

\$~16

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 16th November, 2021

+ **C.R.P. 65/2020 & CM APPLs. 24684/2020, 30978/2020**

SALAHUDDIN MIRZA Petitioner

Through: Ms. Isha Aggarwal, Advocate.
(M: 9810793583)

versus

MOHD QAMAR THROUGH: LRS AND ORS Respondents

Through: Mr. Rashil Gandhi, Advocate
(M-9643484400)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present revision petition arises out of impugned order dated 9th September, 2020, passed by the Id. Civil Judge-08 (Central), Tis Hazari Courts, New Delhi (*hereinafter, "Executing Court"*), by which the execution petition filed by the Petitioner has been dismissed.
3. The brief background to the dispute is that a Collaboration Agreement, dated 30th August 2018, was entered into between the Petitioner/Plaintiff: Mr. Salahuddin Mirza (Mr. S.D. Mirza) and five individuals: Mohd. Anwar, Mohd. Zafar, Mohd. Qamar, Mohd. Aslam and Mohd. Aziz Ahmed. The Respondents in the present petition/ Defendant in the suit are legal heirs of Mohd. Qamar, and are the only contesting parties. The said Collaboration Agreement was in relation to the property bearing No. 3738, area measuring 70 Sq. Yds., approx., situated at Gali Masjid Wali, Shah Ganj Chowk, Ajmeri Gate, Delhi-110006 (*hereinafter, "suit property"*). A

suit, bearing **Suit No. 3145/19**, came to be filed in respect of the said Collaboration Agreement by the Plaintiff/Petitioner herein, in which the parties entered into a settlement vide the MoU dated 18th January, 2020. The said MoU (also termed as a Compromise Deed) was placed before the Trial Court and statement of the Plaintiff was recorded on 23rd January, 2020 to the following effect:

“
I am the plaintiff in the present case. I have settled the present matter with the Lrs of defendant No.1. The settlement has been reduced into writing and photocopy of the same is Ex.P1(OSR). Therefore, in view of the compromise deed Ex.P1, I pray that present suit may be disposed of as withdrawn as settled.”

4. On the same date, ld. counsels for both the parties appeared before the Trial Court. Even the Defendant appeared in person. The following order was passed by the Trial Court:

“ It is jointly submitted that the matter has been settled between the parties and the terms of settlement have been reduced into writing. Photocopy of compromise deed is placed on record. Same is Ex. P1 (OSR). In view of compromise deed Ex. P1, ld. Counsel for plaintiff prays that the present suit may be disposed of as withdrawn as settled.

Heard.

Let statement of plaintiff be recorded.

Separate statement of plaintiff to this effect recorded.

In view of the statement of plaintiff, present suit is disposed of as withdrawn as settled in terms of compromise deed Ex. P1.”

5. It is the case of the Plaintiff that in terms of the said settlement the possession of the 1st and 2nd floor has been handed over to the Defendants.

The said fact is not disputed. It is further the case of the Plaintiff that a sum of Rs. 1 Lakh has also been paid to the Defendant, which is however disputed by the Defendants. However, according to the Plaintiffs, none of the remaining steps in terms of the said MoU were taken.

6. Since, various other terms of the MoU were not given effect to by the Defendants, the Plaintiff filed an execution petition, in which the impugned order has been passed, dismissing the said petition.

7. Ms. Isha Aggarwal, Id. Counsel appearing for the Plaintiff submits that the MoU/ Compromise Deed is not disputed between the parties. She further submits that the Respondent has also accepted and assumed possession of the 1st and the 2nd Floor of the suit property, pursuant to the said MoU. Accordingly, in her submission, though a formal decree was not drawn up by the Trial Court, for whatever reasons, the Execution Petition could not have been dismissed merely on the ground of no such formal decree having been drawn by the Trial Court. She submits that the judgment of the Supreme Court in ***Sir Sobha Singh and Sons Pvt. Limited v. Shashi Mohan Kapoor (deceased)*** (2019) 9 SCALE 369, clearly supports her case, as in the said judgment, the Supreme Court has held that an execution petition can be preferred, even if a formal decree is not drawn by the Trial Court.

8. On the other hand, Id. Counsel for the Defendants raises a completely new plea before the court to the effect that under Section 14 of the Specific Relief Act, 1963, post the amendment in 2018, any contract, the performance of which involves the continuous duty which the court cannot supervise, cannot be specifically imposed upon the parties. He relies upon the judgment of the Supreme Court in ***B. Santoshamma and Anr. v. D.***

Sarala and Anr. (2020) SCC Online SC 756 and the judgment of the Bombay High Court in ***Bhanumati Jaisukhbhai Bhuta v. Ivory Properties and Hotels Private Limited and Anr. (2020) SCC Online Bom 157*** to canvass this proposition. He further submits that since the construction itself has not taken place, no execution, in respect thereof, could have been entertained by the executing court, and hence the impugned order is liable to be upheld.

9. Heard Id. Counsel for the parties and perused the record.

10. The order of the Trial Court dated 23rd January 2020 clearly notes that the parties were present in person before the Trial Court. The MoU/Compromise Deed was presented to the Trial Court and has been exhibited as Ex. P1. However, the Trial Court for inexplicable reasons, has not recorded the statements of the Defendants who had appeared before the Court on the said date, and whose appearance was marked in the said order. The statements of the Defendant in respect of the MoU/Compromise Deed ought to have been recorded by the Trial Court.

11. Further, the MoU/Compromise Deed has been exhibited as Ex. P1, however, the suit has been disposed of as dismissed as withdrawn as settled. This is not the correct course of action that is required to be followed by the Trial Courts under Order XXIII Rule 3 of CPC.

12. A perusal of the order passed by the Trial Court, taking on record the settlement vide the MoU/ Compromise Deed dated 18th January 2020, and disposing of the suit filed by the Plaintiff, shows that the same was fraught with errors.

13. Order XXIII Rule 3 CPC reads as under:

“ORDER XXIII
Withdrawal and Adjustment of Suits

....

3. *Compromise of suit.*— Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties or where the defendant satisfied the plaintiff in respect to the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation.—An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.”

14. In terms of the said provision, the Trial Court is mandated to pass a decree recording the agreement or compromise, and its satisfaction in respect thereof. The said principle has been settled by the Supreme Court in ***Katikara Chintamani Dora and ors. v. Guntreddi Annamanaidu and ors. (1974) 1 SCC 567***, where the Supreme Court observed:

“58. Order 23, Rule 3, CPC, not only permits a partial compromise and adjustment of a suit by a lawful agreement, but further gives a mandate to the court to record it and pass a decree in terms of such compromise or adjustment in so far as it relates to the suit. If the compromise agreement was lawful-and, as we shall presently discuss, it was so-the decree to the extent it was a consent decree, was not appealable because of the express bar in Section 96(3) of the Code.”

15. Even in the decision of the Supreme Court in ***Sir Sobha Singh (supra)***, it has clearly been held that a decree being passed in accordance with the compromise is necessary. The Supreme Court held:

“35. First, the language of Order 23 Rule 3 of the Code does not admit passing of an order of the nature urged by the learned senior counsel for appellant; Second, the expression "the court shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree in accordance therewith" occurring in Order 23 Rule 3 of the Code, in clear terms, suggests that it is necessary after recording the compromise in the order to further pass a decree in accordance therewith.

36. In other words, the expression "and shall pass a decree in accordance therewith" is a clear indication that after the compromise is recorded by the Court, it shall proceed to "pass a decree". So, the rule contemplates, first an order recording of the compromise and then simultaneously pass a decree in accordance with the order.”

16. The said position of law has been recently reiterated by the Supreme Court in ***R. Janakiammal v. S.K.Kumarasamy (Deceased) through Legal Representatives and ors. (Civil Appeal No. 1537/2016, decided on 30th***

June 2021), where the Supreme Court has observed:

“41. Determination of disputes between persons and bodies is regulated by law. The legislative policy of all legislatures is to provide a mechanism for determination of dispute so that dispute may come to an end and peace in society be restored. Legislative policy also aims for giving finality of the litigation, simultaneously providing higher forum of appeal/revision to vent the grievances of an aggrieved party. Rule 3A which has been added by above amendment provides that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. At the same time, by adding the proviso in Rule 3, it is provided that when there is a dispute as to whether an adjustment or satisfaction has been arrived at, the same shall be decided by the Court which recorded the compromise. Rule 3 of Order XXIII provided that where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, the Court shall order such agreement or compromise to be recorded and pass a decree in accordance therewith. Rule 3 uses the expression “lawful agreement or compromise”. The explanation added by amendment provided that an agreement or a compromise which is void or voidable under the Indian Contract Act, 1872, shall not be deemed to be lawful.”

17. Accordingly, whenever a settlement is presented before a court, the court, after satisfying itself as to the legality and validity of the said settlement and after recording the statements of parties identified by their respective Counsels, has to take on record the compromise or the settlement and pass a decree in terms thereof. This course of action has clearly not been followed by the Trial Court in this case. The said error can at best be

attributed to the Court itself and not to the parties to the proceedings.

18. Insofar as the parties and their Id. Counsels are concerned, they were all present before the Trial Court, as is expected to be done in such a case, and the MoU/Compromise Deed was also presented to the court. The phrase used by the Trial Court in the order : “*disposed of as withdrawn as settled*”, is contrary to the scheme of Order XXIII Rule 3. The MoU/Compromise Deed ought to have been taken on record and exhibited, as has been done by the Trial Court, and a decree in terms of the said Compromise Deed ought to have been drawn.

19. Having said so, a perusal of the order dated 23rd January 2020 passed by the Trial Court leaves no doubt in the mind of this court that there was a proper settlement that was entered into the parties. The Defendants have in fact benefitted from the settlement and have received the possession of the 1st and 2nd floor, as has been confirmed by the Id. Counsel for the Defendants today on a specific query put from the court in respect thereof.

20. The Defendants, having benefitted from the settlement on the one hand and having been holding possession of the property, cannot argue that the said settlement is not specifically enforceable.

21. Moreover, the Executing Court also had a duty to ensure that the MoU/Compromise Deed was duly given effect to between the parties, and any party which seems to be resiling from a duly executed MoU/Compromise Deed before a court of law, ought not to have been given such a benefit by dismissing the execution petition in relation thereto.

22. The MoU/Compromise Deed, dated 18th January, which was entered into between the parties is legal and valid and the same has taken on record by the Trial Court. The suit has also been decreed in terms of the settlement.

The mere act of not drawing a formal decree in respect of the settlement would not deprive the parties of the benefits of the settlement entered into before a court of law. The same is liable to be executed. The said position of law has also clearly been enunciated in the judgment of the Supreme Court in ***Sir Sobha Singh (supra)***, where the Supreme Court held:

“20. The respondent felt aggrieved and filed first appeal before the Delhi High Court. By impugned order, the High Court allowed the appeal and set aside the order dated 22.10.2018 passed by the Executing Court. The High Court held that since the Trial Court did not draw up the formal decree after passing the consent order on 01.06.2012, the Execution Petition filed by the appellant (decree holder) is not maintainable. The High Court, however, granted liberty to the appellant (decree holder) to apply to the Trial Court under Section 152 of the Code for drawing up a decree in terms of the consent order dated 01.06.2012. The appellant (decree holder) felt aggrieved by this order of the High Court and has filed the present appeal by way of special leave in this Court.

21. So, the short question, which arises for consideration in this appeal is whether the High Court was justified in allowing the respondent's (Judgment Debtor's) appeal and thereby was justified in holding that the Execution Petition filed by the appellant (5655/2016) was not maintainable for want of formal decree not being drawn up by the Court after passing of the order dated 01.06.2012.

22. Heard Mr. Huzefa Ahmadi, learned senior counsel, for the appellant and Ms. Aishwarya Bhati, learned senior counsel, for the respondent.

23. Having heard the learned senior counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal, set aside the impugned order

and restore the order of the Trial Court with modification as indicated below.

24. In our opinion, the High Court was not right in holding that in the absence of a formal decree not being drawn or/and filed, the appellant (decree holder) had no right to file the Execution petition on the strength of the consent order dated 01.06.2012. This finding of the High Court, in our view, is not legally sustainable for the reasons set out hereinbelow.

xxx

39. As mentioned above, the Executing Court dismissed the applications filed by the respondent with a cost of Rs. 5 lakhs which resulted in issuance of warrant of possession of the suit house. The High Court, by impugned order, set aside the order of the Executing Court and dismissed the execution application as being not maintainable. The High Court, however, did not then consider it necessary to examine the question as to whether the Executing Court was right in rejecting the respondent's applications.

