

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

**Civil Revision No.7673 of 2017
Date of Decision: 22.11.2017**

Dinesh Gupta and another

.....Petitioners

Vs

Ankit Gupta and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Rakesh Gupta, Advocate
for the petitioners.

Mr. Alok Jain, Advocate
for respondents No.1 and 2.

RAJ MOHAN SINGH, J.

[1]. Petitioners have challenged the order dated 11.09.2017 passed by the Civil Judge (Jr. Divn.) Chandigarh vide which application filed by the petitioners under Order 23 Rule 3-A read with Section 151 CPC was dismissed.

[2]. Reading of the impugned order dated 11.09.2017 would show that three applications were filed before the trial Court, which were disposed of vide the impugned order. In the first application under Order 23 Rules 3 and 3-A read with Section 151 CPC for setting aside the judgment and decree

dated 12.01.2016, following prayer was made:-

- “(i) *the settlements dated 06.05.2015 and 26.11.2015 and the statements of applicant/defendants dated 27.11.2015 recorded in the court of Ms. Dazy Bangar Civil Judge Junior Division Chandigarh, be declared to be an outcome of blackmail, intimidation, manipulation, pressure, coercion and unduly influence of the plaintiffs to compel and force the applicant/defendants to enter into a compromise without their free consent, but under coerced circumstances, in view of which the Judgment and Decree dated 12.01.2016 passed by the predecessor of this Court is required to be recalled/set aside in the interest of justice equity and fair play.*
- (ii) *Any other relief to which the applicant/defendants may be found entitled to in law and under the peculiar facts and circumstances of this case may also be awarded in favour of the applicant/defendants and against the plaintiffs.”*

[3]. The second application under Order XIV read with Section 151 CPC was filed in which prayer for acceptance of the application and framing up of the issues in order to facilitate the petitioners to bring on record the evidence to prove their case in the application under Order 23 Rules 3 and 3-A read with Section 151 CPC was made. The following issues were sought to be framed in the said application:-

- “i. *Whether the compromise deeds dated*

06.05.2015, and 26.11.2015 and the statements of the applicant/defendants recorded in court of the Ms. Dazy Bangar Civil Judge Junior Division Chandigarh, on 27.11.2015 were under undue influence, coercion, fraud and blackmail?

- ii. Whether the compromise the Judgment and Decree dated 12.01.2016 passed by the Court of Ms Dazy Bangar Civil Judge Junior Division Chandigarh is liable to be recalled having been obtained by undue influence, coercion, fraud and blackmail?*
- iii. Whether the Decree Holder complied with the essence and terms of the compromise so obtained by undue influence, coercion, fraud and blackmail?"*

[4]. The third application was filed under Section 151 CPC for allowing the application under Order 23 Rules 3 and 3-A CPC for setting aside the judgment and decree dated 12.01.2016 on account of grounds, facts and circumstances narrated in the said application as well as on account of various provisions as enumerated in 'The Maintenance and Welfare of Senior Citizen Act, 2007 (hereinafter to be referred as 'the Act'). The prayer made in the said application was for the acceptance of the application on the basis of provisions contained in aforesaid Act and the judgment and decree dated 12.01.2016 be set aside.

[5]. Perusal of the judgment and decree dated 12.01.2016

revealed that the same was passed on the basis of compromise. According to the petitioners the said compromise was the result of fraud, undue influence and intimidation given by the plaintiffs in the presence of the police. The said compromise was effected in the police station which was even attested by Inspector Sukhwinder Singh, EOW on 16.11.2015. The compromise was effected between the petitioners and Smt. Ankita Gupta, Sh. Ankit Gupta and Smt. Charul Chowdhary. As per the compromise, the following complaints were sought to be withdrawn:-

Complaints made by Ankit & Ankita Gupta

- “(a) Complaint pending with EOW Sector 17, Chandigarh of Himani Resorts Pvt. Ltd.*
- (b) Complaint of Himani Resorts (P) with Company Law Board, New Delhi.*
- (c) Complaint to Chandigarh Police by Ankit and Ankita.*
- (d) Complaint by M/s AB Resorts to Chd. Police through Ankit Gupta.*
- (e) All letters written to various Banks, departments Since Jan 2014 to be withdrawn.*
- (f) Case pending at Distt. Court Chandigarh by putting up this compromise.*
- (g) All other complaints put against Charul & Vivek at various forums incl anonymous (Benami).*

Complaints made by Dinesh Gupta & Mrs. Asha Gupta

- “(1) Complaint to Chandigarh in all forms.*

- (2) *Complaints to District Magistrate under Senior Citizen Act.*
- (3) *Complaint to ROC Chandigarh against AB Resorts P Ltd.*
- (4) *Complaint to Company Law Board against AB Resorts P Ltd.*
- (5) *All other complaints if any put since Jan 2014 at various forums.*
- (6) *Case pending at Distt. Court Chandigarh by putting this compromise.*
- (7) *All other complaints put at various forums including anonymous.*

Complaints made by Charul Chowdhary

- “1) *Complaint at EOW Chandigarh*
- 2) *Case pending at Distt. Court Chandigarh by putting up this compromise.*
- 3) *All other complaints at any forum since Jan 2014 including that made against by Charul & Vivek Chowdhary, if any.*
- 4) *All other complaints at various forums anonymous (benami).”*

[6]. Further in the compromise, the following provisions were made:-

“Now this compromise briefly states the following

- 1) *Ankit Gupta relinquishes his 1/3 share in at Himani Premium at Khasra No.351, 353, Talbot House The Mall Shimla.*
- 2) *½ portion of BPTP flat at Faridabad.*
- 3) *Land at Khasra No.603/1, measuring 3.14 Bigas would be relinquished by Ankit in favour of Dinesh*

Gupta or Asha Gupta at village Shamwli, Kasauli Gaon, Garkhal, Kasauli.

- 4) *Land at Khasra no.602 measuring 0.17 Bigas at village Shamwli Kasauli Gaon, Garkhal Kasauli would be relinquished by Ankit in favour of Dinesh Gupta or Asha Gupta.*

Mr. Dinesh Gupta & Mrs. Asha Gupta relinquish the following:

- 1) *AB Resorts (P) Ltd. CIN No.U55101CH1991PTC011581 the following share holding & Directorship:*

Shareholing:

Ankit Gupta 31994 (own) + 28290 (gifted by Sh. Dinesh Gupta in favour of his son Sh. Ankit Gupta)

Directorship:

- 1. Ankit Gupta MD*
- 2. Ankita Gupta Director*

AB Resorts has no lien at (1)48 The Mall Shimla (Himani Bar & Restaurant) (2) H.No.2101, Sector 35-C, Chandigarh since 2014.

The essence of this contract/compromise is that Promoter Director Dinesh Gupta & Asha Gupta would enjoy full privileges of owners without holding any shares and Directorship in AB Resorts P Ltd. including office at Hotel Himanis Residency Sector 35-C, Chandigarh. That the said Promoter Director would have no share in assets, liabilities, profits, revenue and bank accounts. Their position is honorary & have no lien on day to day working of company.

The Project at Kasauli 402, 403, 404 measuring 9.04 Bigas

at Village Shamwli, Kasauli Gaon, Garkhal, Kasauli would be sold/disinvested. The responsibility and decision to sell the same shall be exclusively with Ankit Gupta for which Sh. Dinesh Gupta, Smt. Asha Gupta & Smt. Ankita would issue a non revocable SPA for selling this 9.04 Bigas land at building to his best of judgment. The other three parties i.e. Dinesh Gupta, Smt. Asha Gupta & Ankita Gupta would have no say in the decision of Ankit Gupta in this regards is final and binding on all. The SPA would be made at Kasauli. The proceeds of sale from the above would be divided as follows:

- 1) Rs.6,50,00,000/- (six crore fifty lacs) to Mr. Ankit Gupta*
- 2) SBI Liability which is approx. 2.85 cr as on date & whatever at the time of clearing after sale proceeds. No further loan would be disbursed henceforth.*
- 3) Whatever balance of sale proceeds is left to Sh. Dinesh Gupta after paying of old liabilities of Rakesh Thakur (approx 15 lacs) & Amar Raj, Jeevan & Shamshad. If the sale proceeds are exhausted by (1) & (2) then these liabilities would be borne by Dinesh Gupta & Ankit Gupta.*

