

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7412 OF 2021**

Vidya Co-Operative Bank Ltd. .. Petitioner
Versus
Bhagyashree Girish Shegur & Ors. .. Respondents
...

Mr.S.S.Panchpor for the Petitioner.

Mr.Surel Shah for the Respondents.

...
**CORAM: BHARATI DANGRE, J.
DATED : 02nd DECEMBER, 2021**

P.C:-

1. The present petition is filed by a Co-operative bank, viz. Vidya Co-Operative Bank Ltd. at Pune, for setting aside a compromise decree in Regular Civil Suit No.890 of 2020 dated 05/07/2021, passed by the learned Judge, Senior Division, Solapur. The petitioner is seeking stay to the execution and implementation of the concerned decree.

2. The facts which are narrated before me and as set out in the application, can be referred to by the words used by the petitioner in, as fraud, misrepresentation and suppression of material facts, while entering into the compromise decree. It is pleaded that respondent No.2 is the guarantor to the loan facility sanctioned to one M/s.Sujwal Bio Coal and Agro Products Pvt. Ltd. and M/s.Advait Udyog and on a default

being committed, the bank obtained recovery certificate under Section 101 of the MCS Act against the borrowers and as well as the guarantor. In an attempt to stall the execution, it is alleged that the proceedings were filed through the daughter of respondent No.1 and a consent decree was obtained by suppressing a material fact about the attachment order already issued under the recovery proceedings.

Be that so, I am not required to delve into the controversy, since the learned counsel for the respondents Mr.Shah has raised a preliminary objection to the maintainability of the petition, by relying upon a decision of the Hon'ble Supreme Court in case of *Trilok Nath Singh Vs. Anirudh Singh (Dead) through Legal Representatives & Ors.*¹ wherein it has been declared that under Order 23, Rule 3 & 3-A where a compromise decree is to be called in question by a person, who is not party to the proceedings i.e. by a stranger challenging the lawfulness of the compromise arrived between the parties, he must approach the same Court which recorded the compromise. The latest position has been clarified by their Lordships of the Hon'ble Supreme Court by enunciating the principle of law in the following manner :-

“The position that emerges from the amended provisions of Order 23 can be summed up thus:

(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in Section 96(3) CPC.

(ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of clause (m) of Rule 1 Order 43.

¹ (2020) 6 SCC 629

(iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3A.

(iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Order 23 Rule 3.

Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made.”

2. Though the learned counsel for the petitioner has placed reliance upon the decisions of the Hon’ble Apex Court delivered at an earlier point of time in case of *A.A.Gopalakrishnan V. Cochin Devaswom & Ors.*² and *Meghmala & Ors. Vs. G. Narasimha Reddy & Ors.*³ which permit a High Court to examine the allegations of fraud, in the wake of the recent position of law reiterated by the Hon’ble Apex Court in case of *Trilok Nath Singh* (supra), I am in agreement with the submissions advanced by learned counsel Mr.Shah. It is always open for the petitioner to approach the Court which has recorded the compromise and nothing deters him from approaching the said Court and allege fraud, misrepresentation and suppression of the material facts.

² AIR 2007 SC 3162

³ (2010) 8 SCC 383

3. This course being available to the petitioner, learned counsel submits that in view of the compromise effected between the parties, with an object of hoodwinking the bank, there is every likelihood that the consent decree may be acted upon and the parties will effect necessary changes in the records of right qua the respective property. This would cause huge loss to the bank, in case if any further rights are created. In any case, it is submitted that the bank was already in the process and in fact it has also issued proclamations in respect of the properties situated at Satara.

In the aforesaid circumstances, I am inclined to grant the request of the learned counsel for the petitioner bank to the effect that till the petitioner brings out an application for setting aside the consent decree and obtain necessary orders from the said Court, the parties shall maintain the status-quo.

In the wake of the aforesaid observation, the writ petition is dismissed, reserving the liberty to the petitioner to approach the learned Judge, Senior Division, Solapur in Regular Civil Suit No.890 of 2020, where the compromise decree has been passed and the status-quo as on today shall be maintained by the parties, till the necessary orders are passed by the learned Judge.

[SMT. BHARATI DANGRE, J]