IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.1773 of 2018
Date of Decision: March 19, 2018

Jagdish Kaur Sandhu

...Petitioner

Versus

Kiran & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Tushar Sharma, Advocate,
for the petitioner.

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AMIT RAWAL, J.

The present revision is directed against the order dated 6.12.2017 (Annexure P-12), whereby the application of the petitioner moved under Order 23 Rule 1 read with Section 151 of the Civil Procedure Code, has been dismissed by the Lower Appellate Court.

Before adverting to the arguments of Mr.Tushar Sharma, learned counsel representing the petitioner, it would be in the fitness of things to refer few facts relevant for the adjudication of the present revision.

Respondent No.1 Kiran instituted a suit in 2005 seeking declaration to the effect that House No.61, Sector 10A, Chandigarh, House No.1631, Sector 7C, Chandigarh, Industrial Plot No.685, Industrial Area, Chandigarh, land measuring 2 kanals 7 marlas comprised in Khewat No.182/184, Khasra No.106/18 (2-12) situated at Village Kansal and land measuring 1 kanal 10 marlas comprised in Khewat No.183/181, Khasra No.106 are ancestral properties and partition claiming 1/4th share in the aforementioned properties with mandatory injunction directing respondent

No.4-Estate Officer, Chandigarh for transferring the proportionate share in respect of the properties situated in Chandigarh and also for restraint order from issuing No Objection Certificate.

It was averred in the suit that plaintiff and defendants No.1 to 3 are related to each other as plaintiff and defendants No.2 and 3 are the real daughters of defendant No.1. Avtar Inder Singh, father of the plaintiff, expired on 14.9.2005 and left behind the following legal heirs:-

"*1.*	*Smt.Jagdish Kaur Sandhu*	*(wife)*
2.	*Mrs.Kiran*	*(daughter)*
3.	*Mrs.Dapinder Kaur*	*(daughter)*
4.	*Preet Inder Kaur*	*(daughter)"*

Since the defendants refused to grant the share to the plaintiff, was constrained to file the aforementioned suit.

The aforementioned suit was contested by defendants No.1 and 3 by filing written statement and taken all possible objections.

The trial Court, vide judgment and decree dated 30.11.2013 partly decreed the suit. The plaintiff was held entitled to succeed 1/4th share in ½ share of late AIS Sandhu in house No.61, Sector 10A, Chandigarh and House No.1631, Sector 7-C, Chandigarh and a preliminary decree in respect of the aforementioned property was passed. Since the suit was not decreed in toto, both the parties were aggrieved of the aforementioned judgment and decree, preferred two appeals, i.e., Appeals No.18 of 2014 titled as "Kiran Versus Jagdish Kaur Sandhu and others" and 21 of 2014 titled as "Jagdish Kaur Sandhu Versus Kiran and others". During the pendency of the aforementioned appeals, a compromise dated 19.1.2015 (Annexure P-4) was arrived at between the parties, whereby the parties had put their hand together, whereas Kiran had agreed to accept ₹3.00 crores in lump-sum towards her share with an undertaking to vacate the ground floor portion of House No.61, Sector 10-A, Chandigarh within a period of one month as and when the aforementioned amount was paid to her on or before 31.12.2016. It was made clear that Kiran will continue to retain the possession of the ground floor of House No.61, Sector 10-A, Chandigarh. It was also resolved that Kiran will not create any hurdle or problem and will give affidavit or no objection certificate to get the suit property transferred in the name of Jagdish Kaur. In essence, she shall relinquish her right in the property after receipt of the said amount. Parties had also agreed not to initiate any civil and criminal proceedings. In pursuance to the aforementioned compromise, the Lower Appellate Court disposed of all the three appeals vide judgment and decree dated 19.1.2015.