That Ankit Gupta along with his wife & two sons would continue to stay in House No.2101 Sector 35-C as he was been for the last 15 years till the time he is paid Rs.6.5 cr out of sale proceedings of Kasauli Project. Mr. Ankit Gupta and his would give full respect as parents to Dinesh Gupta & Asha Gupta in future. Mr. Dinesh Gupta & Mrs. Asha Gupta will not file any eviction and complaints either at Hon'ble Court, Police, District Magistrate etc. Mr. Ankit

Gupta & his nuclear family will stay in the said house till the time of this payment giving full regards/family atmosphere in the said house and he will continue to stay with his nuclear family in the said house till the time full payment is made and will vacate the said house no.2101 Sector 35-C after receiving the payment.

This compromise further states that Union Bank Lockers No.102, 119, 110 out of which locker no.102 & 119 with Dinesh Gupta & Asha Gupta & Locker no.110 with Ankit & Ankita. The cars will continue to remain in same as continue.

The said compromise of family is final and binding on all parties including those being represented in the said compromise all the parties have hereonto set their respective hands on this family compromise on the day, month and year mentioned above without any pressure or coercion of any kind after fully understanding the contents of the same in presence of witnesses.

The said compromise will be immediately requested for Decree by Hon'ble Court Chandigarh on 27 Nov 2015 i.e. the date for settlement already in the Court. Once it is decreed all papers i.e. Gift Deed/Family settlement deed after getting it registered with concerned tehsildars, share transfer form, company record would be done by 4th December 2015 other than BPTP flat Faridabad which should be done by 31st Dec 2015 loan of said flat would be repaid by Dinesh Gupta w.e.f. Dec 2015."

[7]. On the basis of aforesaid compromise, statements of the parties were recorded before the trial Court on 27.11.2015.

Joint statement of the petitioners was recorded to the following

effect:-

“Statement of Sh. Dinesh Gupta S/o Sh. Darbari Lal Gupta and Smt. Asha Gupta W/o Sh. Dinesh Gupta R/o House No.2101, Sector 35-C, Chandigarh.

We have compromised the matter with plaintiffs and the terms and condition of settlement have been reduced into writing which is duly signed by us and copy of the same is Ex.P1. We undertake to abide by all the terms and conditions of the settlement Ex.P1 and in case we do not follow the said terms and conditions we shall be liable for contempt of court. We further undertake that we shall not revoke the special power of attorney given in the name of Ankit Gupta for selling the property of Kasauli. We further undertake that we willfully cooperate and signed all the requisite documents for getting permission under Section 115 required for selling the property at Kasauli. We shall not initiate any eviction proceedings against the plaintiff in respect of house no.2101, Sector 35-C, Chandigarh till the time of amount of Rs.6.5 crores as agreed by us is not given to the plaintiff. We shall not pursue any of the old complaints filed since January 2014.”

[8]. Similarly joint statements of respondents No.1 and 2 was recorded to the following effect:-

“Statement of Sh. Ankit Kumar Gupta s/o Sh. Dinesh Gupta and Smt. Ankita Gupta w/o Sh. Ankit Gupta both resident of H.No.2101 Sector 35-C, Chandigarh.

We have compromised the matter with the defendants and the terms and conditions of settlement

have been reduced into writing which is duly signed by us and the copy of the same is Ex.P1. We undertake to abide by the terms and conditions of the settlement Ex.P1 and in case we do not follow the said terms and conditions we shall be liable for contempt of court. Ankit Gupta shall transfer 5637 shares of Himani Resorts Solan in favour of Mrs. Charul Chaudhary W/o Sh. Vivek Chaudhary his sister by way of gift deed, share transfer form and endorsement on original share certificate. We and our legal heirs shall not claim any right in the property of defendants no.1 & 2 we shall not pursue any of the old complaints filed since January 2014.”

[9]. Statement of Charul Chowdhary was recorded in the following manner:-

“Statement of Smt. Charul Chaudhary, W/o Sh. Vivek Chaudhary, R/o B-90-91, Aggar Nagar, South End, Ludhiana.

I have compromised the matter with the defendants and the terms and conditions of settlement have been reduced into writing which is duly signed by me and copy of the same is Ex.P1 undertake to abide by the terms and conditions of the settlement Ex.P1 and in case I do not follow the said terms and conditions I shall be liable for contempt of court. I as well as my legal heirs shall not claim any right in the properties of defendant No.1 & 2. I shall not pursue any of the old complaints filed since January 2014.”

[10]. Learned counsel for the petitioners submitted that the compromise was the result of fraud and duress. In the

compromise there was no recital of transfer of 5637 shares in Himani Resorts, Solan in favour of Charul Chowdhary by way of gift deed. The statement was made by Ankit Gupta and Ankita Gupta over and above the scope of compromise in order to pressurise Charul Chowdhary on the ground that the transfer made in her favour in the year 2006 by her father i.e. petitioner No.1 was forged. Similarly in the statement of Charul Chowdhary, the statement to the effect that she as well as her legal heirs shall not claim any right in the properties of defendants No.1 and 2 and shall not pursue any of the old complaints filed by her since 2014 was also not part of compromise and the statement was got recorded by respondent No.1 by pressurizing Charul Chowdhary by way of coercion and intimidation before the police. Learned counsel asserted that the making of statements over and above the written compromise was the result of evil design of respondent No.1. The application under Order 23 Rules 3 and 3-A read with Section 151 CPC was filed on the ground that the compromise was the result of intimidation, manipulation, coercion and blackmailing. Undue influence was exercised by the plaintiffs/respondents No.1 and 2 in order to legitimise the statement dated 06.05.2015 and thereafter civil suit was filed to validate the settlement.

[11]. Learned counsel further submitted that the petitioners

resisted the settlement dated 06.05.2015 and filed counter claim and also approached the Company Law Board at New Delhi in respect of illegal acts and conducts of the plaintiffs in running the affairs of M/s AB Resorts (P) Ltd. Since defendant No.3 Charul Chowdhary was wrongly implicated by her brother i.e. respondent No.1 in false police complaint and threats were given to ruin her and as such a hostage like situation was created due to continuous threats given by the plaintiffs and their influence on the police to arrest Charul Chowdhary, therefore, immense pressure was exerted by the police upon the petitioners, who in order to save their daughter from harassment by the police were made to sign the compromise in the police station on 26.11.2015 and thereafter they were made to make statements in the Court on 27.11.2015. Number of allegations were made in the application.

[12]. Learned counsel submitted that a detailed reply was filed by Charul Chowdhary wherein she has alleged about the extent of pressure and fear established upon her by the respondents No.1 and 2 in order to have illegal and unconditional declaration of forgoing and surrendering her rights in the properties and estates of parents in the compromise dated 26.11.2015. She was not present in the Police Station and the compromise was effected under the police pressure

when her parents were made to sit in the police station for more than 8 hours. Her statement dated 27.11.2015 was claimed to be illegal. The preliminary submissions No.1 and 3(iv) of the reply filed by her reads as under:-

“1. *That at the outset answering-Defendant No.3 confessed that it is mainly due to her mental psychological and fear factor induced by Plaintiff No.1 & 2 to get her arrested in the false Police complaint using their influence with Police and may be using money power. Answering defendant No.3 is a mother of two small kids besides having responsibility of looking after her family and in-laws comprising of than great father-in-law, great mother-in-law, father-in-law and mother-in-law etc. and fear of Police action that too after stealing documents by Plaintiffs made answering Defendant so terrorized that her parents i.e. Defendants No.1 and 2 had to compromise the matter under Police pressure, in presence of Police, in Police station under blackmail, fraud, intimidation, manipulation, pressure, coercion and undue influence of Plaintiffs without their free consent and under coerced circumstances.*

3.(iv) *On 25.02.2016 Plaintiff No.1 & 2 cheated Defendants and were able to procure GPAs instead of SPAs in clear violation of court decree, when they under the garb of smartly relinquish their right in land in Khasra No.602 & 603/1 without dissolving partnership deed in which these land were involved and Plaintiff No.1 & 2 having*

full right on these land thus having no value of these relinquish deeds. Otherwise also said lands are given by Defendants to Plaintiff No.1 by their own funds.”

[13]. Learned counsel further submitted that a contingent settlement was allegedly made out, of which some of the conditions were fulfilled in respect of withdrawal of cases/complaints and the remaining conditions could not be fulfilled inasmuch as that the petitioners were victimized even after the compromise in question and the situation has gone from bad to worse after the compromise. There was no mode of execution provided for fulfillment of the conditions of the contingent agreement/compromise. Both the parties have alleged allegations of outraging the modesty of female folk inter se by father viz-a-viz. the daughter-in-law and mother viz-a-viz. the son. The allegations are so unfortunate that the petitioners could not reconcile. There is no necessity to elaborate the allegations at this juncture.

[14]. Learned counsel submitted that the statements made in pursuance of the compromise were beyond the scope of compromise and the conditions were made on account of evil design of respondent No.1 which has rendered the decree to be fraudulently obtained and is not executable. Under Order 23 Rule 3 CPC, the Court has to record satisfaction and this is a

statutory requirement that the Court must be satisfied that the agreement or compromise entered into between the parties is lawful. The Court has to apply its judicial mind and on filing the objections or application, the Court has to entertain the same and decide the legality and validity of such compromise. The explanation to the Rule 23 CPC made it clear that the agreement/compromise which is void or voidable shall not be deemed to be lawful within the meaning of said Rule. Since independent suit is barred under Order 23 Rule 3-A CPC, therefore, all issues are to be decided in the same suit by way of following proper procedure. The statute requires the Court to first satisfy that the compromise which has entered into between the parties is lawful before accepting the same.

[15]. Learned counsel further submitted that the Court is expected to apply its judicial mind while examining the terms of the settlement before the suit is disposed of in terms of the settlement. The Court shall decide the question, where it is alleged by one party or denied by other party that an adjustment or satisfaction has been arrived, the Court shall decide the question, the Court before which a petition for compromise is filed and which has recorded such compromise, has to decide the question whether an adjustment or satisfaction has been arrived at on the basis of any lawful settlement. Learned

counsel relied upon **Banwari Lal vs. Smt. Chando Devi (Through L.R.), 1993 AIR (SC) 1139** in the aforesaid context.

[16]. Learned counsel further emphasized that the compromise forming the basis of decree can only be questioned before the same Court that recorded the compromise and the fresh suit would be barred under Order 23 Rules 3 and 3-A CPC. The said provision also covers the decree based on fraudulent compromise that it was obtained by fraudulent means and the same would also fall under the provision of Order 23 Rule 3-A CPC. By referring to **Charanjit Singh vs. Jagtar Kaur (dead) through LRs, 2016(2) PLR 480** and **Horil vs. Keshav and another, 2012(2) R.C.R. (Civil) 852**, learned counsel emphasized upon the aforesaid proposition and stated that when independent suit is barred under Order 23 Rule 3-A CPC, therefore, the Court was obligated to decide all questions arising out of the said compromise by way of following proper procedure.

[17]. Learned counsel further submitted that the compromise on the basis of alleged family settlement between the parties should be *bona fide*, must be voluntarily, free from any inducement, fraud, coercion and undue influence. The basic principles as evolved in **Kale and others vs. Deputy Director of Consolidation and others, AIR 1976 SC 807** should have

been adhered to. Learned counsel also submitted that the prayer for framing of issues was required to be accepted in view of the allegations and material on record for disposal of the application in a lawful manner. The impugned order has been passed in a very cryptic manner without adhering to the prayers made in all the three applications.

[18]. Learned counsel further submitted that the issue of senior citizen in terms of Section 23 of The Maintenance and Welfare of Parents and Senior Citizen, Act 2007 was to be adequately dealt with by the trial Court in the impugned order. The transfer of property in terms of Section 23 of the Act has to be treated as void. According to learned counsel, as per recital of the settlement the parents were to be given due honour and respect and the status of the petitioners was not be compromised. The physical needs and basic amenities were to be construed in the nature of settlement arrived at between the parties which ultimately resulted in civil Court decree to the extent of dishonouring the condition of basic amenities and physical needs of the parents and would render the decree to be void under Section 23 of the abovesaid Act.

[19]. Learned counsel by relying upon **Promil Tomar and others vs. State of Haryana and others, 2014(1) R.C.R. (Civil) 403** and **Justice Shanti Sarup Dewan, Chief Justice (Retired)**

and another vs. Union Territory, Chandigarh and others, 2014

(5) R.C.R. (Civil) 656 contended that by virtue of Section 3 of the Act, the overriding effect of the Act has to be construed and the person, who has inherited the property of the aged parents cannot be absolved. By referring to the aforesaid provision and Section 27 of the Act, wherein jurisdiction of the civil Court was held barred, learned counsel contended that all such issues arising out of the terms of the contingent settlement, mode of execution, allegations, counter-allegations by both the sides and the provisions of Maintenance and Welfare of the Parents and Senior Citizen Act, 2007 were required to be answered by the trial Court after framing proper issues in the controversy. All the three applications should have been answered adequately by the trial Court in the impugned order.

[20]. On other hand, learned counsel for respondents No.1 and 2 submitted that Charul Chowdhary was also signatory to the compromise, who never challenged the statement, rather she has filed the execution of the compromise decree . Learned counsel further stated that respondent No.1 never wanted any document in the back date. He has already shown his *bona fide* by making the statement that he would abide by all the conditions. The land in Kasauli be allowed to be sold by the petitioner No.1 and he be paid only Rs.6.5 crores out of the sale

proceeds irrespective of total sale consideration for which the same can be sold. Learned counsel further submitted that fulfillment of conditions regarding 1/3rd share in respect of Himani Hotel at Shimla would be complied with and the share of Charul Chowdhary be kept intact and on payment of Rs.6.5 crores, respondents No.1 and 2 would vacate the house in Chandigarh. Learned counsel also submitted that Charul Chowdhary has not filed any complaint against the alleged incorporation in the statement beyond the scope of compromise.

[21]. Learned counsel by referring to **Ranganayakamma and another vs. K.S. Prakash (D) by LRs and others, 2008(3) R.C.R. (Civil) 601** contended that once the consent decree was acted upon, the question of reopening the entire suit by setting aside the same would not arise. The settlement was for the benefit of the family and for preservation of peace and honour of the family and also for avoidance of litigation. There was no doubtful claim, nor any disputed right was compromised. The compromise was based on reciprocal give and take and was mutually agreed between the parties and, therefore, the Court will not scrutinize the adequacy of consideration moving from one party to the another as the arrangement was acted upon in order to give full effect and would operate as estoppel against the petitioners.

[22]. Learned counsel for respondents No.1 and 2 further submitted that the filing of application for dismissal of the suit was on illegal premise. According to the learned counsel, the compromise in question was not honoured by the petitioners as per the affidavit filed by them in the High Court in COCP No.1347 of 2016. The compromise dated 16.11.2015 and 26.11.2015 and the judgment and decree dated 12.01.2016 were to be respected. The said affidavit was filed on 06.11.2015 and upto that date no allegation of fraud etc. were levelled, rather the petitioners showed their readiness and willingness in the said affidavit to comply with the compromise and the decree. The said contempt petition was ultimately dismissed as withdrawn by the respondents. The petitioner No.1 has already withdrawn the petition before the Company Law Board where the stay was operating in his favour.

[23]. I have considered the submissions made by learned counsel for the parties.

[24]. According to learned counsel for the parties, the complaints filed by Ankit Gupta and Ankita Gupta have been withdrawn. Similarly the complaints filed by Dinesh Gupta, Asha Gupta and Charul Chowdhary have also been withdrawn. Relinquishment of 1/3rd share in Himani Premium by Ankit Gupta in Shimla has not been done. Condition regarding half

portion of BPTP flat at Faridabad has not been complied with. Relinquishment of land in *Khasra* No.603/1 measuring 3.14 *bighas* has been done conditionally by Ankit Gupta in favour of his father Dinesh Gupta. Relinquishment of land in *Khasra* No.602 measuring 0.17 *bighas* in Kasauli has not been done. Relinquishment share holding and Directorship by Dinesh Gupta and Asha Gupta in respect of AB Resorts (P) Ltd. could not be done. Directorship in respect of AB Resorts has no lien as it was done in the year 2014 even before compromise was effected. However, according to the respondents this property was not covered under the compromise. Petitioners have relied upon the essence of the compromise between the parties by saying that the petitioners were to enjoy full privileges as owners without holding any shares and Directorship in AB Resorts (P) Ltd., including office at Hotel Himanis Residency Sector 35-C, Chandigarh. The position was honorary having no lien on the day to day working of the Company. According to the petitioners without complying with the conditions even, the petitioner No.1 was made to suffer in his own Hotel at the instance of respondent No.1 when he was asked to disclose his identity in order to have a room on rent. The love and affection which was to be showered upon the parents by respondent No.1 as per compromise were put aside and the petitioners made

allegations that respondent No.1 conducted himself unbecoming of a son. The allegations have been made in respect of non-fulfillment of the conditions of the compromise that in place of Special Power of Attorney, a General Power of Attorney was obtained which was even cancelled by petitioner No.1 on 11.04.2016. The respondents were to continue to stay in H.No.2101, Sector 35-C Chandigarh till the time respondent No.1 is paid Rs.6.5 crores out of sale proceeds of Kasauli project and vacation of the said house were to be done simultaneously. Respondent No.1 was to give full respect to his parents i.e. the petitioners. Petitioners were not to file any eviction and complaint in the Court against respondent No.1 and his family was to stay in the aforesaid house till the time payment of Rs.6.5 crores is made to respondent No.1.

[25]. At this juncture, both the parties have exhibited their hostile conduct against each other. It appears from the record that the terms and conditions of the compromise were partially complied with and the terms and conditions were contingent in nature. Thereafter allegation of character assassination of higher degree from either side were made. Keeping in view the relationship between the parties, such allegations should not have been levelled against each other. The allegations are intended to destroy the social fabric.

[26]. While deciding the application, the trial Court has not recorded any satisfaction in terms of Order 23 Rule 3 CPC. The decree passed on the basis of the compromise was to the following effect:-

“In view of compromise in this case between the parties and their respective statement, instant suit and counter claim succeeds and is, hereby decreed with no order as to costs to the effect that parties shall remain bound by their respective statements and compromise deed Ex.C-1.”

[27]. Evidently, the trial Court while decreeing the suit has taken note of statements and compromise deed Ex.C-1. On the basis of statements not fully in consonance with the terms of the compromise, the trial Court was required to satisfy itself with regard to the genuineness of the compromise in question. Whether the condition made in the statements would go to make the compromise unexecutable or otherwise were required to be duly met by the trial Court by way of recording statements. The statute requires the Court is to first satisfy itself that the agreement/compromise entered into between the parties is lawful before accepting the same. Since all issues are to be decided in the same suit, therefore, keeping in view the bar created by Order 23 Rule 3-A CPC, there was no remedy available to the petitioners except to file the application under

Order 23 Rule 3-A CPC, therefore, all issues are required to be decided by way of following proper procedure. The applicability of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 in terms of Section 23 has to be answered by the trial Court in view of third application filed before it.

[28]. Since the impugned order has been passed conjointly on all the prayers made by the petitioners, therefore, the trial Court was required to frame relevant issues before deciding the controversy and thereafter the Court was obligated to record its satisfaction with regard to genuineness of the compromise in question.

[29]. Since the Court has not complied with the provisions of Order 23 Rule 3-A CPC, therefore, I am of the view that the trial Court needs to revisit the controversy by way of framing proper issues and also to take into consideration the effect of Section 23 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 in the controversy in question. The statement made by Charul Chowdhary in the context of relinquishment of property which was given to her by her father in the year 2006 is also required to be gone into by the trial Court in order to test legality and admissibility of any such statement made by her in the Court as she is having two children and such statement would have adverse effect on the minors property in respect of

their entitlement without appointment of lawful guardian.

[30]. In view of aforesaid observation, this case is remanded to the trial Court to decide all the three applications afresh in accordance with law without being influenced by any statement of fact recorded hereinabove.

[31]. Nothing observed hereinabove shall be construed to be an opinion on ultimate merits of the case before the trial Court in the aforesaid three applications. This revision petition is disposed of.

November 22, 2017

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No