

HIGH COURT OF TRIPURA
AGARTALA

CRP 09 OF 2015

Sri Birendra Sinha

S/o Late Dhan Sinha of Rajbari,
P.S. Dharmanagar, Distt. North Tripura.

..... **Petitioner.**

- Vrs -

1. Mrs. Arunima Sinha,

D/o Birendra Sinha of Rajbari, P.S. Dharmanagar,
At present W/o Sri Biswajit Sinha of Mandap Para,
Rajbari, P.S. Dharmanagar, Distt. North Tripura.

2. Smt. Tapashi Sinha,

W/o Sri Birendra Kr. Sinha of Mandap Para, Rajbari,
P.S. Dharmanagar, Distt. North Tripura.

..... **Respondents.**

BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS

For the Petitioner	: Mr. K.N.Bhattacharji, Sr. Advocate, Ms. S. Chakaraborty, Advocate.
For the Respondents	: Mr. S.M.Chakraborty, Sr. Advocate, Mr. S. Bhattacharji, Advocate.
Date of hearing & delivery of Judgment & order	: 27.11.2015
Whether fit for reporting	: Yes.

JUDGMENT & ORDER(ORAL)

Heard learned Sr. counsel Mr. K. N. Bhattacharji assisted by learned counsel Ms. S. Chakraborty for the petitioner and learned Sr. counsel, Mr. S.M.Chakraborty assisted by learned counsel Mr. S. Bhattacharji for the respondents.

2. By filing this petition under Article 227 of the Constitution, the petitioner challenged Order dated 03.11.2014, passed by the learned Civil Judge, Sr. Division, Dharmanagar in Case No Civil Misc. 11/2014 arising out of T.S. 02/2012 and also the Order dated 19.06.2014 passed in T.S. 02/2012.

3. The respondents as plaintiffs instituted Title Suit No.2/2012 seeking decree of declaration and other consequential reliefs against the sole defendant who is the petitioner herein. The defendant appeared and submitted written statement and thereafter learned trial Judge framed issues and evidence of both side was recorded. On the date of recording of evidence of the defendant i.e. on 03.05.2014 the Court took an attempt to settle the dispute under Section 89 of CPC and afforded opportunities to the parties to try for settlement out of Court. Thereafter on 19.06.2014 the Court passed an order disposing the suit on settlement under Section 89 of CPC and directed preparation of decree as per that order.

4. Thereafter, the petitioner preferred an application under Section 114 read with Order XLVII, Rules 1 and 2 of CPC seeking review of the order dated 19.06.2014 and the same was registered as Civil Misc. Case No.11/2014. By impugned Order dated 03.11.2014, the review petition was dismissed by the learned trial Judge and hence the present petition is filed challenging both the Order dated 19.06.2014, passed in T.S. 02/2012 and Order dated 03.11.2014, passed in Civil Misc. 11/2014.

5. It is an admitted position that the suit was at the stage of recording evidence on 03.05.2014 when the learned Civil Judge, Sr. Division took an endeavour to settle the dispute under Section 89 of CPC. The impugned Order passed by the learned Civil Judge clearly reveals that he assumed jurisdiction to make an attempt for settlement of dispute under Section 89 of CPC.

Section 89 of CPC reads as follows:-

"Settlement of disputes outside the Court.-- (1) Where 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 observation of the parties, the Court may reformulate the terms of a possible settlement and refer the same for—
(a) arbitration;
(b) conciliation;
(c) judicial settlement including settlement through Lok Adalat; or

(d) mediation.

(2) Where a dispute has been referred--

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of Section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute referred to the Lok Adalat;

(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

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

6. Learned trial Judge while exercising his jurisdiction under Section 89 of CPC was supposed to formulate the terms of settlement and give them to the parties for their observation. After receiving the observation from the parties he was duty bound to formulate the terms of possible settlement and then refer it for arbitration, conciliation, judicial settlement including settlement by Lok Adalat or for mediation. Surprisingly the learned Civil Judge, Sr. Division did nothing and did not comply the provisions prescribed in Section 89 of CPC at all. While the

learned Civil Judge took up the case for settlement under Section 89 of CPC, he was supposed to follow the provision of law. A Civil Judge, Sr. Division is a quite senior officer who is expected to act according to law. Though he has mentioned in the Order that he took up the case for settlement under Section 89 of CPC, it is an admitted position that he has not formulated any terms of settlement and did not take any observation of the parties on the formulated terms of settlement and thereafter did not formulate any possible terms of settlement and also did not refer it to arbitration, conciliation, Lok Adalat or mediation etc. as required by law. The impugned Order dated 19.06.2014 clearly reveals that the learned trial Judge took up the case on that day and he himself passed an Order of settlement recording that after long conciliation between the parties, it was so decided and therefore, he passed the Order.

7. I have meticulously gone through the Order dated 19.06.2014. It will be a sheer misuse of the words to criticize that Order. The Order shows sheer incompetence and lack of quality of a Judicial Officer. The language and contents of the Order is horrible. What was the suit before the Court and what was the conciliation between the parties nothing has been made clear in the Order. The language and contents of the order does not make out any clear meaning. It is absolutely a vague and meaningless Order. Disposal of a case by way of passing such

an Order without jurisdiction, the learned Civil Judge, Sr. Division has committed a sheer miscarriage of justice. A Judicial Officer is expected to deal with a judicial proceeding according to law. While taking up a conciliation under Section 89 of CPC, he was supposed to deal with the issue according to the provision prescribed under Section 89 and not otherwise. A Judge cannot import a procedure of his own giving good-bye to the legal provision. I have no hesitation to observe that the learned Civil Judge, Sr. Division committed sheer misuse of his judicial power. Record shows that Mr. G. Sarkar was the Civil Judge, Sr. Division who passed the Order dated 19.06.2014 and I think he should be cautioned for future that he should not repeat such conduct in disposing cases.

8. The petitioner who was the defendant in the suit, filed the review petition which has been disposed of by Order dated 03.11.2014. The review petition has been dismissed with an observation that it was not a settlement under Section 89 of CPC but in reality it was a compromise under Order XXIII, Rule 3 of CPC. It is further observed that though Section 89 has been mentioned in Order dated 19.06.2014 and Order dated 03.05.2014 but practically the provisions of Section 89 was not complied and so the settlement cannot be said to be a settlement under Section 89 of CPC rather it was a compromise under Order XXIII, Rule 3 of CPC.

9. Let us first see whether the Order dated 19.06.2014 passed in T.S. 2/2012 can be accepted as a compromise under Order XXIII,, Rule 3 of CPC.

Order XXIII, Rule 3 of CPC reads as follows:-

"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 Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule."

10. The above provision clearly stipulates that there must be lawful agreement or compromise in writing and signed by the parties. It is an admitted position that the parties did not submit any written and signed compromise petition and so the observation of the learned Civil Judge that the disposal of the

suit by Order dated 19.06.2014 may be treated as a compromise under Order XXIII, Rule 3 of CPC, cannot be accepted.

11. It is an admitted position that the petitioner and the respondents as well as their lawyers signed the Order sheet dated 19.06.2014. After the suit was disposed of by impugned Order dated 19.06.2014, the petitioner preferred the review petition.

12. Learned Sr. counsel Mr. Chakraborty has submitted that there was nothing stated in the review petition that the petitioner and his lawyer signed the Order sheet without knowing or understand of the contents of the Order. He has also submitted that while the petitioner and his lawyer signed the Order sheet knowing fully well about the contents of the Order, there was no ground for seeking review of the order. On the contrary, learned Sr. counsel Mr. Bhattacharji has submitted that the Order itself was beyond jurisdiction and mere putting of signature by the defendant-petitioner and his lawyer does not make it perfect. The review petition was filed *bona fide* with a view to correct the wrong which has been committed apparently.

13. Under Order XLVII, Rule 1 of CPC a Judgment or Order may be open to review inter alia, if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order XLVII, Rule 1 CPC. In exercise of the jurisdiction under Order XLVII, Rule 1 CPC, it is not permissible for an erroneous decision to be "*re-heard and corrected*". There is a clear distinction between erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "*an appeal in disguise*".

14. The review petition filed by the petitioner in my considered opinion was because of misconception and the review petition was not at all maintainable, since nothing stated in the review petition as to what was the error apparent on the face of the record. The petitioner, if so aggrieved by impugned Order dated 19.06.2014 was supposed to challenge that Order directly before a superior forum. The petitioner, on the contrary, filed a review petition before the same Court and prayed for setting aside and/or alteration of the Order dated 19.06.2014 passed in T.S. 2/2012.

15. Learned Sr. counsel Mr. Chakraborty has submitted that Order dated 19.06.2014 was signed by the parties and their learned counsel. It is, therefore, liable to be presumed that the parties signed the Order being satisfied about the contents of the Order. Nothing alleged in the review petition or in the present revision petition that the petitioner signed the Order without understanding the meaning of it. So, the petitioner cannot challenge that Order and the petitioner is bound by that Order. He has further submitted that since the petitioner participated in the Order and signed it, he cannot go beyond the Order and pray for setting aside that Order. He put reliance on Para 6 of the judgment of the Apex Court in the Case of **Prasun Roy V. The Calcutta Metropolitan Development Authority & Anr.**, reported in **AIR 1988 SC 205** which reads as follows:-

"6.Mr. Kacker submitted that this principle could be invoked only in a situation where the challenge is made only after the making of an award, and not before. We are unable to accept this differentiation. The principle is that a party shall not be allowed to blow hot and cold simultaneously. Long participation and acquiescence in the proceeding preclude such a party from contending that the proceedings were without jurisdiction."

16. It is true that both the parties and their learned counsel signed the Order. No doubt that it will operate as acquiescence on the part of the parties since they put their signature and it is

to be presumed that they put signature knowing and/or understanding the contents of the Order. Even if the parties put their signature, my considered opinion is that such putting of signature will not make the Order perfect which was beyond jurisdiction of the Court. The decision in the case of **Prasun Roy (supra)** was on a different context. It is true that a party cannot be allowed to blow hot and cold simultaneously. There is nothing to show that conciliation was arrived as per provision contained in Section 89 of CPC. There is also nothing to show that there was a compromise petition filed by the parties in writing with their signature as required under Order XXIII, Rule 3 of CPC. Under such circumstances, even if the parties put their signature in the Order sheet it can neither be treated as conciliation under Section 89 of CPC nor a compromise under Order XXIII, Rule 3 of CPC.

17. Learned Sr. counsel, Mr. Bhattacharji has submitted that compromise petition must be in writing and signed by the parties and otherwise it cannot be entertained. He has referred the decision of Delhi High Court reported in **AIR 1997 DELHI 317 (Smt. Kamla Devi & Anr. V. Prabhat Chand & Anr.)** wherein the High Court relying on the decision of the Apex Court, reported in **1988 SC 400 (Gurpreet Singh V. Chatur Bhuj Goel)** has held that compromise without writing and

signed by the parties cannot be accepted and Order disposing the suit on the basis of oral agreement was not acceptable.

18. Under Article 227 of the Constitution, this Court is vested with the power to interfere any order passed by the inferior Court or tribunal to remove any irregularity or illegality and to correct an error apparent on the face of the record which affects the jurisdiction of the Court. In my considered opinion, Order dated 19.06.2014, passed by the learned Civil Judge, Sr. Division, Dharmanagar in T.S. 2/2012 was absolutely beyond jurisdiction and it has caused miscarriage of justice and therefore, the Order is liable to be interfered and set aside and accordingly the Order is set aside and quashed. The review petition itself was not maintainable and the review petition including the impugned Order is also quashed.

19. Learned Civil Judge, Sr. Division, Dharmanagar is directed to take up the trial of the suit according to law from the stage it was wrongly disposed of by Order dated 19.06.2014.

20. The suit was of 2012 and in the meantime 4(four) years already elapsed, therefore, the trial Court is directed to dispose the case within 6(six) months from the date of receipt of the record.

21. The revisional application stands accordingly disposed of.

22. Send a copy of this Judgment/Order to the Court of learned Civil Judge, Sr. Division, Dharmanagar.

Also send a copy to the concerned Civil Judge (Sr. Division), Dharmanagar.

JUDGE