

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

% *Date of Judgment: 25.02.2011*

+ **RSA No. 30/2011**

SH. ABDUL SALIQ KHAN**Appellant**
Through: Mr. B.B. Gupta, Advocate.

Versus

SHRI. NAHID KHAN & ORS.**Respondent.**
Through: None.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1. The present appeal has impugned the judgment and decree dated 30.10.2010 wherein a direction had been given to the trial judge to draw up the formal decree in terms of its judgment dated 03.07.2006; further holding that the order dated 03.07.2006 was an executable order as the statements of the parties were binding upon them. The executing court on 15.02.2010 had dismissed the execution petition holding that the order dated 03.07.2006 (passed in suit no. 1333/1995) was a suit which had been dismissed as withdrawn/compromised; such an order was not a "decree" and as such not executable. The impugned judgment on 30.10.2010 had allowed the appeal against the afore-noted order.

2. This is a second appeal. Before this court, it has been urged that a substantial question of law has arisen as the impugned

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judgment has committed a perversity in giving a direction to the trial court to draw up a decree; executing court had rightly dismissed the execution petition upholding the objections of the appellant as the executing court could not have gone behind the decree, there was no decree in the eyes of law; it was only an order; it was rightly held that such an order was not an executable order.

3. Learned counsel for the appellant has relied upon a Division Bench Judgment of this court reported in 158 (2009) Delhi Law Times 531 Mohd. Amin Vs. Mohd. Iqbal to support his submission. It is stated that this judgment can be applied on all four squares to the case in hand. It is pointed out that in this case also; the parties had entered into a settlement whereby in terms of their compromise agreement, the suit stood dismissed as withdrawn; Division Bench of this court has held that such a compromise arrived at between the parties did not amount to a decree and was not executable. The afore-noted ratio would apply to the facts of the instant case.

4. The submissions made by the learned counsel for the appellant have no force. The present suit i.e. Suit no. 1333/1995 had been filed by the plaintiff against the defendant for declaration and permanent injunction. In the course of trial on 25.04.2006, when part cross-examination of DW-1 had been recorded, both the parties had agreed that there are chances for compromise and the matter be sent to the Mediation Centre for mediation. The parties were directed to appear before the learned mediator. The mediator, on 15.05.2006, had recorded an order that the parties have settled their disputes and the terms of the settlement were

incorporated in the said order. It had further noted that the parties agree that the cases filed by them against each other would be withdrawn after the execution of their settlement; matter was referred back to the court for 01.06.2006 for recording their statements and for passing appropriate orders as per law. The terms of settlement as recorded before the mediator were reiterated on oath before the court. Plaintiff had stated in the last line on oath-

"I withdraw my suit as dismissed as withdrawn/compromised."

Statement of defendant no. 1, Nahid Khan, was also recorded wherein he had accepted this statement of the plaintiff as correct.

The following order was thereafter passed by the Civil Judge:-

"Present: Sh. A.H. Bharti, counsel for the plaintiff.

Sh. Swaranjeet Singh, counsel for the defendant no. 1. The present suit has been compromised in the Mediation Centre. The statement of the plaintiff and defendant recorded. Both the statements are signed by their respective counsels. The plaintiff made statement that the suit be dismissed as withdrawn/compromised in terms of the statement made by him today in the court.

Keeping in view of the statement of both the parties, the present suit is dismissed as withdrawn/compromised. The parties are bound by their respective statements made in the court. File be consigned to record room after necessary compliance."

Thus, Order dated 03.07.2006 was admittedly passed pursuant to the compromise recorded between the parties which was a compromise effected before the Mediation Cell; parties had

been referred to Mediation under the orders of the court. This was essentially an order which was passed under Section 89 of the code of Civil Procedure (hereinafter referred to as 'Code'.

Section 89 (1) (d) & 2 (d) of the Code read as follows:-

“Settlement of disputes outside the Court- (1) where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for-

(d) mediation”

“(2) Where a dispute has been referred-

(d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.”

