

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CIVIL APPLICATION (CAW) NO.2797 OF 2018
IN
WRIT PETITION NO.6613 OF 2016 (D)

(Smt. Chandrabhaga w/o Madhukar Tembhare Vs. Thawardas s/o Binoomal Lalwani
and others)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri P.A. Abhyankar, Advocate for Petitioner.[CAW No.2797/2018]
Shri M. Anilkumar, Advocate with Ms. Akansha Wanjari, Advocate for
Respondent No.1. [WP No.6613/2016]
Shri Rohit P. Masurkar, Advocate for Respondent Nos.1 & 2.

CORAM: SUNIL B. SHUKRE, J.

DATE: 14th NOVEMBER, 2019.

Heard.

The ground on which this review application rests, is that the final order passed in Writ Petition No.6613/2016 on 31.08.2018 is not the result of a written compromise arrived at between the parties to the petition. Shri P.A. Abhyankar, learned counsel for the review applicant submits that the compromise being violative of the mandate of Order XXIII, Rule 3 of the Code of Civil Procedure (CPC), would not bind any party and would not have formed the basis of judgment so rendered in the petition. He relies upon the law laid down in this regard by the Hon'ble Apex Court in the case of *Gurpreet Singh v. Chatur Bhuj Goel* reported in *AIR 1988 SC 400*.

Shri M. Anil Kumar, learned counsel for respondent No.1 opposing the application submits that the

provisions of Order XXIII, Rule 3 of CPC are not applicable to the facts of the present case for the reason that the judgment sought to be recalled is based upon the consensus shown by the parties. The legal heirs of the original respondent No.2, however, support the review application. The reason for the support given by the legal heirs of original respondent No.2 is that they had never agreed to the alleged arrangement between the parties and the no objection given on their behalf by their previous learned counsel, Shri P.K. Mishra, was without obtaining any instructions and it was based upon no authority given to him to tender any such no objection.

So far as the ground taken in the review application is concerned, I find no merit in the same. The judgment passed by this Court on 31.08.2018 was never based upon any compromise arrived at between the parties and, therefore, the provisions of Order XXIII, Rule 3 of the CPC would not be applicable to the facts of the present case and as such, at this stage with due respect, I would say, no assistance could be sought by the review applicant from the law laid down by the Hon'ble Apex Court in the case of *Gurpreet Singh (supra)*.

It must be stated here that careful reading of the judgment sought to be reviewed would show that there was willingness shown by the petitioner who is the review applicant here to vacate the suit premises on a condition that amount of Rs.6 lakh, the balance amount of consideration, be paid to her by original respondent No.1 or

non-applicant No.1 in the present application and that this was accepted by original respondent No.1. There is also a recording of statement of Shri S.P. Kshirsagar, then learned counsel representing the review applicant given on instructions that the petitioner (review applicant) was willing to vacate the suit premises if she was paid an amount of Rs.6 lakh being balance amount of the consideration of the sale of the suit property by respondent No.1 and the petitioner would not thereafter raise any claim to challenge the sale-deed or the right of respondent No.1 in respect of suit property. This was endorsed to by the legal heirs of original respondent No.2 when a statement was made by Shri P.K. Mishra, then learned counsel appearing for the legal heirs after obtaining instructions that the legal heirs would have no objection if the proposed arrangement between the petitioner and respondent No.1 was made effective. His such statement was accordingly recorded. It was upon such understanding between the parties, which emerged basically from the willingness shown by them to accommodate each other, that this Court did not consider the arguments of the rival parties on merits and disposed of petition in terms of the offer made by respondent No.1 and accepted by the petitioner and also consented to by legal heirs of respondent No.2. This arrangement was made more in the nature of admissions and concessions given by the respective parties than a formal agreement of settlement between the parties, as contemplated under Order XXIII, Rule 3 of the CPC. Such mutual concessions would not,

therefore, attract provisions of Order XXIII, Rule 3 of the CPC. Besides, the arrangement has occurred in exercise of the jurisdiction of this Court under Article 227 of the Constitution of India and not while hearing an appeal filed against a judgment and decree of a Civil Court. Under Article 227, the nature of jurisdiction of this Court, is quite different than that of an Appellate Court hearing an appeal filed under statutory provisions. The jurisdiction is more equitable in nature enabling High Court to resolve a dispute by also considering equities between the parties rather than just the legal rights of the parties. This Court while delivering the judgment, was also conscious of this aspect of the case. So, I find no merit in the argument of the applicant in this regard.

As regards the argument that the legal heirs did not give any authority to Shri P.K. Mishra, their previous Advocate, to make a statement on their behalf, I find that there is no merit in this argument also. The reason being that and although it is not specifically recorded in the judgment dated 31.08.2018, this matter was firstly heard in the pre-lunch session and when it emerged during the course of the hearing that the matter could be disposed of on the basis of mutual concessions being given by the petitioner and the respondent No.1, this Court asked for the response of Shri P.K. Mishra, who had then sought some time to obtain necessary instructions from his client and accordingly this matter was once again put up on board for hearing in the post lunch session and when it was taken up,

Shri P.K. Mishra, Advocate made, on instructions, a statement which could be seen to be recorded in the judgment under review and which has been referred to earlier.

There is one more reason for not accepting the aforestated argument. The legal heirs have not issued any notice so far to their previous Advocate Shri P.K. Mishra, seeking an explanation from him as to why did he make a particular statement which now the legal heirs say was without their authority. Shri P.K. Mishra, Advocate has also not been made party to this petition.

On the backdrop of these facts and circumstances, it would be very unfair on the part of the legal heirs to level allegations against Shri P.K. Mishra, Advocate. Such a party does not deserve any sort of review from this Court.

In view of above, I find that the application being without any merit, deserves to be dismissed and it is dismissed accordingly.

The other applications are disposed of accordingly.

JUDGE