

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

Decided on: 03.10.2013

+ **RFA (OS) 98/2013, C.M. NO.12524/2013**

INDER KUMAR KATHURIA Appellant
Through: Sh. Sanjay Jain, Sr. Advocate with
Sh. Manish. K. Jha, Ms. Prabhsahay Kaur and
Ms. Aastha Jain, Advocates.

versus

KRISHAN KUMAR KATHURIA & ORS. Respondents
Through: Sh. Gurmehar. S. Sistani with Sh.
Arjun Syal, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The present appeal is filed against a decree dated 08.04.2004, which was drawn-up pursuant to an order of this Court in I.A. No. 7595/2004 in CS(OS) 90/2004. Before entering the details of that order, a background of the dispute between the parties is necessary. The plaintiff in CS(OS) 90/2004, and the appellant herein, is the sole registered owner of property bearing No. D-133, East of Kailash, New Delhi (hereinafter "*the property in question*"), which was given as a perpetual lease by the President of India through a deed dated 27.10.1973, for a sum of ₹ 48,000/-, registered in the Office of the Sub-Registrar, Delhi on 09.01.1974. This property comprises a ground floor, first floor, mezzanine and second floor. While the plaintiff is in possession of the ground floor, the first floor is occupied by the first defendant, his brother, along with his wife, Mrs. Veena Kathuria, and their two sons, Mr. Amit Kathuria and Arjun Kathuria.

2. The plaintiff claimed that since his brother, Krishan Kumar Kathuria, the first defendant was a bachelor and had no reasonable residential accommodation in the year 1976, the plaintiff permitted him (i.e. his

brother) to occupy the first floor of the property in question. Subsequently, it is claimed that on the plaintiff's request to vacate the property since he required it for his own purposes (after this son got married and required the first floor, it is claimed, to reside with his wife), the first defendant agreed, but never acted upon his promise to vacate the premises. Thus, it is claimed that the plaintiff then filed CS(OS) 90/2004 for possession and *mesne* profits against the first defendant and his three family members (i.e. wife and two sons) in respect of the first floor of the property in question. It is also stated that in December, 2001, the first defendant openly refused to vacate the suit property, unless the plaintiff bought him a first floor flat having the same built-up area as the property in question at any other location in South Delhi. As a consequence, the plaintiff submitted that the occupation of the first floor by the four defendants/respondents herein is unauthorized.

3. During the pendency of the proceedings, the parties represented to the Court that a compromise had been arrived at, whereby their disputes were settled. The suit was, therefore, disposed off in terms of a compromise recorded by the parties, presented to the Court as a joint application under Order XXIII Rule 3, Code of Civil Procedure ("CPC") in I.A. No 7595/2004. That order of 10.11.2004 held as follows:

"This is a joint application under Order XXIII Rule 3 read with Section 151 CPC moved on behalf of the parties praying for recording settlement and satisfaction reached between the parties in relation to the subject matter of the suit. The application is supported by the affidavit of Mr. Krishan Kumar Kathuria – Defendant No.1, Ms. Veena Kathuria – defendant No. 2, Mr. Amit Kathuria defendant No.3 and Mr. Arjun Kathuria – defendant No.4. Parties are present in the Court and they fully affirm to the contents of the application. Accordingly the application is allowed, the compromise reached between the parties is taken on record and the suit of

the plaintiff is disposed of as satisfied, leaving the parties to bear their own costs. All pending applications also stand disposed of.”

4. The compromise reached by the parties was that the plaintiff would sell the entire property to a third party within three years from the passing of the compromise order at the price mutually agreed by the parties, and pay the first defendant 29% of the gross sale consideration. In the alternative, in case the plaintiff was unable to sell the property, the compromise agreement stipulated that the plaintiff was to transfer ownership of the first floor of the property in question to the first defendant i.e. the plaintiff's brother, and execute all necessary documents necessary in that regard. It was also agreed that the first defendant would pay ₹ 8.75 lakhs towards the lumpsum reimbursement of electricity and water charges. Towards this payment, the first defendant agreed to pay ₹ 1 lakh on the date of hearing of the compromise application, and the balance was to be deducted by the plaintiff from the share of the first defendant's sale proceeds from the sale of the property in question.

