

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

C.R. No. 8452 of 2015

Date of Decision:- 07.03.2017

Ramesh Kumar Napa

....Petitioner

vs.

Iqbal Krishan Sharma

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. D.K. Tuteja, Advocate,
for the petitioner.

Respondent in person.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 23.09.2015 (Annexure P-12) passed by learned Civil Judge (Junior Division), Hisar whereby the application filed by petitioner/defendant for dismissal of the suit filed by respondent-plaintiff, keeping in view the compromise arrived at between the parties, has been dismissed.

Briefly the facts of the case are that the petitioner-defendant entered into an agreement to sell dated 29.6.2011 with respondent-plaintiff relating to plot bearing No. 598 measuring 6 Marla situated at Sector-5, Hansi, District Hisar. The petitioner-defendant even received a sum of ₹ 3 lacs as earnest money. As per case of the petitioner, he was always ready and willing to perform his part of contract and even called upon the

respondent by virtue of legal notice dated 12.5.2012 but respondent-plaintiff did not turn up to get the plot transferred in his name. However, an FIR bearing No. 319 dated 2.4.2012 under Section 420 IPC was registered at Police Station City Hisar against the petitioner-defendant in which challan was presented and ultimately the petitioner was held guilty vide judgment dated 20.7.2013 for commission of offence punishable under Section 420 IPC and was sentenced to undergo simple imprisonment for a period of one year with a fine of ₹ 500/-. Petitioner also filed a criminal complaint under Sections 452, 323, 506/34 IPC and Sections 3 and 4 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'The SCST Act') against respondent before the Court of Chief Judicial Magistrate, Hisar, which was pending adjudication at the time of passing of judgment dated 20.7.2013. Against this judgment of conviction and order of sentence, petitioner filed a criminal appeal in the Court of Additional Sessions Judge, Hisar. The respondent-plaintiff also filed civil suit in the Court of Civil Judge, (Junior Division), Hisar for recovery of ₹ 8, 29,500/- against the amount of earnest money of ₹ 3 lacs paid by the respondent to the petitioner. Written statement to the suit was filed by the petitioner-defendant.

Three rounds of litigation were pending in different Courts between the same parties i.e. (i) criminal complaint filed by the petitioner against the respondent, (ii) criminal appeal filed by the petitioner against judgment of conviction and order of sentence and (iii) civil suit for recovery filed by the respondent against the petitioner.

During the pendency of aforesaid three proceedings, the

petitioner and respondent entered into a compromise on 23.1.2015. Respondent-plaintiff got deposited a sum of ₹ 3,50,000/- in bank after taking it from the petitioner. With regard to receipt of said amount of ₹ 3,50,000/- has also been mentioned in the compromise. It has also been mentioned that now he will have no claim with regard to balance amount from the petitioner. It was also mentioned in the compromise that he will withdraw all the pending cases and would not lay any claim. In pursuance of said compromise, petitioner also withdrew his criminal complaint filed under Sections 452, 506, 323/34 IPC and Sections 3 and 4 of the SCST Act on 27.1.2015 and got his statement recorded before the Court of Chief Judicial Magistrate, Hisar. On the basis of the statement made by the petitioner to the effect that compromise has been arrived at between the parties, the complaint of the petitioner was dismissed and the respondent was discharged. Similarly, the petitioner also moved an application with “no objection” from the respondent before the Court of Additional Sessions Judge, Hisar for taking up the appeal which was pending adjudication. On 27.1.2015, respondent had to come present in Court along with the original compromise but he did not bring the compromise. However, the parties were permitted to compound the matter in view of compromise arrived at between them. The offence under Section 420 IPC was also allowed to be compounded and thereafter the petitioner was acquitted of the charge on 27.1.2015. On the basis of compromise, petitioner withdrew his criminal complaint as well as criminal appeal. As per case of the petitioner, respondent promised the petitioner to withdraw his suit for recovery but subsequently respondent refused to withdraw the suit as per compromise.

Thereafter, the petitioner filed an application before Civil Judge (Junior Division), Hisar to dismiss the suit for recovery filed by respondent keeping in view the compromise arrived at between them. Notice in the application was issued. Ultimately, that application was dismissed vide order dated 23.9.2015 on the ground that Civil Court is not bound by the decision passed in a criminal case. Said order dated 23.9.2015 (Annexure P-12) dismissing the application filed by the petitioner is under challenge in the present revision petition.

Learned counsel for the petitioner submits that a compromise was arrived at between the parties and it was decided that all cases including civil as well as criminal will be withdrawn. The signature on the compromise and receipt of amount are not disputed by the Civil Judge. Still application moved by the petitioner has been dismissed without conducting any enquiry and without taking into consideration the compromise arrived at between both the parties. Learned counsel also submits that in the compromise, it was nowhere mentioned that the amount of ₹ 3.5 lacs was towards fine or due to any alleged fraud committed by the petitioner and it was the amount which was settled in compromise between the parties. Learned counsel also submits that it was specifically mentioned in the compromise that nothing remains to be outstanding against the petitioner as an amount of ₹ 3.5 lacs has been accepted against earnest money of ₹ 3 lacs whereas, still the suit was not withdrawn and the application for dismissal of the suit has wrongly been dismissed.

Learned counsel for the petitioner has relied upon judgment of this Court rendered in case **Narinder Aneja vs. Harbans Lal and others,**

2015(5) RCR (Civil) 651 and Satya Wati Jain vs. Shiv Kant Ghai and others, 2012 (4) PLR 376 in support of his contentions.

The respondent, who is present in person, submits that a well reasoned order has been passed by the Addl. Civil Judge (Junior Division), Hisar whereby application moved by the petitioner has been dismissed. The compromise was arrived at between the parties in criminal proceedings only and there was no compromise regarding the civil suit and the Civil Court is not bound by the decision passed in the Criminal case. He has also relied upon judgment of Hon'ble the Apex Court rendered in Seth Ramdayal Jat vs. Laxmi Prasad, 2009 (11) SCC 545 in support of his contention.

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

Facts relating to pendency of civil and criminal litigation, compromise arrived at between the parties are not disputed. As per case of the petitioner, the compromise was effected relating to all civil and criminal cases, whereas, as per stand of the respondent, the compromise was relating to criminal proceedings only and not relating to civil proceedings. It is also not disputed that all criminal proceedings have been withdrawn because of the compromise arrived at between them. The signature of both the parties on the compromise are also not disputed. When civil suit filed by the respondent was not withdrawn, the petitioner moved an application for dismissal of the suit on the basis of compromise arrived at between them. Said application was dismissed by the Addl. Civil Judge (Jr. Division), Hisar vide order dated 23.9.2015 which has been

challenged in the present revision petition.

Now the question for consideration before this Court is as to whether the application moved by the petitioner for dismissal of the suit can be dismissed on the ground that the Civil Court is not bound by the decision passed by the Criminal Court or not. It is also to be decided as to whether in case of compromise arrived at between the parties and denial thereof in part, an enquiry is necessary by framing an issue or not. A question also arises as to whether the petitioner could have been granted an opportunity to prove the existence of the original compromise with the aid of Sections 65 and 66 of the Indian Evidence Act, 1872.

In order to deal with the issue regarding compromise arrived at between the parties, the provisions of Order XXIII Rule 3 CPC are relevant, which are 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 was duly signed by both the parties but the same has been denied by the respondent. 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 the denial of the respondent or Court should hold an enquiry to find out as to whether such a compromise really exists or not. One party is asserting the compromise and other party has denied this fact. It needs an enquiry because it would tantamount a question of fact which can be determined only after leading evidence.

In proviso to Order XXIII Rule 3 of CPC, it is mentioned that where it is alleged by one party and denied by the other party, then the Court shall 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 Babu 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.”

The respondent has not shown any judgment to the contrary and in such circumstances, no enquiry could be conducted. Accordingly, the question is decided in the affirmative by holding that in case where 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 XXIII Rule 3 CPC.

The other question which would also be relevant in the present case is as to whether the petitioner can be permitted to lead secondary evidence to produce photocopy of the compromise as the original copy of the compromise might be kept by the other party. There is no dispute that photocopy of the compromise cannot be looked into by the Court as it can be manufactured but if the petitioner is asserting that compromise has been effected, then the question would arise whether the petitioner can prove the document by way of secondary evidence by resorting to Sections 65 and 66 of the Indian Evidence Act, 1872. In this regard, the judgments of this Court in the cases of **Kashmir Kaur vs. Sukhwant Kaur and others**, 2006 (2) RCR (Civil) 683 and **Sham Lal vs. Piare Lal and others**, 1986 (2) CurLJ 144 would be relevant.

Section 62 of the Act defines as to what are the documents which are called primary evidence and Section 63 of the Act talks about the secondary evidence. Section 65 of the Act provides the circumstances in which secondary evidence relating to a document may be given. Section 66 of the Act relates to the notice to produce the document by way of

secondary evidence, if it is in possession of the 3rd party. In the present case, in case the original compromise is not there or the same is in custody of the other party, then permission can be granted and notice would be issued under Section 66 of the Act for its production. In case the existence of compromise is proved in Court and the petitioner is successful in producing the document by way of secondary evidence or otherwise and other party failed to prove otherwise then the decision is to be taken by the Civil Court.

Accordingly, keeping in view the observations as made above, the present revision petition is allowed and the case is remanded to the trial Court for framing an issue with regard to existence of an agreement for the purpose of holding an enquiry. However, the trial Court would grant only two opportunities to each party to lead their evidence to prove the issue now framed by it as the suit is pending since long and same be decided as early as possible.

March 07, 2017
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes