

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

**C.R. No. 2588 of 2017
Date of Decision:-07.04.2017**

Sunita Rani and another

...Petitioners

vs.

Saroj Kamra and others

...Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Rajan Bansal, Advocate,
for the petitioners.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 23.02.2017 (Annexure P-7) passed by Civil Judge (Junior Division), Bathinda whereby the trial Court has wrongly and illegally recalled order dated 9.1.2017 vide which plaintiff No.1 has been permitted to withdraw the suit not only on her behalf but also on behalf of plaintiff No.3 (the present petitioners).

Briefly, the facts of the case are that the petitioners along with respondent No.1 filed a suit for possession of three storey building bearing M.C. No. 4617, situated in Dhobi Bazar, Bathinda with declaration to the effect that plaintiffs along with defendants No. 3 to 8 (respondents No. 4 to 9 in the present petition) are entitled to succeed by way of inheritance to

the estate left by Sh. Bhagwan Dass who died intestate at Bathinda on 13.4.2010.

After issuance of notice to the suit, written statement was filed by respondent No.2 stating therein that the suit property is self-acquired property of Bhagwan Dass (deceased) and plaintiffs have no right to challenge the valid registered Will dated 26.6.2003. Said Will was registered on 27.06.2003 and executed by Bhagwan Dass in favour of respondent No.2. The sisters of Bhagwan Dass relinquished their rights in the property in favour of Bhagwan Dass vide relinquishment deed dated 7.10.1959. Accordingly, Bhagwan Dass became absolute owner of the suit property.

Issues were framed by the trial Court on 29.11.2014. Thereafter, the petitioners moved an application for permitting them to withdraw the suit on the ground of maintaining cordial relations and to save themselves from unnecessary litigation. The suit was dismissed as withdrawn on behalf of present petitioners vide order dated 9.1.2017. Thereafter, plaintiff No.2-respondent No.1 Saroj Kamra moved an application for recalling of order dated 9.1.2017 whereby plaintiff No. 1 was permitted to withdraw the suit. Said application was allowed vide order dated 23.2.2017 (Annexure P-7) which is subject-matter of challenge in the present revision petition.

Learned counsel for the petitioners submits that the impugned order has been passed without any application of mind and the same is not sustainable in the eyes of law. Learned counsel also submits that when the trial Court granted permission to petitioner No.1 to withdraw the suit not

only on her behalf but also on behalf of plaintiff No.3, then there was no reason to recall the above said order of withdrawal being guardian of a physically handicapped and mentally retarded person. She was competent to withdraw the suit on her behalf and on behalf of plaintiff No.3 from the suit but with the permission of the Court. Learned counsel also submits that statement of petitioner No.1 was recorded and thereafter suit was dismissed as withdrawn. Learned counsel also submits that the trial Court did not consider the fact that the petitioners had specifically mentioned in their application for permitting themselves to withdraw from the suit as they did not want to contest the suit anymore but subsequently the order was wrongly recalled. At the end, learned counsel for the petitioners submits that the impugned order dated 23.2.2017 passed by the trial Court is liable to be set aside.

Heard arguments of learned counsel for the petitioners and have also perused the impugned order and other documents available on the file.

Facts involved in the case are not disputed. Petitioner-plaintiff No.1 was permitted to withdraw the suit not only on her behalf but on behalf of plaintiff No.3 also. Thereafter, the application for recalling of the order was allowed vide order dated 23.2.2017. The suit was filed by plaintiff No.3 through plaintiff No.1 being his next friend. On 9.1.2017, plaintiff No.1 suffered a statement that a compromise had been effected with the defendant and she wanted to withdraw the suit on her behalf as well as on behalf of plaintiff No.3, being of unsound mind. The Court permitted to withdraw the suit by plaintiff Nos. 1 and 3. Subsequently, an

application was moved by plaintiff No.2 on the ground that plaintiff No.1 could not withdraw the suit on behalf of plaintiff No. 3, being mentally retarded and even no satisfaction of the Court was recorded that the compromise on behalf of minor was for betterment and welfare of minor. Order 32 Rule 7 CPC is relevant for deciding the controversy in hand which is as under:-

“7. Agreement or compromise by next friend or guardian for the suit- (1) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

(1A) An application for leave under sub-rule 91) shall be accompanied by an affidavit of the next friend of the guardian for the suit, as the case may be, and also, if the minor is represented by a pleader, by the certificate of the pleader, to the effect that the agreement or compromise proposed is, in his opinion, for the benefit of the minor.

Provided that the opinion so expressed, whether in the affidavit or in the certificate shall not preclude the Court from examining whether the agreement or compromise proposed is for the benefit of the minor.”

