

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

+ **RFA No. 54/2008**

% **5<sup>th</sup> December, 2011**

VINAY KUMAR MALHOTRA & ORS ..... Appellants  
Through : Mr. G.L. Rawal, Sr. Advocate with  
Mr. Kuljeet Rawal, Advocate.

versus

VASHIST MALHOTRA ..... Respondent  
Through : Mr. Sanjeev Bahl, Advocate.

**CORAM:**  
**HON'BLE MR. JUSTICE VALMIKI J. MEHTA**

To be referred to the Reporter or not? **Yes**

**VALMIKI J. MEHTA, J (ORAL)**

1. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 Civil Procedure Code, 1908 (CPC) is to the impugned judgment of the trial Court dated 3.11.2007 disposing of the suit as compromised under Order 23 Rule 3 CPC.

2. The brief facts of the case are that respondent/plaintiff filed the subject suit for declaration and injunction, inasmuch as there were disputes between the parties with respect to a company of which the respondent and the appellants were directors. It was alleged by the respondent/plaintiff that

he was wrongly removed from the directorship and that defendant No. 2 was wrongly appointed as the Director of defendant No.3.

3. The company in question seems to have received money from the Chief Controller, Accounts, Ashoka Road, New Delhi amounting to Rs.70 lakhs. Obviously, the real dispute was for the claim towards these amounts. During the pendency of the suit, appellant/defendant No.1 and respondent/plaintiff made the following statements on 8.2.2006:-

“Statement of Sh. Vashisht Kumar Malhotra, plaintiff no.1

on S.A.

I have received two cheques one bearing no.122230 dt. 18.2.03 amounting to Rs.5.00 lakhs and another bearing no.122231 dt. 18.2.06 amounting to Rs.3.00 lakhs from defendant no.1 in the court. Another sum of Rs.32.00 lakhs would be paid to me by the defendants within 2 months and the remaining amount of Rs.30.00 lakhs would be paid to me by the defendants by way of four monthly cheques after two months. I further state that a formal compromise deed duly signed by the parties would be placed before the court on the next date of hearing.

RO&AC

sd/-

sd/-

(P.K.Saxena)  
Addl. District Judge, Delhi  
8.2.06”

“Statement of Sh. Vinay Kumar Malhotra, defendant no.1

on S.A.

I have handed over two cheques one bearing no.122230 dt. 18.2.06 amounting to Rs.5.00 lakhs and another bearing no. 122231 dt. 18.2.06 amounting to Rs.3.00 lakhs to the plaintiff in the Court. Another sum of Rs.32.00 lakhs would be paid to the plaintiff within 2 months and the remaining amount of Rs.20.00 lakhs would be paid to the plaintiff by way of four monthly cheques after two months. I further state that a formal compromise deed duly signed by the parties would be placed before the Court on the next date of hearing.

RO&AC

sd/-

sd/-

(P.K.Saxena)  
Addl. District Judge, Delhi  
8.2.06”

4. It has been held by the Supreme Court in the case of ***Pushpa Devi Bhagat v. Rajinder Singh and Ors. 2006 (5) SCC 566*** that the expression in Order 23(3) CPC “lawful agreement or compromise in writing”, need not be by means of a formal instrument, and statement of parties or counsel made in Court will be a sufficient compliance of the requirement of Order 23 Rule 3 CPC.

5. In view of the above, the subject suit can be validly held to be compromised inasmuch as the statements of respondent/plaintiff and defendant No. 1 make clear the agreement between the parties as to the

liability of the appellant No.1 towards respondent No.1. Nothing else was envisaged for disposal of the suit claim except that a particular amount was paid, as stated in the statement and further amounts of ₹32 lakhs and ₹30 lakhs were to be paid, as has been recorded in the statement of the parties dated 8.2.2006. Therefore, there is a complete agreement with respect to the entitlement of respondent No.1/plaintiff and the liability of the appellant No.1/defendant No.1 which was crystallized. Hence, the suit could stand disposed of in terms of the compromise decree by which the appellant No.1 has to pay the amount as detailed in the statement to the respondent.

6. The learned Senior counsel for the appellant in support of the appeal argued before this Court three points, namely:-

(i) The statements themselves note that a formal compromise deed would be filed by the parties, and the same having not been filed, there is no agreement within the meaning of Order 23 Rule 3 CPC.

(ii) The subject suit was a suit for declaration and injunction and there were various other terms which were to be recorded in the compromise agreement which was to be filed after the statements.

(iii) The statement made by the appellant No.1/defendant No. 1 can only decree the suit against appellant No.1/defendant No.1 and not against defendant Nos.2 and 3.

7. In my opinion, all the arguments raised by learned Senior counsel for the appellant have no merit. It is settled law that once the terms of an agreement are clear, merely because the party state that a formal agreement in writing will be entered into, will not detract from the finality of the agreement already entered into. In the present case, the statements recorded clearly show a complete agreement between the parties whereby the appellants were to pay to the respondent a total sum of ₹70 lakhs towards satisfaction of the disputes which were subject matter of the suit. No other relief was pressed for by the respondent/plaintiff qua his suit and therefore the suit was decreed as compromised in terms of the statements by granting a relief of payment of moneys to the respondent. As already stated above, the Supreme Court in *Pushpa Devi Bhagat* (Supra) has observed that the statement made by the parties or their counsel in Court amounts to sufficient compliance of Order 23 Rule 3 CPC.

8. The second argument as raised on behalf of learned Senior counsel for the appellant is equally misconceived inasmuch as there may be various issues in the suit, and which may not strictly be for recovery of money, however, it is always open for the parties to dispose of their disputes by agreeing to receiving of moneys in satisfaction of the claim(s). In this case

as per the agreement between the parties the claims of the

respondent/plaintiff were satisfied by the agreement to receive the amount of ₹70 lakhs. It is relevant to bear in mind two aspects while dealing with the argument as raised on behalf of the appellant. Firstly, the word in the statement of the parties is that “a formal compromise deed...” would be filed i.e. the filing was only a formality inasmuch as whatever was the agreement was already found in the statements recorded. Secondly, it is not pleaded or argued that what were the other alleged points to be recorded in the formal deed. Therefore, the suit would stand disposed of by the respondent/plaintiff getting a sum of ₹70 lakhs in lieu of all the prayers made in the suit. Accordingly, the mere fact that the statements recorded envisaged that a formal compromise deed should be signed and filed, would not make any difference to the finality of the agreement which is already entered into between the parties.

9. The third argument which was raised on behalf of the appellants seemed to *prima facie* have substance. This was because the statement on the basis of which the suit was disposed of as compromise, in terms of Order 23 Rule 3 CPC, was a statement made only by appellant No.1/defendant No.1 and the defendant Nos. 2 and 3/appellant Nos. 2 and 3 never made any statement. However, learned counsel for the respondent has drawn my attention to the reply filed on behalf of appellants/defendants, jointly to the

application under Order 23 Rule 3 CPC, and in this reply there is a categorical admission made that the statement made by the defendant No.1/appellant No.1 was a statement on behalf of all the appellants/defendants. This has been stated in the following manner by the appellants / defendants in reply to the application under Order 23 Rule 3 CPC filed by respondent/plaintiff:

“3) to 5) That the contents of the paras 3 to 5 under reply are grossly & maliciously twisted. The Defendants have never denied the statement recorded on 8<sup>th</sup> February, 2007 but have also placed on record a substantive and corroborative material to prove that there was something more than what was recorded which was in the form of oral submissions duly taken note of by the then Hon’ble Judge for which structuring of formal deed of compromise and its placement on record was directed.  
...”

10. Accordingly, once the appellants admit that the statement made by the appellant No.1/defendant No.1 in the Court on 8.2.2006 was on behalf of all the appellants, in such circumstances, all the appellants are therefore bound by the same for the decree to be passed against all of them.

11. Obviously, the present appeal is a *mala fide* exercise to back out of a settlement and satisfaction of a liability which the appellants undertook to clear towards the respondent/plaintiff. Such type of mis-adventures need to be visited with appropriate costs, inasmuch as, the respondent has been

unnecessarily put to burden of the costs of the present appeal.

Accordingly, in view of the ratio of the recent judgment of the Supreme Court in the case of ***Ramrameshwari Devi and Others v. Nirmala Devi and Others (2011) 8 SCC 249*** this appeal is dismissed with costs of ₹25,000/-. The Supreme Court in the aforesaid case of ***Ramrameshwari Devi*** (supra) has stated that it is high time that actual and realistic costs be imposed so that a dishonest litigant does not profit out of the false litigation. I am also empowered to impose actual costs by virtue of ***Volume V*** of the ***Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15***.

12. The present appeal is therefore dismissed with costs of ₹25,000/-, which shall be paid within a period of two weeks from today. Trial Court record be sent back.

**VALMIKI J. MEHTA, J.**

**DECEMBER 05, 2011**

AK