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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ OMP (I) (COMM) 129/2016 & I.A. 7647/2021, I.A. 7648/2021  
CONNAUGHT PLAZA RESTURANTS PVT. LTD.

.... Petitioner

Through: Dr. N. Pradeep Sharma & Mr.  
Abhinav S. Raghuvanshi, Adv.

versus

CAPITAL BOOT HOUSE .... Respondent

Through: Mr. Rajesh Yadav, Sr. Adv.  
With Ms. Ruchira Yadav, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**JUDGEMENT**

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**01.07.2021**

(Video-Conferencing)

**I.A. 7647/2021 (under Section 151 of CPC, 1908- seeking extension/ enlargement of time) & I.A. 7648/2021 (under Order XXXIX, Rules 1 and 2, read with Section 151 of CPC, 1908- for restraining the respondent from interfering with peaceful possession of the petitioner)**

1. These are connected applications which essentially seek a modification of the terms of settlement between the petitioner and the respondent, on the basis where of OMP (I) (COMM) 129/2016 was disposed of, by this Court, on 4<sup>th</sup> November, 2016.

2. It is not necessary to enter into the details of controversy between the parties. Suffice it to state that the settlement deed dated 3<sup>rd</sup> November, 2016, in which the respondent was the “first party”, and

the petitioner was the “second party”, specifically envisaged, *inter alia*, thus:

“3. That the terms and conditions of the previous agreements between the parties shall be binding on them as also directed by the Hon’ble High Court of Delhi in orders dated 20.07.2015 and 10.08.2015. It is however clarified/agreed between the parties, that in view of changed circumstances, the franchise agreement dated 11.10.2000, shall expire with the efflux of time on 30.06.2021, when all the agreements between the parties shall automatically come to an end. There shall be no further extension/enlargement for any reason whatsoever, of time beyond 30.06.2021. The Second Party shall remove all its installations, fittings and fixtures on or before 30.06.2021. The Second Party shall not be entitled to seek any extension/enlargement, under any circumstances.”

(Emphasis supplied)

*Vide* order dated 4<sup>th</sup> November, 2016, OMP (I) (COMM) 129/2016, was disposed of by this Court on the basis of the afore-extracted settlement deed which was directed to form part of the order and by which the parties were explicitly made bound.

3. By the present application, the petitioner seeks extension of time to vacate the premises of the respondent. The only ground urged in the petition, and argued before the Court by Dr. Sharma, learned Counsel for the petitioner, is the intervening COVID-19 pandemic and the restrictions put in place by the lockdowns imposed by the governmental authorities from time to time. Dr. Sharma submits that these lockdowns have made it impossible for the petitioner to vacate the premises before 30<sup>th</sup> June, 2021, as required by the afore-extracted clause in the settlement deed between the parties.

4. Dr. Sharma, learned Counsel for the petitioner/applicant, submits that, at the time when the settlement deed was executed, neither party could foresee the COVID-19 pandemic or the hardships that would result as a consequence thereof. He submits that his client has no intention of continuing in the premises in question, but would take at least three months' time to remove the fixtures and furniture as well as the effluent treatment plant situated on the roof of the premises to another location. In as much as the present situation was not within the contemplation of the parties when they entered into the aforesaid settlement agreement, Dr. Sharma submits that the interests of justice would require that further time be granted to the petitioner to vacate the premises, and that, in the interregnum, the respondent be restrained from forcibly seeking to evict the petitioner therefrom.

5. Mr. Rajesh Yadav, learned Senior Counsel appearing for the respondent, on the other hand, seriously questions the *bona fides* of the present application. He submits that the respondent wrote not once but twice to the petitioner, on 12<sup>th</sup> May, 2021 and 13<sup>th</sup> June, 2021, making it clear that no time, beyond 30<sup>th</sup> June, 2021, would be granted to the petitioner to retain the premises in question. He submits that, despite these communications, the respondent has, at the nth hour and a day before 30<sup>th</sup> June, 2021, sought to invoke the jurisdiction of this Court to frustrate the agreement between the parties. He submits, on instructions, that his client is unwilling to allow the petitioner to continue in the premises in question any further. He also places reliance on the recent judgment of the Supreme Court in *Compack*

*Enterprises India Pvt. Ltd. vs. Beant Singh*<sup>1</sup>, in this regard.

6. In the opinion of this Court, no relief whatsoever can be granted to the petitioner in either of these applications. The terms of settlement between the petitioner and the respondent are clear and explicit. The parties have taken care to clarify, in the afore-extracted Para 3 of the terms of settlement, not once but twice, that “there shall be no further extension/enlargement *for any reason whatsoever* of time beyond 30.06.2021” and that the petitioner would “not be entitled to seek any extension/enlargement, *under any circumstances*”. The same paragraph requires the petitioner to remove all installations, fittings and fixtures on or before 30<sup>th</sup> June, 2021.

