

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

CR No.1020 of 2014 (O&M)
Date of decision : 02.05.2018

Ram Kumar and another

...Petitioners

Versus

Suman Sharma and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. R.S. Chauhan, Advocate for the petitioners.

Mr. Charanpreet Singh, AAG, Punjab.

Mr. Puneet Jindal, Sr. Advocate with
Ms. Neha Anand Mahajan, Advocate
for respondent Nos.1 and 2.

Mr. Harmanjit Singh, Advocate for respondent No.4.

ANIL KSHETARPAL, J.

This revision petition has been filed under Article 227 of the Constitution of India challenging the order passed by the learned First Appellate Court refusing to revive the suit as well as the appeal vide order dated 07.08.2013.

Some facts are required to be noticed. Late Sh. Sunil Prashar is stated to have died on 16.09.2000 leaving behind Class-I heirs Suman Sharma, widow, Abhinav, minor son and Asha Rani, the mother. There was some dispute inter se between the parties and Asha Rani filed a suit for declaration to the effect that she is the mother of Sunil Prashar and, therefore, entitled to equal share with defendant Nos.3 and 4 i.e. Suman Sharma and Abhinav in the amount payable by defendant No.2 on account

of death of Sunil Prashar. The aforesaid suit was decreed vide judgment and decree dated 05.09.2006. The operative part thereof is extracted as under:-

“11. In view of my findings on issue No.1 above, the plaintiff is entitled to the relief as claimed for. Consequently, the suit of the plaintiff is hereby decreed with costs to the effect that she is entitled to receive 1/3rd share of the entire funds paid by the defendants No.1 and 2 to the defendants No.3 and 4 after the death of deceased Sunil Prashar and accordingly, the defendant No.3 is directed to make the payment of the share of the plaintiff to her within a period of three months from the date of passing the decree. As far as the pension is concerned, the plaintiff has no claim over the same and the defendants No.3 and 4 shall be receiving the same exclusively. Decree sheet be prepared and file be consigned to the record room.”

Suman Sharma, widow and Abhinav, the minor son filed an appeal against the aforesaid judgment and decree dated 05.09.2006.

There were certain criminal proceedings and before the High Court, the parties entered into a settlement, the terms whereof are as under:-

“The terms are recorded as under on consensual basis:-

1. The exchange deed dated 28.05.2000 will, not be given effect to and shall stand cancelled. Petitioners No.2 and 3 would also be bound by that settlement as the learned counsel appearing on their behalf has precise instructions to that effect.

Learned counsel clarifies that he has received instructions to that effect from petitioners No.2 and 3 through their father petitioner No.1-Maninder Dass.

Insofar as the property which stood in the name of the deceased-Sunil Dutt is concerned, it shall be transferred in the name of Suman Sharma (first informant complainant)

and its possession shall be handed, over to the complainant-first informant.

2. *Insofar as the ancestral property is concerned, the share of the complainant-first informant-widow of the deceased therein shall be transferred in her name.*

3. *Insofar as the self-acquired property is concerned, petitioner No.1 agrees that he would not alienate it in any manner during his life-time.*

4. *A civil suit filed by Asha Rani wife of petitioner No.1 are mother of petitioners No.2 and 3, for the grant of retiral benefits/family pension on account of the death of the deceased-Sunil Dutt had been decreed. An appeal against the said decree at the hands of the complainant-first informant is pending in this first Appellate Court. Petitioners No.2 and 3, as legal representatives of the deceased-Asha Rani shall move a motion before the appropriate Court for withdrawal of the civil suit, itself.*

The exercise with regard to the cancellation of the exchange deed, the transfer of land and delivery of possession and the withdrawal of suit shall be undertaken within a period of two months from today.

The parties shall be bound by the counsel statement aforementioned. In the light of the fact that the inter se litigating members of the family has arrived at a settlement.

It is ordered that the petitioners shall not be arrested in case FIR No.35 dated 19.4.2007, under Sections 420, 467, 468, 471, 120-B of IPC and Section 13 (1) (D), 13(2) of the Prevention of Corruption Act, 1988, registered at Police Station Anandpur Sahib. Further, investigation in that FIR shall also be stand stayed. Both the stay orders are granted on consensual basis.

The instant petition shall stand disposed of accordingly.”

Thereafter, Suman Sharma filed Criminal Miscellaneous No.M-43566 of 2007 seeking cancellation of anticipatory bail granted to Ram Kumar and Sham Kumar on the ground that the settlement arrived at and undertaking given by them is not being honoured. It was further pleaded that very foundation of grant of anticipatory bail has ceased to exist as the settlement has not been honoured.