This Section has been inserted after the amendment in the Code of Civil Procedure by the Amendment Act of 1999. Object of the newly inserted provision is obviously to promote alternate methods of dispute resolutions.

The Mediation and Conciliation Rules of 2004 (hereinafter referred to as 'Rules') were framed on 11.08.2005 by the High Court of Delhi in exercise of its powers under Part X of the Code of Civil Procedure read with Section 89 (2) (d).

Rule 24 (b) is relevant. It reads as:-

“Rule 24: Settlement Agreement

(b) The agreement of the parties so signed shall be submitted to the mediator/conciliator who shall, with a covering

letter signed by him, forward the same to the Court in which the suit or proceeding is pending.”

Rule 25 (a) reads as :-

“Rule 25: Court to fix a date for recording settlement and passing decree-

“ on receipt of any settlement, the court shall fix a date of hearing normally within seven days but in any case not beyond a period of fourteen days. On such date of hearing, if the court is satisfied that the parties have settled their dispute, it shall pass a decree in accordance with terms thereof”

A conjoint reading of Rule 24 (b) and 25 (a) shows that where an agreement has been reached between the parties with regard to all the issues in the suit or proceeding or some of the issues, the same shall be reduced to writing and signed by the parties or their constituted attorney; the agreement so signed shall be submitted to the Mediator/Conciliation who shall, with a covering letter signed by him, forward the same to the Court in which the suit or proceeding is pending. There is then a mandate upon the court to pass a decree after the afore-noted settlement has been arrived at.

5. In the instant case on 03.07.2006, court had noted the parties have arrived at settlement before the Mediator; it had recorded this submission of the parties of oath and had passed an order stating that the parties would be bound by their respective statements; the suit was dismissed as withdrawn/compromised. This compromise/withdrawal was on the basis of the statements made by the parties which were binding inter se upon them. The court had inadvertently not drawn up a formal decree; which was a mandate upon it in terms of Rule 25 (a).

6. The first appellate court had rightly noted that drawing up of the decree in these circumstances was only a formality. The parties were bound by the terms of the settlement and if one party did not abide by it or chose to retract from it, the other party had a right to get it executed through a decree. It was in these circumstances that the impugned judgment had directed the Civil Judge to draw up a decree which was only a formality.

7. The impugned judgment suffers from no infirmity. No substantial question of law has arisen. The judgment relied upon by the learned counsel for the appellant reported as Mohd. Amin (supra) is distinct on its facts. In that case, on specific averments made by the respective parties in their compromise applications in para 11 the suit has been withdrawn/compromised; question of drawing up a decree had not arisen as this was on the voluntary statements made by the parties seeking permission of the court to withdraw their suit. In the instant case, in terms of the Rules which are admittedly applicable and which have been formulated pursuant to the incorporation of Section 89 in the Code and which provision has a statutory force, it was a mandate upon the court to have drawn up the decree in terms of the compromise recorded by the court. It had inadvertently not done so. This was an error which could be corrected. Such a power is available under the Provisions 152 of the Code of Civil Procedure (hereinafter referred to as 'Code'). The impugned judgment had accordingly ordered it to do so.

8. Section 152 of the Code is founded on the maxim "actus curiae neminem gravabit" i.e. an act of Court shall prejudice no man where the decree does not correctly express what was really

decided and initiated by the court, the court has inherent power to amend the decree so as to carry out its own meaning.

9. In AIR 2004 Gau 136 Ashutosh Das Vs. Smt. Rani Das & Ors. where a decree passed was vague, merely stating that “the suit would be decreed on contest with costs”, without giving any further indication at all, no decree as to what reliefs had, in fact, been granted to the decree holder, the provisions of Section 152 of the Code had been resorted to and the trial court had been directed to pass necessary orders on an application to be preferred by the judgment debtor; permission had been granted to amend the decree.

10. No substantial question of law has arisen; appeal is without any merit; it is dismissed.

INDERMEET KAUR, J.

FEBRUARY 25, 2011
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