

**IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
(Lucknow Bench)**

**Judgment Reserved on 24.03.2022
Judgment Pronounced on 27th 04.2022**

Special Appeal No. 110 of 2022
(Arising out of Contempt Petition No. 716 of 2004)

Dr. J.S. Yadav

....Appellant

Through:- Mr. Amit Bose, Senior Advocate with
Mr. Abhishek Bose, Advocate

v/s

Dr. Anil Kumar Upadhyay and others

... Respondents

Through:- Sri Vishal Kumar Upadhyay, Advocate
for the respondents

**Coram: HON'BLE RAJESH BINDAL, CHIEF JUSTICE
HON'BLE JASPREET SINGH, JUDGE**

ORDER

JASPREET SINGH,J.

1. This instant intra-court appeal has been preferred under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 against the order dated 02.12.2021 passed by the learned Single Judge whereby two applications for recall bearing C.M. Application No. 80976 of 2021 for recall of order dated 26.04.2012 and C.M. Application No. 160117 of 2021 for recall of order dated 28.08.2012 passed in Contempt Case No. 716 of 2004 (Ajay Kumar Pandey and 29 others Vs. Dr. J.S. Yadav) have been allowed and as a result the contempt proceedings have been revived against the appellant.

2. Mr. Amit Bose, learned Senior Counsel assisted by Mr. Abhishek Bose has assailed the impugned order primarily on two grounds:-

(i) It is urged that the learned Single Judge had no jurisdiction to recall the orders, inasmuch as, once the contempt application is disposed of/dismissed, there is no provision for recall of such order. It is urged that in the instant case by means of order dated 28.8.2012 the contempt petition was dismissed as infructuous and the learned Single Judge while exercising powers of the Contempt Judge had no power to recall the said order.

(ii) It is also urged that the said application for recall was also hit by Section 20 of the Contempts of Court Act and for the said reason as well the application for recall was not maintainable as by recalling the order on application which otherwise had been rendered otiose could not be revived.

3. Learned counsel for the respondent on the other hand has submitted that an order was passed by the Writ Court which was affirmed in Special Appeal and almost 20 years have lapsed but the order has not been complied with and for one reason or the other, the appellant has been raising technical objections only to ensure that the order passed by the Court is not complied with.

4. It is further urged that the necessity to file the recall application arose on the ground that on mis-apprehension of facts, the contempt-petition filed by the petitioner was dismissed as infructuous. Elaborating his submissions, it is urged that the contempt petition was preferred by 29 petitioners, however, only in respect of two such petitioners who were being represented by a counsel namely Shailendra Singh Chauhan made a statement that the parties have entered into an amicable settlement and the learned Contempt Judge relying upon the aforesaid statement dismissed the contempt petition as a whole.

5. It is also submitted that the counsel who had made a statement before the Contempt Court was not representing the other

contempt-petitioners and at best the statement could have been accepted only in respect of two such contempt-petitioners who did not wish to press the contempt petition but in the garb thereof the petition of the remaining parties could not be dismissed as their right to prosecute the contempt petition was unhampered.

6. It is further submitted that the private respondents had preferred a Special Leave Petition before the Apex Court and where liberty was granted to approach High Court and in furtherance thereof initially a fresh contempt was filed which was thereafter withdrawn and an application for recall was filed which after hearing the parties has been allowed by the learned Single Judge and in the aforesaid facts and circumstances where the order passed by the Writ Court has yet not been complied with, it is not open for the appellant to raise such technical objections and even otherwise the order of recall has not prejudiced any party and the appellant has a right of raising the objections on merits before the Contempt Court. It is urged that if an order has been passed on mis-representation or on incorrect facts, the Court is duly vested with ample powers to recall such an order as an act of Court cannot prejudice any party. In view of the aforesaid, the appeal deserves to be dismissed.

7. The Court has heard the learned counsel for the parties and also perused the material available on record.

8. Before adverting to the respective submissions, it will be worthwhile to take a glance at the facts leading up to the passing of the impugned order of recall dated 02.12.2021.

9. The matter in controversy relates to the admissions of students in pursuance of pre-medical test held in the year 1998. 56 students were admitted in the First Year Course of Bachelor of Dental Science in Chaudhary Multan Singh Memorial Dental College on the basis of marks obtained by them. Some of such students were granted the admission on the basis of their merit obtained in the pre-medical test but some of the students were admitted against the management

quota. Later, it revealed that Chaudhary Multan Singh Memorial Dental College, Tundla did not have the approval from the Dental Council of India to admit the students after the first year and it is in the aforesaid backdrop that the aggrieved students preferred several writ petitions before this Court.