40. We have, therefore, perused the order of the Executing Court. Having perused it, we are of the considered view that the Executing Court was right in rejecting the objections raised by the respondent in his applications and, therefore, find no good ground to interfere in those findings of the Executing Court.

41. In our view, all the objections raised by the respondent were frivolous and were raised only with a view to avoid execution of the compromise decree. None of the objections raised by the respondent could be gone into after consent order had been passed. In any event, none of the objections raised by the respondent had any substance on merits and were, therefore, rightly rejected by the Executing Court to which we concur. In our view, the respondent having taken time twice to vacate the suit

house and yet not adhering to the undertaking given, this Court cannot countenance such conduct of the respondent. It is reprehensible.

42. This takes us to examine the next question, namely, what is the effect of not filing the copy of the decree along with the execution application filed by the appellant. In our view, even though the appellant did not file the certified copy of the decree along with the execution application for the reason that the same was not passed by the Court, yet the execution application filed by the appellant, in our view, was maintainable. Indeed, so long as the formal decree was not passed, the order dated 01.06.2012 was to be treated as a decree during the interregnum period by virtue of Order 20 Rule 6A (2) of the Code. In other words, notwithstanding the fact that the decree had not been passed, yet by virtue of principle underlined in Order 20 Rule 6A(2) of the Code, the order dated 01.06.2012 had the effect of a decree till the date of actual passing of the decree by the Court for the purposes of execution or for any other purpose. This empowered the Executing Court to entertain the execution application and decide the objections raised by the respondent on merits.

23. Accordingly, the Supreme Court in the said judgment of **Sir Sobha Singh (supra)** has clearly held that the tactic of a party to a compromise to resile from the same is reprehensible. The Executing Court ought to look at the spirit of the compromise. The mere non-drawing of a formal decree, and objections which are raised later by the party to the compromise in order to resile from it, are not grounds which can be taken by the Executing Court to dismiss the execution of a Compromise Deed.

24. In this time and age when Courts are repeatedly emphasizing upon the importance and significance of Alternate Dispute Resolution, parties being permitted to resile from an MoU/Compromise Deed, duly entered into,

cannot be condoned by any Court of law.

25. The Executing Court has a duty to emphasize upon the said Compromise Deed that has been entered into, and to ensure that parties abide by the same. The steps which are to be taken by the Executing Court in respect of the same are clearly provided for in the CPC.

26. In the present case, the MoU/Compromise Deed entered into by the parties, imputes certain obligations upon the Defendants, which according to the Plaintiff are not being adhered to. In such circumstances, the Executing Court cannot be helpless for the Plaintiff. The Executing court is duty-bound to take all steps required in accordance with law to give effect to the settlement, irrespective of whether a formal decree was drawn or not. Accordingly, the impugned order is not sustainable and is set aside.

27. The Executing Court is now directed to execute the MoU/Compromise Deed in letter and spirit, and if required, take necessary steps of appointing a Local Commissioner or Court Receiver to ensure that the same is implemented between the parties.

28. Further, in order to complete the formality of drawing up a formal decree, the Trial Court in *Suit No. 3145/19*, is directed to draw up a decree sheet in terms of the MoU/Compromise Deed, so that the objections which are now being taken, can also be avoided in the future.

29. In view of the dishonest conduct which has been adopted by the Defendants who have challenged the settlement as being not specifically enforceable, after having entered into the Compromise Deed and assumed possession of the first and second floor of the property, costs amounting to Rs. 25,000/- are imposed upon the Defendants to be deposited with the High Court of Delhi (Middle Income Group) Legal Aid Society. The said costs

shall be deposited within a period of two weeks.

30. The present petition is allowed in the above terms. In the meantime, till the execution petition is restored and the Executing Court is seized of the same, *status quo* shall be maintained and no third party interest shall be created in respect of the title or possession of the property by the Defendants. The Execution Petition is restored to its original number, and the parties are directed to appear before the Executing Court on 9th December, 2021. The Executing Court shall also ensure that the costs, as directed, are deposited by the Judgment-Debtor.

31. List before the Executing Court on 9th December 2021. The Registrar (Appellate) shall communicate the present order to the concerned District Judge, Central District, Tis Hazari Courts for the execution petition to be restored and for ensuring the drawing up of the formal decree sheet in the suit.

32. The present petition and all pending applications are disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 16, 2021/Aman/Ak