The suit was dismissed as withdrawn on 9.1.2017 only on the ground that a compromise had been effected between the plaintiffs and defendant, but no compromise was produced on record. Even the Court

was not apprised of the terms and conditions of the compromise. Nothing was mentioned as to how the compromise was in the interest of the minor. The application for recalling of the order was contested by filing reply on the ground that Court was not having any power to recall or review its own order. Learned trial Court allowed the application on the ground that no guardian for plaintiff No. 3 was appointed, whereas, it was the duty of the Court to appoint guardian for taking care of interest of the minor. Hon'ble the Apex Court in case **Dokhu Bhushayya vs. Katragadda Ramakrishnayya and others**, AIR 1962 (SC) 1886 has held that it is the duty of the Court, so far as practicable to safeguard the interest of minors. Rule forbids the next friend or the guardian to enter into an agreement or a compromise on behalf of minor without express leave of the Court. Even in case, titled as **Sita Ram and another vs. Director of Consolidation, Agra Division, Agra and others**, 1967 ALJ 723 it has been held that minor can plead in defence that agreement arrived at in total disregard of Order 32 Rule 7 is not binding on him. In a judgment of Allahabad High Court in case **Rajendra Prasad Gupta vs. Km. Purrima Sharma and others**, 2006 AIR (Allahabad) 270, it has been held that in case of mistake or omission on the part of the trial Court, the Court can recall its earlier order to correct the mistake. Hon'ble the Apex Court in **Dokhu Bhushayya's case** (supra) has observed as under :-

“The object behind Order 32 seems to me to be that when an infant is involved in a legal proceeding, he should have a guardian assigned to him and that guardian should be under the control of the Court before which the

proceeding is pending so as not to be able to affect the rights and liabilities of the infant, the subject matter of the proceeding, by a compromise which the Court has not approved as one for the benefit of the infant. If this is the principle, as I think it is, there would be no justification for limiting the operation of the rule in its application to execution proceedings, only to compromises which directly affect the rights and liabilities under the decree. The rule, in my view, would apply, among others, to compromises which bring a proceeding to an end and thereby affect the rights or liabilities of the infant involved in it. I think this view receives support from the observations of Varadachariar J. in *Katneni Venkatakrishnayya v. Ganapati China Kanakayya*, *ILR 1938 Madras 819 at P. 828* that, "Rule 7 deals with the conduct of a next friend' as such who, as pointed out in *Bhodes v. Swithenbank*(2) is an officer of the Court to conduct the suit; and the principle underlying rule 7 is that whenever he proposes to do anything beyond the normal conduct of the suit, he has to obtain the leave of the Court to do so.", Quite obviously the word "suit" in this observation would include a proceeding in execution.

It is of some interest to point out that the learned Judges of the High Court were careful to use the word "directly"; they said the agreement or compromise

in the present case did "not directly deal with or regulate the extent and nature of the rights and liabilities under the decree, which stand intact and unaffected as before." This seems to me to indicate that the learned Judges were conscious that the compromise in this case affected the rights and liabilities of the appellant under the decree at least indirectly. It seems to me that if the rule prohibits an agreement which directly affects the rights and liabilities of an infant under a decree, there would be no reason to think that it would not similarly prohibit an agreement deliberately made to affect the same rights and liabilities indirectly. The agreement challenged in this case is, as I shall endeavour to show, of this kind."

In the present case, the suit was dismissed as withdrawn on behalf of plaintiff Nos. 1 and 3 only on the ground that a compromise was arrived at with the defendants. Neither the satisfaction of the Court has been recorded nor it has been mentioned as to how the compromise was in the interest of the minor. Only on the basis of statement of plaintiff No. 1 Sunita Rani who was the next friend of plaintiff No. 3 (minor), it was dismissed as withdrawn. The statement recorded and the order passed are reproduced as under:-

STATEMENT

"Stated that the matter has been compromised with defendant, so present suit may be dismissed as withdrawn on behalf of Plaintiff Nos. 1 and 3."

ORDER

“Sh. Milan Setia, Adv. Filed power of attorney on behalf of plaintiffs Nos. 1 and 3. Plaintiff suffered statement before this court that the matter has been compromised with defendant, so the present suit may be dismissed as withdrawn on behalf of plaintiffs nos. 1 and 3. In view of the statement of plaintiff Sunita Rani, suit is hereby dismissed as withdrawn on behalf of plaintiff Nos. 1 and 3. Let case be adjourned to 19.1.2017 for defendant evidence.

On perusal of impugned order dated 23.2.2017, it is apparent that neither the terms and conditions of the compromise were mentioned nor anything as to how the compromise was in the interest of minor whereas it was the duty of the trial Court to record the reasons and findings that the compromise was effected in the interest of the minor. Accordingly, the application moved for recalling of that order has rightly been allowed. There is no merit in the contentions raised by learned counsel for the petitioners and impugned order does not require any interference by this Court. The revision petition being devoid of any merit is hereby dismissed.

April 07, 2017
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes