

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.2572 of 2012 (O&M)

Date of decision: 07.07.2015

& Civil Revision Nos.4121 and 4122 of 2012 (O&M)

Kiran Bala (deceased) through her LRs ... Petitioner

versus

Anil Kumar Bagga and another Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ram Kumar Chauhan, Advocate,
for the petitioner.

Mr. Arun Jain, Senior Advocate,
with Mr. Amit Jain, Advocate,
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

.....

K.Kannan, J. (Oral)

1. All the revision petitions arise out of single proceedings which were heard and disposed of through a common order.
2. It is a clear no win situation for the petitioner who assailed a compromise filed into court containing his signatures as well but gave no evidence to point out how the compromise was vitiated. The counsel says that when the compromise was filed on

19.08.2004. She engaged another counsel and wanted to contend that the compromise was not true and when the case was brought on 26.08.2004, there was a prayer for adjournment made and when it was opposed, the court passed an order allowing the compromise to be recorded and dismissing the appeals. The orders brought in challenge in second appeals before this court and this court had held that the petitioner ought to only apply to the court which allowed the compromise to consider her objections and there could be no remedy by means of second appeals. The petitioner has approached the court below under Section 151 assailing the compromise as vitiated.

3. I have no doubt in my mind that the order passed on 26.08.2004 accepting a compromise without rendering the adjudication on the validity was clearly wrong but when the petitioner secured to herself the benefit of assailing the same through an order of the High Court in the second appeals and when she had also moved an application assailing the compromise through applications under Section 151, she was bound to set forth the vitiating circumstances and offer evidence therefor. The petitioner would point out that her own signature was there but all the parties in the suit had not signed as a circumstance to show that the compromise could not be acted upon. I would reject this argument, for, there is no compulsion in law that all the parties must sign and it depends on the nature of power which is given to the counsel with

the vakalatnama. The compromise is signed by the petitioner as well as the counsel and in respect of parties who had not signed, the signature of the counsel had been affixed who had the authority to enter into the compromise. That should actually settle there the first objection under that the compromise cannot be validated by the fact that some of the parties had not signed the document.

4. The explanation to Order 23 Rule 3 CPC makes it clear that an agreement to compromise which is void or voidable shall not be lawful within the meaning of rule. If a compromise is therefore vitiated under any of the circumstances spelt out under the Contract Act, then the compromise cannot be taken to be valid. If the petitioner's own signature is an admitted fact and if she was setting up vitiating circumstance, then all the trappings of rule of evidence for assailing a contract would apply to a compromise also. Fraud cannot make a document void but only voidable. Deception or fraud or any other vitiating circumstance must be set forth in all its details the way the Civil Procedure Code lays down through Order 6 Rule 4 CPC. The burden of proof of showing a particular document as vitiated by the fraud shall be only on a person who takes a plea that it was so vitiated. Section 101 of the Evidence Act enacts a fundamental rule that a person that desires a particular judgment to be given on the basis of assertion of a right or on the existence of certain fact which he asserts, such assertion shall be proved by him.

Section 102 is a corollary to Section 101 that says that the burden for a person lies on that person who would fail if no evidence at all were given by either side. Section 103 is an additional ground that a person who wishes the court to believe in its existence, shall take the burden of proof, unless it is provided by law that such proof to fact shall lie on any particular person. Section 106 states that where any fact is especially within the knowledge of the person, the burden shall be on that person. The conjoint reading of these sections will make it abundantly clear that the petitioner, who was alleging a case of fraud or deception, had to prove the same and if no evidence had been given by either party, Section 102 rules that the burden was not discharged.

5. The result is inevitable that the petitioner, who pleaded fraud, claimed that she had appeared in court and went back without any evidence to prove her assertion. She will take the consequences of her indiscretion and I find no scope for intervention in her favour. All the revision petitions are dismissed.

(K.KANNAN)
JUDGE

07.07.2015
sanjeev