10. A bunch of writ petitions bearing No. 1312 (MS) of 2001; 1313 (MS) of 2001; 1909 (MS) of 2001 and 1915 (MS) of 2001 were decided by the learned Single Judge of the Court by means of judgment and order dated 06.08.2001. This judgment came to be challenged in Special Appeal No. 347 of 2001 which was connected with another Special Appeal bearing No. 368 of 2001. Both the Special Appeals were decided by means of the judgment dated 09.11.2001. In the Special Appeal preferred by the Director/Secretary of Chaudhary Multan Singh Memorial Dental College, Tundla, District Firozabad, the Division Bench of the Court while dismissing the appeal directed the Authorities of Chaudhary Multan Singh Memorial Dental College to refund the fee of 60 students who had deposited the fee either for the free seats or the seats under the Management Quota.

11. It is this order passed by the Division Bench in Special Appeal dated 09.11.2001 which was pressed for compliance in Contempt Petition No. 716 of 2004 as the Authorities of Chaudhary Multan Singh Memorial Dental College failed to refund the fee.

12. The record further reflects that the Contempt Petition remained pending since 2004. On 26.04.2012 the contempt petition was dismissed having become infructuous. The order passed by the Contempt Court dated 26.04.2012 reads as under:-

"In pursuance to the earlier order dated 03.04.2012 passed by this Court, the contemnor Dr. J.S. Yadav as well as Sri Vivek Chauhan & Sri Amit, petitioners are present in person.

Sri Shailendra Singh Chauhan, learned counsel for the

petitioners as well as Sri Amit Bose, learned counsel for the contemnor jointly submit that the settlement between the parties have reached amicably and now no contempt exists. Hence, they pray that the contempt petition may kindly be dismissed being infructuous. Notice for personal appearance is discharged.

In view of above, the contempt petition is dismissed being infructuous. "

13. Thereafter C.M. Application No. 51213 of 2012 and 57607 of 2012 were filed by the remaining petitioners seeking recall of the order dated 26.04.2012. The said application for recall was rejected by the Contempt Court noticing that the counsel for the petitioners had given a statement in the open Court that the present contempt petition had become infructuous as the parties had entered into an amicable settlement. Since the said order was passed in open Court, hence, there was no reason to recall the order, consequently, the applications were dismissed.

14. The private respondents being aggrieved preferred a Special Leave Petition before the Apex Court which came to be disposed of by means of order dated 05.07.2019 granting liberty to the petitioners before the Apex Court to move the High Court. The order passed by the Apex Court dated 05.07.2019 reads as under:-

" Heard the learned counsel for the parties.

The order has been passed by the High Court on the basis of the submissions made by the learned counsel that there is a settlement between the parties and now no contempt exists.

It is submitted that the matter was not settled completely and the order of the High Court has not been complied with.

If that be so, the only remedy lies with the petitioners is

to approach the same court, instead of filing a Special Leave Petition in this court. The petitioners, if so advised, may move the High Court in case there is some fraud played upon them.

In view of the above, the Special Leave Petitions are disposed of.

Pending interlocutory application (s), if any, is/are disposed of."

15. It is thereafter that the private respondents filed a fresh Contempt Petition bearing No. 878 of 2021 which was withdrawn by them with liberty to pursue the remedy as available to the respondents by filing the Recall Application.

16. It is in the aforesaid backdrop that the recall applications were moved by the private respondents which have been considered. After assessing the entire matter, the learned Single Judge allowed the applications for recall and directed the appellant to appear before the Court on 14.12.2021 for framing of charges.

17. The foremost issue that requires consideration is whether the said application for recall was maintainable before the learned Single Judge. The learned Senior Counsel Mr. Amit Bose making his submissions has urged that once the contempt petition was dismissed and the notices were discharged, the Contempt Court does not have the jurisdiction to recall the order and as such the order passed by the learned Single Judge is beyond jurisdiction, accordingly, is liable to be set aside.

18. In support of his submissions, he has relied upon a Division Bench decision of this Court in the case of :-

(i) ***State vs. Baldev Raj in 1991 SCC Online (Allahabad) 1070;***

(ii) ***Durga Nagpal Vs. Committee of Management, Patronage Institute of Management Studies and others***

in 2013 SCC Online All 13298

(iii) Mahavir Prasad Verma Vs. Central Administrative Tribunal, Lucknow and others in 2013 SCC Online All 13904.

19. Placing reliance on the aforesaid decisions, it is urged that it is no more open to contend that no power to recall has been conferred on the Court under the Contempt of Court Act, consequently, upon the dismissal of the application for contempt, in view of the statement made by the learned counsel for the respondents that the parties had arrived at a settlement the recall application was not maintainable.

20. It will be apropos to examine and look at the entire scenario with a multifocal lens. It is now well settled that the High Court is a court of plenary jurisdiction. The High Court being the court of record has the power to punish for contempt under Article 215 of the Constitution of India. A court of record being a court of superior jurisdiction is entitled to consider the question of its own jurisdiction raised before it. Article 215 specifically confers upon the Court of record such powers including the power to punish for contempt of itself.

21. The contempt jurisdiction of the High Court is not only to ensure the compliance of the orders passed by the Court but also to strike at such acts which tend to adversely affect the administration of justice or has a tendency to impede the course of justice which may shake public confidence in the judicial institution.

22. Thus, it can take note of such act and pass such orders under the contempt jurisdiction where the acts adversely affects the majesty of law or dignity of the Court. However, at the same time, it must be well remembered that the jurisdiction is not to protect the dignity of an individual judge but to protect the administration of justice from being maligned.

23. The Courts of law do not pass futile orders. However, once an order is passed, the same is binding on the parties and must be capable of being executed and complied with. It will be of no value if the Court is unable to get its orders complied with or else, the public shall lose faith and it would reflect most inappropriately on the judicial system. Thus, the orders passed by the Court have to be taken to their logical conclusion so that the faith of the public at large remains intact and the orders of the Court are not to be taken lightly by those who are bound to comply with the same.

24. There is another angle with which the issue at hand can be viewed with. Whether the statement given by a counsel for some of the parties can be treated to be a statement on behalf of all even though they are not represented by such counsel and what would be its effect ?

25. It will be valuable to refer to the maxim "**Actus Curiae neminem gravabit**". In simple words, it means that the act of the Court shall prejudice no man. The High Court being a court of record by its very constitution and composition is invested with inherent powers. All courts are vested with inherent powers to undo a wrong which may have occurred on account of a mistake of the Court causing prejudice to a party.

26. Applying the aforesaid principles, the Apex Court in *South Eastern Coalfields Ltd. Vs. State of M.P. (2003) 8 SCC 648* in para 28 held that the principle "that no one shall suffer by an act of the Court" embraces within its sweep all such acts as to which the Court may form an opinion in any legal proceedings that the Court would not have so acted had it been correctly appraised of the fact of law.

27. A perusal of the order dated 26.04.2012 would indicate that the said order was passed on the basis of statement made by Sri Shailendra Singh Chauhan, counsel appearing for the petitioners and Mr. Amit Bose, learned counsel for the contemnor. It could not be disputed by the learned Senior Counsel for the appellant that the

settlement, reference of which is made in the order dated 26.04.2012 did not relate to all the contempt petitioners rather it was confined to only two of such contempt petitioners. Mr. Bose also could not dispute the fact that Mr. Shailendra Singh Chauhan whose statement is recorded in the order dated 26.04.2012 by the Contempt Court did not represent all the said contempt petitioners and the statement of Mr. Shailendra Singh Chauhan, learned counsel could not relate to all the contempt-petitioners.

28. The order passed on 28.08.2012 dismissing the recall applications by the Contempt Court, as already reproduced hereinabove first, would indicate that it did not enter into the merits of the matter as to whether the statement as given by Mr. Chauhan on behalf of all the contempt-petitioners was valid and actually whether the alleged settlement was between all the contempt-petitioners and the contemner. It also could not be disputed that the Apex Court in its order dated 05.07.2019 had granted liberty to the respondents to approach the High Court in case if some fraud was played upon them.

29. At this stage, it will be apposite to evaluate the effect of the statement given by the said counsel who was not authorized to make the statement on behalf of all the contempt petitioner and in effect it could not bind such parties. It is not even the case of the appellant that amount of fee had been refunded to the respondents. He has not even apprised the Court about the settlement arrived at between the parties

30. The meaning of the word fraud and misrepresentation has been noticed by the Apex Court in *Ram Chandra Singh Vs. Savitri Devi and others* reported in (2003) 8 SCC 319 wherein paras 16 to 22 it has been held as under:-

16. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter.

17. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.

18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.

19. In *Derry v. Peek* [(1889) 14 AC 337 : (1886-90) All ER Rep 1 : 58 LJ Ch 864 : 61 LT 265 (HL)] it was held:

In an action of deceit the plaintiff must prove actual fraud. Fraud is proved when it is shown that a false representation has been made knowingly, or without belief in its truth, or recklessly, without caring whether it be true or false.

A false statement, made through carelessness and without reasonable ground for believing it to be true, may be evidence of fraud but does not necessarily amount to fraud. Such a statement, if made in the honest belief that it is true, is not fraudulent and does not render the person making it liable to an action of deceit.

20. In *Kerr on Fraud and Mistake*, at p. 23, it is stated:

“The true and only sound principle to be derived from the cases represented by *Slim v. Croucher* [(1860) 1 De GF & J 518 : 29 LJ Ch 273 : 2 LT 103 : 45 ER 462] is this: that a representation is fraudulent not only when the person making it knows it to be false, but also when, as Jessel, M.R., pointed out, he ought to have known, or must be taken to have known, that it was false. This is a

sound and intelligible principle, and is, moreover, not inconsistent with *Derry v. Peek* [Arising out of SLP (C) No. 20273 of 2000] . A false statement which a person ought to have known was false, and which he must therefore be taken to have known was false, cannot be said to be honestly believed in. ‘A consideration of the grounds of belief’, said Lord Herschell, ‘is no doubt an important aid in ascertaining whether the belief was really entertained. A man's mere assertion that he believed the statement he made to be true is not accepted as conclusive proof that he did so.’ ”

21. In *Bigelow on Fraudulent Conveyances*, at p. 1, it is stated

“If on the facts the average man would have intended wrong, that is enough.”

It was further opined:

“This conception of fraud (and since it is not the writer's, he may speak of it without diffidence), steadily kept in view, will render the administration of the law less difficult, or rather will make its administration more effective. Further, not to enlarge upon the last matter, it will do away with much of the prevalent confusion in regard to ‘moral’ fraud, a confusion which, in addition to other things, often causes lawyers to take refuge behind such convenient and indeed useful but often obscure language as ‘fraud upon the law’. What is fraud upon the law? Fraud can be committed only against a being capable of rights, and ‘fraud upon the law’ darkens counsel. What is really aimed at in most cases by this obscure contrast between moral fraud and fraud upon the law, is a contrast between fraud in the individual's intention to commit the wrong and fraud as seen in the obvious tendency of the act in question.

22. Recently this Court by an order dated 3-9-2003 in *Ram Preeti Yadav v U.P. Board of High School & Intermediate Education* [(2003) 8 SCC 311 : JT 2003 Supp (1) SC 25] held: (SCC pp. 316-317, paras 13-15)

“13. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud. (See *Derry v. Peek* [Arising out of SLP (C) No. 20273 of 2000] .

14. In *Lazarus Estates Ltd. v. Beasley* [(1956) 1 All ER 341 : (1956) 2 WLR 502 : (1956) 1 QB 702 (CA)] the Court of Appeal stated the law thus: (All ER p. 345 C-D)

‘I cannot accede to this argument for a moment. No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever;’

15. In *S.P. Chengalvaraya Naidu v. Jagannath* [(1994) 1 SCC 1] this Court stated that fraud avoids all judicial acts, ecclesiastical or temporal.”

31. In the aforesaid backdrop if the statement made by Sri Chauhan is seen it would lead the Contempt Court to satisfy itself as to veracity of the statement regarding the settlement arrived at between all the contempt petitioners and the contemnor and only once the said fact was verified could the petition be dismissed as infructuous. Even otherwise once the contempt Court takes

cognizance of the matter then it is a matter between the contemner and the Court. In this view of the matter, it was all the more important for the Contempt Court to have verified all the facts before discharging the contempt notice.

32. In the instant case, once it is not disputed that the order passed by the Division Bench of the year 2001 had not been complied with, the petition could not have become infructuous. The statement of the counsel, which was beyond his competence and yet made before the Court on behalf of such contempt-petitioners who had not entered into any settlement and it gave an impression to the Court that all the contempt-petitioners had settled the matter with the contemnor, is nothing short of a misrepresentation amounting to fraud, especially when the settlement, if arrived at, by only two of such contempt petitioners could at best be not pressed on their behalf but not on behalf of other co-petitioners and the petition as a whole ought not have been dismissed as having become infructuous.

33. It is a case where the appellant has taken recourse to the judicial proceedings to thwart the course of justice and a direction which was issued by the Division Bench in the year 2001 has not been complied with till date. This in itself is a shocking state of affairs which does hurt the judicial conscience and has a deleterious effect on the public at large.

34. In the aforesaid circumstances, the learned Single Judge rightly passed the order dated 02.12.2021 Ex-debito justitiae. The inherent powers of the Court can very well be utilized to undo a wrong and ensure that the path of justice remains un-polluted and the orders passed by it are taken to its logical conclusion, which in turn reinforces the faith of the public.

35. It will be worthwhile to notice the observations made by the Apex Court in *Indian Bank Vs. Satyam Fibres (India) Pvt. Ltd. (1996) 5 SCC 550* in para 20, 22 and 23, it held as under:-

20. By filing letter No. 2775 of 26-8-1991 along with

the review petition and contending that the other letter, namely, letter No. 2776 of the even date, was never written or issued by the respondent, the appellant, in fact, raised the plea before the Commission that its judgment dated 16-11-1993, which was based on letter No. 2776, was obtained by the respondent by practising fraud not only on the appellant but on the Commission too as letter No. 2776 dated 26-8-1991 was forged by the respondent for the purpose of this case. This plea could not have been legally ignored by the Commission which needs to be reminded that the authorities, be they constitutional, statutory or administrative, (and particularly those who have to decide a lis) possess the power to recall their judgments or orders if they are obtained by fraud as fraud and justice never dwell together (*Fraus et jus nunquam cohabitant*). It has been repeatedly said that fraud and deceit defend or excuse no man (*Fraus et dolus nemini patrocinari debent*)

22. The judiciary in India also possesses inherent power, specially under Section 151 CPC, to recall its judgment or order if it is obtained by fraud on court. In the case of fraud on a party to the suit or proceedings, the court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the court's business.

23. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the court and also amounts to an abuse of the process of court, the courts have been held to have inherent power to set aside an order obtained by fraud practised upon that court. Similarly, where the court is misled by a party or the court itself commits a mistake which prejudices a party, the court has the inherent power to recall its order. (See: *Benoy Krishna Mukerjee v. Mohanlal Goenka* [AIR 1950 Cal 287] ; *Gajanand Sha v. Dayanand Thakur* [AIR 1943 Pat 127 : ILR 21 Pat 838] ; *Krishnakumar v. Jawand Singh* [AIR 1947 Nag 236 : ILR 1947 Nag 190] ; *Devendra Nath Sarkar v. Ram Rachpal Singh* [ILR (1926) 1 Luck 341 : AIR 1926 Oudh 315] ; *Saiyed Mohd. Raza v. Ram Saroop* [ILR (1929) 4 Luck 562 : AIR 1929 Oudh 385 (FB)] ; *Bankey Behari Lal v. Abdul Rahman* [ILR (1932) 7 Luck 350 : AIR 1932 Oudh 63] ; *Lekshmi Amma Chacki Amm v. Mammen Mammen* [1955 Ker LT 459] .) The court has also the inherent power to set aside a sale brought about by fraud practised upon the court (*Ishwar Mahton v. Sitaram Kumar* [AIR 1954 Pat 450] .) or to set aside the order recording compromise obtained by fraud. (*Bindeshwari Pd. Chaudhary v. Debendra Pd. Singh* [AIR 1958 Pat 618 : 1958 BLJR 651] ; *Tara Bai v. V.S. Krishnaswamy Rao* [AIR 1985 Kant 270 : ILR 1985 Kant 2930] .)

36. Again in *United India Insurance Co. Ltd. Vs. Rajendra Singh (2000) 3 SCC 581* in para 15 and 16, it has been held as under:-

15. It is unrealistic to expect the appellant Company to resist a claim at the first instance on the basis of the fraud because the appellant Company had at that stage no knowledge about the fraud allegedly played by the claimants. If the Insurance Company comes to know of

any dubious concoction having been made with the sinister object of extracting a claim for compensation, and if by that time the award was already passed, it would not be possible for the Company to file a statutory appeal against the award. Not only because of the bar of limitation to file the appeal but the consideration of the appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then.

16. Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly-discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.

37. In *Hamza Hazi Vs. State of Kerala (2006) 7 SCC 416*, the Apex Court in paragraph 26 has held as under:-

26. The High Court, as a court of record, has exercised its jurisdiction to set at naught the order of the Forest Tribunal thus procured by the appellant by finding that the same is vitiated by fraud. There cannot be any doubt that the Court in exercise of its jurisdiction under Article 215 of the Constitution of India has the power to undo a decision that has been obtained by playing a fraud on the Court. The appellant has invoked our jurisdiction under Article 136 of the Constitution of India. When we find in agreement with the High Court that the order secured by him is vitiated by fraud, it is obvious that this Court should decline to

come to his aid by refusing the exercise of its discretionary jurisdiction under Article 136 of the Constitution of India. We do not think that it is necessary to refer to any authority in support of this position except to notice the decision in *Ashok Nagar Welfare Assn. v. R.K. Sharma* [(2002) 1 SCC 749 : 2001 Supp (5) SCR 662] .

38. The observations made by the learned Single Judge in its order dated 02.12.2021 in paragraph 12 also amplifies the conduct of the appellant which reads as under:-

"12. After hearing the rival contentions and going through the material on record, this court finds that since the year 2004 the petitioners are make efforts to get the order of Special Appeal court dated 09.11.2001 complied. They have not been able to get any relief. The record of the contempt petition is replete with orders of issuance of warrants and directions for personal appearance of opposite party but the fact remains that the order of this court has not been complied with. Petitioners have been relegated to one forum to the other but the substantial justice stands denied to them. Opposite party no.1 has left no stone unturned to hoodwink this court's and has avoided compliance of this court order for more than 20 years. This is very lamentable and shakes the confidence of the common man in the judicial system of the country when the technicalities are given precedence over substantial justice. It is settled law that admissions made by the counsel unauthorisedly without instructions from his client is not binding on his client. The Apex Court in the case of *Himalayan Cooperative Group Housing Society Vs. Balwan Singh and others*, 2015 AIR(SC) 2867 has held in para 32 as follows :-

32. Generally, admissions of fact made by a counsel are binding upon their principals as long as they are unequivocal; where, however, doubt exists as to a purported admission, the court should be wary to accept such admissions until and unless the counsel or the advocate is authorised by his principal to make such admissions. Furthermore, a client is not bound by a statement or admission which he or his lawyer was not authorised to make. A lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of the client unless such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was employed. We hasten to add neither the client nor the court is bound by the lawyer's statements or admissions as to matters of law or legal conclusions? "

39. Having noticed the facts and the law in the preceding paragraphs now, in the aforesaid backdrop, if the decisions relied upon by the learned Senior Counsel for the appellant are considered, it would indicate that in the case of **Balraj Deo (supra)**, the issue before the Division Bench was that the contemner was convicted by the Court and he filed a recall application instead of filing an appeal in terms of Section 19 of the Contempts of Court Act. It is in the aforesaid backdrop that the said recall application was rejected and thus on the face of it, the said decision does not come to the rescue of the appellant and is clearly distinguishable.

40. **Durga Nagpal's case (supra)** was a case where after the

contempt proceedings were dropped and the application for modification of the final judgment was moved and in the aforesaid backdrop, it was held that the contempt Judge did not have the power to revive its own order, however, the facts of the said case are also at variance to the case at hand, hence, the said decision also does not help the appellant especially when in the present case the element of fraud and misrepresentation is involved which in turn activates the maxim "Actus Curiae neminem gravabit".

41. In **Mahavir Prasad's case (Supra)**, it would indicate that in the said case, an application for review/recall was moved which was rejected by the Central Administrative Tribunal in default. This order was assailed before the High Court in writ jurisdiction which was quashed and the contempt petition was restored to its original number directing the Tribunal to decide the same after bringing the successors in the office on record, thus, the facts of the case are quite different to the facts of the case, consequently, the said decision does not apply to the instant case.

42. In light of the aforesaid detailed discussions, this Court has no hesitation to hold that the impugned order dated 02.12.2021 does not suffer from any error which may persuade this Court to interfere, accordingly, the Special Appeal is dismissed.

43. In the facts and circumstances, there shall be no order as to costs.

(Jaspreet Singh, J.) (Rajesh Bindal, C.J.)

Lucknow
27th April, 2022
Asheesh

Whether the order is speaking : Yes/No
Whether the order is reportable : Yes/No