

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

% **Date of decision: 24<sup>th</sup> March, 2014**

+ **CS(OS) 753/2014, IA No.4783/2014 (for exemption) & IA No.4782/2014 (u/O 39 R-1&2 CPC)**

**BHAI SARABJIT SINGH**

**..... Plaintiff**

Through: Mr. Raman Kapur, Sr. Adv. with Mr. Manish Kumar, Mr. Amit Kumar & Mr. Piyush Kaushik, Advs.

Versus

**INDU SABHARWAL & ORS**

**..... Defendants**

Through: Dr. Arun Mohan, Sr. Adv. with Mr. Arvind Bhatt with defendant no.1 Indu Sabharwal in person.  
Mr. Sanjiv Kakra & Mr. Sanjeev Mahajan, Advs. for D-2&d-3.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. The plaintiff has instituted this suit for declaration of the Settlement Agreement dated 6<sup>th</sup> August, 2010, entered into between the plaintiff and the three defendants and on the basis of which CS(OS) No.1698/2007 was decreed on 8<sup>th</sup> November, 2013, as null and void on account of fraud and misrepresentation played upon the plaintiff by the three defendants, pleading:-

- (a) that the plaintiff and the defendant no.2 Ms. Nisha Singh and the defendant no.3 Ms. Tara Sabharwal are the children of Bhai Tirlochan Singh and Mrs. Manjit H. Singh;
- (b) that the defendant no.1 claims to be the second wife of Bhai Tirlochan Singh;
- (c) that after the demise of Bhai Tirlochan Singh, disputes and differences arose between the plaintiff and the defendants with respect to his estate and which were the subject matter of CS(OS) No.1698/2007 filed by the defendants no.2&3;
- (d) that vide *ex parte* stay order dated 14<sup>th</sup> September, 2007 in the said suit, the parties thereto were restrained from creating any third party interest in the properties of Bhai Tirlochan Singh;
- (e) that though the defendants no.2&3, immediately after the demise of Bhai Tirlochan Singh, had withdrawn an amount of approximately Rs.1 crore out of his bank account but did not mention the same in the suit;
- (f) that the defendant no.1, though initially in the said suit admitted the validity and authenticity of the Will dated 23<sup>rd</sup> March, 2006 of Bhai Tirlochan Singh but subsequently took a somersault;

- (g) CS(OS) No.684/2008 was also filed by the plaintiff for injunction the defendant no.1 herein from interfering in the enjoyment and peaceful possession of the plaintiff of property No.9, Amrita Shergill Marg, New Delhi;
- (h) Test. Case No.2/2008 was also filed by executor to the Will dated 23<sup>rd</sup> March, 2006 aforesaid of Bhai Tirlochan Singh, for probate thereof;
- (i) that vide order dated 5<sup>th</sup> August, 2010 in FAO(OS) No.83/2007 arising from the aforesaid proceedings, the parties were referred to the Mediation Cell of this Court;
- (j) that the Settlement Agreement dated 6<sup>th</sup> August, 2010 supra was signed between the parties;
- (k) that the plaintiff agreed to the said Settlement Agreement, to buy peace and under a *bona fide* belief, (i) that on account of the order dated 14<sup>th</sup> September, 2007 of *status quo*, all the movable assets pertaining to the estate of Bhai Tirlochan Singh, either in his individual name or in the joint name of Bhai Tirlochan Singh and the defendant no.1 or of a third party with Bhai Tirlochan Singh, irrespective of any nomination therein,

were lying deposited in the respective accounts, untouched by either of the parties; (ii) that the amounts as were lying deposited in the form of bonds, investment etc. were intact and none of the parties had withdrawn / misappropriated any money out of the estate of Bhai Tirlochan Singh; (iii) that the movable assets in the form of deposits, investment, bonds share etc. of Bhai Tirlochan Singh which had fallen in the respective shares of the parties would be released in implementation of the Settlement Agreement and the monies would accordingly be released / adjusted; (iv) that no formal decree shall be passed in the suit as the same would have tax implications on overall valuation of the assets and deposit of stamp duty; and, (v) that the family properties bearing No.9, Amrita Shergil Marg, New Delhi and 71, Jor Bagh, New Delhi would be retained and divided amongst all, without selling, so that everyone gets a place to live and some movable assets;

- (1) that it was never the spirit of the Settlement Agreement to get a decree which would result in heavy taxation due to the high value of the suit properties;

