

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

C.R. No.4615 of 2015 (O&M)

Date of Decision:- 16.5.2017

Balbir Kaur and another

....Petitioners

vs.

Mohinder Kaur and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Satinder Khanna, Advocate,
for the petitioners.

Mr. H.S. Tuli, Advocate for
Mr. S.S.Rangi, Advocate,
for respondents No. 2 to 5.

Mr. Pushpinder Kaushal, Advocate,
for respondent No.14.

DAYA CHAUDHARY, J.

This revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 11.5.2015 (Annexure P-1) passed by Civil Judge (Junior Division), Ludhiana whereby application filed under Order 23 Rule 3 CPC has been dismissed.

Briefly, the facts of the case as made out in the present revision petition are that petitioner-plaintiffs filed a suit for declaration and permanent injunction stating that they were in cultivating possession of the

land in dispute and respondent-defendants be restrained from interfering in their peaceful possession. Respondent-defendant No.2 also filed a suit for declaration and permanent injunction and defendant-respondent No.14 filed a suit for permanent injunction. In total three suits were pending between the parties.

During pendency of the suits, a compromise was arrived at between the parties in all the three suits and it was reduced into writing. Applications were moved under Order 23 Rule 3 CPC in suit nos. 2 and 3 and those suits were allowed to be withdrawn in terms of the compromise.

On number of occasions, plaintiff-petitioners requested the defendants to get the sale deed executed and registered as per compromise but defendants failed to do so and resiled from their statements. Subsequently, an application was filed by plaintiff-petitioners under Order 23 Rule 3 CPC with Sections 89 and 151 CPC for direction to defendant-respondents to come and make statement before the Court to get the sale deed executed and registered. However, said application was dismissed vide order dated 11.5.2015 by holding that when a compromise is alleged by one party and denied by other, it was incumbent upon the Court to hold an enquiry by framing issue of its existence, which has been challenged in the present revision petition.

Learned counsel for the petitioners submits that the impugned order is against the law and facts as while deciding the application filed under Order 23 Rule 3 CPC the learned trial Court should have conducted an enquiry to come to a conclusion regarding validity of the compromise arrived at between the parties. The suits filed by defendants were

withdrawn because of compromise arrived at between them. The existence and validity of the compromise has become final between the parties and accordingly orders dated 14.7.2014 (Annexure P-2) and order dated 30.9.2014 (Annexure P-3) whereby suits were withdrawn on the basis of compromise will operate as *res judicata*.

Learned counsel for respondents No. 2 to 5 has opposed the submissions made by learned counsel for the petitioners and submits that impugned order does not require any interference. However, learned counsel for respondent No.14 has also reiterated the arguments as have been raised by learned counsel for respondents No. 2 to 5.

The provisions of Order 23 Rule 3 CPC are relevant which are being reproduced as under:-

“Order XXIII – Rule 1 and 2. xxx xxx

Rule 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 or 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;

Provided that where it is alleged by one party and denied

by the other that an adjustment or satisfaction has been arrived at, the court shall decide the question, but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation – An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.”

Admittedly, the compromise arrived at between the parties was reduced into writing and same was duly signed by both the parties, but it was denied by respondents subsequently. Now, the question arises as to what should be the course of action on the part of the Court in such a situation as to whether the Court should reject the compromise on denial of the respondents or Court should hold an enquiry to find out as to whether such compromise really exists or not. One party is asserting the compromise and other party has denied the same and has resiled from said compromise.

In proviso to Order XXIII Rule 3 of CPC, where the compromise is alleged by one party and denied by the other party, then the Court is to decide the question. Once the determination of question is provided in the proviso itself, the learned trial Court should have ordered for an enquiry by framing an issue as to 'whether there exists a compromise between the parties as alleged'. It should have given opportunities to both the parties to lead evidence which could have been restricted with number

of opportunities. The observation made by the Bombay High Court in case

Shri Purushottam Pandurang Nipane vs. Shri Tarachand Purushottam

Nipane, 1997 (1) ICC 696 is reproduced as under:-

“10. As has already been pointed out, Order 23, Rule 3 Proviso of the Civil Procedure Code contemplates a complete enquiry. Again, the language lays a stress that no adjournment would be granted for the purpose of deciding the question as to whether such compromise was really in existence. There appears to be no such enquiry having been made by the trial Court and it seems that the trial Court has chosen to decide the question merely on the basis of the applications made before it, vide Exhibits 28 and 30. Proviso to Rule 3 of Order 23 casts a duty on the Court where the compromise application is pending to decide as to whether, in fact, the compromise has been arrived at particularly when one party asserts about the compromise and the other party denies the same. Such indeed was the situation in this matter. While defendants assert the factum of compromise along with the conditions expressed therein, the plaintiff has denied the same. If we see Exhibit 30, the very factum of compromise is also disputed by the plaintiff. Not only this but the

plaintiff further goes on to suggest that there was a fraud played upon him for entering into this compromise. The question, therefore, as to whether the said compromise was in reality there or not and further question as to whether the said compromise could be read and recorded, should have been decided by a full fledged enquiry for that purpose. Again, because of the positive language of Order 23 Rule 3 Proviso, this enquiry should have been immediately conducted. One can understand that when this application (Ex. 28) was given, since the records of the trial Court were not available, the matter could be and, in fact, was adjourned. However, it seems that the adjournment is not for that purpose; because the positive language of was the Proviso to Rule 3 of Order 23, the Court was bound to give reasons as to why it was deferring the enquiry. In this case, the trial Court firstly held that the compromise cannot be read and recorded and indeed such finding could not have been given unless the trial Court had recorded a positive finding regarding the factum of the compromise by parties or not and whether the parties had put their signatures on the compromise application. What the trial Court has done is that