Petitioner-defendant No.1 (appellant in her appeal), i.e., Jagdish Kaur Sandhu submitted an application in 2016 under Order 23 Rule 1 read with Section 151 CPC for setting-aside the compromise and judgment and decree dated 19.1.2015 being nonest, unlawful qua all the parties, arbitrary and against the provisions of law. The aforementioned application was contested by respondent-plaintiff Kiran by filing reply (Annexure P-9). The trial Court vide impugned order dated 6.12.2017 (Annexure P-12) dismissed the application.

Mr.Tushar Sharma, learned counsel appearing on behalf of the petitioner submitted that the petitioner is 80 years old widow, who is surviving on the pension of her late husband Avtar Inder Singh and some rental income. She is a patient of heart. Due to her advanced age and stress of litigation with her own daughter for last about 11 years, she was under mental pressure, which resulted into a compromise, but the fact of the matter is that she never wanted to enter into compromise. The petitioner never shirked away from her responsibilities towards respondent No.1. In terms of the compromise, respondent No.1 was under obligation to execute affidavit/no objection certificate for transferring the right and share in the house in question in the name of the petitioner. However, all requests of the petitioner remained futile as respondent No.1 failed to make any effort for transferring the rights of the aforementioned house. She did not come forward for transferring the right and share in the aforementioned property. In these circumstances, even letters dated 8.8.2015 and 5.12.2015 (Annexures A-1 to A-5 annexed with the application) were also sent for appending her signatures, but she did not sign the same. Even copy of the affidavit was also drafted and was sent by registered post. The consent to pay ₹3.00 crores by the petitioner was deceitful, after giving wrong representation, heavy stress etc. It was liable to be set-aside as it was not on account of her willful, but due to pressure being nursed and false representation. It was not a valid compromise being nonest in the eyes of law. Respondent No.1 had rescinded from the terms of the compromise in not complying her part of the compromise and, therefore, the compromise remained unexecutable. All these factors did not weigh in the mind of the Court while dismissing the application, therefore, there is an abdication.

I have heard the learned counsel for the petitioner, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.Tushar Sharma, for, it would be necessary to reproduce the relevant paragraphs of the compromise for the adjudication of the lis, which read as under:-

> "*In order to end the endless litigation in the family, we have arrived at compromise. In terms, Kiran, respondent No.1 has*

agreed to accept the proposal of Rs.3,00,00,000/- in lump-sum towards her share and she will vacate the ground floor portion of House no.61, Sector-10A, Chandigarh within a period of one month as and when the said payment of Rs.3,00,00,000/- has been made to her on or before 31.12.2016. Till the time Jagdish Kaur, appellant has not made the above said agreed payment, Kiran, will continue to retain the possession of H.No.61 (Grounds Floor), Sector-10A, Chandigarh. It is further resolved that Kiran will not create any hurdle or problem and will give affidavit or no objection certificate to get the suit property transferred in the name of Jagdish Kaur. Kiran, respondent No.1 shall relinquish her right in the suit property in question after receipt of above said agreed amount. The parties have agreed not to initiate any civil or criminal proceedings pertaining to the suit property in any manner."

From the perusal of the aforementioned relevant paragraphs, it is evident that respondent No.1 was to perform her part of the compromise after receipt of the money and, therefore, grievance of the petitioner vis-a-vis respondent No.1-plaintiff Kiran, her daughter, of not stepping forward to execute the affidavit and no objection certificate, pales into insignificance. No sane person would sign the compromise without receipt of the consideration amount. It is not the case of the either of the parties or any part of the compromise envisages that only from the sale of the property, amount of ₹3.00 crores was/is to be paid to respondent No.1. No positive steps have been taken on behalf of the petitioner-defendant No.1 to perform her part of the compromise by making payment in lump-sum. It would be in the domain of the Executing Court, as noticed by the trial Court, for calling upon the respondent to perform her part of the compromise, but respondent No.1 cannot be prevented to dictate the terms without complying with her part/role established as per the compromise.

For the reasons stated above, the application is devoid of merit. I do not find any illegality or perversity in the order under challenge. No ground for interference is called for. Revision petition stands dismissed.

March 19, 2018 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned **Yes/No**

Whether Reportable: **Yes/No**