

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.5947 of 2014 (O&M)
Decided on: 09.05.2016

Harbhajan Kaur and others

....Petitioners

Versus

Veer Kaur

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Sanjay Verma, Advocate
for the petitioners.

Mr. Saurabh Bajaj, Advocate
for the respondent.

1. *Whether Reporters of local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

REKHA MITTAL, J.

The present petition has been directed against order dated 25.08.2014 passed by the Additional District Judge, Kurukshetra, dismissing application of the petitioners and upholding plea of the respondent/plaintiff that the appeal filed against order dated 23.07.2014 (Annexure P-3) passed by the Civil Judge (Senior Division), Kurukshetra, is maintainable.

A brief backdrop of the case is that Veer Kaur daughter of Gurdial Singh-respondent filed a civil suit against her sisters – Harbhajan Kaur and others (petitioners herein) *qua* property left behind

by Sh. Gurdial Singh, father of the parties. The said suit was disposed of by the Lok Adalat vide award dated 07.03.2009 on the basis of compromise purported to be executed between the contesting parties. The petitioners challenged the award aforesaid before this Court in Civil Revision No.2273 of 2009 by invoking jurisdiction of the Court under Article 227 of the Constitution of India and the said petition was decided in favour of the petitioners vide order dated 29.07.2010, whereby the award dated 07.03.2009 was set-aside and the parties were left to contest the suit filed by the respondent/plaintiff. The respondent/plaintiff filed Special Leave Petition (in short 'SLP') before Hon'ble the Supreme Court of India which was disposed of on 30.09.2010, the appeal was allowed and impugned judgment of the High Court was set-aside with liberty to the respondents (petitioners herein) to approach the Lok Adalat for setting-aside the decree on the ground that it was obtained by fraud. Subsequent thereto, the petitioners filed an application under Order 23 Rule 3-A read with Section 151 of the Code of Civil Procedure (in short 'CPC') for setting-aside the award of Lok Adalat dated 07.03.2009. The Civil Judge (Senior Division) Kurukshetra, after framing of issues and permitting the parties to adduce evidence in support of their respective contentions decided the application in favour of the petitioners vide order dated 23.07.2014 and as a result, the award dated 07.03.2009 was set-aside.

The order passed by the trial Court was challenged in appeal CA No.101/14 before the First Appellate Court by invoking Section 96 CPC. The petitioners (respondents therein) raised an issue *qua* maintainability of the appeal and the same has been answered by

the First Appellate Court of Additional District Judge, Kurukshetra in favour of the respondent/appellant by holding that the appeal is maintainable.

Feeling aggrieved against the order passed by the Court in appeal, the present petition has been preferred by invoking the jurisdiction of this Court under Article 227 of the Constitution of India.

The sole question that calls for determination is whether the order dated 23.07.2014 passed by the Civil Judge (Senior Division) Kurukshetra, allowing the application filed by the petitioners under Order 23 Rule 3-A read with Section 151 CPC and setting-aside the award dated 07.03.2009 passed by the Lok Adalat is amenable to challenge in regular civil appeal filed before the First Appellate Court at Kurukshetra.

Counsel for the petitioners would contend that as the trial Court has not passed any judgment much less a decree while disposing of application filed by the petitioners under Order 23 Rule 3-A read with Section 151 CPC, the order passed by the trial Court cannot be challenged in appeal by invoking Section 96 CPC. It is further submitted that even if the respondent has any grievance to express against the said order, she may be entitle to file a revision petition before this Court. It is further argued that the First Appellate Court committed a serious error rather illegality by holding that the application filed by the petitioner for setting-aside the award of Lok Adalat dated 07.03.2009 is to be considered as an application for review and, therefore, the appeal is maintainable under Order 47 Rule 7(1) CPC.

Counsel for the respondent, on the other hand, has supported the impugned order with the submissions that as an independent suit to challenge the award passed on the basis of compromise is barred by the provisions of Order 23 Rule 3 CPC, the application filed by the petitioners to assail the said award of the Lok Adalat on any score whatever including that of fraud would amount to review of the earlier judgment and decree dated 07.03.2009, therefore, the appeal is maintainable before the Court of Additional District Judge by invoking the provisions of Order 47 Rule 7 CPC, as has been held by the First Appellate Court. In support of his contention, he has referred to judgment of the Kerala High Court *“Anandan vs Nanu”*, 2007(5) RCR (Civil), judgment of this Court *“Balwinder Singh vs Karnail Singh”*, 2000(3) RCR (Civil) 229, *“Wassan Singh and others vs Lakha Singh and another”*, 2005(2) RCR (Civil) 791, judgment of Allahabad High Court *“Harendra Prasad vs Smt. Parshottama and others”*, 1995 AIR (Allahabad) 30, judgment of Bombay High Court *“Waman Ramchandra Bhayde and others vs Kanta Narayan Patel and others”*, 2013(1) ALL MR 62, judgment of Madhya Pradesh High Court *“Thakur Prasad vs Bhagwandas”*, 1985 MPLJ 149. Further reliance has been placed upon judgment of Hon'ble the Supreme Court of India *“Sushil Kumar Sen vs State of Bihar”*, 1975(1) SCC 774.

