

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

% **Date of decision: 23rd June, 2020.**

+ **CS(OS) 2161/2015**

KUMKUM TALWAR AND ORSPlaintiffs/Review Applicants
Through: Mr. Deepak Khosla, Adv.

Versus

NATASHA KOHLI AND ANR Defendants/Respondents
Through: Ms. Nandita Rao, Adv. for D-1.
Mr. Sanjeev Mahajan, Adv. for D-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

[VIA VIDEO CONFERENCING]

Review Application No.101/2020, IA No.3828/2020 (for stay) & IA No.4431/2020 (of plaintiffs for seeking expunction of paragraphs 90 & 91 of Review Petition No.101/2020)

1. Review/recall, in entirety, is sought of the judgment/order dated 24th February, 2020 disposing of not only CS(OS) No.2161/2015 in which these applications have been filed but also CS(OS) No.1321/2006, CS(OS) No.1435/2006 as well as IA No.15431/2015 in disposed of CS(OS) No.1137/2014, as well as plethora of applications pending in all the four proceedings. In the alternative, review/recall of the directions contained in paragraph 45(E),(F),(G),(M) & (N) of the judgment/order dated 24th February, 2020 is sought.

2. IA No.3828/2020 seeks stay, for thirty days beyond disposal of the Review Application, of the operation of paragraphs 45 to 48 of the

judgment/order dated 24th February, 2020 and during the pendency of the Review Application, seeks stay of execution of the judgment/order dated 24th February, 2020 and direction for payment of legal costs incurred by the review applicants pending the adjudication of IA No.3828/2020.

3. The Review Application No.101/2020 and IA No.3828/2020 came up before the undersigned on 13th May, 2020, when the counsels who had opposed the review applicants during the hearings leading to the judgment/order dated 24th February, 2020, appeared on advance notice. Notice of the Review Application as well as IA No.3828/2020 was issued and pleadings ordered to be completed and the Review Application and IA No.3828/2020 posted for hearing on 10th June, 2020. On 2nd June, 2020, certain other applications filed by the review applicants came up before this Court. However, the counsel for the review applicants, on 2nd June, 2020, as recorded in the order of the said date, ultimately confined the hearing to the Review Application and IA No.3828/2020 only. The counsel for the review applicants, on 10th June, 2020 circulated his note of written arguments and during the hearing read out the same, besides adding explanations and examples thereto. The hearing spilled over from 10th June, 2020 to 11th June, 2020 and the counsel for the review applicants, before his rejoinder arguments, again circulated a written note and read out from the same as earlier. Needless to state, the opposing counsels have also been heard and on 11th June, 2020, orders on the Review Application and IA No.3828/2020 were reserved.

4. The litigation subject matter of the four proceedings i.e. CS(OS) No.1321/2006, CS(OS) No.1435/2006, CS(OS) No.1137/2014 & CS(OS) No.2161/2015 which were disposed of vide judgment / order dated 24th February, 2020 of which recall/review is sought, commenced out of disputes between a husband and wife namely Mon Mohan Kohli ('MMK') and Natasha Kohli ('Natasha'). During the pendency of the said litigation, the sisters of MMK namely Kumkum Talwar ('Kumkum') and Vinay Mahajan ('Vinay') filed an application stating that their brother MMK was not keeping good health and was not able to prosecute / defend the litigations and seeking to be appointed as guardians of person and properties of MMK. The said applications were allowed and Kumkum and Vinay were appointed as guardians *ad litem* of MMK.

5. Out of the wedlock of MMK and Natasha, a son namely Rishab Kohli ('Rishab') was born and who was also a party to some of the legal proceedings aforesaid, as a minor, represented through his mother Natasha.

6. Resultantly, the litigation which had commenced out of disputes between husband and wife, turned into a litigation of the wife with her sisters-in-law i.e. sisters of her husband and the litigation grew and was refusing to die down.

7. The ill health of MMK, owing whereto the need for appointing his guardian *ad litem* had arisen, continued.

8. MMK was/is a person of substantial financial means. During the pendency of the litigation, successive retired Judges of this Court were appointed as 'Court Observers', to overlook the business and financial interests of MMK; but the assets of MMK were being continuously depleted

not only in meeting the fee and expenses of the Court Observers but also in meeting the substantial legal fee and costs of ever growing litigation, being incurred by Kumkum and Vinay as guardians *ad litem* of MMK. This state of affairs was continuing since July, 2013.

9. Besides the aforesaid four proceedings pending before this Court, there were a large number of other legal proceedings *inter se* Natasha / Rishab on the one hand and Natasha's sisters-in-law namely Kumkum and Vinay on the other hand, of course mostly as guardians *ad litem* of MMK, and costs and expenses of which legal proceedings also was being billed to the assets of MMK, which it may be mentioned, had remained static, owing to the business, which though when carried on by MMK was highly profitable, with him removed from the scene, was merely continuing on past glory.

10. On 13th March, 2019, it was *inter alia* the contention of the senior counsel then appearing for Natasha, that (i) Rishab, being the son of MMK and Natasha, had attained majority and was then 22 years old; (ii) MMK, in a sound mental state, on 13th September, 2006, had executed a Will and which was not disputed by any of the parties; (iii) under the said Will, MMK had bequeathed his entire estate in favour of Rishab, except certain bequests; and, (iv) Natasha, for the sake of bringing all the litigations to an end, was willing to give up all the rights, asserted by her in various litigations, either on her own behalf or as natural guardian of Rishab, and to abide by the Will aforesaid of MMK. With effect from 13th March, 2019, hearing spanning over several dates, till 13th September, 2019 continued with respect to the developments since the inception of the litigations, pending not only before

this Court but before several other Courts also, and qua the need therefor and/or for continuance thereof and whether the pendency of the same was in the interest of MMK, and the best way to dispose of the same. The need to reiterate what transpired during the said hearings is not felt, as the same is recorded in detail in the judgment/order dated 24th February, 2020 of which review is sought. Pursuant to the said hearings and *inter alia* recording as under:

“41. As would be evident from above, at the end of a marathon hearing, there is consensus qua putting the litigation to an end, with the only difference being that the counsel for the Kumkum and Vinay personally and as guardian ad litem of MMK suggesting that the litigation be kept in abeyance rather than being ended.

42. In Shipping Corporation of India Ltd. Vs. Machado Brothers (2004) 11 SCC 168, Guru Gobind Singh Indraprastha University Vs. Dr. Smit Rajput 2015 SCC OnLine Del 9130 (DB), Pushpawati Vs. Narain Prasad Gupta 2013 SCC OnLine Del 4750, Varinder Sahni Vs. Pratap K. Kaula 2013 SCC OnLine Del 765 and State Bank of India Vs. State Bank of India, Schedule Castes/Tribes Employees Welfare Association 2011 SCC OnLine Mad 313 (DB), it has been held that cause of action with which a litigation is commenced, if is found to have ceased to exist, the litigation should not be permitted to continue thereafter and an immediate stop should be put thereto. It was held that it is the duty of the Court to take such action as is necessary in the interest of justice, which include disposing of infructuous litigation. It was further held that continuation of a suit which has become infructuous by disappearance of cause of action would amount to an abuse of the process of the Court and interest of justice requires that such suit should be disposed of.

43. Since July, 2013 when MMK suffered a stroke and owing whereto according to all parties concerned he is unable to decide for himself, in the last over six years there has been no

improvement in his condition and it is not the case of either of the parties that there is likelihood in near future of any improvement. It is thus not deemed necessary to keep the present as well as other litigations pending by adjourning the same sine die or by keeping the same in abeyance. The possibility of MMK in future reverting to his pre July, 2013 state and desirous of continuing the litigations can be addressed by, while disposing of the litigations, permitting the parties to revive some of the litigations.

44. Else, it is felt that in view of the present mental state of mind of MMK and as long as the same continues and in view of the offer of Natasha and Rishab, the cause of action for the litigations have disappeared.”,

judgment/order dated 24th February, 2020 of which review is sought was pronounced, disposing of all the litigations and issuing directions with respect to various litigations and with respect to other affairs of MMK.

11. Though on 13th May, 2020, when the Review Application and IA No.3828/2020 had first come up before the undersigned, it was assumed that both, the Review Application as well as IA No.3828/2020 were on behalf of both Kumkum and Vinay, who throughout the hearings leading to the judgment/order dated 24th February, 2020 were represented by the same counsel and earlier in the litigations had common interest and were represented through the same counsel, but during the hearing on 10th June, 2020, the counsel for the review applicant/applicant stated that the Review Application was on behalf of Kumkum only and not on behalf of Vinay. Finding it strange that Kumkum and Vinay, though their interest was common and though prior to 24th February, 2020 had been acting jointly, would in the matter of review, act separately and thereby avail more than

one round of review, it was enquired from the counsel for the review applicant/applicant, whether Vinay intended to separately apply for review and in which case, both review applications would be heard together. The counsel for the review applicant/applicant however on that date stated that Vinay will not separately seek review on the grounds on which Kumkum had sought the review. On that date, it was assumed that what was stated qua the Review Application applied to IA No.3828/2020 as well and the counsel for the review applicant also did not make any separate reference thereto. However while dictating this order, it is found that the Review Application is by Kumkum and IA No.3828/2020 is by Vinay, though in reference to the Review Application. Therefrom also, it is clear that Kumkum and Vinay are acting in concert. It may also be recorded that no separate arguments have been made with respect to IA No.3828/2020. The counsel for the review applicant/applicant on 10th June, 2020 also stated that the hearing shall bind Vinay as well.

12. Not only does the Review Application runs into 56 pages and the rejoinder to the replies thereto runs into 80 pages, but the hearing of the Review Application also spanned over several hours. The need to record the respective contentions is not felt, in view of the lengthy pleadings on record and owing to the counsel for the review applicant/applicant having read from his written notes of arguments (besides making certain additional comments) which are also on record and in the event of need, the same can be adverted to. Similarly, the reply of the non-review applicants are on record and their arguments were in sync therewith.

13. At this stage, it is also apposite to mention that the Review Application and IA No.3828/2020 have been filed through a different Advocate, who has also argued on behalf of review applicant/applicant, than the senior counsels and counsels who were representing Kumkum and Vinay, not only in the hearings leading to the judgment/order dated 24th February, 2020 but also earlier in all the legal proceedings which were disposed of vide the judgment/order dated 24th February, 2020. During the hearing, it was observed that the senior counsel / counsel who had appeared for Kumkum and Vinay during the hearings leading to the judgment/order dated 24th February, 2020, had not chosen to come forward and controvert what is attributed to them in the judgment/order dated 24th February, 2020, as the counsel now appearing for Kumkum and Vinay and who was not present during the hearings aforesaid, was seeking to do.

14. The counsel now appearing for Kumkum and Vinay stated that if the Court were to invite or call upon the earlier counsels, they would come forward to controvert.

15. All that can be said is, that it is not the function of the Court to invite anyone to make a case for himself/herself.

16. At the fag end of the arguments in opening of the counsel for Kumkum and Vinay, it was enquired from him, whether not in the entire hearing, not a single word had been addressed on, how the judgment/order dated 24th February, 2020 inter alia making arrangement felt to be in the best interest of MMK and his affairs including business and financial affairs, of which review was sought, was prejudicial to MMK and whether not Kumkum and Vinay otherwise had no stake in the litigations save as

guardians *ad litem* of MMK. It was further enquired, whether not the same showed the endeavour of Kumkum and Vinay, to continue the litigation by filing the Review Application, not for any better arrangement to be worked out qua affairs of MMK but more for satisfaction of their own egos and not for the benefit of MMK.

17. The counsel for the review applicant/applicant, in his note of rejoinder arguments, in reply to the aforesaid query, included a head with respect to MMK but thereunder merely mentioned that verbal arguments will be addressed. However in the rejoinder arguments also, no prejudice to MMK from the arrangement worked out in judgment/order dated 24th February, 2020 was argued.

18. It was the contention of the counsel for Rishab, that what had been argued by the counsel for review applicant/applicant was different from what was pleaded in the Review Application and the rejoinder filed to the replies thereto. Attention was drawn to certain paragraphs of the Review Application and the rejoinders to the replies thereto, to show that what was being challenged during the hearing, was admitted in the pleadings.

19. This led to the review applicant/applicant filing IA No.4431/2020 seeking expungement/deletion of certain paragraphs of the Review Application and the rejoinder, to which attention had been drawn by the counsel for Rishab. The said application was also got listed on 11th June, 2020 and this order will dispose of the said application as well.

20. The judgment/order dated 24th February, 2020 disposing of the four legal proceedings pending before this Court as well as a large number of other legal proceedings pending in various other Courts, the costs and

expenses of which were bleeding the assets of MMK, was (i) to do substantial justice to the affairs of a man i.e. MMK, who owing to his health conditions, is unable to decide for himself, and since the year 2013 is medically opined to have an intellect of six years old; (ii) to not allow his business and other properties to be frittered away / consumed in litigation costs being incurred with respect thereto; and, (iii) to put an end to litigations arising from the matrimonial relationship of MMK with Natasha, when MMK today is not in a position to know or feel the aches and pains of matrimony which were the cause of action for the said litigations. While doing so, it was also deemed appropriate to, for the time being, retain the guardianship of person and property of MMK with the Court, as has been for the last six years, allowing Kumkum and Vinay to care for his person, as they have been doing for the last several years and to allow Rishab to participate in the business and rejuvenate the same.

21. The Judges presiding over the Courts ought not to ever forget, that the Courts are of justice, and not of procedure. Considering all the facts and circumstances, it was felt/found, that in disposing of the four legal proceedings as were pending before this Court as also plethora of other litigations in other Courts, as per the procedure prescribed by law, great injustice would be caused to the person qua whose affairs the game of litigation was being played/continued to be played in the Courts, out of personal prejudices and egos of the warring parties and forgetting the interest of the said person. The judgment/order dated 24th February, 2020, of which recall/review is sought, was in the spirit of doing justice to the affairs of MMK, who was/is personally incapacitated from crying out for justice. It was felt that no purpose was being served in allowing monies of MMK

being spent, in his sisters fighting, his wife and son. Endeavour was also made in the judgment/order dated 24th February, 2020 of which review is sought, to work out the best arrangement deemed fit by this Court, for efficient and profitable running of businesses of MMK. It was deemed appropriate to give a role in the same to Rishab, in whose favour MMK also had executed a Will. It was not deemed expedient to give any role in the running of businesses, to sisters of MMK. The reason which prevailed was that while Rishab, as heir of MMK had a long term interest in the said businesses, Kumkum and Vinay who did not claim any personal interest or heirship of MMK, did not have. While Rishab, by any mishandling of the businesses would inflict future injury to himself only, Kumum and Vinay were seen as having the potential of permanently damaging the said businesses, to spite Natasha and Rishab. It was not deemed necessary to proceed with the trial of claims for guardianship of person and property of MMK. It was deemed expedient to retain guardianship of person and properties of MMK, at least for the time being, in the Court, as has been for the last six years, with care of person of MMK being assigned to Kumkum and Vinay, as also has been the case for last several years.

22. It was in this context that it was noticed in the hearing that it was not the case/argument on behalf of Kumkum and Vinay that any better arrangement could or ought to have been made, in the interest of MMK. Sufficient safeguards, as per the comprehension of the Court, were built in the judgment/order dated 24th February, 2020 to ensure that the business is not conducted to the prejudice of MMK in his life time. No flaw has been pointed out in the arrangements so made in the judgment/order dated 24th February, 2020, in so far as in the interest of MMK, and the entire emphasis

during the hearing was, either on procedure prescribed by law being not followed for determining who was entitled to guardianship of person and properties of MMK, or on Kumkum and Vinay, in whose care and custody MMK has been ordered to remain as he has been for the last several years, being reduced to the status of 'Ayahs', by requiring them to give accounts of the monies spent for the benefit of MMK.

23. In my view, no canon of justice requires the Court to be a slave to the procedure, even if it does great harm / injustice to the person whose affairs are being litigated. Rules, undoubtedly are one of law's attributes but frequently fail as guide to outcome of a particular incipient case. Where justice collides, in the facts of a particular case, with the established rules, the Courts cannot forget that it is justice and not the rules which have to prevail. Being a Judge, is not only about knowing the rules, which are but to serve justice, but also about knowing, when an exception is to be made to the rules. In such cases, avoiding the rules, though undoubtedly may appear to be equivalent to denial of justice, because legitimate expectations are frustrated, but it has to be remembered that rules are not the law but mere instruments/implements of law and justice and that rules are not justice. The words "a Court cannot conduct its business without a Code of Procedure; the relation of rules of practice, to work of justice, is intended to be of a handmaid rather than a mistress", when expressed in abstract, are assented to by all. However a Judge has also to know, when to apply the same. The facts of the present case were found to be crying for application thereof.

24. The judgment/order dated 24th February, 2020 was a judgment/order of conscience, of what will best serve justice to MMK i.e. whether continuance of litigations at cost of MMK, with his business suffering owing to lack of any initiative and under observance of the observer appointed by this Court, or to endeavour to put an end to the unnecessary expenditure and to make best possible arrangement qua business. It was felt that injustice was being caused to MMK by allowing legal costs and expenses to mount and business to be without anyone at helm. Be that as it may, I have, after the hearing of the Review Application, again probed my conscience whether the conclusion arrived at in the judgment / order dated 24th February, 2020 was correct for MMK, and have again reached the same conclusion, in the absence of any better alternative coming forward.

25. Even otherwise, the Review Application and the arguments thereon has/have been drafted / addressed, beyond the scope of review and in an attempt for arguing afresh on the controversy which was subject matter of hearings from 13th March, 2019, this time under advice of another advocate.

26. The counsel for the review applicant/applicant, during the hearing has also informed of advice given by him to Kumkum and Vinay to initiate other litigations against Natasha and Rishab and under threat thereof made a proposal for complete settlement of all disputes; however since it was made without prejudice, it is not deemed appropriate to detail the terms thereof. However therefrom, as also from the arguments and additions thereto besides the written text, during the hearing, has left me with an impression of, Kumkum and Vinay looking for proverbial legal solution of cutting the baby into half and which attitude has but to be condemned.

27. No ground for review or for grant of any of the reliefs claimed in IA No.3828/2020 is made out.

28. Similarly, no ground for allowing the review applicant/applicant to withdraw the averments contained in the Review Application / rejoinder duly sworn on oath, is made out.

29. Review Application No.101/2020, IA No.3828/2020 & IA No.4431/2020 are dismissed.

JUNE 23, 2020

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RAJIV SAHAI ENDLAW, J.

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