

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

% Judgment delivered on: 02nd November 2017

+ RFA (OS)(COMM) 16/2017

SAREGAMA INDIA LIMITED Appellant

versus

THE INDIAN SINGERS RIGHTS ASSOCIATION & ORS.

..... Respondents

+ RFA (OS)(COMM) 17/2017

SUPER CASSETTES INDUSTRIES PRIVATE LIMITED

..... Appellant

versus

THE INDIAN SINGERS RIGHTS ASSOCIATION & ORS.

..... Respondents

+ RFA (OS)(COMM) 18/2017

SUPER CASSETTES INDUSTRIES PRIVATE LIMITED

..... Appellant

versus

THE INDIAN SINGERS RIGHTS ASSOCIATION & ORS.

..... Respondents

Advocates who appeared in this case:

For the Appellants :

Mr Chander M.Lall, Senior Advocate with Mr Ankur Sangal and Ms Sucheta Roy, Advocates in RFA(OS) (COMM) 16/2017

Mr Amit Sibal, Senior Advocate with Mr Neel Mason, Mr Ankit Relan, Ms Ridhima Pabbi, Mr Uday Singh Chopra and Ms P.Vennela, Advocates in RFA(OS) (COMM) 17/2017 & 18/2017

For the Respondents : Mr Sudhir Chandra, Senior Advocate with Mr Pravin Anand, Mr Dhruv Anand, Ms Udit Patro and Mr Shamim Nooreyezaan, Advocates for R-1.

Mr Prabhakar Meher, Advocate for R-2 & 3 in RFA(OS) (COMM) 16/2017 & 17/2017

Mr Sanjay Agnihotri and Ms Madhuri Yadav, Advocates for R-2,3 & 4 in RFA(OS) (COMM) 18/2017

Mr Rakesh Kumar, Advocate for R-2 to 5 in RFA(OS) (COMM)17/2017

CORAM:-

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

CM No.30490/2017(exemption) in RFA(OS)(COMM)16/2017

CM Nos.31158-60/2017(exemption) in RFA(OS)(COMM)17/2017

CM Nos.31163-65/2017(exemption) in RFA(OS)(COMM)18/2017

Exemptions are allowed subject to all just exceptions.

RFA (OS)(COMM) 16/2017 & CM Nos.30488/2017 (stay) {arising out of CS(COMM) No. 1624/2017}

RFA (OS)(COMM) 17/2017 & 31157/2017 (stay), 31161/2017(under Order XLI Rule 33 read with Order XIII Rule 10 CPC) {arising out of CS(COMM) No. 1547/2017}

RFA (OS)(COMM) 18/2017, CM Nos.31162/2017 (stay), 31166/2017(under Order XLI Rule 33 read with Order XIII Rule 10 CPC) {arising out of CS(COMM) No. 1624/2017}

1. The appellants are aggrieved by identical orders dated 17.05.2017 (passed in CS(COMM) No. 1547/2017 & CS(COMM)

No. 1624/2017), whereby, the learned Single Judge has allowed the applications under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 filed by the respective respondents (Plaintiff and defendants in the subject Suits), recorded the settlement entered into between the respondents and decreed the Suit in terms of the settlement.

2. The appellants are also aggrieved by the decision of the Single Judge in disposing of the application Order I Rule 10 CPC filed by the appellants under for being impleaded as a party to the Suit between the respondents and directed that the grievance, if any, of the appellants, being independent grievances, may be addressed by the appellants by way of substantive proceedings which they were permitted to take as permissible in law and the further finding that they are neither necessary nor property parties in the said proceedings.

3. The subject Suits and applications in issue are as under:

- (1) CS(COMM) No. 1547/2016 titled The Indian Singers' Rights Association Versus Mr Deepak Arora & Ors.
 - a. I.A. No. 265/2017 (under Order XXIII Rules 3 jointly filed by plaintiff and defendants in the Suit)
 - b. I.A. No. 16261/2016 (under Order I rule 10 by Saregma India Limited – Appellant in RFA (OS) Comm 16/2017)
 - c. I.A. No. 96/2017 (under Order I rule 10 by Super Cassette Industries Private Limited – Appellant in RFA (OS) Comm 17/2017 & RFA (OS) Comm 18/2017)

(2) CS(COMM) No. 1624/2016 titled The Indian Singers' Rights Association Versus Mr A D Singh & Anr.