it had- mixed these two questions. After all the question of factum of compromise would be different question for the question of validity of the compromise. The trial Court has in a confused manner dealt with these questions and has committed an error in first refusing to read and record the compromise on the ground that the plaintiff had changed the stand. As regards the fact of compromise, the trial Court has left that question open and has deferred that question to the stage when the evidence in the main suit would be led. Now, all this is clearly contrary to the language of Order 23 Rule 3 of the Civil Procedure Code, and more particularly the Proviso thereto. The finding given by the trial Court at the end of para 6, is therefore, premature and has to to be set aside. The trial Court was bound to hold an enquiry into the question as to whether there was, in fact, an adjustment or satisfaction, and it is only thereafter that the further question would arise as to whether the terms of the compromise were valid enough so that it could be read and recorded. The while finding in para 6, therefore, appears to be completely premature. The trial Court has also expressed its

doubts regarding the validity of the compromise because of the fact that Parvatibai was not a signatory of such compromise. It is again an admitted position that on 13.9.1993, Parvatibai was deleted from the array of the defendants, the date of which is not known to us. Whether Parvatibai had any interest in the compromise and what is the effect of her subsequent deletion was bound to be considered by the trial Court, which has not been considered at all. The whole case law mentioned by the trial Court in its order, and more particularly in para 6, has been completely misunderstood and was, not necessary. The case law is also not discussed at all. The trial Court has also looked askance at the change of the Advocates by the plaintiff. Unless, therefore, there was a full-fledged enquiry into the factum of the compromise, no further findings could have been recorded regarding the legality or otherwise of the same. Indeed, all this could have been done at one and the same time, after giving the opportunities to the parties to lead- evidence on that issue. The trial Court would have been justified in directing the parties first to lead evidence on the question of the existence or otherwise of the compromise and

could have then decided as to whether the compromise was valid or not. Instead, the trial Court proceeded to hold that the compromise was not valid and then has given an opportunity to the parties to prove or disprove its existence. The whole thing is like putting a cart before the horse.”

Similarly, in the case of **Gangavva vs. Basappa Bapu Naaruti, 2001 (2) ICC 468**, the Karnataka High Court has also made the following observations :-

“9. In K. Chandrahas Shetty's case the Court below had recorded depositions of the parties after filing of the compromise petition. This shows that while enquiring into this aspect of the matter, the Court is required to conduct an enquiry by recording the evidence of the parties, if necessary. In the circumstances, when the petitioner has set up compromise between the petitioner and defendant No.2 and when defendant No.2 has denied the same, the Court ought to have conducted the enquiry in this regard and ought to have recorded a finding whether there was a compromise between the plaintiff and defendant No.2 or not as stated by the plaintiff and ought not to have dismissed the compromise application

filed by the petitioner and the statement filed by the petitioner for making an enquiry into this aspect of the matter. In the circumstances, both the orders passed by the Court below cannot be sustained.”

In the case of **P.S.S. Somasundaram Chettiar vs. R. Sathappan and others, 1983 AIR (Madras) 372**, the Division Bench of Madras High Court has held as under :-

“31. Thus, after consideration of the provision of law and the views expressed in the above judicial decisions, we are of the view that for the purpose of answering the first question contained in the un-amended order 23 Rule 3 CPC – whether it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part? - it is the foremost duty of the Court before which an application has been filed for recording a compromise to investigate the question whether it has been satisfied that the suit has been adjusted wholly or in part by the agreement, which is attacked as the result of fraud, undue influence and coercion. Especially so, in this case, where the applicant, who stands in a fiduciary relationship as father has propounded the agreement, which is said to have been signed by the quondam minor,

viz., the respondent, the respondent's wife and the applicant's own wife, viz., the second plaintiff, with respect to several other items of properties, which are not the subject matter of the suit and the encumbrances over the few items of properties allotted to the quondam minor are said to be very heavy, which fact has not been disclosed in the agreement and the agreement having been propounded more than one year and two months after the date of the agreement.

32. Accordingly, we answer the reference that the first limb of Rule 3 Order 23 of the CPC envisages an enquiry being made by the Court before recording any agreement or compromise on the application of one party for being satisfied itself whether the suit has been adjusted wholly or in part outside the Court, when such agreement is attacked as one that has been obtained by fraud, undue influence and coercion. Any observation made by us in the course of our judgment will not prejudice the parties in the disposal of the application on merits by the Court which will dispose of the same. With the above observations, we direct that the applications be enquired into and disposed of on merits.”

Learned counsel for respondents No. 2 to 5 has not shown any judgment to the contrary or under such circumstances, no enquiry is required to be conducted.

Accordingly, it is held that holding of an enquiry is must in case a compromise is asserted by one party and denied by other party. It is incumbent upon the Court to hold an enquiry by framing an issue of its existence in view of provisions of Order 23 Rule 3 CPC.

In view of facts and law position as discussed above, the present revision petition is allowed and case is remanded to the trial Court with a direction to hold an enquiry after framing an issue with regard to existence of an agreement within a period of not more than six months on receipt of copy of the order. However, the trial Court would grant only two opportunities to each party to lead their evidence to prove the issue to be framed.

May 16, 2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes