. 508010084552 at ING VYSYA Bank, Navyug Market, Ghaziabad, UP on 9.10.2000. This account is in the name of Sh. Atul Gupta, who gave an undertaking to the bank to the effect that A.K. Gupta and Atul Gupta were the same persons.</i>	<i>27.9.06</i>



108026 for Rs. 2 lacs	Sushil Kumar	The pay order was encashed in a/c No. 11505 at Mahamedha Urban Cooperative Bank, 36, Nair Basti, GT Road, Ghaziabad, UP. This account is in the name of one Sushil Kumar s/o Sh. Navkant r/o D- 22, Dayanand Nagar, Ghaziabad, UP.	7.10.06
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(b) The Special Power of Attorney is shown to have been executed by Sh. Sushil Kumar, Plaintiff, in favour of Sh. Atul Gupta and is witnessed by Kuldeep Kumar and Vinod Kumar. The address given in respect of Kuldeep Kumar is wrong. This witness has told that he had signed the said document on the asking of Sh. Atul Gupta and did not know the contents and the purpose of the said document. This Kuldeep Kumar has also signed the account opening form in ICICI Bank, Ghaziabad, UP as Narender Kumar, again on the asking of Sh. Atul Gupta. The address given of the other witness is incomplete.

(c) That the affidavit of Sh. Sushil Gupta is shown to have been executed on 17.9.06, the Terms and Conditions of Settlement is shown to have been signed by plaintiff Sushil Kumar on 18.9.06 while the Special Power of Attorney is shown to have been executed on 16.6.06. The purpose of execution of the Special Power of Attorney is inconsistent with the preposition that the plaintiff had signed the I.A., his affidavit and the Terms & Condition of Settlement past the date of execution of the Special Power of Attorney.

(d) That the seals and entries of Notary Public shown on the Affidavit and the Special Power of Attorney executed by plaintiff Sushil Kumar were found to be bogus.

(e) That Ms. Sangeeta Grover Advocate has denied signing the I.A. NO. 10515/06 and the 'Terms & Conditions of Settlement'.

9. That in view of the facts and circumstances stated above and in the interest of justice, second opinion from some other Govt. Examiner of Questioned Documents was felt necessary. Therefore, all the questioned documents, admitted and specimen signatures/handwriting were sent to the GEQD, Hyderabad, for re-examination and opinion. The report of the GEQD, Hyderabad was still awaited by the date of hearing i.e. 08-10-07.



3rd interim status report was submitted in the Hon'ble Court stating the above position.

10. That the next date of hearing was fixed for 07-01-08. However, by that date the report of the GEQD, Hyderabad was still awaited in spite of the two reminders sent with the request to expedite the expert's report. This position was submitted in the Hon'ble Court on that date.

11. That the report of the GEQD, Hyderabad was received vide no. CH-320/2007/79 dated 7-01-08. As per the said report:-

(a) The specimen signatures of Sh. Pradeep Gupta, defendant, matched with his signatures appearing in IA No. 10515/2006 in C.S. (OS) NO. 2495/200, affidavit dated 18.9.06 & the Terms and Conditions of Settlement dated 18.9.06.

(b) The specimen signatures of Ravi Kumar matched with his signatures appearing in account opening form of a/c No 50504 at UCO Bank, Delhi High Court Branch, New Delhi Pay order No.108022 for Rs 50000/- was credited in this account on 23.6.06.

(c) The specimen signatures of Sh. Sharad Kumar Aggarwal, (Counsel for the plaintiffs), matched with his signatures appearing in IA No. 10515/2006, Terms and Conditions of Settlement dated 18.9.06, account opening form of A/c no. 628601517137 at IC2CI Bank, Raj Nagar Branch, Ghaziabad UP, wherein pay order No. 108021 for Rs 1 lac was credited on 21.11.06, and in the account opening form of a/c No. 39802 at UCO Bank, Delhi High Court Branch, New Delhi, wherein pay order No 108025 for Rs 3 lac was credited on 20.9.06.

(d) The specimen signatures of witness Kuldeep Kumar matched with his signatures appearing in Account Opening Form of A/c no. 628601517137 of ICICI Bank, Raj Nagar Branch, Ghaziabad, UP.

(e) The specimen signatures of Sh. Sanjeev Srivastava, (Counsel for the defendant) matched with his signatures appearing in the IA No. 10515/2006 dated 18-09-06 and the Terms and Conditions of Settlement dated 18.9.06.

(f) That it had not been possible for them to give any opinion on the rest of the items including the signatures of plaintiff Sh. Sushil Kumar on the basis of material at hand and had asked for further specimen signatures and admittedly genuine signatures of Sh Sushil Kumar for examination. Thereafter more specimen signatures of the plaintiff were obtained and his admitted signatures were also being procured from different sources to be sent to the GEQD Hyderabad.

11. That this position was submitted in the Hon'ble High court on 13-02-08 through the last interim status report.

12. That in pursuance of the order dated 13.02.08 of the Hon'ble Court,



specimen signature and handwriting of Sh. Sushil Kumar, plaintiff and of Sh. Atul Gupta advocate, specimen handwriting of Sh. Sarad Kumar Aggarwal, advocate and Sh. Pardeep Gupta, defendant were given/obtained before the Joint Registrar of Delhi High Court on 29-03-08. The admitted signatures of Sh. Sushil Kumar, plaintiff obtained from Union Bank of India Fatehpuri branch, Delhi and Zila Sehkari Bank Ltd., Merrut U.P. and also the photographs of admitted signatures of Sh. Sushil Kumar, plaintiff were taken, with the permission of the Hon'ble Court vide order dated 31-10-07, from the original plaint, verification & affidavit in Civil Suit (OS) No. 2495 of 2001 of Delhi High Court, Delhi. The same were further sent to GEQD Hyderabad for comparison with the questioned signatures appearing in the documents filed in IA No. 10515 of 2006 in Civil Suit (OS) No. 2495 of 2001. It is submitted that report of GEQD Hyderabad is still awaited. The present investigation may be concluded on receipt of the GEQD report.

13. That the copies of all the relevant documents collected during the course of investigation are being filed as annexure-1 as per the direction of this Hon'ble Court."

29. From the aforesaid status report, it is clear that all the six drafts mentioned in judgment dated 19.09.2006 were issued from the account of Ashish Goel, brother-in-law of Defendant No.1. Five bank accounts, in which 5 out of 6 Drafts were encashed, were seized. DD No. 108021 was issued in the name of Narendra Kumar and was encashed on 21.11.2006 in Account No. 628601517137, which was opened on 13.11.2006 at ICICI Bank, Raj Nagar, Ghaziabad, U.P., in the joint names of Sharad K. Agrawal and Narender Kumar, who was shown as his blood relative (brother). The account was self-introduced by Sharad K. Agrawal on the basis of an existing account he held with ICICI Bank, Preet Vihar, Delhi. Money was credited to the said account on 21.11.2006 and a sum of Rs.90,000/- was thereafter debited on 21.11.2006 and 22.11.2006 by Sharad K. Agrawal. Sharad K. Agrawal admitted his signatures on the account opening form and Annexure 'A' thereto, *albeit* he denied having filled in the particulars. Bank officials asserted that all details were filled by Sharad K. Agrawal in his



personal capacity. It was revealed in the subsequent inquiry that the joint account holder 'Narender Kumar' was identified to be one 'Kuldeep Kumar', who was employed as a *munshi* (assistant) with Sharad K. Agrawal and Kuldeep Kumar was the same person who had allegedly witnessed the execution of SPA dated 16.06.2006.

30. Investigation revealed that DD No. 108022 was issued in the name of one Ravi Kumar and was encashed on 28.09.2006 in Account No. 50504, which was opened on 23.06.2006 with UCO Bank, Delhi High Court Branch. This Ravi Kumar was son of Sadhu Lal, resident of Sita Puri, New Delhi and an employee of Delhi High Court Canteen and not 'Ravi Kumar' the Plaintiff No. 2, in whose account the money ought to have been remitted if the compromise was genuine. DD in the sum of Rs.50,000/- was credited to the same account on 28.09.2006 and an amount of Rs.49,000/- was withdrawn therefrom on 05.10.2006. Ravi Kumar, the account holder stated that the DD was deposited in his account by Atul Gupta, Advocate and an amount of Rs. 49,000/- was thereafter withdrawn and given to Atul.

31. DD No. 108023 was issued in the name of A.K. Gupta and was encashed on 27.09.2006 in Account No. 508010084552, which was opened on 09.10.2000 with Vysya Bank, Navyug Market, Ghaziabad, U.P. and introduced by Sharad K. Agrawal. DD was credited in the said account on 27.09.2006. For the purpose of crediting the said DD, photocopy of an Agreement to Sell dated 21.09.2006, purportedly executed between Atul Gupta and Sharad K. Agrawal, in respect of the lower ground floor of property bearing No. A-39, Dayanand Colony, Lajpat Nagar-IV, New Delhi, was submitted to the bank. Agreement to Sell records part payment of Rs. 1.50 lakh through DD No. 108023 dated 18.09.2006 in the name of A.K.



Gupta. The document was relied upon to justify acceptance of the DD in the account of Atul Gupta, Advocate.

32. DD No. 108025 was issued in the name of Atul Gupta and was encashed on 20.09.2006 in Account No. 39802, which was opened with UCO Bank, Delhi High Court Branch, Delhi on 27.01.2004 in the joint names of Atul Gupta and Sharad K. Agrawal. DD was credited in this account on 20.09.2006, wherefrom Rs. 1.85 lacs was withdrawn by Sharad K. Agrawal and Smt. Purnima Aggarwal on 22.09.2006 and Rs. 80,000/- was withdrawn by Atul Gupta on 23.09.2006.

33. DD No. 108026 was issued in the name of Sushil Kumar and was encashed on 07.10.2006 in Account No. 11505, which was opened on 06.09.2006 in Mahamedha Urban Cooperative Bank Ltd., 36, Nair Basti, G.T. Road, Ghaziabad, U.P. in the name of one Sushil Kumar, son of Sh. Navkant and the said person was introduced to the bank by his landlord, Sanjay Tyagi. Sushil Kumar, on whose name the account was opened, was working as a driver of Sanjay Tyagi, an acquaintance of Atul Gupta being the junior associate of Sharad K. Agrawal. Investigation revealed that the account was opened at the instance of Atul Gupta and after the DD was deposited in the account on 07.10.2006, the entire amount was withdrawn by 30.10.2006. Both Sushil Kumar and Sanjay Tyagi stated that a total sum of Rs. 2 lakh was handed over to Atul Gupta. In so far as DD No. 108024 is concerned, it was issued in the name of Mahesh Kumar Gupta, one of the Plaintiffs, but was not encashed.

34. Therefore, the inevitable conclusion from the investigation reports is that fictitious bank accounts were opened by Atul Gupta in connivance with Sharad K. Agrawal to siphon off the monies allegedly paid to the Plaintiffs



and as rightly flagged by the counsel for the Applicant, if there was a genuine compromise, DDs would have been remitted into the existing bank accounts of the Plaintiffs, which they maintained independently in different banks. From the stage of submitting the account opening forms to deposit of DDs and withdrawal of monies, there is active involvement and connivance of Atul Gupta and Sharad K. Agrawal by using names of persons known to them and having nothing to do with the Applicant. Most importantly, Plaintiffs never got any money from the transaction and even in the judgement dated 19.09.2006 it is recorded that the six DDs were handed over to Atul Gupta. In fact, Atul Gupta, Sharad K. Agrawal and Defendant No.1 are the only beneficiaries of the compromise decree. The entire chain of events from opening of fictitious bank accounts to their operation and withdrawal of monies, lends credence to the stand of the Applicant that he did not consent to the settlement terms and/or the passing of the compromise decree.

35. The stand of the Applicant is further fortified by other surrounding circumstances which have come to light through investigation as brought forth in the status reports of EOW. Affidavit filed in support of the compromise application is dated 17.09.2006 whereas the application is signed on 18.09.2006. Applicant is right in submitting that no deponent can testify on 17.09.2006 that he had read the contents of an application drafted on 18.09.2006 and/or that its contents were true to the knowledge of the deponent. The notary as described on the stamp was one 'R.B. Advocate', Kachheri, Meerut, U.P. but the stamp does not bear the registration number of the notary and investigation revealed that no such notary was found working at the stated place. The seal of the notary was found to be fake. The



fact that the affidavit was signed at Delhi but attested at Meerut also cannot be overlooked.

36. Coming to the alleged SPA executed on 16.06.2006 by the Applicant in favour of Atul Gupta, even this document has come under a cloud. The date, month and year annotated on the SPA contain alterations/over writings and there is use of white fluid. SPA is stated to be witnessed by one Kuldeep Kumar, who was assistant of Sharad K. Agrawal, but the given residential address was found to be false. Further, Kuldeep Kumar stated during investigation that he had signed on the SPA at the instance of Atul Gupta, without having knowledge of the contents of the SPA or the purpose for which it was being executed. He also stated that he signed on the ICICI Bank account opening form as one 'Narendra Kumar', at the instance of Atul Gupta. This fact is confirmed by the forensic opinion given by G.E.Q.D. The other witness on the SPA was one Vinod Kumar, whose address and other credentials were found to be incomplete and unverifiable.

37. From the status reports, it has also emerged that Sangeeta Grover, Advocate, whose signatures purportedly appeared on the compromise application as also the terms of settlement, denied having signed on these documents. Significantly, it has also emerged that Defendant No.1 stated that the Applicant was not relenting and compromising the matter and therefore, Atul Gupta roped in Sharad K. Agrawal and on their asking, Defendant No.1 had prepared DDs of Rs.1.6 lacs each in favour of five Plaintiffs and Rs.2 lacs in favour of Atul Gupta, however, these DDs were cancelled on insistence of Atul Gupta, who then got six DDs prepared as aforementioned. It is also pertinent to mention that DD No.108023 was prepared in the name of one Sh. A.K. Gupta purporting to be in the name of



Sh. Amrish Gupta, Plaintiff No.3, however, the account was in the name of Atul Gupta, who had given an undertaking to the concerned bank that ‘A.K. Gupta’ and ‘Atul Gupta’ was one and the same person.

38. Seen holistically, there was indeed a fraud played on the Applicant as also the Court. It is clear that the Applicant was not involved in signing the settlement terms and/or the compromise application and had no knowledge of the same. The argument of Defendant No.1 that fraud if any was *inter se* the Plaintiffs and their lawyers and he cannot be blamed, cannot come to his aid. If Applicant was not party to the compromise and the decree was obtained fraudulently, it cannot be sustained. During the course of hearing, Court was also apprised that Atul Gupta and Sharad K. Agrawal are habitual in cheating innocent persons and were sent to judicial custody in some case as also debarred from appearing in Courts. The entire narrative that comes out from the investigation by EOW speaks volumes of how through a well planned and orchestrated conspiracy the settlement terms were drawn; compromise application was prepared with supporting documents; bank accounts were opened and DDs were deposited and encashed. It needs no gainsaying that fraud vitiates everything and a decree obtained by fraud is a nullity. It is trite that the Court which passes a consent decree can recall the same if it is established that the decree was obtained by fraud. In this context, I may refer to the relevant passages from the judgment of the Supreme Court in ***Pushpa Devi (supra)*** as follows:-

“Re: Point (ii)

18. Order 23 deals with withdrawal and adjustment of suits. Rule 3 relates to compromise of suits, relevant portion of which is extracted below:

“3. Compromise of suit.—Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, in writing and signed by the parties or



where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit.”

The said Rule consists of two parts. The first part provides that where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, the court shall order such agreement or compromise to be recorded and shall pass a decree in accordance therewith. The second part provides that where a defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the court shall order such satisfaction to be recorded and shall pass a decree in accordance therewith. The Rule also makes it clear that the compromise or agreement may relate to issues or disputes which are not the subject-matter of the suit and that such compromise or agreement may be entered not only among the parties to the suit, but others also, but the decree to be passed shall be confined to the parties to the suit whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit. We are not, however, concerned with this aspect of the Rule in this appeal.

19. *What is the difference between the first part and the second part of Rule 3? The first part refers to situations where an agreement or compromise is entered into in writing and signed by the parties. The said agreement or compromise is placed before the court. When the court is satisfied that the suit has been adjusted either wholly or in part by such agreement or compromise in writing and signed by the parties and that it is lawful, a decree follows in terms of what is agreed between the parties. The agreement/compromise spells out the agreed terms by which the claim is admitted or adjusted by mutual concessions or promises, so that the parties thereto can be held to their promise(s) in future and performance can be enforced by the execution of the decree to be passed in terms of it. On the other hand, the second part refers to cases where the defendant has satisfied the plaintiff about the claim. This may be by satisfying the plaintiff that his claim cannot be or need not be met or performed. It can also be by discharging or performing the required obligation. Where the defendant so “satisfies” the plaintiff in respect of the subject-matter of the suit, nothing further remains to be done or enforced and there is no question of any “enforcement” or “execution” of the decree to be passed in terms of it. Let us illustrate with reference to a money suit filed for recovery of say a sum of rupees one lakh. Parties may enter into a lawful agreement or compromise in writing and signed by them, agreeing that the defendant will pay the sum of rupees one lakh within a specified period or*



specified manner or may agree that only a sum of Rs 75,000 shall be paid by the defendant in full and final settlement of the claim. Such agreement or compromise will fall under the first part and if the defendant does not fulfil the promise, the plaintiff can enforce it by levying execution. On the other hand, the parties may submit to the court that the defendant has already paid a sum of rupees one lakh or Rs 75,000 in full and final satisfaction or that the suit claim has been fully settled by the defendant out of court (either by mentioning the amount paid or not mentioning it) or that the plaintiff will not press the claim. Here the obligation is already performed by the defendant or the plaintiff agrees that he will not enforce performance and nothing remains to be performed by the defendant. As the order that follows merely records the extinguishment or satisfaction of the claim or non-existence of the claim, it is not capable of being “enforced” by levy of execution, as there is no obligation to be performed by the defendant in pursuance of the decree. Such “satisfaction” need not be expressed by an agreement or compromise in writing and signed by the parties. It can be by a unilateral submission by the plaintiff or his counsel. Such satisfaction will fall under the second part. Of course even when there is such satisfaction of the claim or subject-matter of the suit by the defendant and the matter falls under the second part, nothing prevents the parties from reducing such satisfaction of the claim/subject-matter, into writing and signing the same. The difference between the two parts is this: where the matter falls under the second part, what is reported is a completed action or settlement out of court putting an end to the dispute, and the resultant decree recording the satisfaction, is not capable of being enforced by levying execution. Where the matter falls under the first part, there is a promise or promises agreed to be performed or executed, and that can be enforced by levying execution. While agreements or compromises falling under the first part can only be by an instrument or other form of writing signed by the parties, there is no such requirement in regard to settlements or satisfaction falling under the second part. Where the matter falls under the second part, it is sufficient if the plaintiff or the plaintiff's counsel appears before the court and informs the court that the subject-matter of the suit has already been settled or satisfied.

20. *In a suit against the tenant for possession, if the settlement is that the tenant will vacate the premises within a specified time, it means that the possession could be recovered in execution of such decree in the event of the defendant failing to vacate the premises within the time agreed. Therefore, such settlement would fall under the first part. On the other hand, if both parties or the plaintiff submit to the court that the tenant has already vacated the premises and thus the claim for possession has been satisfied or if the plaintiff submits that he will not press the prayer for delivery of possession, the suit will be disposed of recording the same, under the second part. In such an event, there will be disposal of the suit, but no “executable” decree.*



21. In this case, under the settlement, the tenant undertook to vacate the suit property on a future date (that is 22-1-2002) and pay the agreed rent till then. The decree in pursuance of such settlement was an “executable” decree. Therefore the settlement did not fall under the second part, but under the first part of Rule 3. The High Court obviously committed an error in holding that the case fell under the second part of Rule 3.

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*29. At the cost of repetition, we may recapitulate the facts of this case. The suit was a simple suit for possession by a landlord against a tenant filed in the year 1993. The plaintiff's evidence was closed in 1998. The contesting defendant (Defendant 2) did not lead any evidence, and her evidence was treated as closed. The matter was dragged on for 3 years for the defendant's evidence after the conclusion of the plaintiff's evidence. It was noted on 19-5-2001 that no further adjournment will be granted for the evidence of Defendants 4 and 5 (who are not contesting the matter), on the next date of hearing (23-5-2001). When the matter finally came up on 23-5-2001, no evidence was tendered. On the other hand, a statement was made agreeing to vacate the premises by 22-1-2002. The trial court took care to ensure that the statements of both counsel were recorded on oath and signed. Thereafter, it passed a consent decree. The attempts of tenants in such matters to protract the litigation indefinitely by raising frivolous and vexatious contentions regarding the compromise and going back on the solemn undertaking given to the court, should be deprecated. In this context, we may refer to the observation made by this Court in a similar situation in *Jamilabai Abdul Kadar v. Shankarlal Gulabchand* [(1975) 2 SCC 609 : AIR 1975 SC 2202] : (SCC pp. 623-24, paras 25-27)*

“25[23]. On the facts of the present case we have little doubt the pleader has acted substantially with the knowledge of and encouraged by his client. ...

26[24]. We feel no doubt that the broad sanction for the compromise came from the tenant, that no shady action is imputable to Respondent 4 and that his conduct has been motivated by the good of his client.

27[25]. The last posting was for reporting the compromise. But, on that date, the Court declined further adjournment and the party being absent and away, the pleader for the appellant had no alternative but to suffer an eviction decree or settle it to the maximum advantage of his party.”

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31. This appeal is, therefore, liable to be dismissed as being devoid of merit. The consent decree is upheld, though for reasons different from those which weighed with the High Court. The landlords (the respondents) will be entitled to seek mesne profits for the period from 22-1-2002 to the



date of delivery of possession in accordance with law. The appeal is accordingly dismissed with costs. The costs payable by the appellant are quantified at Rs 25,000.”

39. In fact, at this stage, I may reiterate the observations of the Division Bench made in order dated 04.02.2016, setting aside the order of learned Single Judge, whereby this application was not restored after it was dismissed in default. Division Bench observed that it is incumbent on the Court to be scrupulous in the extreme and very serious to see that no taint or touch of fraud or deception or misrepresentation is found in the conduct of its ministers and lawyers have always been treated as officers of the Court. Court has a duty to ensure that proceedings before it do not fall below the standard of honesty and the slightest suspicion of trickery affects the honour of the Court and impairs its usefulness. It would be disastrous, it would be absolutely shocking, if the Court were to enforce a fraudulent compromise.

40. For all the aforesaid reasons, this application is allowed and judgment and decree dated 19.09.2006 is recalled and suit is restored to its original position and number.

41. Application stands disposed of.

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42. List the matter before the Roster Bench on 12.01.2026, subject to orders of Hon’ble the Chief Justice.

JYOTI SINGH, J

DECEMBER 15, 2025/YA/S.Sharma