This Court vide order dated 12.10.2009 cancelled the anticipatory bail and observed as under:-

“In the peculiar facts and circumstances of the case and fairly serious nature of the allegations in the prosecution plea, I have no hesitation in varying the order dated 31.5.2007 and to hold that the anticipatory bail plea filed by Ram Kumar and Sham Kumar shall stand declined.

However, it is made clear that the observations made by this Court shall not have any bearing on the merits of the civil litigation pending between the parties. The Civil Court shall be totally unfazed by whatever may have been said by this Court.”

Ram Kumar and Sham Kumar being legal heirs of Asha Rani filed an application under Section 151 CPC for recalling the order dated 07.08.2007 by which appeal was decided having been compromised and the judgment and decree passed by the trial Court dated 05.09.2006 was set aside while allowing the plaintiff to withdraw the suit. During the pendency of this application, daughters of Asha Rani, the original plaintiff also filed an application for being impleaded as party being Class-I heirs. Application was allowed and the daughters were impleaded as party. It was pleaded in the application filed by Ram Kumar and Sham Kumar that since

compromise/settlement arrived at between the parties had fizzled out, therefore, the appeal which was disposed of in terms of the compromise and the suit was withdrawn should be revived. The aforesaid application as noticed above, has been dismissed by the Court on the ground that once the Civil Suit has been withdrawn unconditionally, the appeal cannot be revived and re-decided on merits.

This Court has heard the learned counsel for the parties at length.

The order passed by the District Judge, Ropar while allowing the appeal and setting aside the judgment and decree passed by the trial Court dated 05.09.2006 and granting the permission to the plaintiff to withdraw the suit on 07.08.2007, is extracted as under:-

“2. Sh. Dharam Pal Adv. along with Ram Kumar made a statement that appeal filed by the appellant may be allowed as the matter has been settled between the parties by way of compromise before the Hon'ble High Court with a prayer for withdrawal of the suit.

3. Suman Sharma appellant along with Sh. Suraj Parkash Kaushal, Adv. counsel for appellants has also made a statement raising no objection if the legal representatives of deceased Asha Rani are allowed to withdraw the suit as per their statement recorded today in the Court. Ld. Counsel for the appellant has submitted before this Court that other part of the compromise effected between the parties has not been implemented by Ram Kumar, Sham Kumar and Maninder Dass. However, said compromise is not a part of the present proceedings and appellants can well resort to the appropriate proceedings under law for implementation thereof. In this view of the matter, the appeal is allowed and

judgment and decree passed by the learned trial Court impugned in this appeal dated 5.9.2006 is ordered to be set aside and the suit filed by the plaintiff/respondent No.1 Asha Rani is ordered to be dismissed as withdrawn leaving the parties to bear their own costs. File be consigned to the record room. Announced.”

It is clear from the reading of the aforesaid order that the appeal was allowed and the judgment and decree passed by the trial Court dated 05.09.2006 was set aside in compliance with the undertaking given before the High Court vide order dated 31.05.2007. It is the case of Smt. Suman that the compromise arrived at, has not been honoured by the other side. It is Smt. Suman who had filed an application seeking cancellation of the anticipatory bail granted to the accused including Ram Kumar and Sham Kumar.

In these circumstances, the appeal which was allowed not on merits but on the basis of the statement made by the parties based upon the compromise arrived at between the parties before the High Court cannot also stand. It was not the case of simplicitor withdrawal of the suit. The judgment and decree had been passed in favour of Asha Rani on 05.09.2006. By order dated 07.08.2007, judgment and decree passed by the trial Court was allowed to be set aside with the consent of the parties.

Once the settlement arrived at between the parties had fizzled, the First Appellate Court committed material illegality in refusing to recall the order dated 07.08.2007 and revive the appeal for decision on merits. A careful reading of the order dated 07.08.2007 proves that the judgment and decree dated 05.09.2006 was got set aside with the consent only on the basis

of the settlement/compromise which does not survive. Hence, the order passed by the learned District Judge, refusing to restore the position as it existed before 07.08.2007 is erroneous. Still further, learned District Judge allowed the daughters of Asha Rani to be impleaded as parties being Class-I heirs. Daughters of Asha Rani being Class-I heirs are entitled to the estate of Smt. Asha Rani. As per the judgment and decree dated 05.09.2006, Asha Rani who has since died was held entitled to 1/3rd share of the entire amount payable by defendant Nos.1 and 2 except pension. Daughters of Asha Rani never made any statement to withdraw the suit and to get the judgment and decree set aside. Learned First Appellate Court overlooked that fact. Daughters had not made any statement to withdraw the suit and allow the appeal filed by Suman and Abhinav.

In view thereof, the order under challenge dated 07.08.2013 is recalled. The first appeal filed by Suman and Abhinav is restored to its original number.

Revision petition is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

02.05.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No