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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 2077/2013 & I.A.No.1788/2014**

MAMTA DHAWAN

..... Plaintiff

Through **Mr.Vivek Sharma, Advocate.**

versus

NARESH DHAWAN

..... Defendant

Through **Ms.Sumedha Dua, Advocate.**

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Date of Decision: 16th October, 2017

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J (ORAL):

1. Learned counsel for the plaintiff prays for an adjournment on the ground that the plaintiff is unwell. However, on the last date of hearing i.e. 21st August, 2017, this Court had made it clear that it would not grant any adjournment today. Consequently, the request for adjournment is declined.
2. It is pertinent to mention that the present suit has been filed for declaration and permanent injunction on behalf of the plaintiff-wife and against the defendant-husband.

3. In the present suit, the plaintiff-wife has prayed for a declaration that the consensual judgment and order dated 10th March, 2016 and the formal decree prepared on 02nd February, 2013 passed in CS(OS) No.1222/2004 be declared void, illegal, invalid, arbitrary and malafide. The plaintiff-wife also seeks permanent injunction restraining the defendant-husband from acting upon the order dated 10th March, 2006 and the formal decree dated 02nd February, 2013.

4. Mr. Vivek Sharma, learned counsel for the plaintiff states that the compromise order dated 10th March, 2006 and the formal decree dated 02nd February, 2013 passed in CS(OS) No.1222/2004 are vitiated by fraud and misrepresentation perpetrated by the defendant. He contends that the fraud and misrepresentation committed by the defendant with respect to the compromise order dated 10th March, 2006 was not known to the plaintiff when the said order was passed.

5. Mr. Vivek Sharma also states that various properties were concealed and properties with defective title were given to the plaintiff.

6. On the other hand, learned counsel for the defendant-husband states that there exists a consensual judgment and decree dated 10th March, 2006 passed between the parties. She submits that the present suit is barred under Order XXIII Rule 3A CPC.

7. She further submits that the issues raised in the present suit has already been decided by a court of competent jurisdiction vide order dated 26th August, 2013 in Ex. P.No.122/2013 – which order stands confirmed by the learned Division Bench and even an SLP against the

same stands dismissed.

8. She lastly submits that the present suit is barred by limitation under Section 3 read with Article 59 of the Limitation Act.

9. In rejoinder, learned counsel for the plaintiff states that though the SLP challenging the order dated 26th August, 2013 and the Division Bench order dated 16th May, 2014 had been dismissed on account of non-prosecution, yet an application for restoration has been filed, which is yet to be listed.

10. Having heard the learned counsel for the parties, this Court is of the view that the present suit is hit by law of estoppel since a consent decree operates as an estoppel and is valid and binding unless and until it is set aside by the court which passed the said decree, by an order on an application under proviso to Order XXIII Rule 3 CPC. The Supreme Court has further held that a consent decree is a contract with the imprimatur of the courts superadded. It is something more than a mere contract and has the elements of both command and contract. It has also been held that the Court's attempt should be to give life and enforceability to the compromise and not to defeat it on technical grounds. (See: *Manish Mohan Vs. Ram Bahadur*, (2006)4 SCC 416 and *PT Thomas Vs. Thomas Job*, (2005) 6 SCC 478).

11. This Court is in agreement with the submission of learned counsel for the defendant that the present suit is barred by virtue of Section 12 and Order 23 Rule 3A. The said Section and Order are reproduced hereinbelow:-

A) Section 12 CPC

“12. Bar to further suit.— Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.”

B) Order 23 Rule 3A CPC

“Order 23 — Withdrawal and Adjustment of Suits

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3-A. Bar to suit.— No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.”

12. The Division Bench of this Court Supreme Court in ***Smt. Simrat Katyal Vs. Shri Varinder Katyal, 2010 SCC OnLine Del 4261*** has held as under:-

“39. In almost similar situation, the Apex Court in the case of Pushpa Devi Bhagat (dead) through LR. Sadhna Rai (Smt) v. Rajinder Singh and others, (2006) 5 SCC 566, at page 576 in para 17 laid down as under:

“17. The position that emerges from the amended provisions of Order 23 can be summed up thus:

(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in Section 96(3) CPC.

(ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a

compromise) in view of the deletion of clause (m) of Rule 1 Order 43.

(iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3A.

(iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 Order 23.

Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made. The second defendant, who challenged the consent compromise decree was fully aware of this position as she filed an application for setting aside the consent decree on 21.8.2001 by alleging that there was no valid compromise in accordance with law. Significantly, none of the other defendants challenged the consent decree. For reasons best known to herself, the second defendant within a few days thereafter (that is on 27.8.2001), filed an appeal and chose not to pursue the application filed before the court, which passed the consent decree. Such an appeal by the second defendant was not maintainable, having regard to the express bar contained in Section 96(3) of the Code.

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42. We are of the view that arguably the only remedy which lies with the Appellant is to file the application, if maintainable, before the concerned Court who passed the consent decree between the parties or to take all the objections which are available to the Appellant in the execution proceedings at the time of enforcement of decree, if situation arises.”

13. Consequently, the present suit is barred in law.

14. This Court is also of the opinion that the present suit filed on 25th October, 2013 is barred by limitation as the order sought to be challenged in substance by the plaintiff is dated 10th March, 2006. Moreover, as the said order was in the knowledge of the plaintiff way back on 10th March, 2006, preparation of the decree in 2013 would not extend the period of limitation.

15. In any event, this Court is also of the opinion that the present suit is barred by *res judicata* as all the issues that have been raised in the present suit have already been decided by a court of competent jurisdiction vide order dated 26th August, 2013 passed in Ex. P.No. 122/2012 inasmuch as the plea of illegal withdrawal of the Company Petition No.57/2005 before the CLB and non compliance of the impugned compromise decree within the time frame prescribed have already been rejected.

16. The plaintiff's appeal being EFA (OS) No.8/2014 was also dismissed vide order dated 16th May, 2014. Even an SLP challenging the said order has been dismissed on account of non-prosecution.

17. Consequently, the present plaint is rejected on the ground that it does not disclose a cause of action and is barred by law. Accordingly, the present suit and the application are dismissed.

MANMOHAN, J

OCTOBER 16, 2017
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