

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

RSA.No. 1109 of 2013 ()

AGAINST THE JUDGMENT AND DECREE IN A.S.NO.150/2010 OF DISTRICT COURT,
PALAKKAD DATED 28.06.2013

AGAINST THE JUDGMENT AND DECREE IN O.S.NO.524/2004 of MUNSIF COURT, CHITTUR
DATED 29-06-2006

APPELLANT(S)//APPELLANT/IST DEFENDANT:

M/S. MANUEL SONS FINANCIAL ENTERPRISES (P) LTD
ADMINISTRATIVE OFFICE, M.O.ROAD, THRISSUR VILLAGE
THRISSUR TALUK AND DISTRICT.
REPRESENTED BY ITS MANAGING DIRECTOR P.M.MANUEL
S/O.P.T.MANUEL, M.O.ROAD, THRISSUR VILLAGE
THRISSUR TALUK AND DISTRICT

BY ADVS.SRI.O.RAMACHANDRAN NAMBIAR
SRI.GEEN T.MATHEW

RESPONDENT(S)/RESPONDENTS/2ND DEFENDANT AND PLAINTIFF:

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1. RAMAKRISHNAN, AGED 65 YEARS
S/O.VELAYUDHAN PILLAI, KULATHINGAL KIZHAKETHARA
VANDAZHI VILLAGE, ALATHUR TALUK, PALAKKAD DISTRICT.
 2. SUNDARESWARAN, AGED 66 YEARS
S/O.KRISHNASWAMY PILLAI, MANNAMKUTTIYIL
THEKKE DESOM VILLAGE, CHITTUR TALUK
PALAKKAD DISTRICT.

R2 BY ADV.SRI.SAJAN VARGHEESE K.
R2 BY ADV.SRI.LIJU. M.P
R1 BY ADV.SRI.D.KRISHNA PRASAD
R1 BY ADV.SMT.MINI V MENON

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON
01.04.2015, THE COURT ON 20-05-2015 DELIVERED THE FOLLOWING:

“C.R.”

A.HARIPRASAD, J.

R.S.A. No.1109 of 2013

Dated this the 20th day of May, 2015

JUDGMENT

This Second Appeal raises an important legal question about the authority of a counsel, who does not hold a vakalath for the party, to make an endorsement on the plaint that the party-defendant has no objection in decreeing the suit as prayed for. Further question is whether a decree passed pursuant to such an endorsement is amenable to appeal under Section 96 CPC?

2. Heard the learned counsel for the appellant and the contesting respondent.

3. Appellant is the first defendant in a suit for redemption of mortgage. It is a private limited company. First respondent is the second defendant and the second respondent is the plaintiff in the suit. I shall refer to the parties as plaintiff and defendants for convenience. The plaintiff contended that he mortgaged a property with the first defendant company as security for a chitty transaction between the first defendant and the

second defendant. The mortgage was created by deposit of title deeds with the first defendant. As the second defendant defaulted in payment of the subscription, the plaintiff expressed his willingness to pay off the amount with interest to the first defendant. But, the first defendant was not ready to receive the amount. Hence the suit was filed for redemption of mortgage.

4. First defendant filed a written statement admitting the transaction and creation of an equitable mortgage. According to the first defendant, there were other chitty transactions between the first defendant and the second defendant and the property in question had been mortgaged for securing those debts as well. The plaintiff and second defendant had not cleared the liability in respect of other transactions. Hence the suit is not maintainable. Second defendant supported the plaintiff claim.

5. While the suit was pending, on 27.06.2006, one Advocate by name Sri.Mahadevan endorsed on the reverse of the plaint, said to be on behalf of the first defendant company, that it has no objection in decreeing the suit. A similar endorsement was made by the counsel for the second defendant also agreeing that the suit be decreed. On the basis of these endorsements, learned trial Judge passed a decree in the suit as prayed for on 29.06.2006. First defendant later preferred an appeal before the

District Court, Palakkad with a petition under Section 5 of the Limitation Act requesting to condone delay of 1378 days. The contention raised by the first defendant is that it came to know of the decree only in the month of March, 2010 when the plaintiff came to the office of the first defendant demanding return of title deeds stating that he had deposited money before the court below as per the terms of the decree obtained by him from the trial court. Then the first defendant made an enquiry and realised that the suit was decreed on 29.06.2006. The application for condonation of delay was opposed by the plaintiff and the second defendant. After considering the contentions of the parties, the first appellate court dismissed the petition and consequently the appeal was also dismissed.

6. I carefully perused the case records produced from the trial court. It is seen from the index and B diary and also from other records that on 08.12.2004, an Advocate by name Sri.Unnikrishnan had filed vakalath for the first defendant(appellant). One can find in the records the vakalath filed by Advocate Sri.Unnikrishnan on behalf of the first defendant with a hearing date 07.01.2005. It is pertinent to note that the Managing Director of the first defendant company had authorised Advocate Sri. Unnikrishnan by executing a vakalath to appear and act on behalf of the company. It is also relevant to note that Advocate Sri.Mahadevan's name, who made the endorsement on the reverse of the plaint on 27.06.2006

agreeing to decree the suit, is not seen mentioned in the said vakalath. Also, he has not accepted the brief of first defendant. In the backdrop of these facts, learned counsel for the appellant contended that the court below failed in its duty to take note of the grave predicament in which a litigant might be put, if an unscrupulous counsel without any legal authority makes an endorsement to decree or dismiss the suit, as the case may be, and if the court acting on the endorsement passes a decree binding on the party. It is also submitted by the learned counsel that if anybody entertained a view that any Advocate can make such an endorsement whereby a suit can be terminated, the result will be that a professional without scruples or qualms could cause extreme prejudice to an unwary litigant. Before delving into the ethical aspect of such an action, I feel that primarily the legal principles should be considered.

7. Under the Code of Civil Procedure, 1908 ("CPC" for short), the relevant provision is Order 3 Rule 4. It reads as follows:

*"Rule 4. **Appointment of pleader:**(1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorised by or under a power-of-attorney to make such appointment.
(2) Every such appointment shall be a filed in Court*

and shall, for the purposes of sub-rule (1), be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

Explanation.-*For the purposes of sub.r.(2) an application for review of judgment, an application under S.144 or 152 or application under O IX, R.9 or 13 of this Code; any appeal from any Decree or Order in the Suit and any application of act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of monies paid into court in connection with the suit shall be deemed to be proceedings in the suit.*

(3) Nothing in sub-rule (2) shall be construed-

(a) as extending, as between the pleader and his client, the duration for which the pleader is engaged, or

(b) as authorising service on the pleader of any notice or document issued by any Court other than the Court for which the pleader was engaged, except where such service was expressly agreed to by the client in the document referred to in sub-rule (1).

(4) The High Court may, by general order, direct

that, where the person by whom a pleader is appointed is unable to write his name, his mark upon the document appointing the pleader shall be attested by such person and in such manner as may be specified by the order.

(5) No pleader who has been engaged for the purpose of pleading only shall plead on behalf of any party, unless he has filed in Court a memorandum of appearance signed by himself and stating-

(a) the names of the parties to the suit,

(b) the name of the party for whom he appears, and

(c) the name of the person by whom he is authorised to appear :

Provided that nothing in this sub-rule shall apply to any pleader engaged to plead on behalf of any party by any other pleader who has been duly appointed to act in Court on behalf of such party."

Words used in the statute are definitive that no pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorised by or under a power-of-attorney to make such appointment. One can find a little bit of dilution of this rigid rule in the proviso to Order 3 Rule 4(5) CPC. I shall deal with it later. As per Rule 27 of the Civil Rules of Practice, Kerala,

which came into force on 01.10.1971, the appointment of pleaders by executing a vakalath shall be in form No.12. It insists that the name of the pleader or the pleaders, if more than one pleader is appointed, shall be inserted in the vakalath before it is executed. Further, it shall be dated at the time of its execution and of its acceptance. The Rule further states about the formalities to be complied regarding the attestation of vakalath. I shall refer to a cognate provision, viz. Rule 17 in the Rules of the High Court of Kerala, 1971. Rule 17 of the said Rules says that no Advocate shall be entitled to act in any proceeding, unless he files a vakalath. The proviso therein also shows that where an advocate already on record in any proceeding appoints another Advocate to appear for him at the hearing of the case, it shall not be necessary for the latter to file a vakalath. There cannot be any dispute that this provision in the High Court Rules has no application to the proceedings before the subordinate courts.

8. Now I shall directly hit the question as to whether an Advocate, having no vakalath executed in his favour by a litigant, could concede that the suit be decreed against the party for whom he purported to act. The dispute whether a decree passed on the basis of an endorsement made by a counsel falls under Order 23 Rule 3 CPC (a compromise decree) or a decree under Order 12 Rule 6 CPC (a decree passed on admission) is only of academic interest in this case. It certainly should fall within the category

known as consent decree. Whether the bar created by Section 96(3) CPC in respect of a consent decree will apply to the facts and circumstances of this case is the relevant question here. Section 96 CPC deals with appeals from original decrees. Sub-section (3) of Section 96 CPC says that no appeal shall lie from a decree passed by a court with the consent of parties. It is very important to take note of the expression used by the legislature in this provision, viz., “decree passed by the court with the consent of parties”. Legislature did not choose the terminology “a compromise decree” or “a decree on admission”. It is obvious therefore that a decree passed on compromise and a decree passed on admission of the plaint claim will certainly fall within Sub-section (3) of Section 96 CPC. Hence, the question whether a decree passed by a court on the basis of an endorsement by an Advocate is a compromise decree or a decree on admission is not a vital one insofar as Section 96(3) CPC is concerned, if the suit is fully and finally disposed based on the endorsement. However, that debate is not required in this case.

9. Learned counsel for the appellant drew my attention to a decision in **Laxmidas v. Savitabai (AIR 1956 Bombay 54)**. A Division Bench of the Bombay High Court headed by the Honourable Chief Justice, Chagla, CJ. considered the authority of an Advocate under Order 3 Rule 4 CPC to compromise a suit. In the action before the High Court, the parties

and their respective counsel talked over the disputes and a compromise was formally drawn up. When the suit was called out before a learned Single Judge on a subsequent date for talking of a consent decree, a new counsel appeared on behalf of the defendant and informed the court that the defendant was not agreeable to the consent terms. Thereupon, the learned Single Judge directed the plaintiffs to take out a notice of motion for recording the compromise and latter it was dismissed. Hence the plaintiffs approached the Division Bench with an appeal. Considering the facts and circumstances, the Bench declared the law on the point in paragraph 6 of the Judgment as follows:

“Now, both in India and in England it is well recognised that it is impossible for a member of the Bar to do justice to his client and to carry on his profession according to the highest standards unless he has the implied authority to do everything in the interests of his client.

This authority not only consists in putting forward such argument as he thinks proper before the Court, making such admissions as he thinks proper, but also to settle the client's litigation if he feels that a settlement will be in the interests of his client and it would be foolish to let the litigation proceed to a judgment.

This implied authority has also been described

as the actual authority of counsel or an advocate practising in India. This authority may be limited or restricted or even taken away. After all, an advocate is the agent of his client and it is open to the client to tell his advocate that he has no right to settle a suit without his consent or that he should only settle it on certain terms which he may indicate.

If such a limitation is put upon his authority, then the implied or the actual authority of the advocate disappears or is destroyed. Then he has only an ostensible authority as far as the other side is concerned because it may be that although a limitation is put upon his actual authority the other side does not know of that limitation and the other side may still proceed on the assumption that the advocate appearing for the other side has the actual authority which every advocate has.

But in cases like this the courts have taken a lenient view as far as the rights of the parties are concerned as against the rights of the profession. When the actual authority is destroyed and merely the ostensible authority remains, the Courts have said that although the other side did not know of the limitation put upon the authority of an advocate, the Court will not enforce a settlement when in fact the client had withdrawn or limited the authority of his advocate.”

But, ultimately the Division Bench in that case allowed the appeal considering the peculiar facts and circumstances. And the impugned judgment of the learned Single Judge was set aside. Nonetheless, the discussion made above clearly throws light on the powers and authority and also on the limitations of an Advocate appointed by a party.

10. Advocate's authority to compromise a suit or confess judgment was considered by a Full Bench of this Court in **C.S.Nayakam v. A.N.Menon (AIR 1968 Kerala 213)**. Facts in the case are that the counsel for the defendant endorsed on the back of the plaint that the suit could be decreed as prayed for. Accordingly a decree was passed. But, it is to be noted here that there was no dispute regarding the fact that the defendant had engaged the same counsel who made the endorsement. With this vivid distinction in the facts, we have to appreciate the law laid down by the Full Bench. The Full Bench followed the dictum in **Sourendranath v. Tarubala Dasi (AIR 1930 PC 158)**, delivered by Lord Atkin. This Court found that an Advocate in India has inherent authority to enter into a compromise on behalf of his client and the compromise so entered into would be binding on him. It further observed that the implied authority is an actual authority and not an appendage to his office or dignity added by the courts to the status of the Advocate. The implied authority can however always be countermanded by the client. Considering the scope of Order 3

Rule 4 CPC, the Full Bench observed as follows:

“Order III, Rule 4 requires the appointment of a counsel to act in Court by a document in writing. The word 'act' is not anywhere defined. Is not compromise or confessing judgment an act? If so, is it not within the authority of counsel? The provision which requires the existence of a power in writing to 'act' draws no distinction between the various kinds of acting, and consequently we are relegated to the general powers of counsel as envisaged by the Privy Council. There is in their Lordships' opinion no distinction between the power of counsel in England, Scotland and Ireland and Advocates in India who are not required to file a power. Order III, Rule 4 makes no difference. The only requisite it lays down is a written authority of appointment. When that is given it leaves counsel so appointed free to 'act', and draws no distinction between various kinds of acting. If the legislature draws no distinction there is no justification for the court to make one.”

The observations by the Full Bench show that the authority of a counsel to confess judgment emanates from the appointment contemplated under Order 3 Rule 4 CPC, which mandatorily insists on a written authority.

11. Supreme Court had occasion to consider the scope of the expression “in writing and signed by the parties” occurring in Order 23 Rule

3 CPC in **Byram Pestonji Gariwala v. Union Bank of India (AIR 1991 SC 2234)**. Legality of a decree passed on the basis of a compromise petition signed by the counsel and not by the parties in person was considered by the Apex Court. The law laid down is as follows:

“The words 'in writing and signed by the parties', inserted in O.23, R.3, C.P.C. by the C.P.C. (Amendment) Act, 1976 necessarily mean and include duly authorised representative and Counsel. Thus a compromise in writing and signed by counsel representing the parties, but not signed by the parties in person, is valid and binding on the parties and is executable even if the compromise relates to matters concerning the parties, but extending beyond the subject matter of the suit. A judgment by consent is intended to stop litigation between the parties just as much as a judgment resulting from a decision of the Court at the end of a long drawn out fight. A compromise decree creates an estoppel by judgment.”

The decision in **Sakrappa v. Shidramappa (AIR 1960 Mysore 217)** is to the effect that when a pleader acts, he is supposed to do it as the agent of the principal (parties to the litigation) and as representing them. The learned Judge on interpreting the proviso to Order 3 Rule 4(5) CPC held that the authority of a pleader, who is merely authorised by another pleader

holding a vakalathnama from the party, is merely to plead as mentioned in the above provision. While so pleading, if he reported to the court that the party gave up a part of his case, it would be in excess of his authority and the party would not be bound by such giving up. In the case in our hand, there is no reason brought out from the records to hold that the counsel who filed a vakalath for the first defendant had authorised another counsel to plead on his behalf for the party. Even if one assumes so, I am of definite view that such counsel gets no authority to confess judgment against the interest of the party for whom he was only authorised to plead. In otherwords, an Advocate cannot, unless he has filed in the court a memorandum of appearance (vakalath) prescribed by the Rules, concede the claim or confess judgment affecting the rights of a party as it exceeds the authority recognized in Order 3 Rule 4(5) proviso to CPC.

12. My above view derives support from a decision of the Orissa High Court in **D.Adinarayana Subudhi v. D.Surya Prakash Rao (AIR 1980 Orissa 110)**. It has been held that a Senior Advocate who is debarred from filing a vakalathnama under Order 3 Rule 4 CPC, taking instruction from the client and from doing “any act other than pleading” required or authorised by law has no power to act on behalf of a party. The learned Judge has gone to the extent of holding that the memorandum of appearance contemplated under Order 3 Rule 4 CPC creates an agency by

a client in favour of his Advocates which clothes the latter with the power to act on behalf of the former. In the absence of a vakalathnama executed by the client and duly accepted by the Advocate and then filed in the court, no agency is created and therefore, no undertaking could be made by the Advocate so as to bind the client. Similarly, the Delhi High Court in **Berjesh Goyal v. Daily Foods (AIR 2009 Delhi 118)** observed that there is no bar under Order 3 Rule 4(5) CPC for a pleader, duly authorised by the party under a vakalathnama, to engage another pleader to plead the case on his behalf. The power to “plead” would include within its scope and ambit, the right to examine witnesses, seek adjournments, address arguments, etc. But the court took a clear view that such a pleader however cannot have the power to compromise a case or withdraw a case or to do any other act which may have the effect of compromising the interest of the client. I fully agree with the view expressed in the above decisions.

13. For completion of the discussion on this point, I may refer to High Court Circular No.28 of 1968, which is binding on all courts subordinate to this High Court. It reads as follows:

*“28/68 No.D1-27739/68, dated 4th October,
1968.*

*Sub.-Concessions or admissions made
by Advocates in subordinate courts- Procedure to be*

followed by the courts-Directions issued.

The High Court has, not infrequently, come across statements in judgments and orders of subordinate courts such as this issue was not pressed by counsel, 'this was conceded', 'it is admitted by counsel', 'the only point urged before me'. As often as not, the veracity of such statements has been challenged in appeal or in subsequent proceedings. At times these challenges are sought to be buttressed by affidavits from counsel who appeared before the subordinate courts or by affidavits by the party affected. And cases have not been wanting where there affidavits of counsel or party are controverted by other affidavits of either the opposite party or his counsel.

The High Court is of the view, for obvious reasons, that such controversies should be avoided. And it feels that this can be achieved if the Presiding officer gets counsel making a concession on a point canvassed by the pleadings or the memorandum of appeal to record the concession either in the issue paper or in the memorandum or on a separate paper under his signature. This record must be initialled and dated by the presiding officer and must be available among the case records."

Emphatically I may observe that such concessions or admissions can be made only by counsel engaged by a party by executing a vakalath. In the

given case, I am constrained to observe, the learned trial Judge completely ignored the law and the administrative directions in the circular. High Court's power to issue circulars touching upon the procedural matters relevant for the dispensation of justice by the subordinate courts emanates from Article 235 of the Constitution of India. Disobedience of any direction in a High Court circular by a subordinate judicial officer or a court staff will certainly invite disciplinary action under the Service Rules, especially the Conduct Rules. Care should have been taken by the trial Judge before passing the decree to see whether the counsel, who made the endorsement on the reverse of the plaint, had the required authority to do so. I shall forcefully remind the officers of the District Judiciary to bestow attention to the relevant circulars issued by the High Court, which they are bound to follow.

14. I may now sum up the discussion. A counsel, who has not been appointed by a party by executing a memorandum of appointment envisaged under Order 3 Rule 4 CPC (same as vakalath referred to in the Civil Rules of Practice, Kerala) may plead as permitted by the proviso to Order 3 Rule 4(5) CPC. In appropriate cases such power to plead may include even taking evidence or addressing arguments. But, he has no authority to compromise a suit, confess judgment in the suit or make an admission so as to bind the party. No court shall accept or act on such a

compromise or confession or admission without verifying whether the Advocate doing so had been authorized by the party by executing a vakalathnama. A decree passed in a case on the basis of an endorsement by an Advocate, who has no vakalath in the case, cannot be said to be a consent decree. The legal position being so, I find the decree herein passed by the trial court based on an endorsement made by an Advocate not engaged by a party as required under law is not a consent decree and it is per se illegal. Apprehension of the learned counsel for the appellant that encouragement of such practice by the lower courts will entail in promoting unethical practices, atleast in some cases, is worthy to be noted; of course, in this case there is no doubt about the integrity or credibility of the Advocates concerned. It is true that power of a duly appointed counsel to contest the case and in appropriate situations to compromise or concede for protecting the interest of his client certainly has to be respected. But, that power cannot be ceded to an Advocate acting on behalf of the Advocate appointed by the party, as it may endanger the precious legal rights of a litigant. Therefore, I hold, in the given case that the endorsement made by an Advocate purported to be on behalf of the first defendant cannot be taken as binding on the first defendant in the absence of his engagement by it as contemplated by the Code or the Rules.

15. Now yet another question that arises for consideration is

whether an appeal can be preferred against the decree in such cases. Section 96(3) CPC prohibits filing an appeal against a decree passed by a court with the consent of the parties. As I have already seen that the decree passed by a court on the basis of an endorsement by a counsel who does not hold a vakalath for and on behalf of a party cannot be treated as a consent decree. It is so because the authority to concede or compromise is conferred on an Advocate only on executing a memorandum of appointment (vakalath) as mentioned in Order 3 Rule 4 CPC. In the absence of such a document, an Advocate cannot concede or compromise on behalf of a party. Therefore, if a decree happened to be passed in a suit on the basis of an endorsement by an Advocate not duly appointed by the party, the decree can never be treated as a consent decree. Law is well settled by the pronouncements of Apex Court that there is no blanket bar in questioning the validity of the compromise/consent decree in an appeal under Section 96 CPC. The law laid down by the Supreme Court in **Banwari Lal v. Chando Devi ((1993) 1 SCC 581)** is as follows:

“After the amendments which have been introduced, neither an appeal against the order recording the compromise nor remedy by way of filing a suit is available in cases covered by Rule 3-A of Order 23. As such a right has been given under

Rule 1-A(2) of Order 43 to a party, who challenges the recording of the compromise, to question the validity thereof while preferring an appeal against the decree. Section 96(3) of the Code shall not be a bar to such an appeal because Section 96(3) is applicable to cases where the factum of compromise or agreement is not in dispute. As such a party challenging a compromise can file a petition under proviso to Rule 3 of Order 23, or an appeal under Section 96(1) of the Code, in which he can now question the validity of the compromise in view of Rule 1-A of Order 43 of the Code.”

Later the Apex Court in **Kishun v. Bihari (AIR 2005 SC 3799)** held as follows:

“..... Section 96(3) contemplates non-appeallability of a decree passed by the court with the consent of parties. Obviously, when one of the parties sets up a compromise and the other disputes it and the court is forced to adjudicate on whether there was a compromise or not and to pass a decree, it could not be understood as a decree passed by the court with the consent of parties. As we have noticed earlier, no appeal is provided after 1-2-1977, against an order rejecting or accepting a compromise after an enquiry under the proviso to Order XXIII, Rule 3, either by Section 104 or by Order XLIII, Rule 1 of the Code. Only

when the acceptance of the compromise receives the imprimatur of the court and it becomes a decree, or the court proceeds to pass a decree on merits rejecting the compromise set up, it becomes appealable, unless of course, the appeal is barred by Section 96(3) of the Code. We have already indicated that when there is a contest on the question whether there was a compromise or not, a decree accepting the compromise on resolution of that controversy, cannot be said to be a decree passed with the consent of the parties. Therefore, the bar under Section 96(3) of the Code could not have application. An appeal and a second appeal with its limitations would be available to the party feeling aggrieved by the decree based on such a disputed compromise or on a rejection of the compromise set up.”

There was a feeble attempt by the learned counsel for the plaintiff to dispute the maintainability of this appeal based on a Division Bench decision of this Court in **Selvaraj v. Federal Bank Ltd. (2011 AIR CC 826)**.

I may initially note that the facts in that case have no similarity to the facts in this case. The observation made by the Division Bench in the above decision in respect of the bar under Section 96(3) CPC shall not detain me from arriving at a conclusion on the basis of the said binding precedents that when a decree passed is said to be on the basis of a compromise or

consent and if it is legally not such a decree, there cannot be any prohibition, either under Section 96(3) CPC or otherwise, in challenging the correctness of the decree before an appellate forum. This principle is clear from the decisions of the Apex Court on this aspect. Therefore, the ratio in **Selvaraj's** case cannot be applied blindfoldedly as it will not preclude the first defendant from filing an appeal challenging the decree passed which is per se not a consent decree falling within Section 96(3) CPC. Therefore, I hold that an appeal is maintainable against a decree purported to be one passed under Order 23 Rule 3 CPC or Order 12 Rule 6 CPC, if the aggrieved party is able to substantiate that such a decree falls short of the legal requirements to name it a consent decree within the meaning of Section 96(3) CPC. Stated otherwise, the challenge raised against a decree, alleging that it is not a consent decree or a compromise decree, can be entertained by way of an appeal under Section 96 CPC, if valid reasons in law are shown.

16. What is now remaining to be considered is about the legality of the finding by the District Judge in the appeal. The learned District Judge found that reasons stated for condonation of delay were not acceptable. The learned District Judge decided the case against the first defendant mainly on the reason that a certified copy of the vakalath put in by Advocate Sri.Unnikrishnan was not produced. Learned counsel for the

appellant submitted that evidence was let in by the witnesses examined on the side of the appellant (first defendant) to show that Advocate Sri. Mahadevan, who made the endorsement on behalf of the first defendant, was not engaged by the company and he had no authority to make such an endorsement. The court below was carried away by the fact that there was no material produced by the first defendant to substantiate the contention that the counsel who made the objectionable endorsement was not a junior attached to the office of the counsel who held a vakalath. I am afraid, I cannot subscribe to such a view. The lower appellate court should have called for the records from the trial court to examine whether the counsel who made the endorsement had the authority to do so as per Order 3 Rule 4 CPC. I am of the definite view that the lower appellate court failed in its duty to find out merit of the case pleaded by the appellant. Since the jurisdiction under Section 100 CPC does not permit me to deal with vexed questions of fact, I am constrained to remit the matter back to the District Court, Palakkad for a proper adjudication in the light of the principles of law stated elsewhere in this decision.

In the result, the appeal is allowed. The matter is remitted back to the court below after setting aside the order in I.A.No.780 of 2010 and also the decree and judgment in A.S.No.150 of 2010 for a proper decision in the petition under Section 5 of the Limitation Act and also in the regular

appeal presented before that court within a period of four months from the date of receipt of the judgment of this Court and records in this case. Parties are directed to appear before the District Court, Palakkad on 26.06.2015.

All pending interlocutory applications will stand dismissed.

A. HARIPRASAD, JUDGE.

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