- a. I.A. No. 264/2017 (under Order XXIII Rules 3 jointly filed by plaintiff and defendants in the Suit)
- b. I.A. No. 16256/2016 (under Order I rule 10 by Saregma India Limited – Appellant in RFA (OS) Comm 16/2017)
- c. I.A. No. 305/2017 (under Order I rule 10 by Super Cassette Industries Private Limited – Appellant in RFA (OS) Comm 17/2017 & RFA (OS) Comm 18/2017)

4. The respondent No.1 – The Indian Singers Rights Association filed the respective Suits, *inter alia*, seeking relief of permanent injunction, thereby, restraining the defendants therein from communicating to the public the plaintiff's repertoire comprising of performer's rights of all its members and works of its sister societies without paying the singer's royalty to the plaintiff and obtaining a clearance from the plaintiff and an order for rendition of accounts and payment of damages.

5. It was contended in the respective complaints, by respondent No.1, that it is a registered copyright society and the members of the respondent No.1 Society are singers and as a category of performers have an inalienable right to receive royalty, as guaranteed under Section 38A of the Copyright Act, 1957 read with Section 18(1), third and fourth provisos and further that the third and fourth provisos

of Section 18(1) read with Section 39A grants the performers an inalienable right to receive royalty for commercial utilization of their performances incorporated in a sound recording or in a cinematographic film.

6. It was contended that the right to receive royalty could only be assigned to legal heirs of the performers or a collecting society for collection and distribution and any assignment to the contrary is void.

7. During the pendency of the Suit, the appellants filed an application under Order I Rule 10 seeking impleadment in the said Suit, contending that the appellants had acquired copyright in the songs either by way of commissioning the creation of such works under a contract of service with the composers, lyricists, singers and musicians directly or by entering into appropriate assignment deeds.

8. It was contended that the appellants were the owners of all rights in the songs in its repertoire and had the sole and exclusive rights in each and every component of the song being the lyrics, the melody of the songs, the sound recording which homogenizes the lyrics and the melody as well as the performance of the singers, musicians, chorus, artists, etc. that are embodied within the songs.

9. It was contended that being the owner of all rights in the songs, the appellants, and not the respondent No.1, had exclusive rights of an owner under Sections 14(a), 14(e), 38A and 55 of the Copyright Act. It was, *inter alia*, on this premise that the appellants sought

impleadment in the said proceedings.

10. Pending consideration of the said application, subject applications under Order XXIII Rule 3 were filed jointly by the respective respondents for recording the compromise as lawful, disposal of the Suit in terms of the said settlement and passing of a decree in the Suit in terms of the said settlement.

11. Learned counsel for the appellants, before the learned Single Judge, opposed the application under Order XXIII Rule 3 and contended that the application under Order I Rule 10, filed by them, was required to be disposed of prior to the consideration of the application under Order XXIII Rule 3.

12. Learned Single Judge, by the impugned order, held the settlement between the parties to the Suit to be lawful. The learned Single Judge noticed that the defendants in the respective Suits had acknowledged the performers rights and their right to receive royalty and also recorded that the plaintiff in the Suit had received the royalty fee from the defendants. An undertaking of the defendants was also recorded that for future they shall obtain necessary clarification certificate from the plaintiff therein by paying royalty/fee in time.

13. The learned Single Judge accordingly decreed the Suit in terms of the settlement between the plaintiff and the defendants in the Suit.

14. With regard to the application, filed by the appellants, under

Order I Rule 10, learned Single Judge noticed the contention of the appellants that the applications under Order I Rule 10 should be heard prior to the disposal of the application under Order XXIII Rule 3. Learned Single Judge also noticed the contention of the appellants that the rights, which were being claimed by the plaintiff in the Suit, had, in fact, been assigned to the appellants and the compromise entered into between the plaintiff and the defendants was collusive.

15. Learned Single Judge, however, was of the view that the grievance of the appellants was independent of the settlement between the parties to the Suit and, accordingly, held that the grievance may be addressed by way of substantive proceedings and, accordingly, held that the appellants were neither necessary nor proper parties to the said Suits.

16. In view of the above observations, learned Single Judge declined to go into the opposition raised by the appellants that the settlement, which was sought to be entered into by the parties to the Suit, was collusive and not lawful.

17. Learned senior counsel appearing for the appellants relying on the decision of the Supreme Court in *Banwari Lal vs. Chando Devi & Anr.*: (1993) 1 SCC 581 contended that it was obligatory on the Court while considering an application under Order XXIII Rule 3 to decide whether the compromise proposed to be recorded was lawful or not. It was further contended that the question as to whether an agreement

or compromise was void or voidable under the Indian Contract Act was to be decided by the Court prior to the disposal of the application under Order XXIII Rule 3 filed by the parties to the Suit.

18. It is further contended that it is only that Court before which a compromise between the parties is propounded, that can go into the question as to whether the settlement is lawful or not. Parties also can raise the said issue, only before the Court before which the settlement is submitted. No independent Suit or proceedings would lie for declaration that the settlement was not lawful.

19. Learned senior counsel appearing for the respondents endeavoured to show before us that it was the respondent No.1 alone, which had lawful rights to claim royalty. Further, an effort was made to show that the performer's right to receive royalty is inalienable and, accordingly, it was the plaintiff alone who had the right to an injunction and to receive royalty on behalf of the performer. Further, an effort was made to contend that any agreement to the contrary, which would defeat the rights of the performer to receive royalty, would be void.

20. The question that arises for consideration, in the present appeals, is as to whether the learned Single Judge erred in disposing of the application under Order I Rule 10 CPC, filed by the appellants, by holding that the appellants were neither necessary nor proper parties and further declining to consider the objection raised by the

appellants that the settlement proposed before the Court was collusive and not lawful and relegating the appellants to independent proceedings to readdress its grievance.

21. Reference may be had to the provisions of Order XXIII Rule 3 of the Code of Civil Procedure.

*“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 satisfies 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 than 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 avoidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.”

22. The proviso to Order XXIII Rule 3 and the Explanation were inserted by Act 104 of 1976 with effect from 01.02.1977. Order XXIII stipulates that where it is proved to the satisfaction of the Court

that the Suit has been adjusted wholly or in part by any lawful agreement or compromise, the Court shall order such an agreement, compromise to be recorded and pass a decree in accordance therewith.

23. Order XXIII Rule 3 requires (i) proof to the satisfaction of the Court and (ii) that the agreement or compromise is lawful. It is only on satisfaction of the Court that the agreement or compromise is lawful that the Court is to record the same and pass a decree in accordance therewith. If dispute is raised as to the adjustment or satisfaction, the proviso mandates the Court to decide the said question. Explanation to Order XXIII Rule 3 notes that an agreement or compromise which is void or voidable under the Indian Contract Act shall not be deemed to be lawful.

24. Order XXIII Rule 3A, which was also inserted by Act 104 of 1976 with effect from 01.02.1977, reads as under:-

***“3A. 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.”*

25. Order XXIII Rule 3A bars an independent Suit to set aside a decree on the ground that the compromise, on which a decree is based, was not lawful.

26. A reading of Order XXIII Rule 3A in conjunction with Order XXIII Rule 3 shows that the Court before whom a compromise or an agreement is propounded is to satisfy itself that the agreement or

compromise is lawful. It is that Court alone which has to undertake the exercise so as to ascertain whether the compromise or agreement is lawful or not and the said exercise has to be undertaken prior to recording the same and passing a decree in accordance therewith. No Court other than the said Court can go into the said question, as no Suit would lie for setting aside a decree on the ground that the compromise on which the decree was based was not lawful.

27. Even if a person not a party to the compromise were to contend that the compromise was not lawful, it would be obliged to approach the same Court, which has recorded the compromise or settlement and passed a decree based thereon.

28. The Supreme court in *Banwari Lal* (supra) has held as under:-

“11. The present case depicts as to how on 27.2.1991 the Court recorded the alleged agreement and compromise in a casual manner. It need not be impressed that Rule 3 of Order 23 does not require just a seal of approval from the Court to an alleged agreement or compromise said to have been entered into between the parties. The statute requires the Courts to be first satisfied that the agreement or compromise which has been entered into between the parties is lawful, before accepting the same. 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 agreement arrived at between the parties. It need not be pointed out that once such a petition of compromise is accepted, it becomes the order of the Court and acquires the sanctity of a judicial order.

13. When the amending Act introduced a proviso along with an explanation to Rule 3 of Order 23 saying that where it is alleged by one party and denied by other that an adjustment or satisfaction has been arrived at, "the Court shall decide the question", the Court before which a petition of compromise is filed and which has recorded such compromise, has to decide the question whether an adjustment or satisfaction had been arrived at on basis of any lawful agreement. To make the enquiry in respect of validity of the agreement or the compromise more comprehensive, the explanation to the proviso says that an agreement or compromise "which is void or voidable under the Indian Contract Act..." shall not be deemed to be lawful within the meaning of the said Rule. In view of the proviso read with the explanation, a Court which had entertained the petition of Compromise has to examine whether the compromise was void or voidable under the Indian Contract Act. Even Rule 1(m) of Order 43 has been deleted under which an appeal was maintainable against an order recording a compromise. As such a party challenging a compromise can file a petition under proviso to Rule 3 of Order 23, or an appeal under Section 96(1) of the Code, in which he can now question the validity of the compromise in view of Rule 1A of Order 43 of the Code.