5. Subsequently, in 2008, the first defendant filed an Execution Petition No. 400/2008 seeking enforcement of the 10th November, 2004 order, and an application under Section 12 of the Contempt of Courts Act, 1971 for non-compliance of that order [I.A. No. 14136/2007 in CS(OS) 90/2004]. By an order dated 19.11.2009, the learned Single Judge dismissed the application for contempt as not maintainable, but allowed the execution petition with a direction to draw-up a decree sheet. The reasoning of the learned Single Judge as regards the second finding is relevant to the present appeal. It was argued before the learned Single Judge that the order of 10th November, 2004 was only a settlement, whilst only a decree could be executed in execution proceedings. The fact that no decree was drawn-up

within the meaning of Section 2(2) of the Code of Civil Procedure, read with Order XX Rule 6 CPC, it was contended, negated the viability of the execution proceedings. Further, it was argued that,

“the court has not passed an order for drawing a decree intentionally as the agreement presented by the parties under Order 23 Rule 3 CPC shows a fresh agreement entered into between the parties leaving aside the issues raised in the subject matter of the suit and, therefore, the so-called compromise is beyond the nature and scope of the suit filed by the Objector and the fact is that no decree was ever drawn up by the Court.”

6. After considering the arguments advanced by the plaintiff, the judgment-debtor in those proceedings, the learned Single Judge concluded as follows:

“15. Hence, there is no force the submission that the order dated 10th November, 2004 is not executable as a decree or that no decree can be drawn as the settlement/compromise arrived at between the parties is beyond the nature and scope of the subject-matter of the suit. The objection raised by the judgment-debtor is merely a flimsy one which is not sustainable in law and is, therefore, rejected.”

7. Further, the learned Single Judge also considered the argument that the execution petition *“was not maintainable as an execution can only be filed when a decree has been passed by the court”*, and the consent order of 10th November, 2004 did not qualify as one. Relying on an almost identical fact situation before the Court in *Mohd. Iqbal v. Mohd. Amin*, 2008 (146) DLT 521, the learned Single Judge dismissed this contention as well. To recount, in *Mohd. Iqbal*, this Court held as follows:

“3 ... The Division Bench was of the view that when the order dated 25.2.1991 was passed by this Court permitting withdrawal of the suit, the Court was conscious of the fact that the suit had been withdrawn in view of the compromise

which had been placed on record. The Division Bench specifically noted that it is because of that that the Court has directed that the parties would be bound by the terms of the compromise. Consequently, the Division Bench concluded that the observation of the Executing Court that Clause 10 of the agreement was a new agreement between the parties did not appear to be correct. As a result of this conclusion, the Division Bench set aside the impugned order and remanded the case back to the Executing Court to decide the execution petition afresh in the light of the observations made by the Division Bench.”

8. Relying on these observations, the learned Single Judge further concluded as follows in the present case:

“20. A bare perusal of the order and the settlement stated above shows that the suit was disposed of in terms of the settlement arrived at between the parties. As such, it cannot be said that the present execution is not maintainable and no decree is to be drawn and that the order dated 10th November, 2004 is not executable and enforceable under law.

21. I am of the considered opinion that in view of settled law, the order dated 10 November, 2004 which has been passed in the application under Order 23 Rule 3 which has been accepted by the parties as the application was duly signed by the parties and supported by affidavits and the order was passed in the presence of the parties whereby the terms and conditions mentioned in the application were also accepted by the Court, thus I feel that order dated 10 November, 2004 passed by this court amounts to a ‘decree’ within the meaning of Section 2(2) of the Code. Therefore, I direct that a decree be drawn in view of the order passed on 10th November, 2004.

22. The decree holder is also entitled to his right to the suit property being D-133 [1st Floor], East of Kailash, New Delhi and I direct the judgment debtor Sh. Inder Kumar Kathuria to execute all the documents for transferring his right in the suit property to the decree holder against the amount agreed to by the parties and also to hand over vacant and peaceful

possession of the same to the decree holder. Further, the judgment debtor is directed to pay the court fee stamp, if leviable, and if not, then the same shall be adjusted from the amount payable to the judgment debtor. Execution petition disposed of accordingly.”