- (m) that however immediately after the Settlement Agreement, the behavior of the defendant no.1 changed and the defendant no.1, without awaiting the valuation, started breaching the terms of the Settlement Agreement, firstly by not providing support to the plaintiff in the probate case of his grandmother being Test. Case No.108/2008, as agreed to by her and subsequently by not permitting the plaintiff to withdraw his share of money in terms of the Settlement Agreement or in quick valuation of property No.9, Amrita Shergill Marg, New Delhi;
- (n) that the defendant no.1 also started pressing for a decree in terms of the Settlement Agreement, in contravention of the term thereof for withdrawal of the suit;
- (o) that the plaintiff also learnt that huge sums of money as were lying in the form of investment in bonds, shares, debentures, mutual funds etc. were illegally withdrawn / misappropriated by the defendant no.1 in violation of orders dated 14<sup>th</sup> September, 2007 and 22<sup>nd</sup> May, 2008 in CS(OS) No.1698/2007 directing the parties to maintain *status quo*;

- (p) that from all the aforesaid acts of the defendant no.1, the plaintiff felt that the defendant no.1 had no real intention to settle the matter;
- (q) that though the defendant no.1 subsequently offered that whatever anybody had taken from the estate of Bhai Tirlochan Singh can be accounted for but the said offer also showed that the defendant no.1, after misappropriating the monies, was causing impediments to the plaintiff getting his share;
- (r) that vide order dated 9<sup>th</sup> July, 2013 in FAO(OS) No.83/2007 a decree was directed to be drawn up in terms of the Settlement Agreement dated 6<sup>th</sup> August, 2010;
- (s) that the defendant no.1 also filed IA No.14651/2013 in CS(OS) No.1698/2007 for sale of all the assets of Bhai Tirlochan Singh and which was also in negation of the Settlement Agreement;
- (t) that the defendant no.1 by her deliberate acts of fraud and misrepresentation, got the plaintiff to sign the Settlement Agreement by concealing and suppressing the material fact that the defendant no.1 had already withdrawn the entire money from the estate of Bhai Tirlochan Singh; had the plaintiff

known so, the plaintiff would have never agreed to the Settlement Agreement; that owing to the defendant no.1 having already withdrawn the money she now has no benefit in implementation of the Settlement Agreement; and,

- (u) that as the Settlement Agreement dated 6<sup>th</sup> August, 2008 was entered upon by playing fraud upon the plaintiff, the plaintiff is entitled to have the same declared as null and void.

2. The suit came up first before this Court on 14<sup>th</sup> March, 2014 when the senior counsel for the defendant no.1 as well as the counsel for the defendants no.2&3, though not on caveat, appeared; owing to applications filed in CS(OS) No.1698/2007 pending before this Bench, this suit was ordered to be listed before this Bench.

3. The senior counsel for the defendant no.1 and the counsel for the defendants no.2&3 have contended that the suit is not maintainable.

4. I have also on perusal of the plaint with the allegations aforesaid, invited attention of the senior counsel for the plaintiff to Order 23 Rules 3 and 3A of the CPC, which are as under:-

*“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 that 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 voidable under the India Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.*

**3A. Bar to suit.** - *No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.”*

5. Attention of the senior counsel for the plaintiff has also been invited to my judgment in **Smt. Rajwanti. Vs. Sh. Kishan Chand Shehrawat** MANU/DE/1685/2009.

6. Attention of the senior counsel for the plaintiff is also invited to Section 22 of the Indian Contract Act, 1872 which provides that 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.

7. It has further been enquired from the senior counsel that if as per the Settlement Agreement, the estate of Bhai Tirlochan Singh was to be divided / distributed as provided therein and even if the defendant no.1 has already taken a share therein, why the remedy of the plaintiff is not to execute the said Settlement Agreement in terms whereof a decree has already been passed in CS(OS) No.1698/2007 and in said execution of the decree, contend that the monies already received / withdrawn by the defendant no.1 are liable to be accounted for/adjusted.

8. I may notice that the senior counsel for the defendant no.1 states that the defendant no.1 is willing therefor and has already taken the said stand in the applications filed in CS(OS) No.1698/2007.

9. The senior counsel for the plaintiff however states that once the plaintiff was made to sign the Settlement Agreement on the premise that the movable assets forming part of the estate of Bhai Tirlochan Singh and as described in Annexure – ‘C’ to the said Settlement Agreement exist, and the same were found to be not existing, a case of the consent of the plaintiff to the said Settlement Agreement having been obtained fraudulently is made out and the plaintiff has become entitled to have the said Settlement Agreement voided and the offer of the senior counsel for the defendant no.1

to have the monies withdrawn by the defendant no.1 (in her capacity as nominee in the said movable assets) accounted for in implementation of the said Settlement Agreement, is of no avail and cannot come in the way of the plaintiff having the said Settlement Agreement voided. It is argued that if the same were to be permitted, every person, after indulging in fraud would be entitled to ward off the liability by making such an offer.

10. I have considered the aforesaid contention.

11. Section 17 of the Contract Act defines fraud as an act committed by a party to the contract with the intent to deceive another party or to induce him to enter into the contract, either by making a suggestion as a fact, of that which is not true or by active concealment inspite of having knowledge or belief of the fact or by making a promise without any intention of performing it or by any other act fitted to deceive. However Explanation thereto provides that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless it is the duty of the person keeping silence to speak or unless silence is in itself equivalent to speech.

12. Though the plaintiff in the plaint has pleaded fraud but finding that the plaintiff, in the plaint, has not pleaded that the defendant No.1 had made any

suggestion or representation to the plaintiff that the movable assets of Bhai Tirlochan Singh and as described in Annexure-‘C’ to the Settlement Agreement had not been withdrawn or encashed by her or that the defendant No.1 had the duty to speak or that her silence in this respect was equivalent to speech, I have asked the senior counsel for the plaintiff to show from the Settlement Agreement any representation of the defendant no.1, of the monies which she is alleged to have withdrawn, continuing to exist.

13. Though the senior counsel for the plaintiff has not been able to show any clause of the Settlement Agreement in this regard but by reference to Annexure – ‘C’ thereto contends that the same amounts to a representation of the said monies continuing the exist.

14. However a perusal of Annexure-‘C’ to the Settlement Agreement shows the same to be containing a description of the movable assets of Bhai Tirlochan Singh and the value thereof, with the total value being of Rs.8,98,63,320.74p.

15. The parties, in the Settlement Agreement, agreed to divide all the assets, movable and immovable of Bhai Tirlochan Singh in the ratio of 40% by the plaintiff and 20% each by the three defendants, after valuation thereof.

16. The senior counsel for the plaintiff has contended that the investments of Bhai Tirlochan Singh, as mentioned in Annexure – ‘C’, were found to not exist as the defendant no.1 prior to the signing of the Settlement Agreement had withdrawn nearly 50% of the monies in the said investments, taking advantage of being a nominee of Bhai Tirlochan Singh therein and is now sitting over the said monies and causing impediments in valuation of the other properties and in implementation of the Settlement Agreement.

17. The senior counsel for the defendant no.1 states that the defendant no.1 has merely re-invested the monies which were due therefor and such re-investment axiomatically could not be in the name of Bhai Tirlochan Singh and is in the name of the defendant no.1 or along with others and the defendant no.1 is ready to account therefor and no loss or prejudice has been caused to the plaintiff thereby.

18. Else, on a perusal of the terms of the Settlement Agreement, I do not find any clause therein which can be said to be a representation by the defendant no.1 to the plaintiff, of the investments as mentioned in Annexure – ‘C’ existing in the same form. Rather Annexure – ‘C’ lists the value of movable assets which were agreed to be divided.

19. Though the senior counsel for the plaintiff to support his case that the defendant no.1 had committed fraud argues that the conduct of the defendant no.1 is akin to the Illustration (a) to Section 17 of the Contract Act but the said Illustration is of what is not fraud and not of what is fraud.

20. Not only from the Settlement Agreement, but even from the pleadings in the plaint, no case of fraud is made out. The plaintiff has nowhere pleaded that the defendant no.1 represented to the plaintiff that the said investments were existing in the old form only; rather what the plaintiff has pleaded is that 'he *bona fide* believed so in his mind at the time of signing the Settlement Agreement'. A plea of such belief by the plaintiff as to a matter of fact, without any representation by the defendant no.1, would be a plea of the plaintiff being under a mistake of fact rather than a plea of fraud. Mistake of fact under which one of the parties entered into a contract, does not make the contract voidable.

21. Even though the senior counsel for plaintiff has not argued, but no case of the defendant No.1 having acted fraudulently, for the reason of having promised to do anything without having any intention of doing it, is also made out/pleaded. Rather the plaintiff, in the plaint itself admits the offer of the defendant No.1 to have the monies withdrawn by her adjusted.

22. Rather, I have enquired, whether the plaintiff has applied for execution of the Settlement Agreement, even if the defendants were refusing to perform their obligations thereunder.

23. No execution is stated to be filed. No other steps also, for implementation of the Settlement Agreement are informed to have been taken by the plaintiff.

24. Thus, no case for having the Settlement Agreement and decree in terms thereof voided on the ground of consent of plaintiff therefor having been obtained fraudulently is made out. It cannot also be lost sight of that the Settlement Agreement was arrived at before the Mediation Cell of this Court through the aegis of trained professional mediator and if challenge to such Settlement Agreements arrived at before the Mediation Cell of this Court were to be entertained on such pleadings, the same will severely hamper the efficacy and faith in mediation which has been statutorily recognised as a dispute resolution method.

