

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

Date of decision: 31st January, 2011

+ I.A. No.2698/2010 (u/S 151 CPC for modification of the order dated 18th May, 2009) in CS(OS) No.1167/2008

SUNITA GUPTA

..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. Praveen Chauhan, Advocate

Versus

INDERJEET SINGH & ANR.

..... Respondents

Through: None.

AND

1. MANINDER KUMAR JAIN

2. ALKA JAIN

..... Applicants

Through: Mr. Rajesh Gupta, Advocate.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. This application has been filed under Section 151 CPC for modification of terms of compromise as recorded in I.A. No.6506/2009 and in terms of which compromise the suit was decreed. The applicants were not parties to the suit or to the compromise aforesaid. They however claim to be successors in interest and assignees of the defendant no.1 Shri Inderjit Singh who was a party to the compromise. In terms of the said compromise the defendant no.1 Shri Inderjit Singh had exclusive rights of ownership and construction *inter alia* over the existing roof/terrace above the second floor of the property No.G-60, East of Kailash, New Delhi, on the condition that he shall be obliged to at his own cost reconstruct the servant quarters, toilets and water tanks existing on the said terrace to the roof/terrace of the fresh construction (of the third floor). It was also recorded in the compromise that the plaintiff is entitled to two servant quarters and toilets-cum-bath as existing on the terrace above the second floor.

2. The applicants claim that the defendant no.1 Shri Inderjit Singh sold the said terrace to one Smt. Sneha Lata Pahuja and Shri Virender Pahuja

(defendant no.3) (and both of whom were also parties to the compromise) and who in turn sold the same to the applicants; that the applicants submitted proposal to the MCD for raising construction on the said terrace but MCD insisted upon the applicants producing a “No Objection” from the other owners of the building; that while the other owners have given their no objection, the plaintiff has refused to give the “No Objection” on the ground that MCD would not permit construction of servant quarters and toilet on the terrace of the proposed construction. This application has been filed for modification of the condition in the compromise entitling construction on the terrace above second floor only subject to shifting of the servant quarters and toilet on the terrace of the proposed construction and by offering that the servant quarters and the terrace can be constructed at another appropriate place which MCD is willing to sanction.

3. Notice of the application was issued and reply thereto has been filed by the plaintiff. The counsels have been heard.

4. The counsel for the applicants has relied on:-

- (i) Order dated 30th March, 2009 of the Supreme Court in Civil Appeal No.2006-2007/2009 titled ***Devineni Tirupathirayudu v.***

Surapaneni Suramma observing that the only course open to the legal representatives of a party to a compromise is to apply for recall of the compromise decree in as much as they cannot file independent suit challenging the compromise decree in view of the bar contained in Order 23 Rule 3A of the CPC;

- (ii) ***Pushpa Devi Bhagat v. Rajinder Singh*** (2006) 5 SCC 566 laying down that since neither appeal nor independent suit is maintainable against/for setting aside of a compromise decree, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the Court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. It was further held that the Court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not;
- (iii) ***Preetinder Singh v. Gursharan Singh*** 2010 I AD (DELHI) 657 reiterating the aforesaid position;

- (vi) ***Rajwanti v. Kishan Chand Shehrawat*** 160(2009) DLT 185

dismissing a suit challenging a compromise decree as not maintainable;

- (v) Judgment dated 21st December, 2007 of this Court in CM (M) No.483/2003 titled ***Chanchal Bansal v. Himanshu Bansal***, also holding that the only remedy to lay a challenge to a compromise decree unlawfully obtained or which is void or voidable is to move an application before the court concerned which had passed the decree; Reliance in this regard was placed on ***Banwari Lal v. Chando Devi*** (1993) 1 SCC 581.

5. Per contra, the senior counsel for the plaintiff has relied upon:-

- (a) Judgment dated 22nd April, 2008 of the Supreme Court in Civil Appeal No.953/2004 titled ***Bholi v. Lachhman Singh*** laying down that the terms of compromise having become a decree of the Court, the Court is *functus officio* to modify the decree;
- (b) ***Union of India v. Babu Rao*** 130(2006) DLT 504 (DB) observing that once the Court had delivered a judgment, it becomes *functus officio* and has no right to thereafter entertain the miscellaneous applications except for correcting clerical

errors.

6. The applicants are seeking modification of the consent decree not on the ground that the consent thereto of the predecessors in interest of the applicants was obtained by practicing fraud or undue influence or was no consent for any other similar reason but owing to the applicants being unable to obtain permission from MCD for construction of servant quarters-cum-toilet on the terrace of the second floor with the condition subject to which the said construction was permitted. The applicants are thus proposing to change the said condition by proposing construction of the servant quarters-cum-toilet at some other place. It will thus be seen that the application is not filed on any of the grounds as were under consideration in the judgments (supra) cited by the counsel for the applicants. What the applicants are seeking today is to change/modify the terms of the compromise. The question which arises is whether the same is permitted and if so in the form of this application in a disposed of suit.

7. A compromise is nothing but an agreement. The imprimatur of the Court in accepting the compromise and in passing a decree in terms thereof, confers the said agreement with the status of a lawful contract. It is not the

case of the applicants that the finding of this Court of the compromise being lawful is incorrect or that any of the terms of the compromise were unlawful so as to void the contract. The applicants/are seeking modification of the compromise on the ground –

- A. That the servant quarters-cum-toilet as existing have also not been sanctioned;
- B. That their predecessor Shri Inderjit Singh at the time of signing of the compromise was not aware of the MCD Bye Laws and had no idea that servant quarters were not permissible over third floor;
- C. That the servant quarters can be conveniently built with appropriate sanction from the MCD at another place;
- D. That changing/altering the position of the servant quarters does not violate the compromise;
- E. That the condition of shifting of the servant quarters to the terrace of the third floor was contrary to MCD Bye Laws, statutory rules and impossible of performance and thus redundant.

F. That such modification is fair in the facts and circumstances.

8. Section 21 of the Indian Contract Act, 1872 provides that a contract is not voidable because it was caused by a mistake as to any law in force in India. Similarly under Section 22 of the Act a contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact. It would thus be seen that the grounds taken by the applicants in the application are not such on the basis whereof it can be said that the imprimatur of this Court of the contract being lawful is erroneous or which would entitle the applicants as successor in interest of one of the parties to the contract to void the contract. Else, a contract is voidable/void when consent thereto is caused by coercion, fraud or misrepresentation (under Section 19), when consent thereto is caused by undue influence (under Section 19A), where both parties are under mistake as to a matter of fact essential to the agreement (under Section 20), when consideration or object thereof is unlawful (under Sections 23&24), when without consideration (under Section 25), when in restraint of trade (under Section 27), when in restraint of legal proceedings (under Section 28), when uncertain (under Section 29) or when by way of wager (under Section 30).

The applicants have not made out a case under any of the said provisions for this Court to entertain the application on the said ground.

9. I am otherwise unable to comprehend as to how a party to agreement can seek change thereof.

10. Faced with the aforesaid, the counsel for the applicants contended that the servant quarters as existing, are also illegal and liable to be demolished. He contends that the same are being not demolished and/or the applicants are not taking any steps with respect thereto for the reason of the same being a subject matter of the consent decree before this Court.

11. MCD was not a party to the consent decree. This Court even otherwise was in the suit or in the compromise not concerned with the legality of the said servant quarters. Thus merely because the servant quarters as existing, form part of the compromise will not come in the way of MCD taking action with respect to the same if illegal or liable to be demolished or the applicants seeking demolition thereof from the MCD or the plaintiff resisting such action of the applicants or the MCD or the plaintiff if entitled to, having the said construction regularized from the MCD.

12. Finding no merit in the application, the same is dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

JANUARY 31st, 2011
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