7. Once the parties have, consciously and between themselves, agreed that no extension of time beyond 30<sup>th</sup> June, 2021, to vacate the premises, would be available to the petitioner for any reason whatsoever and under any circumstances, it is not open to the petitioner to contend, before the Court that extension was justified as the circumstances in which the petitioner finds itself were not foreseeable when the settlement agreement was executed. That would amount to requiring the Court to pass an order in violation of the terms of settlement between the parties, on the basis of which, OMP (I) (COMM) 129/2016 was disposed of. This, quite obviously, is not permissible at all.

8. The plea, of the petitioner, that it would need further time to

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<sup>1</sup> (2021) 3 SCC 702

remove the furniture, fixtures and effluent treatment plant located on the premises, is also without merit, as the afore-extracted para 3 of the terms of settlement expressly requires the petitioner to remove all furniture, fixtures and other equipment on or before 30<sup>th</sup> June, 2021. This settlement was executed almost five years back. It was for the petitioner to take steps to ensure that the furniture, fixtures and other equipment, including the effluent treatment plant were removed before 30<sup>th</sup> June, 2021. No extension of time can be granted, therefore, even for the said purpose.

9. There is also, *prima facie*, substance in the contention of Mr. Yadav, that the present application lacks *bona fides*. Though the respondent was under no duty to do so, it nevertheless placed the petitioner on notice regarding its responsibility to vacate the premises on 30<sup>th</sup> June, 2021, *vide* its communications dated 12<sup>th</sup> May, 2021 and 13<sup>th</sup> June, 2021. There was no want of clarity, therefore, at all, regarding the stand of the respondent.

10. It does, therefore, appear disquieting that, a day before the time for vacating the premises was to expire, the petitioner has sought to move this Court and obtain injunctive orders. The manner in which the petitioner has invoked the Court's jurisdiction also operates as a fetter to grant of any relief to the petitioner in this case.

11. The reliance, by Mr. Yadav, on the decision in *Compack Enterprises<sup>1</sup>*, is also well placed. The Supreme Court has also made it absolutely clear that consent decrees are not to be lightly interfered

with by Court, save and except by consent of the parties to the decree. The only circumstances in which consent decrees can be modified by a Court are (i) where there is revised consent of the parties to the decree, (ii) the consent was obtained by fraud, misrepresentation or mistake or (iii) clerical or arithmetical errors in the consent decree were required to be corrected. Absent these exigencies, the Court cannot modify the terms of a consent decree or a settlement on the basis of which the petition was disposed of. At the unilateral request of one of the parties to the settlement, it is obvious that the Court cannot pass an order which is violative of the terms of settlement. Were it to do so, the Court would be acting in flagrant excess of the jurisdiction vested in it.

12. Paras 19 and 20 of the report in *Compack Enterprises*<sup>1</sup>, may, for this purpose, be reproduced thus:

“19. Before advertng to the specific contentions raised by the learned Senior Counsel for the petitioner, it may be useful to briefly summarise the law governing consent decrees that shall inform our conclusions on the present matter. It is well settled that consent decrees are intended to create estoppels by judgment against the parties, thereby putting an end to further litigation between the parties. Resultantly, this Court has held that it would be slow to unilaterally interfere in, modify, substitute or modulate the terms of a consent decree, *unless it is done with the revised consent of all the parties thereto*. [*Gupta Steel Industries v. Jolly Steel Industries (P) Ltd.*<sup>2</sup>; *Suvaran Rajaram Bandekar v. Narayan R. Bandekar*<sup>3</sup>]

20. However, this formulation is far from absolute and does not apply as a blanket rule in all cases. This Court in *Byram Pestonji Gariwala v. Union Bank of India*<sup>4</sup>, has held that

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<sup>2</sup> (1996) 11 SCC 678

<sup>3</sup> (1996) 10 SCC 255

<sup>4</sup> (1992) 1 SCC 31

a consent decree would not serve as an estoppel, *where the compromise was vitiated by fraud, misrepresentation, or mistake*. Further, this Court in the exercise of its inherent powers may also unilaterally rectify a consent decree *suffering from clerical or arithmetical errors, so as to make it conform with the terms of the compromise.*”

(Emphasis supplied)

**13.** In view of this legal position, it is not possible for this Court to come to the aid of the petitioner or accommodate any of the prayers contained in either of these applications.

**14.** Both applications are, therefore, dismissed.

**C. HARI SHANKAR, J.**  
**(VACATION JUDGE)**

**JULY 01, 2021**

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