

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL APPEAL NO.40 OF 2018
IN
CHAMBER SUMMONS NO.1857 OF 2010
IN
SUMMARY SUIT NO.336 OF 2009**

Ahmed M. Rowjee

...Appellant

Vs.

Mr.Sadrudin Hasan Daya & Ors.

...Respondents

Mr.Mallikarjun Chougule, Legal Aid Advocate for Appellant.

Mr.S.G. Abbas Kazmi for Respondent Nos.1 and 2.

Ms.Vaishali P. Benore for Respondent No.4.

**CORAM : NARESH H. PATIL AND
G.S. KULKARNI, JJ.**

DATE : 2nd MAY 2018

P.C.:

Heard the learned Counsel appearing for the parties.

2. The appeal is directed against the order dated 9th March 2011 passed by the Single Judge of this Court. The Court recorded consent of the appellant that the appellant was willing to accept an amount of Rs.5 Lakhs in full and final settlement of all his claims against the defendants. The suit was accordingly disposed of.

3. The appellant is represented by a lawyer engaged by the Legal Services Authority. The learned Counsel for the appellant submits that due to old age and problem relating to hearing, the appellant could not understand the order passed by the Single Judge recording consent of the appellant. His original claim is of Rs.6 Lakhs along with interest against which the appellant received Rs.5 Lakhs.

4. The appellant is present in Court. The learned Counsel has taken instructions from the appellant.

5. Perused the record, the impugned order and heard the submissions advanced. We refer to the provisions of Order 23 Rule 3 of the CPC which refers to “compromise of suit”. Rule 3 contemplates that in a case where a question arises whether or not there is a lawful compromise, the question whether such agreement or compromise is lawful is required to be determined by the Court which has passed the decree. The Supreme Court in *Banwari Lal Vs. Chando Devi*, reported in *(1993)1 SCC 581* which is followed in the recent decision of the Supreme Court in *R.Ranjanna Vs. S.R.Venkataswamy & Ors*, reported in *AIR 2015 SC 706* has held the issue as to whether an agreement or compromise leading to a decree in a suit is lawful, is required to be raised before the Court that passed such decree and it is that court alone

which can examine and determine that question.

6. This view has also been followed in the recent Judgment of the Division Bench of this Court to which one of us is a party (G.S.Kulkarni, J.) in the case of Smt.Vishankumari Udaysingh Varma Vs. Vijaysingh Rajasingh Varma. 2016(4) Mh.L.J. 805.

6. In view of the grounds raised by the learned Counsel appearing for the appellant before us, the appropriate remedy may be to move the learned Single Judge. We dispose of the appeal accordingly. All contentions to be urged before the learned Single Judge are kept open.

[G.S. KULKARNI, J.]

[NARESH H. PATIL, J.]