

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 5088 of 2011 (O&M)

Date of Decision: 17 .02.2016

Mithlesh and Others

... Appellant(s)

Versus

Ramwati and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. O.P.Sharma, Advocate
for the appellant(s).

Mr. Keshav Partap Singh, Advocate
for respondents No.1 to 6.

Mr. Sanjiv Gupta, Advocate
for respondent No.10.

Shekher Dhawan, J.

Present regular second appeal against judgment and decree dated 7.8.2010, passed by learned Additional District Judge, Palwal, whereby appeal filed by the defendants was dismissed.

For the sake of convenience, parties are being referred to as per their status before the Court of first instance.

Relevant facts of the case that plaintiffs had filed suit for

possession by way of specific performance of agreement of sale dated 24.10.1994. Defendant denied the due execution of the agreement. The Court of first instance framed issues and parties were asked to lead their respective evidence. The Court of first instance, after appreciating the evidence, decreed the suit of plaintiffs for possession by way of specific performance in terms of agreement of sale dated 24.10.1994. Defendant Smt. Somoti (since deceased) through her legal heirs preferred an appeal before the Court of first appeal and the Appellate Court dismissed the same. As such present regular second appeal before this Court.

Learned counsel for the appellants mainly submitted that first Appellate Court has decided the appeal on the basis of statement dated 1.5.2010 having been made by the parties before learned Additional District Judge, Palwal, whereby present appellants had undertaken to deposit the amount of ₹ 35,00,000/- upto 1.7.2010 and in case of non-compliance, appeal be dismissed.

Learned counsel for the appellants mainly submitted that Appellate Court had decided the appeal on the basis of compromise, though no such written compromise, duly signed by the parties, was placed on the file. Learned counsel for the appellants also took the plea that as per the provisions of Order 23 Rule 3 CPC, there was no necessity of writing the compromise. However, the Court below passed the order without there being any written compromise as required under Order 23 Rule 3 CPC and judgment & decree, passed on the basis of compromise is liable to be set aside. On this point, reliance was

placed upon the judgment rendered by the Hon'ble Apex Court in case ***Pushpa Devi Bhagat (D) Th. LR. Smt. Sadhna Rai v. Rajinder Singh & Others 2006(3) RCR (Civil) 479***. Reliance was also placed upon another judgment of the Hon'ble Supreme Court in case ***Bakshi Devi Raj and Another v. Sudhir Kumar 2011 AIR (SCW) 4650***, wherein view was taken that as per provisions of Order 23 Rules 3 & 4 CPC, counsel is not debarred from making any statement on behalf of the party but it is desirable to get instructions in writing.

While arguing on this point, learned counsel for the respondents submitted that compromise was duly effected between the parties and appellants got recorded their statements and their counsel also made statement before the Court on 1.5.2010. There was no complaint against anybody including counsel for making mis-statement to the parties and there was no question of withdrawing from such a compromise having been entered into between the parties in the Court itself. Learned counsel for the respondents also took the plea that otherwise also, counsel is legally empowered to withdraw the appeal and even compromise can be effected at the instance of some of the legal representatives. So, present appeal be dismissed.

Having considered the submissions made by learned counsel for the parties and gone through the facts of the case; material available on the file and the judgments referred to and relied upon by learned counsel for the appellants, this Court is of the considered view that matter in controversy is short and simple. Mainly, interpretation of Order 23 Rule 3 CPC is involved and relevant provision thereof is being

reproduced, hereunder:

"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 satisfied the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise 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."

Civil suit for specific performance, having been filed by the plaintiffs, was decreed by the Court of first instance. First appeal was filed by Ramesh and ten other legal representatives of Smt. Somoti. Appeal remained pending before the First Appellate Court for a considerable period and on 1.5.2010, legal representatives of Smt. Somoti made statement that they have entered into compromise with the respondents and as per compromise, agreement dated 24.10.1994 shall stand cancelled. Appellants were to make payment of ₹ 35,00,000/- through bank draft within two months i.e. till 1.7.2010 against a receipt. An option was also given to the appellants that in case respondents refused to accept the said payment of ₹ 35,00,000/-, the said amount

could be deposited in the Court itself. Appellants bound themselves as well by making statement that in case they failed to perform their part of the agreement, appeal be treated having been withdrawn. This statement was signed by all the legal representatives of Smt. Somoti in presence of their counsel Sh. R.K.Goel, Advocate. On the same date, respondents also made statement before the Court of learned Additional District Judge, Palwal that statement made by the appellants is correct and they have no objection if the appeal is decided in terms of the said compromise. The statement of the respondents was also authenticated by the counsel representing them. Such a detailed terms of compromise having been reduced into writing, before the Court of first appeal, certainly amounts to written compromise. Written compromise having been entered into between the parties with their free consent and in presence of their respective counsel. Such a compromise is certainly a valid compromise under Order 23 Rule 3 CPC. The facts of the case are certainly distinguishable from the case of ***Pushpa Devi Bhagat (D) Th. LR. Smt. Sadhna Rai v. Rajinder Singh & Others*** (*supra*).

It is also not disputed that on 1.5.2010, present appellants failed to comply with the terms & conditions of compromise having been reduced into writing before the Court itself and moved an application and present appellants cannot wriggle out of their legal liability having been arisen on the basis of written compromise which was duly signed by the parties in presence of their counsel before the Court below. The Court below has rightly taken the view that there is nothing on the file to show that appellants are victims of fraud or misrepresentation.

Law on the point is also settled that if the parties make statement in the Court, which is signed by them, they are bound by that and they cannot resile from it. Otherwise also, it shall be the mockery of entire judicial system if the party making statement in the Court, in the presence of their counsel, be allowed to withdraw their statement without any justified reason.

In view of above, present appeal, filed by the appellants, is without any merit. The present controversy involves appreciation of facts and no substantial question of law is involved in this appeal and the same stands dismissed being not maintainable.

(Shekher Dhawan)
Judge

February 17, 2016

"DK"/anju