I have heard counsel for the parties, perused the paperbook and the judgments cited at bar with the able assistance of counsel for the parties.

Before dealing with rival submissions made by counsel for the parties, a brief reference to the operative part of the order passed by

the trial Court while disposing of the application filed by the petitioners under Order 23 Rule 3-A read with Section 151 CPC for setting-aside the award dated 07.03.2009 is pertinent. The trial Court in Para 13 of the order dated 23.07.2014 has held, reads thus:-

“As a sequel to my aforesaid findings especially rendered on Issue No.1, the application filed by the applicants/defendants stands allowed and the award dated 07.03.2009 passed by the predecessor of this Court is hereby set-aside. However, there is no order as to costs. Paper be tagged with main case file and after due compliance same be sent back to the Record Room.”

Subsequent to the passing of this order, it appears that the respondent/plaintiff did not file an application before the trial Court for revival of the suit titled **“Smt. Veer Kaur and others vs Harbhajan Kaur and others”** or its decision on merits. However, she preferred an appeal before the District Judge, Kurukshetra by invoking the provisions of Section 96 CPC. Section 96 CPC provides for appeal from original decree and a relevant extract therefrom, germane to the controversy, is extracted hereinbelow for ready reference:-

“96. Appeal from original decree

(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed ex parte.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.”

A conjoint reading of the aforesaid extracts i.e. operative part of the order passed by the trial Court for setting-aside the award dated 07.03.2009 and Section 96 CPC, it becomes crystal clear that the respondent cannot maintain a regular appeal by invoking the provisions of Section 96 CPC to assail the order dated 23.07.2014 passed by the trial Court. By way of order dated 23.07.2014, the trial Court only set-aside the award dated 07.03.2009 passed by the Lok Adalat but never decided the suit on merits, therefore, the order passed by the trial Court neither amounts to a judgment much less a decree amenable to challenge by invoking Section 96 CPC. In this view of the matter, I have no hesitation to hold that the First Appellate Court committed a gross error rather illegality by holding that the appeal filed under Section 96 CPC is maintainable.

This brings the Court to another issue as to whether the application filed by the petitioners for setting-aside award of the Lok Adalat dated 07.03.2009 can be said to be an application for review in order to accept contention of the respondent that the appeal is maintainable under Order 47 Rule 7 CPC as the application for review has been allowed by the trial Court. The First Appellate Court without adverting to the application filed by the petitioners or the relevant provisions of Order 47 CPC providing for review has decided the question of maintainability in favour of the respondent. The petitioners never filed an application under Order 47 for setting-aside the award passed by the Lok Adalat. On the contrary, they filed an application by invoking the provisions of Section 151 CPC though a reference was also made to Order 23 Rule 3-A CPC that creates a bar against a

separate suit being filed against a decree based on compromise.

Order 47 provides for application for review of judgment and a relevant extract from Order 47 reads as follows:-

“1. Application for review of judgment

(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.”

An application for review of a judgment can be filed in three contingencies envisaged under Order 47 Rule 1 CPC namely, (1) discovery of new and important matter or evidence which after the exercise of due diligence was not within knowledge or could not be produced by the applicant at the time when the decree was passed or order made, or (2) on account of some mistake or error apparent on the face of the record, or (3) for any other sufficient reason.

The case of the petitioners for setting-aside the award dated 07.03.2009 admittedly does not fall within the ambit of first two

contingencies extracted hereinbefore. The question that arises now is whether the same falls within the purview of '*any other sufficient reason*'. Keeping in view the sequence of Clauses (a) to (c) of Order 47 Rule 1 CPC, the words 'sufficient reason' is to be examined in the light of the earlier two contingencies envisaged by Clause (a) and (b). As the petitioners filed the application for setting-aside the award of the Lok Adalat on the ground of fraud by invoking Section 151 CPC dealing with inherent jurisdiction of the Court, I find myself unable to accept the submissions made by counsel for the respondent that the application filed by the petitioners is to be construed or deemed to be an application for review and thus allowing of the said application would entitle the respondent to prefer an appeal by invoking Rule 7 of Order 47 CPC. Even otherwise, the appeal preferred by the respondent before the First Appellate Court has not been filed under Order 47 Rule 7 read with Order 43 CPC but the same has been filed by invoking Section 96 CPC.

To be fair to the respondent, he has referred to the various judgments passed by different High Courts as well as Hon'ble the Supreme Court. In ***Anandan case (supra)*** decided by the Kerala High Court, the Court has merely held that compromise decree cannot be challenged by way of a separate suit and the same can only be challenged by way of review or an application to set-aside the decree by invoking inherent jurisdiction of trial Court within a reasonable time. This judgment goes against the respondent for the reason that the party feeling aggrieved against a compromise decree has alternative remedy either to file an application for review or to invoke inherent jurisdiction of the trial Court. As in the present case, the petitioners invoked the

inherent jurisdiction of the Court under Section 151 CPC, it negatives claim of the respondent that the petitioners filed the application for review, thus, the order passed by the trial Court is amenable to challenge by invoking Rule 7 of Order 47 CPC.

In ***Balwinder Singh's case (supra)*** this Court has simply held that no appeal is maintainable against a compromise decree and remedy available to the appellant is either to file a regular suit or a review application. The Court made an obiter observation but did not lay down any ratio.

In ***Wassan Singh and other's case (supra)*** this Court has held that no separate suit can be filed to set-aside an order passed on the basis of compromise. In ***Harendra Prasad's case (supra)*** decided by the Allahabad High Court, the Court has held that an appeal is maintainable against the order of review by invoking the provisions of Order 43 Rule 1 CPC. Similarly, the Bombay High Court in ***Waman Ramchandra Bhayde and other's case (supra)*** has held that the appeal is permitted against the order granting application for review under Rule 7 of Order 47 CPC by invoking Order 43 Rule 1(w) CPC. The Madhya Pradesh High Court in ***Thakur Prasad's case (supra)*** has held that a compromise decree can be challenged in appeal under Section 96 read with Order 43 Rule 1(a) CPC on the ground that the compromise is alleged to be unlawful but the revision is not competent against the decree. The judgments relied upon by counsel for the respondent have got no bearing on the facts of the case in hand, when otherwise, there is no dispute about the settled position in law that no separate suit lies against a decree passed on the basis of compromise in view of the bar

created under Order 23 Rule 3-A CPC and an appeal is maintainable against an order allowing the application for review in the light of provisions of Order 47 Rule 7 and Order 43 Rule 1 CPC. As has been discussed hereinbefore, but at the cost of repetition, as the petitioners did not prefer an application for review, the respondent cannot maintain an appeal even by invoking the provisions of Order 47 Rule 7 read with Order 43 Rule 1 CPC much less under Section 96 CPC.

In ***Sushil Kumar Sen's case (supra)*** decided by Hon'ble the Supreme Court of India, it has been held in Para 2, quoted thus:-

“2. It is well settled that the effect of allowing an application for review of a decree is to vacate the decree passed. The decree that is subsequently passed on review, whether it modifies, reverses or confirms the decree originally passed is a new decree superseding the original one (see Nibaran Chandra v. Abdul Hakim, AIR 1928 Calcutta 418, Kanhaiya Lal v. Baldeo Prasad, (1906) ILR 28 Allahabad 240, Brijbasi Lal v. Salig Ram, (1921) ILR 34 Allahabad 282 and Pyari Mohan v. Kalu Khan, ILR 44 Cal 1011.”

Admittedly, in the case at hand, after setting-aside the award dated 07.03.2009 passed by the Lok Adalat, the trial Court has neither passed any judgment much less a decree superseding the award passed by the Lok Adalat. The trial Court after setting-aside the award of the Lok Adalat has not proceeded with the case filed by the respondent for its decision on merits or otherwise. Under these circumstances, the respondent cannot take any advantage to her contentions from the observations made in Para 2 of the judgment, reproduced hereinbefore.

In view of the above, the order impugned cannot be allowed to sustain and accordingly set-aside. The appeal preferred by the respondent against order dated 23.07.2014 under Section 96 CPC is dismissed being not maintainable. However, the respondent shall be at liberty to assail the order dated 23.07.2014 passed by the trial Court, by taking recourse to appropriate proceedings, in accordance with law.

09.05.2016
yakub

(REKHA MITTAL)
JUDGE