

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 1506 of 2017

ORDER:

1) Assailing the order, dated 09.12.2016, passed in I.A.No.29 of 2014 in A.S.No.2 of 2014 on the file of the Senior Civil Judge, Palamaner, wherein and whereunder an application filed under order XXIII Rule 3 of C.P.C. to enquire into the compromise arrived at between the parties and to record the same, was dismissed, the present Civil Revision Petition is filed by the petitioner/ appellant under Article 227 of the Constitution of India.

2) The facts in issue are as under:

The respondents Nos.1 and 2 herein filed a suit against the petitioner for specific performance of contract. After a full fledged trial, the said suit was decreed in favour of respondents 1 and 2. Aggrieved by the same, the petitioner preferred an appeal. Pending the appeal, the petitioner herein filed an application under Order 23 Rule 3 of C.P.C., to enquire into the compromise arrived at between the parties and to record the same. It is stated in the affidavit filed in support of the I.A., that on 26.12.1999 both the parties settled their disputes whereby the petitioner should pay Rs.34,500/- to respondents 1 and 2 and they inturn should give up their right over the said property. The petitioner paid Rs.1500/- on the said date and balance of Rs.33,000/- has to be paid on or before 01.03.2000. To that

effect, an agreement was also executed by incorporating the said terms of compromise. Pursuant to the compromise, the petitioner paid Rs.33,000/- to the respondents 1 and 2 on 03.02.2000. Thereafter they received and executed final agreement in favour of the petitioner. Now, the respondents 1 and 2 are evading to record the compromise.

3) A counter came to be filed by respondents 1 and 2 stating that there is no such mediation and no compromise was entered into between them. They never received any amount from the petitioner. It is also stated that the petitioner has falsely set up the theory of compromise, in order to knock away the property. The alleged agreement for compromise is forged and fabricated document. It is also stated that they are prepared to proceed with the appeal on merits and hence prays to dismiss the petition.

4) After considering the rival submissions, the Court below dismissed the petition. Challenging the same, the present revision came to be filed.

5) Learned counsel for the petitioner would submit that during the pendency of the appeal, at the intervention of the elders, both the petitioner and respondents settled their dispute. He further submits that, after receiving Rs.34,500/- from the petitioner, respondents 1 and 2 are now evading to record the compromise. He relied upon the judgment of this Court in *B.Anjamma and others v. A.Pullaiyah and others*<sup>1</sup>.

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<sup>1</sup> (2003) 4 ALT 153

6) It is to be noted that in case if a party obtained an order basing on a compromise and subsequently goes back on the compromise, on the ground that the same was obtained by playing fraud, definitely the Court can enquire into the compromise and decide as to whether the said compromise was voluntary or by fraud.

7) In *Nagarapu Venkata Rama Rao v. Nagarapu Lakshmipathi Rao and others* (1 supra), a learned Single Judge of this Court held as under:

“Explanation to Order 23 Rule 3 of the Code no doubt says that an agreement or compromise which is void or voidable under the Indian Contract Act, 1872 shall not be deemed to be lawful within the meaning of this rule. In the present case no substantial ground had been pointed out by objectors to say that agreement or compromise in present matter is either void or voidable under Contract Act and hence at any stretch of imagination it cannot be said that proposed compromise between concerned parties in above petitions is not lawful.”

8) In the instant case, the parties arrived at a compromise and thereafter pending appeal filed I.A. on the ground that they have settled the dispute. The said fact is seriously disputed by the respondents 1 and 2 herein stating that they have not received any amount and they have not even signed on any document. That being the position, this Court cannot go into the said aspect namely, as to whether there was any compromise or not would not arise. Moreover, it is to be noted that though the alleged

compromise between the parties was in the year 1999, but no steps were taken till 2014 when the present application came to be filed. Obviously it appears to be a case, where the petitioner intends to prolong the issue on one pretext or the other. Hence, I see no reasons to interfere with the order passed by the trial Court.

9) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

10) Miscellaneous petitions, if any, pending shall stand closed. There shall be no order as to costs.

27.03.2017  
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JUSTICE C. PRAVEEN KUMAR