

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

903 CIVIL APPLICATION NO. 3329 OF 2007
IN LPA/25/2001 WITH CA/9715/2003 IN LPA/25/2001 WITH
CA/10606/2003 IN LPA/25/2001 WITH CA/12733/2008 IN
CA/3329/2007

AFSARI BEGUM SAYYAD EJAZ AHMED AND ANR
VERSUS
SAYYED MASTAN SAYYED IBRAHIM AND ORS

...
Advocate for Applicants : Mr. Rajendra Deshmukh
Advocate for Respondents 4 to 7 and 12 : Mr. P.R. Katneshwarkar
Advocate for Respondents 13 to 19 : Mr. H.I. Pathan
...

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.**
DATED : JANUARY 19, 2018.

ORDER :

1) Civil Application No. 3329/2007 is filed for recalling the order made by this Court in L.P.A. No. 25/2001, due to which the proceeding came to be disposed of by preparing decree in terms of compromise filed in Civil Application No. 9715/2003. Prayer is made to allow the applicants to withdraw Civil Application No. 9715/2003 in which terms of compromise were filed and prayer was made to dispose of the matter in terms of compromise. Both the sides are heard.

2) Most of the applicants had filed suit for partition of immovable property on the ground that they were entitled to 1/3rd

share in the property which was sold by Syyed Ibrahim to some of the defendants. The suit was decreed in their favour and appeal preferred against the said decree was dismissed. To challenge the decision given in the appeal, L.P.A. No. 25/2001 was filed in this Court. When the matter came up for hearing, Civil Application No. 9715/2003 was filed by the original plaintiffs and defendants and submission was made to dispose of the appeal in terms of compromise and request was made to prepare the decree in terms of compromise. This Court verified the terms of compromise and this Court also took care to see that the interest of minors was protected, procedure in that regard was followed. When the value was around Rs.3,00,000/-, the amount tendered was Rs.6,00,000/- and this circumstance was considered and compromise was accepted by this Court. Decree was prepared accordingly as per the decision given by this Court in L.P.A. on 14.11.2003. Present Civil Application No. 3329/2007 came to be filed on 5.3.2007.

3) It is the contention that such proceeding can be filed under the provision of Order 23, Rule 3 r/w. Section 151 of Civil Procedure Code ('C.P.C.' for short). It is the contention that the other side had approached applicants and representation was made to applicants that present respondents were acknowledging the share of the present applicants in the suit property. It is contended

that when the applicants were expected to get the property worth Rs.3,00,000/-, offer of amount of Rs.6,00,000/- was given and so, due to the pressure and the false promise, consent was given by the applicants to the said compromise. It is contended that the aforesaid amount which was agreed to be paid was not paid and the applicants kept on demanding the amount to the respondents. It is contended that ultimately the respondents denied to make such payment on 28.1.2007 and the applicants realised that there was intention to deceive and so, they approached this Court by filing the present application.

4) The learned counsel for the applicants submitted that in view of explanation given to Order 23, Rule 3 of C.P.C., the compromise mentioned in Civil Application No. 9715/2003 cannot be called as lawful as fraud was played on the applicants. The said explanation is as under :-

"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."

The learned counsel submitted that due to provision of Order 23 Rule 3-A of C.P.C., no suit shall lie to set aside the decree on the ground that the compromise on which the decree is based was not

lawful and so, this Court is expected to consider the contentions made in the present application and relief needs to be granted. In support of this contention, the learned counsel for applicants placed reliance on some observations made by the Apex Court in the case reported as **(1993) 1 Supreme Court Cases 581 [Banwari Lal Vs. Chando Vedi and Anr.]**. This Court has carefully gone through the facts of that case. The facts were totally different. Basically, the compromise was not signed by the parties and the suit was dismissed as per the submissions made by advocates of the parties. The facts of the present matter are altogether different.

5) The provision of Order 23, Rule 3 itself shows that it is necessary for the Court to get satisfied that the suit has been adjusted wholly or in part by any lawful agreement or compromise in writing which is signed by the parties. The order accepting compromise shows that every aspect of the matter was touched by this Court before accepting the compromise. In the application itself, present applicants have admitted that the procedure was followed by this Court. In the agreement, there was promise to make payment of Rs. 6,00,000/- and in lieu of that, plaintiffs gave up their claim of share in the immovable property. The decree was drawn accordingly and it can be said that in view of the decree, the plaintiffs became entitled to recover Rs.6,00,000/- from the respondents, who had

agreed to the compromise. In view of these circumstances, it cannot be said that the compromise was void or voidable under Indian Contract Act, 1972. The circumstance that when this Court accepted the compromise in the year 2003 and the applicants came to this Court in the year 2007 itself speak loud about the contentions made. There is possibility that some dispute arose subsequent to the filing of the compromise in the Court. In such cases the rights which have materialised in the compromise only can be enforced and such contentions cannot be addressed under provision of Order 23, Rule 3 of C.P.C. Further, though there is the allegation of fraud, apparently it is breach of promise. Thus, it is not possible to give any relief in the present proceeding. In the result, Civil Application No. 3329/2007 stands dismissed. Other pending civil applications, if any, are also disposed of.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/