9. Against this order, the plaintiff preferred an appeal, EFA(OS)5/2010. On 19.02.2010, as was recorded by an order of the Court of the same date, during the course of hearing before the Division Bench, the first defendant handed over a cheque of ₹ 7.75 lakhs towards the reimbursement of water and electricity bills as provided in the settlement terms between the parties, which was accepted by the plaintiff without prejudice to his arguments in the appeals. Subsequently, on 10.03.2010, the Court noted that the:

“The parties have been able to work out a mutually amicable solution and seek assistance of a facilitator to implement the terms and conditions agreed upon between the parties”.

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10. It listed the terms of the common terms reached between the parties. However, on 01.11.2010, the Court recorded:

“We have perused the report of Facilitator which states that no mutual settlement could be possible between the parties.

List for consideration on 21st February, 2011.”

11. Subsequently, on 15.03.2012, the Court noted as follows:

“XXXXXX XXXXXX XXXXXX

We find that there does not appear to be any other alternative other than these three possibilities [i.e. Mr. I.K. Kathuria either agreeing to any of the two alternatives proposed in the earlier talks with the facilitator, or the impugned order] and either the appellant adheres to the two alternatives set out in the order dated 10.3.2010 or the impugned order has to be given effect to.

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12. Finally, on 22.03.2012, the appeal was disposed off in the following terms:

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- i. *The appellant will pay to the respondents a sum of ₹3.40 crore (mistakenly recorded as ₹ 3.04 crore on 19.3.2012), in the name of Mr. “Krishan Kathuria”, in full and final settlement of the claim of the respondents against the 29 per cent share in the suit property within a period of sixty (60) days from today.*
- ii. *In case the payment is not made within sixty (60) days, the appellant will get a grace period of another sixty (60) days but will have to pay interest @ 15 per cent per annum simple interest for the delayed period till date of payment.*
- iii. *The possession of the first floor of the property will be handed over by the respondents to the appellant within sixty (60) days of the full consideration being paid by the appellant to the respondents with or without interest as the case may be.*
- iv. *If the appellant fails to make payment to the respondents within the period of sixty (60) days as also within the grace period of sixty (60) days with interest, the directions contained in the impugned order would come into effect and the respondents will be entitled to get the sale deed registered in their name for the first floor of the property along with 29 per cent undivided share in the land within a period of one (1) month, the sale deed will be executed by an Officer of this Court to be appointed for the said purpose.*

The appeal and the application stand disposed of in the aforesaid terms.”

13. Subsequently, the plaintiff’s failure to pay the amount as required in the above order, led to a revival of rights and obligations under the

impugned order in those proceedings, i.e. the order of the learned Single Judge on 19.11.2009, which directed a decree to be drawn-up in terms of the original compromise between the parties. Accordingly, in pursuance of the said order, and at the behest of the first defendant, a decree was drawn up by the Joint Registrar of this Court on 08.04.2013, in the following terms:

“FOR THE PLAINTIFF: Mr. Ashish Dholakia, Advocate

FOR THE DEFENDANTS: Mr. Vikas Pahwa, Advocate.

This suit coming on this day for final disposal before this Court in the presence of the counsel for the parties, as aforesaid and upon the parties having arrived at a compromise and having filed a joint application (I.A. No.7595/2004) under Order 23 Rule 3 read with section 151 C.P.C., It is ordered that the said application (I.A. No.7595/2004) is allowed and a decree be and the same is hereby passed in terms of the said application (I.A. No.7595/2004), which shall form part of the decree.

It is further ordered that the parties shall bear their own costs.

*Given under the hand and seal of the **Hon’ble Mr. Justice B.C. Patel Chief Justice** of the High Court of Delhi at New Delhi, this the 10th day of November 2004.*

Prepared on 08.04.2013.”

