

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

% *Judgment Reserved on: 01.02.2011*
Judgment Delivered on: 04.02.2011

+ **RSA No.175/2004 & CM No.9290/2004**

SATISH KUMAR MALHOTRA Appellant
Through: Mr.Rohit Kumar, Advocate.

Versus

RAJINDER BAJAJ Respondent
Through: Mr.Ashok Bhalla, Advocate.

AND

**CM(M) No.967/2004 & CM No.9240/2005 (for stay) & CM
No.9242/2004(for hearing the CM(M) with the RSA)**

SATISH KUMAR MALHOTRA Appellant
Through: Mr.Rohit Kumar, Advocate.

Versus

RAJINDER BAJAJ Respondent
Through: Mr.Ashok Bhalla, Advocate.

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.

1. Satish Kumar Malhotra is the appellant before this court. He has impugned the judgment dated 28.2.2004. Vide the impugned judgment and decree dated 28.2.2004 the order of the trial judge dated 15.12.1999 had been endorsed. The trial judge had disposed of the petition under Section 20 of the Indian Arbitration Act 1940 (hereinafter referred to as the 'Arbitration Act') and

simultaneously allowed the application under Order 23 Rule 3 of the Code of Civil Procedure (hereinafter referred to as the 'the Code') in terms of which the parties had entered into a valid cancellation agreement dated 11.7.1997 cancelling their agreement dated 30.11.1983. In terms of this compromise dated 11.7.1996 Satish Kumar Malhotra (hereinafter referred to as 'the appellant') had handed over the suit property i.e. property bearing No.GI/10, G.T.Karnal Road, Industrial Area, Delhi to Rajinder Bajaj (hereinafter referred to as 'the respondent').

2. Factual matrix of the case is as follows:

- i. Suit No.405/84 had been filed by the respondent against the appellant under Section 20 of the Arbitration Act.
- ii. Appellant had filed suit No.701/1987 against the respondent praying for a declaration to the effect that he is a tenant of respondent; accordingly decree for perpetual injunction be granted in his favour and respondent be restrained from interfering in his peaceful possession of the suit property.
- iii. Respondent filed an application under Section 34 of the Arbitration Act seeking a stay of the proceedings in view of the admitted agreement dated 30.11.1983.
- iv. On 6.3.1986 the suit was stayed and the matter was referred to the Sole Arbitrator Sh.SantoshKumar.
- v. RCA No.52/1986 was filed by the respondent impugning the order dated 6.3.1986.
- vi. On 2.11.1987 the appeal was allowed and the matter was remanded back to the civil judge to frame specific issues

and after allowing the parties to lead evidence decide the suit afresh.

vii. This order dated 6.3.1986 had also been impugned by the respondent in FAO No.66/1986 before the High Court. This was disposed of on 31.8.1999. During the pendency of this FAO the respondent had filed CM No.387/1988 which was an application under Order 23 Rule 3 of the Code seeking to take on record the compromise arrived at between the parties which had been evidenced by document dated 11.7.1997.

viii. Vide order dated 31.8.1999 the High Court remitted the matter back to the Civil Judge before whom the proceedings under Section 20 of the Arbitration Act were pending with a direction that CM No.387/1988 (which was an application under Order 23 Rule 3 of the Code) to be considered afresh. This was in view of the categorical contention of the appellant that he had only signed on a blank paper and never agreed to handover the possession of the suit property to the respondent. Vide the aforementioned order i.e. the order dated 31.8.1999 the Civil Judge was directed to take evidence and decide the matter after giving opportunity to the respective parties in accordance with law.

ix. Thereafter on 30.9.1999, the following three issues were framed; they read as follows:

1. Whether the compromise/agreement dated 11.7.97 was voluntarily arrived at between the parties? OPA
2. Whether the signature of the respondent were obtained on the aforementioned agreement dated 11.7.97 under duress on the blank paper? OPR
3. Relief.

x. The respondent examined himself as AW-1; Rajinder Kumar Sahi a witness to the agreement dated 11.7.1997 was examined as AW-2. The appellant had examined 13 witnesses including himself.

xi. On 15.12.1999, on the basis of the oral and documentary evidence led before the trial court the Civil Judge allowed the application under Order 23 Rule 3 of the Code. It held that the compromise agreement dated 11.7.1997 had voluntarily been entered into between the parties and the parties had voluntarily and willfully compromised the matter in terms of the application under Order 23 Rule 3 of the Code. Suit of the appellant was dismissed. Petition under Section 20 of the Arbitration Act was also disposed of; this was vide a common order dated 15.12.1999.

xii. Two appeals i.e. RCA No.21/2003 and RCA No.22/3003 were filed against the impugned judgment and decree; they were in suit No.405/1984 and Suit No.701/1987 respectively. Vide a common judgment dated 28.2.2004 both the appeals were dismissed. The impugned judgment had re-appreciated the oral and documentary evidence led by the respective parties including the oral versions of AW-1 and AW-2 as also RW-1 to RW-13. The testimonies of the witnesses of the respondent were found to be credible. The impugned order allowing the application under Order 23 Rule 3 of the Code i.e. CM No.387/1988 was considered. Petition under Section 20 of the Arbitration Act was disposed of as compromised in view of the cancellation agreement dated 11.7.1997 entered

into between the parties.

3. A second appeal i.e. RSA No.175/2004 has been filed by the appellant; CM(M) No.967/2004 had also simultaneously been preferred against the same judgment.

4. On behalf of the appellant, it has been urged that a substantial question of law has arisen in the second appeal; findings in the impugned judgment are perverse; the impugned judgment has made reference to Ex.AW-1/2 as the compromise petition under Section 23 Rule 3 of the Code which was an incorrect observation; the application under Order 23 Rule 3 of the Code was CM(M) No.387/1998. Attention has been drawn to para 8 onwards of the impugned judgment. It is submitted that a perusal of the same shows that the Presiding Officer had not applied its mind and that is why, not at one place but at several places the compromise petition under Section 23 Rule 3 of the Code has been referred to as Ex.AW-1/2; in fact, this shows that CM No.387/1998 which was in fact the compromise application had not been adverted to at all. This has raised a substantial question of law. Attention has been drawn to the version of AW-1 Rajinder Bajaj. It is pointed out that in the cross-examination, he had admitted that on 09.7.1997 criminal proceedings were pending inter se between the parties. He had admitted that on 9.7.1997 he had lodged a FIR against the appellant which had been withdrawn on the same day on the asking of Ramesh Sehgal who was a witness to Ex.AW-1/1; it is pointed out that Ex.AW-1/1 was the cancellation agreement dated 11.7.1997; on 9.7.1997 the document dated 11.7.1997 had not been created; reference by PW-1 in his cross-examination to Ramesh Sehgal witnessing Ex.AW-1/1

as the person who had put pressure upon him to withdraw the FIR clearly reveals the falsity of the witness. It is pointed out that RW-11 Ramesh Sehgal who was the attesting witness to this cancellation agreement had clearly supported the case of the appellant; the impugned judgment giving effect to the compromise dated 11.7.1997 is a perversity. It is pointed out that in para 20 of the judgment of the trial court, the trial judge had also noted contradictions between versions of AW-1 and AW-2 yet he has chosen to rely upon the said versions. The impugned judgment endorsing these findings; is a perversity and call for an interference.

5. Arguments have been countered. It is submitted that the parties had voluntarily entered into the compromise; the compromise had been reduced into writing on 11.7.1997 in terms of which the parties i.e. the appellant Satish Kumar Malhotra and the respondent Rajinder Bajaj had settled all their disputes and differences. All the contentions now raised before this Court have been dealt with in the impugned judgment. The findings of the courts below call for no interference. Counsel for the respondent has placed reliance upon (1999) 3 SCC 529 Kanhaiya Lal Vs. Babu Ram as also (1999) 6 SCC 343 Karnataka Board of Wakfs Vs. Anjuman-E-Ismail as also another judgment of the Apex Court reported in 2010 (6) Scale 368 UOI Vs. Ram Prakash to support his submission that concurrent findings of fact by two Courts below cannot be interfered with. The scope for interference by the High Court in an appeal under Section 100 is limited; it is confined only to substantial questions of law; no interference is called for on any other count.

6. Record has been perused.

7. The facts have been aforementioned. Suit No.405/1984 had been filed by Rajinder Bajaj against Satish Kumar Malhotra; which was a petition under Section 20 of the Arbitration Act. Simultaneously suit bearing no.701/1987 titled as Satish Kumar Malhotra Vs. Rajinder Bajaj had been filed by Satish Kumar Malhotra against the defendant wherein Satish Kumar Malhotra claimed himself to be a tenant under Rajinder Bajaj. Pursuant to the application under Section 34 of the Arbitration Act, the suit proceedings were stayed. Reference was made to the Sole Arbitrator Santosh Kumar; this was vide order dated 6.3.1986. Appeals were filed against the aforementioned order dated 6.3.1986. Matter was again remitted back to the Civil Judge for disposal of the petition under Section 20 after framing of issues. The appeal impugning the order dated 6.3.1986 was preferred in the High court was disposed of on 31.8.1999 directing the Civil Judge before whom the petition under Section 20 of the Arbitration Act was pending to consider the plea of Satish Kumar Malhotra that the compromise agreement dated 11.7.1997 was not a voluntary compromise agreement and the signatures of Satish Kumar Malhotra had been obtained on a blank paper under duress.

8. Two concurrent findings of fact had been recorded by the Courts below. The two witnesses had been examined on behalf of the appellant Rajinder Bajaj of whom Rajinder Bajaj was examined as AW-1. Nothing has been elicited in his cross-examination which could shake his testimony. He has categorically averred that the parties had voluntarily entered into a compromise on 11.7.1997 and Satish Kumar Malhotra had put his signatures on the said

document at point A. This compromise agreement has been proved as Ex. AW-1/1; there were two witnesses to this agreement of whom Ramesh Sehgal had been examined as RW-11. RW-11 has supported the stand of Satish Kumar Malhotra stating that the signatures of Satish Kumar Malhotra had been obtained on blank papers forcibly under pressure; he had admitted that he is 'Samdi' of Satish Kumar Malhotra as his brother's daughter is married to the son of Satish Kumar Malhotra. The other attesting witnesses to this agreement was AW-2 Rajinder Kumar Sahi who had supported the stand of the appellant. These oral versions as also the documentary evidence which included Ex.AW-1/1 to Ex.AW-1/3 were examined and scrutinized by the courts below. Testimony of RW-5, the Notary Public, as also the version of RW-11 Ramesh Sehgal has been rejected. The court had noted that Satish Kumar Malhotra examined as RW-4 and Ramesh Sehgal examined as RW-11; had admitted that they had not lodged any report to the police to the effect that it was under threat and coercion that they had signed certain blank papers; the alleged threats had also not been explained. Compromise agreement Ex.AW-1/1 dated 11.7.1997 was held to be a voluntary agreement arrived at between the parties wherein the respondent has appended his signatures willfully.

9. Relevant at this stage would it be to examine the aforementioned documents. Ex.AW-1/1 is the cancellation agreement which is dated 11.7.1997; it is signed by Satish Kumar Malhotra as a first party not on one page but on both the two pages of the document. Contention of Satish Kumar Malhotra that he was coerced to sign one blank paper is thus belied. He is not clear as to whether it

was one blank or more than one blank paper on which he had signed. One attesting witness to this said document (AW-2) had fully supported this document stating that both the parties had signed the document in his presence. This witness was known to both the parties equally; he was the secretary of the GT Karnal Road Manufacturer Association and was a neutral witness. His statement was also recorded earlier on 28.5.1998 under Order X of the Code in the High Court wherein he had stuck to the same stand. Per contra the second attesting witnesses to this agreement RW-11 (Ramesh Sehgal) was closely related to Satish Kumar Malhotra; although, he had stated that Satish Kumar Malhotra had been coerced to sign on blank paper, he admitted that no complaint of this coercion was ever reported to the police. After scrutiny of his version he was held not to be a credible witness.

10. Ex.AW-1/2 was the compromise petition under Order 23 Rule 3 of the Code. The signature of Satish Kumar Malhotra appeared in the column of the defendant; it is a single page application; Satish Kumar Malhotra had earlier signed in the column of the plaintiff; thereafter his signature was scored off and written in the column of the defendant. Admittedly, these are the signatures of Satish Kumar Malhotra. The Court had correctly noted that had the signatures of Satish Kumar Malhotra been appended on a blank paper, they would not have first appeared in the column above the plaintiff; thereafter scored off and rightly recorded in the column above the defendant.

11. Ex.AW-1/3 is a ditto of Ex.PW-1/2 and had been exhibited in the second suit proceedings.

12. The minor contradictions pointed out by learned counsel for the appellant in the version of AW-1 and AW-2 have been dealt with by the two courts below. Credibility of AW-1 and AW-2 had been established qua the testimony of the witnesses of the respondent; the documentary evidence proved as Ex.AW-1/1 to Ex.AW-1/3 also evidenced that the respondent Satish Kumar Malhotra had voluntarily, willfully and without coercion or duress had appended his signatures on the cancellation agreement Ex.AW-1/1.