25. Even though the plaint does not contain the ingredients required to be pleaded to make out a case of fraud but even if it were to be held that a case of fraud is made out, it has been enquired from the senior counsel for the plaintiff, whether not the suit would still be barred by Order XXIII Rule 3A

of the CPC, the Court in which the compromise contained in the Settlement Agreement was filed, having recorded a satisfaction of the same being lawful and having passed a decree in terms thereof. Attention of senior counsel for plaintiff was also invited to the Explanation to Rule 3 and it is enquired, whether in this suit, the compromise contained in Settlement Agreement can be held to be fraudulent and axiomatically void, when the Court which passed decree in terms thereof is deemed to have satisfied itself that the same is lawful i.e. not voidable under the Contract Act.

26. The senior counsel for the plaintiff in this regard has invited attention to *Dadu Dayal Mahasabha Vs. Sukhdev Arya* (1991) 1 SCC 189, in para 7 whereof it has been held that the Court which passed the consent decree has a jurisdiction to set aside the same on the ground that a party thereto did not give his consent thereto, and the said Court has power and duty to investigate this aspect; however if the case of the party challenging the decree is that, though he was a party to the compromise but his consent had been procured by fraud, the Court in which the compromise was recorded cannot investigate the said aspect in exercise of its inherent power and the only remedy of the party is to institute a suit. On the basis thereof, it is argued that a separate suit, as this, is maintainable.

27. Finding, that the compromise recorded in the dicta aforesaid is of prior to 1<sup>st</sup> February, 1977, from which date the Explanation to Rule 3 and Rule 3A supra were incorporated in Order XXIII of the CPC and which were not considered in the said judgment, it was enquired from the senior counsel for plaintiff, whether the same would still be good law.

28. The senior counsel for the plaintiff then invites attention to ***Ramji Gupta Vs. Gopi Krishan Agrawal*** (2013) 9 SCC 438 where ***Dadu Dayal Mahasabha*** supra has been cited and has contended that the same view has been followed even after the insertion of the Explanation to Rule 3 and Rule 3A.

29. The senior counsel for the plaintiff is however unable to tell, whether the question for decision in ***Ramji Gupta*** supra was the same as with which we are concerned. On perusal of the said judgment, it is found that ***Dadu Dayal Mahasabha*** supra was cited therein in the context of discussion on inherent powers of the Civil Court and ***Ramji Gupta*** supra was otherwise not concerned with maintainability of a suit for setting aside of a compromise. Thus, the reliance by the senior counsel for the plaintiff on ***Ramji Gupta*** supra, without even advertng to what was for decision therein, is mechanical and of no avail.

30. Though the senior counsel for the plaintiff has handed over photocopies of a number of other judgments also but without citing the same, except the judgment of the Division Bench of this Court in ***Gopal Krishna Kapoor Vs. R.S. Chhabra*** MANU/DE/1790/2009 (para 16). However, the same also on a demurrer observes that even if such a suit is maintainable, no case of fraud was found to have been made out in that case.

31. I may mention that I have in ***Smt. Rajwanti*** supra, on a conspectus of the case law in this regard have concluded that Rule 3A of Order XXIII of the CPC is unequivocal in this regard and does not permit any distinction to be made between suits where challenge to compromise decree is on the plea of fraud having been played on the Court as distinct from cases where plea is of fraud having been played by one party on the other and have found the law to be, that no independent suit lies and the only remedy is by way of an application before the Court passing the consent decree.

32. In any case, the matter is placed beyond any pale of controversy by the judgment of the Supreme Court in ***Horil Vs. Keshav*** (2012) 1 SCALE 525 cited by the counsel for the defendants No.2&3, laying down that a compromise forming the basis of a decree can only be questioned before the same Court that recorded the compromise and a fresh suit for setting aside

the compromise decree is expressly barred by Rule 3A supra. It was further held that the expression “not lawful” used in Rule 3A, also covers a decree based on a fraudulent compromise and hence a challenge to a compromise decree on the ground that it was obtained by fraudulent means also falls under the provisions of Rule 3A.

33. The counsel for the defendants No.2&3 in this regard has also invited attention to *Banwari Lal Vs. Chando Devi* (1993) 1 SCC 581 and *Shyam Sunder Kalra Vs. Ravinder Kumar Jain* 196 (2013) DLT 84 (CN) to the same effect.

34. The conduct of the plaintiff, of filing this suit inspite of clear as sky position in law, is only indicative of the plaintiff searching reasons for reneging from the Settlement Agreement and to put spokes in implementation thereof.

35. I may record that the plaintiff present in person in the Court also wanted an opportunity to address and the senior counsel for the plaintiff had no objection thereto and the plaintiff also has been heard. He has given reasons why he entered into the compromise. However, in view of the legal position aforesaid, the suit would in any case be not maintainable and is barred by law and is dismissed.

In the facts, no costs. Decree sheet be drawn up.

**MARCH 24, 2014**  
pp/bs..

**RAJIV SAHAI ENDLAW, J.**