14. The present appeal arises against this decree, drawn-up on 08.04.2013, arising from CS(OS) 90/2004. Learned counsel for the plaintiff seeks to impugn both the order of 10th November, 2004, and the subsequent decree drawn-up in terms of that order. *First*, it is argued that when, under

an agreement or compromise, one party does not confer any benefit upon the other, but receives considerable benefit, such a compromise or agreement cannot be regarded as lawful within the meaning of Order XXIII Rule 3 CPC for want of consideration. On the facts of this case, it is argued that whilst the first defendant got the ownership of the 1st floor of the property in question under the compromise, despite having no right or title over it, no consideration flowed in the opposite direction towards the plaintiff. Building on this, it was argued that the learned Single Judge should not have recorded the compromise, as it was unfair and detrimental to the interests of the plaintiff. Moreover, a plea of undue influence is made, which, it is argued, can be easily inferred as Sh. I.K. Kathuria agreed to transfer his absolute share to Sh. K.K. Kathuria, the first defendant, for no consideration. For this, reliance was placed upon a decision of this Court, *Iqbal Krishan v. Maharaj Krishan*, 68 (1997) DLT 318 (DB) and a decision of the Supreme Court in *State of Punjab (now Haryana) and Others v. Amar Singh and Another*, (1974) 2 SCC 70. *Secondly*, it is argued that the learned Single Judge failed to appreciate that the suit could not have been satisfied by the compromise recorded, as it was not filed for title or ownership of the property in question, but for the eviction of the first defendant and his family. Thus, it was argued that the suit could have been satisfied only if the first defendant had vacated the suit premises and paid the *mesne* profits. *Thirdly*, it was argued that the provision for ownership of the property in question, or the payment of 29% of the gross sale consideration, was in the nature of a penalty, and therefore, unenforceable. *Fourthly*, it is argued that because Section 17(1), Registration Act, 1908 mandates that the instruments enumerated in Clauses 7(a) to (e) shall be registered compulsorily if the property to which they relate is immovable property, the value of which is ₹100 or upwards, and as the present

compromise or the decree was not registered as such, it cannot be the basis for any rights or obligations relating to the immovable property in question.

15. Before addressing these arguments, it is useful to extract Order XXIII Rule 3 CPC, which is crucial to this case:

*“3. **Compromise of suit.**- Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject matter of the suit: - Provided that where it is alleged by one party and denied by the other than an adjustment or satisfaction has been arrived at, the court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the court, for reasons to be recorded, thinks fit to grant such adjournment.*

Explanation: An agreement or compromise which is void or avoidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.

16. As regards the arguments advanced that the compromise between the parties could not have satisfied the suit, in that the reliefs claimed were distinct from the compromise, two factors are important. *First*, while the relief claimed was for eviction from the property in question, the compromise dealt with rights in the property *inter se* the two parties comprehensively, thus covering the question of eviction as well. Indeed, if the terms of the compromise are to be viewed, the first defendant is to be paid 29% of the sale proceeds, or be *given ownership of the property in question* – thus, these factors clearly decide, and delve into, the question of

eviction from the suit property as well. Indeed, necessarily implicit in the compromise reached between the parties was the fact that the first defendant would *not* be evicted, as the entire compromise would be rendered ineffectual otherwise.

17. The second – and crucial aspect – is that the terms of Rule 3 of Order XXIII are clear and unambiguous in stating that “*the court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject matter of the suit.*” (emphasis supplied). The plaintiff/appellant’s argument would have carried weight but for the amendment to the law in 1976, which authorized courts to record compromises and direct decrees in respect of not only disputes that were the subject matters of the suits and proceedings pending before them, but also comprehensive settlements, which encompassed other matters and claims. Thus, the Court hearing the matter, in this case, the learned Single Judge, was clearly authorized by law to record, and pass a decree, in accordance with the compromise reached by the parties, even if it travels beyond the confines of the facts of the case before the Court. At any rate, thus, the compromise recorded by the learned Single Judge cannot be faulted on this ground.

18. As regards the argument that the compromise contained in effect a *penal* and, therefore, unenforceable arrangement, relating to the argument that the compromise was reached as a result of undue influence, it is clear under the explanation to Rule 3 that any compromise contrary to the Indian Contract Act cannot be enforced. This proposition is indisputable (see *Amar Singh*, (*supra*), where the Supreme Court held that “*where a compromise goes against a public policy prescription of a statute or a mandatory*

direction to the Court to decide on its own certain foundational facts, a razi cannot operate to defeat the requirement so specified or absolve the court from the duty. The resultant order will be ineffective. After all by consent or agreement, parties cannot achieve what is contrary to law and a decree merely based on such agreement cannot furnish a judicial amulet against statutory violation. For, 'by private agreement' converted into a decree, parties cannot empower themselves to do that which they could not have done by private agreement alone'. ... The true rule is that "the contract of the parties is not the less a contract, and subject to the incidents of a contract, because there is superadded the command of the Judge)". However, despite a vague and casual assertion of undue influence at Ground F of the appeal memorandum, no details or particulars whatsoever of undue influence have been pleaded, or are clear from the record. Neither are the provisions of the compromise penal in any way. Rather, they deal with regard to civil rights to the property in question between the parties, and the division of ownership rights/sale proceeds with regard to the property. These are entirely civil matters, relating to money/property, with a view to settling the legal rights and obligations of parties in respect of the suit, rather than to enforce any penal sanctions, i.e. to punish the plaintiff.

19. Equally, the argument as to the requirement of registration of the compromise is without merit, given the ruling of the Supreme Court in *Som Dev and Others v. Rati Ram and Another*, 2006 (10) SCC 788, which is controlling. There, in negating this very argument, the Court held:

"9. On a plain reading of Section 17 of the Registration Act, with particular reference to Clause (vi) of Sub-section (2) it is clear that a decree or order of a court and a compromise decree that relates only to the subject matter of the suit need not be registered on the ground that it is a non-testamentary instrument which purports to or operates to create, declare, assign, limit or extinguish any right to or in immovable

property or which acknowledges receipt or payment of any compromise on account of a transaction which brings about the above results. But if a suit is decreed on the basis of a compromise and that compromise takes in property that is not the subject matter of the suit, such a compromise decree would require registration. Of course, we are not unmindful of the line of authorities that say that even if there is inclusion of property that is not the subject matter of the suit, if it constitutes the consideration for the compromise, such a compromise decree would be considered to be a compromise relating to the subject matter of the suit and such a decree would also not require registration in view of Clause (vi) of Section 17(2) of the Registration Act. Since we are not concerned with that aspect here, it is not necessary to further deal with that question. Suffice it to say that on a plain reading of Clause (vi) of Section 17(2) all decrees and orders of Court including a compromise decree subject to the exception as regards properties that are outside the subject matter of the suit, do not require registration on the ground that they are hit by Section 17(1)(b) and (c) of the Act. But at the same time, there is no exemption or exclusion, in respect of the Clauses (a), (d) and (e) of Section 17(1) so that if a decree brings about a gift of immovable property, or lease of immovable property from year to year or for a term exceeding one year or reserving an early rent or a transfer of a decree or order of a Court or any award creating, declaring, assigning, limiting or extinguishing rights to and in immovable property, that requires to be registered.”

20. Finally, as regards the plea that the compromise is void for lack of consideration, and that the learned Single Judge should have refused to record the settlement, as also the argument that the order of 10th November, 2004 intentionally did not pass a decree, but only recorded the settlement, this Court takes notice of two important facts: *first*, this question of whether a consent decree can be appealed before an appellate Court was considered by the Supreme Court in *Pushpa Devi Bhagat (D) th. LR Smt. Sadhna Rai v. Rajinder Singh and Ors.*, 2006 (5) SCC 566, in the following terms:

“11. Section 96 provides for appeals from original decrees. Sub-section (3) of Section 96, however, provided that no appeal shall lie from a decree passed by the court with the consent of the parties. We may notice here that Order 43 Rule 1 (m) of CPC had earlier provided for an appeal against the order under Rule 3 Order 23 recording or refusing to record an agreement, compromise or satisfaction. But Clause (m) of Rule 1 Order 43 was omitted by Act 104 of 1976 with effect from 1.2.1977. Simultaneously, a proviso was added to Rule 3 Order 23 with effect from 1.2.1977. We extract below the relevant portion of the said proviso:

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the court shall decide the question.

Rule 3A was also added in Order 23 with effect from 1.2.1977 barring any suit to set aside a decree on the ground that the compromise on which the decree is based was not lawful.