14. The application for exercise of power under proviso to Rule 3 of Order 23 can be labelled under Section 151 of the Code but when by the amending Act specifically such power has been vested in the Court before which the petition of compromise had been filed, the power in appropriate cases has to be exercised under the said proviso to Rule 3. It has been held by different High Courts that even after a compromise has been recorded, the Court concerned can entertain an

application under Section 151 of the Code, questioning the legality or validity of the compromise. Reference in this connection may be made to the cases Smt. Tarn Bai v. V.S. Krishnaswamy Rao AIR 1985 Karnataka 270, S.G. Thimmappa v. T. Anantha , Bindeshwari Pd. Chaudhary v. Debendra Pd. Singh , Mangal Mahton v. Behari Mahton and Sri Sri Iswar Gopal Jew v. Bhagwandas Shaw , where it has been held that application under Section 151 of the Code is maintainable. The Court before which it is alleged by one of the parties to the alleged compromise that no such compromise had been entered between the parties that Court has to decide whether the agreement or compromise in question was lawful and not void or voidable under the Indian Contract Act. If the agreement or the compromise itself is fraudulent then it shall be deemed to be void within the meaning of the explanation to the proviso to Rule 3 and as such not lawful. The learned Subordinate Judge was perfectly justified in entertaining the application filed on behalf of the appellant and considering the question as to whether there had been a lawful agreement or compromise on the basis of which the Court could have recorded such agreement or compromise on 27.2.1991. Having come to the conclusion on the material produced that the compromise was not lawful within the meaning of Rule 3, there was no option left except to recall that order.”

(emphasis supplied)

29. In *Banwari Lal* (supra), the Supreme Court has held that Order XXIII Rule 3 requires the Court to be first satisfied that the agreement or compromise, which has been entered into between the parties, is lawful before accepting the same. The Court is expected to apply its judicial mind to the terms of the settlement before recording the same

and disposing of the Suit in terms of the settlement. Once a petition of compromise is accepted, it becomes an order of the Court and acquires the sanctity of a judicial order. It is the Court before which a petition of compromise is filed and which has recorded such a settlement, which has to decide the question whether an adjustment or satisfaction has been arrived at based on a lawful agreement.

30. A party challenging the compromise is to file a petition under the proviso to Rule 3 of Order XXIII. It has been noticed that the power has been vested in the Court before whom the petition of compromise had been filed to entertain an application questioning the legality and validity of the compromise.

31. The Court, which is called upon to take on record a settlement and dispose of the proceedings based on the settlement, is obliged to satisfy itself that the settlement is lawful and is also empowered to go into any question or objection raised with regard to the settlement on the ground of the same not being lawful.

32. The learned Single Judge was accordingly obliged to examine the said issue raised by the appellants that the settlement was collusive and not lawful, prior to accepting the said compromise and passing a decree based thereon.

33. Section 24 of the Indian Contract Act, 1872, *inter alia*, stipulates that if any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for

a single object is unlawful, the agreement is void. Section 23 of the Indian Contract Act, 1872, *inter alia*, stipulates that the consideration and object of an agreement is lawful unless it is forbidden by law or is of such nature that, if permitted it would defeat the provisions of law or is fraudulent or involves or implies injury to the person or property of another or the Court regards it as immoral or opposed to the public policy.

34. The contention of the appellants is that the settlement arrived at between the parties to the Suit i.e., the respondents, involves injury to the property of the appellants.

35. Since the question raised by the appellants before the learned Single Judge was that the rights of the appellants is adversely affected, by the settlement being arrived at between the parties to the Suit, the learned Single Judge, in our opinion, was obliged to determine the question as to whether the settlement was lawful or not or void or voidable.

36. Since, the learned Single Judge erred in not considering this aspect, we are of the view that the impugned order of the learned Single Judge cannot be sustained.

37. In view of the above, the appeals are allowed. The impugned orders dated 17.05.2017 in the respective subject Suits are set aside. The respective applications under Order XXIII Rule 3 and Order I Rule 10 are restored to the file of the learned single judge.

38. Parties shall appear before the learned Single Judge on 06.11.2017, for directions.

39. It is clarified that this Court has neither examined nor considered the rival claims of the appellants or the respondent No.1, raised under the Copyright Act and, leave the same to be considered by the learned Single Judge, in accordance with law.

40. The appeals are, accordingly, disposed of in the above terms. There shall be no order as to cost.

SANJEEV SACHDEVA, J.

S. RAVINDRA BHAT, J.

NOVEMBER 02, 2017/st