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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-924-2022 (O&M)

Date of Reserve: 06.05.2022

Date of Pronouncement: 16.05.2022

GSM Technologies Pvt. Ltd.....Petitioner (Defendant)

Versus

Dr. Veena Anand Respondent (Plaintiff)

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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

Mr. Akshay Bhan, Sr. Advocate with
Mr. Dharam Bir, Advocate,
Mr. Shashank Kabir, Advocate and
Mr. Abhijeet Singh Rawaley, Advocate
for the respondent/Plaintiff.

Mr. Saurabh Gautam, Advocate
for the applicant in CM-3928-CII-2022 and
CM-3929-CII-2022.

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MANJARI NEHRU KAUL, J.

The petitioner company (hereinafter referred to as the 'defendant') has preferred the instant revision petition under Article 227 of the Constitution of India seeking setting aside of the order dated 07.03.2022 (Annexure P-28), passed by the District Judge, Gurugram, vide which the appeal filed by the defendant was dismissed *in limine* on the ground of maintainability.

Before proceeding further, it would be relevant to give a brief sequence of events leading to the instant revision petition.

A civil suit for specific performance and permanent injunction was instituted by the plaintiff (respondent herein) against the defendant. One Ravi Kumar claiming himself to be a representative of the defendant company put in an appearance on its behalf, after engaging a counsel. The civil suit thereafter was disposed off on the basis of a compromise effected between the parties. Admittedly, neither any dispute was raised before the trial court with respect to the compromise arrived at between the parties nor was there any controversy between the parties qua the terms and conditions of the compromise. The trial court passed a consent decree dated 22.12.2021 (Ex.C1) on the basis of the compromise arrived at between the parties before the daily Lok Adalat, Gurugram. However, after the consent decree had been passed, the defendant company approached the lower Appellate Court to impugn the consent decree (Ex.C1) wherein it was pleaded that Ravi Kumar had not been authorized to represent it before the trial court much less to contest the civil suit instituted by the plaintiff and enter into a compromise on its behalf. It was contended that it was on the basis of a forged and fabricated Resolution (Ex.D2) purportedly passed by the Directors of the defendant company that the said Ravi Kumar had engaged a counsel and after colluding with the plaintiff entered into a compromise with her. It was, thus, the case of the defendant that since the decree in question had been passed on the basis of a fraudulent compromise entered into by Ravi Kumar, it deserved to be set aside.

The lower Appellate Court dismissed the said appeal preferred by the defendant vide order dated 07.03.2022 (Annexure P-28) on the ground that appeal against a compromise decree was not maintainable in view of the bar created under Section 96(3) of the Code of Civil Procedure

(CPC). The learned Appellate Court while relying upon the judgments of the Hon'ble Supreme Court in ***Banwari Lal v. Smt. Chando Devi (through L.R.)*** (1993) 1 SCC 581 and ***R.Rajanna v. S.R.Venkataswamy and others*** (2014) 15 SCC 471 held that the validity of a compromise could not be challenged by way of a separate suit and the only remedy available to the defendant was to approach the court which had passed the consent decree on the basis of such compromise. Hence, the instant revision petition.

Learned counsel for the petitioner-defendant submits that the approach of the lower Appellate Court is totally perverse as it defeats the purpose behind Order 43 Rule 1A CPC wherein a specific remedy of appeal against a consent decree passed on the basis of a compromise (hereinafter referred to as 'compromise decree') has been provided. The legislature in its wisdom has provided for a remedy of appeal by inserting Rule 1A to Order 43 CPC and if it is denied, then the very provision itself would be left redundant which would be against the intent of the legislature.