12. The position that emerges from the amended provisions of Order 23, can be summed up thus:

- (i) No appeal is maintainable against a consent decree having regard to the specific bar contained in Section 96(3) CPC.*
- (ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of Clause (m) Rule 1 Order 43.*
- (iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3A.*
- (iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 of Order 23.*

Therefore, 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. In that

event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree, is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made. The second defendant, who challenged the consent compromise decree was fully aware of this position as she filed an application for setting aside the consent decree on 21.8.2001 by alleging that there was no valid compromise in accordance with law. Significantly, none of the other defendants challenged the consent decree. For reasons best known to herself, the second defendant within a few days thereafter (that is on 27.8.2001), filed an appeal and chose not to pursue the application filed before the court, which passed the consent decree. Such an appeal by second defendant was not maintainable, having regard to the express bar contained in Section 96(3) of the Code.”

21. The present case is one of an appeal against a decree passed by consent, where the decree itself is being challenged. In such cases, as the Supreme Court’s *dictum* clearly notes, the remedy is to approach the Court which recorded the compromise itself to set aside the decree, rather than to approach the appellate Court, a remedy which has been, by statutory amendment, removed. In this case, after the order of 10th November, 2004, the plaintiff raised several pleas regarding whether a decree was in fact passed in the execution application preferred by the first defendant. The question was argued by counsel and considered by the learned Single Judge in great detail, holding that the order of 10th November, 2004 was in fact a decree. The plaintiff further entered appearance in proceedings before the Appellate Court in those proceedings, and for reasons best known to him, did not challenge the validity of the compromise itself before the learned Single Judge who recorded it. Indeed, till date, no such application to recall, or reconsider, the compromise has been moved before the learned Single

Judge. Moreover, as the plaintiff admits that there *was* a compromise recorded on 10th November, 2004, neither is this a case where “*there is a contest on the question whether there was a compromise or not*”, such that “*a decree accepting the compromise on resolution of that controversy, cannot be said to be a decree passed with the consent of the parties,*” in which case the bar under Section 96 would not apply. (see, *Kishun @ Ram Kishun (Dead) through LRs v. Bihari (D) by LRs*, (2005) 6 SCC 300, paragraph 6)

22. In any case, the order of the learned Single Judge in Execution Petition 400/2008, has now attained finality, with the appeal having been disposed off by an order dated 22.03.2012, leading to a revival of the said order. The learned Single Judge, in paragraphs 11-22, considered the very question of whether the compromise in this case, and the order of 10th November, 2004, can be called a decree or not, and whether execution proceedings in respect of that order are maintainable. In considering the arguments raised by the plaintiff, the learned Single Judge concluded that the order was a decree under the terms of Section 2(2), CPC. Given those findings, which have not been challenged, that issue is thereby decided against the plaintiff. As regards the argument that the compromise is void for failure to disclose a consideration, this Court notices that the compromise was presented by way of a joint application, i.e. it was in writing, and was recorded in the presence of the parties, without any protest. While the Court recording the decree must entertain caution in recording such a compromise under Order XXIII CPC, which is then translated into a decree of the Court, and not just a settlement between the parties, once the parties have accepted such a compromise settling their rights and liabilities, the plea that the settlement be rescinded does not lie. Indeed, this is why the safeguards under Order XXIII, which were met in

this case, are crucially important (i.e. settlement in writing and signed by the parties, or their authorized representatives). Moreover, it is an established principle of law that the Court will not go behind a contractual agreement between the parties, and ascertain the *adequacy* of consideration. Rather, the fact that *some* consideration flowed to either party is sufficient to uphold the contractual arrangement. A reading of the compromise reflected in the joint application of parties in this case clearly shows that both parties have rights and obligations – while the first defendant does receive 29% of the sale proceeds/ownership of the 1st Floor, the agreement records his liability to pay water and electricity charges, and crucially, settles the rights of parties in proportion (71% for the plaintiff, and 29% for the first defendant) finally as opposed to the first defendant contesting this question at trial in the suit. Moreover, the Court also notices that this is the first time since 10th November, 2004 - after a period of one decade, that a plea of lack on consideration has been raised, almost as an afterthought to bypass a compromise freely and voluntarily recorded between the parties- an instance of clear abuse of the judicial process.

23. Thus, for the above reasons, the appeal is without merit. The same is accordingly dismissed. In the circumstances, the appellant is to bear the costs of ₹50,000 (Rupees fifty thousand) to be paid to the respondents within four weeks.

S. RAVINDRA BHAT
(JUDGE)

NAJMI WAZIRI
(JUDGE)

OCTOBER 3, 2013