

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

3 CRA NO.24 OF 2019

SYED SHAKER PASHA (SAGAR) SYED MAHMOOD QUADRI
VERSUS
SYED ASLAM SYED MUNTAJIBUDDIN QUADRI AND OTHERS

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Advocate for Petitioner : Mr. Venjane Tukaram M.
Mr. UD Dalvi, Adv. For Resp.Nos.1 to 4;
Mr. Vakil Afzal Husain M., Adv. For Resp.No.6 ;
Adv. Mobin H. Shaikh For R/9 & 10;
Mr. Deshmukh N. E. Adv. For R/18 (Note Of App.
Filed)

CORAM : P.R. BORA, J.
DATED : 1st July, 2019.

PER COURT:-

1. Learned Counsel Shri UD Dalvi submits that he has instructions to appear for Respondent Nos.1 to 4 and he will file his Vakalatnama in the Registry forthwith.

2. Learned Counsel Shri Shaikh submits that he has instructions to appear for Respondent Nos.9 and 10 and he has already filed his Vakalatnama on their behalf.

3. Respondent No.17 is appearing in person.

4. Learned counsel for petitioner submits that the other respondents are formal parties and they need not be served. The learned counsel further submits that even otherwise he has served

the notices on the said respondents also and service affidavit in that regard has already been filed. In the circumstances, the service is held to be complete.

5. Present civil revision application is filed by the petitioner for setting aside the consent order/decreed passed by Waqf Tribunal in Waqf Suit No.210/2017. The aforesaid suit was filed by present Respondent Nos.1 to 5 for declaration that they are having share in income collected through Chanda, donation, Chadhawa, rent of shop/stalls etc. of Dargah of Hazrat Nooruddin Noor-Ul-Haq Isaq Quadri @ Syed Peer Pasha Quadri Aljilani (RAH) (for short the said Dargah) situated at Nilanga. A direction was also sought by the plaintiffs against Defendant Nos.1 to 12 therein to maintain proper account and entire income collected through Chanda, donation, Chadhawa, rent of shop/stalls etc. During pendency of the said suit, the parties to it arrived at compromise and compromise terms were presented before the Tribunal, on the basis of which, the Tribunal seems to have passed the impugned order.

6. In the present revision, it is the

contention of the revisionist that the consent terms, which are produced before the Tribunal, were not signed by him and he was not agreeing or consenting to the said compromise; however, a false picture was created before the Tribunal that the terms of compromise were signed by the revisionist also and that his signature was there on the compromise terms. It is also the contention of the revisionist that the Tribunal, without verifying the presence of the parties as well as the signatures on the terms of compromise, placing implicit reliance on the submissions made on behalf of other persons present before the Tribunal, has recorded the compromise terms, as if all the parties to the lis have agreed the terms of compromise.

7. The learned counsel appearing for the revisionist submitted that a fraud was played upon the revisionist and falsely representing to the Tribunal that all the parties have arrived at the compromise, the consent decree has been obtained from the Tribunal. The learned counsel, in the circumstances, has prayed for setting aside the said order and remit the matter back to the

Tribunal.

8. Shri Dalvi, learned counsel appearing for Respondent Nos.1 to 4, i.e. original plaintiffs; learned Counsel Shri Shaikh, appearing for Respondent Nos.9 and 10 and Respondent No.17 appearing in person, have submitted that, in fact, the revisionist was quite aware of the consent terms and with his consent the terms of compromise were settled and now he has taken a different stand that he is not agreeing with the consent terms. It was sought to be contended by the learned counsel that as regards the other proceedings and the present proceeding, the revisionist was quite aware of the developments taken place in all those proceedings and with his consent only the terms of compromise were prepared and produced before the Tribunal. The learned counsel, in the circumstances, have prayed for dismissing the revision on the said ground alone since no fraud can be said to have been played upon the revisionist. In the alternative, it is submitted that when the other defendants and the original plaintiffs are ad idem on the issue that the consent terms were settled appropriately and

accordingly the consent decree has been passed and if the present revisionist is not agreeing to it, there shall not be any hurdle in holding that the said consent terms may not be binding upon the revisionist and he can get decided his share, if he desires to do so by resorting to appropriate remedy permissible in law.

9. After having considered the submissions made by the learned counsel appearing for the parties and on perusal of the material placed on record, more particularly the suit plaint and the consent decree accordingly passed, it is revealed that some relief was claimed against the present revisionist also and he was, therefore, made defendant in the said suit. It is further revealed that particularly it was the dispute about collection of Chanda, donation, Chadhawa, rent of shop/stalls etc. and its equal distribution amongst the *Shikmidars* (shareholders). The consent terms show that the Tribunal has appropriately considered the wishes of the parties, which are reflected through the consent terms and accordingly has passed the consent decree.

10. Now, it is the contention of the revisionist that the consent terms, which were presented before the Tribunal, were not signed by him and were not agreed by him. From the record, it is revealed that the consent terms are not signed by all the defendants. It is the contention of the revisionist that the consent terms do not bear his signature. The said contention is not controverted by the contesting respondents. Therefore, there is reason to believe that the consent terms were not signed by the revisionist. In fact, the Tribunal must have taken more care while accepting the terms of compromise and while recording the observations that the parties to the *lis* have arrived at settlement/compromise and that they are present before the Tribunal. It appears that the Tribunal, relying on the submissions made by the parties present before it and their counsel, assumed that all the parties are present before it and that the consent terms are signed by all of them. The question is, when the consent terms are not objected to by the other parties to the said consent terms except the revisionist, whether the said consent terms can be wholly set aside or to be

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set aside only to the extent of the revisionist. The other respondents have, even before this court, submitted that the consent terms bear their signatures and they abide by the said consent terms. In the circumstances, it appears to me that the consent decree passed by the Tribunal can only be held to be not binding on the revisionist.

11. In the result, following order is passed,
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ORDER

i. The consent decree dated 15.9.2018 in Waqf Suit No.210/2017 shall not be binding on the revisionist – Syed Shaker Pasha (Sagar) Syed Mahmood Quadri.

ii. The revisionist is however not precluded from establishing his claim by resorting to appropriate remedies.

iii. The C.R.A. stands allowed in the aforesaid terms.

(P.R. BORA)
JUDGE

Later on :

12. The learned Counsel for respondent no.6 appeared before the Court and sought to contend

that, there was some overwriting in the deed of compromise, which was without the knowledge of present respondent no.6, who is original defendant no.1. In the circumstances, the learned Counsel submitted that, the said compromise cannot be acted upon.

13. It has to be stated that, respondent no.6 has not filed any substantive petition challenging the said order disputing the fact which has been stated now before the Court that, there was some overwriting while presenting the deed of compromise before the Lower Court. It was also open for this respondent to immediately bring the said fact to the notice of the Trial Court that, such overwriting has been done without his knowledge. The present petition is, admittedly, filed by original defendant no.2. In the circumstances, whatever is contended by respondent no.6 cannot be considered in the present petition. Respondent No.6 is, however, not precluded from availing appropriate remedies to ventilate his grievance.

(P.R. BORA)
JUDGE

BDV/GGP