13. Ex.AW-1/2 was the application under Order 23 Rule 3 of the Code which had been filed before the Court of Mr.Daya Prakash, Civil Judge; this was a compromise petition dated 11.7.1997 under Order 23 Rule 3 of the Code signed by both the parties. CM No.387/1988 was the compromise petition which had been filed before the High court; this was dated 23.1.1988 and was an application filed by Rajinder Bajaj in the pending FAO No.66/1986; this was signed by the respondent alone. In para 8 of the impugned judgment inadvertently reference has been made to Ex.AW-1/2 as the compromise petition filed jointly by the parties under Order 23 Rule 3 of the Code. This was in fact the joint petition filed before the Civil Judge. This, however, does not in any manner support the submission of the appellant that CM No.387/1998 had not been adverted to. In fact in para 3 of the impugned judgment the Presiding Officer had correctly noted that in terms of the orders of the High court dated 31.8.1999 the Court had been directed to consider afresh the application of Rajinder Bajaj under Order 23 Rule 3 of the Code and the whole body of the impugned judgment

is herewith bordered thereupon. There is no perversity on this score as has been emphasized by the learned counsel for the appellant.

14. Courts below had rightly returned a concurrent finding that the cancellation agreement Ex.AW-1/1 dated 11.7.1997 had cancelled the business agreement dated 30.11.1983 entered into between the Satish Kumar Malhotra and Rajinder Bajaj; appellant Satish Kumar Malhotra had removed his goods from the suit property and the parties had further agreed to withdraw all pending litigation inter se between the parties.

15. The appeal is yet at the stage of admission. The substantial question of law has been formulated on page 27 of the body of the appeal; they read as follows:

“a. Whether the judgements of the Ld. Lower Courts are untenable in law as the same have been based on mere conjectures, surmises and inferences contrary to the facts and circumstances and the evidence on record?

b. Whether the conclusions arrived at by the Ld. Lower Courts are bad in law as being based on misinterpretation, misreading and ignoring material evidence on record?

c. Whether the Ld. Lower Courts exceeded the jurisdiction vested in the Ld. Lower Courts?

d. Whether the Ld. Lower Courts have erred in law in following a procedure untenable and vitiated in law in dismissing the suit of the plaintiff?

e. Whether the conclusions arrived at by the Ld. Lower Courts that a compromise had been arrived at between the parties without the basic ingredients of the compromise alleged by one party still not being fulfilled as is apparent from the record, vitiated in law?

f. Whether the Ld. Lower Courts have gravely erred in law in giving findings on the basis of a forged document?

g. Whether the suit of the plaintiff seeking substantial relief for protection of valuable rights could be dismissed summarily on the erroneous findings based on a forged document in a separate proceeding?

h. Whether the Ld. Courts could record a compromise which was illegal and barred under the law and on the basis of the compromise dismissed the suit of the plaintiff?"

16. In the judgment of Ram Prakash (supra) the Supreme Court relied upon its earlier judgment reported in (1998) 6 SCC 683 Sheel Chand Vs. Prakash Chand of the Apex Court inter alia held as follows:

"7.....The existence of a "substantial question of law" is the sine qua none for the exercise of jurisdiction by the High Court under the amended provisions of Section 100 CPC. It appears that the learned Single Judge overlooked the charge brought about to Section 100 CPC by the amendment made in 1976. The High court unjustifiably interfered with pure questions of fact while exercising jurisdiction under section 100 CPC. It was not proper for the learned Single Judge to have reversed the concurrent findings of fact while exercising jurisdiction under Section 100 CPC."

17. The aforementioned substantial questions of law do not arise; no substantial question of law has arisen.

18. CM(M) No. 967/2004 has also impugned the judgment dated 28.2.2004. This is a petition under section 227 of the Constitution of India, where powers of the High Court are superintending powers. Interference is called for only when there is a patently wrong decision arrived at by a judicial or quasi judicial Tribunal either on fact or on law, No interference is called for where substantial justice has been done to the parties or where in the larger interest it would not be prudent to issue such a writ.

19. Concurrent findings of the both the Courts below calls for no interference. The RSA, CM(M) as also the pending applications are dismissed.

INDERMEET KAUR, J.

FEBRUARY 4, 2011
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