Learned counsel submits that since every provision that exists in a statute book has a specific purpose to serve and unless and until it is revoked, the courts of law are bound to give effect to it; they cannot deprive a party of its right to invoke a statutory provision by exercising their discretion in an arbitrary manner, as it would defeat the very purpose for which such statutory provision was enacted. Learned counsel further submits that the lower Appellate Court grossly misinterpreted the ratio of the law laid down by the Supreme Court in ***Banwari Lal*** and ***R.Rajanna's case (supra)***. He submits that there was no doubt about the settled position of law that a person aggrieved by a compromise decree could approach the same court for setting aside the same, which had passed the decree in the

first instance and further a separate suit challenging the compromise decree would not be maintainable in view of the bar created under Order 23 Rule 3A CPC. He submits that there was also an alternate remedy of appeal available against a compromise decree as provided under Order 43 Rule 1A CPC as had been held by the Hon'ble Supreme Court in ***Banwari Lal's case (supra), H.S.Goutham v. Rama Murthy and another (2021) 5 SCC 241*** and now reiterated in ***Vipan Aggarwal and another v. Raman Gandotra and others*** (Civil Appeal No. 3492 of 2022 decided on 29.04.2022). Thus, a party aggrieved by a compromise decree has an option to either challenge it before the same court which had passed it at the first instance or challenge it before a court of appeal.

Learned counsel for the plaintiff has vehemently opposed the submissions made by the counsel opposite and submits that the learned Appellate Court has rightly held that appeal against a compromise decree is not maintainable. He submits that a bare reading of Section 96(3) CPC leaves no manner of doubt that no appeal would be maintainable against a compromise decree. Any person aggrieved by a compromise decree would have only one remedy i.e. of approaching the same court which had passed the said decree, for setting it aside. Learned counsel submits that the right course of action for an aggrieved party would be to approach the same court for setting aside the compromise decree. He submits that the remedy of appeal against an order recording or refusing to record a compromise was earlier available under Order 43 Rule 1(m) CPC, however, the said provision was deleted from the statute book by way of an amendment in the year 1976. Therefore, once the legislature had taken away the right to an appeal by way of an amendment, any other provision of the Code could not

be interpreted in a way to nullify the effect of an amendment by which Order 43 Rule 1(m) CPC was deleted. He submits that if Order 43 Rule 1A CPC is interpreted in a way so as to give the right to appeal against a compromise decree, the deletion of Order 43 Rule 1(m) CPC would be nothing but an exercise in futility. Learned counsel submits that the lower Appellate Court had thus rightly dismissed the appeal by relying upon ***Banwari Lal*** and ***R.Rajanna's case (supra)***.

Heard and perused the relevant material on record including the case law on which reliance has been placed by both the parties.

The question which arises for consideration of this court is:

“Whether a party aggrieved by a compromise decree can impugn it before the Appellate Court by way of an appeal under Order 43 Rule 1A CPC or would it have to be challenged before the same court which passed such decree?”

The learned lower Appellate Court has dismissed the appeal preferred by the defendant by way of the impugned order and judgment on the ground that it is not maintainable in view of the bar created by Section 96 (3) CPC. It would be apposite to reproduce Section 96(3) CPC which is as follows:-

“No appeal shall lie from a decree passed by the Court with the consent of parties.”

A bare reading of the provision of Section 96(3) CPC leaves no manner of doubt that a consent decree is not appealable. However, the said provision cannot be read in isolation and would have to be read with other provisions of the Code.

Section 96 CPC provides for appeal from the original decrees.

Sub Section 3 of Section 96 CPC as based on broad principle of estoppel and bars an appeal from a decree passed by a court with the consent of the parties. The Hon'ble Supreme Court in ***Bryam Pestonji Gariwala v. Union Bank of India*** (Civil Appeal No. 3698 of 1991, decided on 20.09.1991) observed as under:-

“43. A judgment by consent is intended to stop litigation between the parties just as much as a judgment resulting from a decision of the Court at the end of a long drawn out fight. A compromise decree creates an estoppel by judgment.”

The relevant provisions of the code which deals with passing of a compromise decree are incorporated in Order 23 Rule 3 CPC. It would be relevant to reproduce Order 23 Rule 3 CPC also, which deals with compromise of a suit, which is as follows:-

*“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 or signed by the parties], or where the defendant satisfies the plaintiff in respect of 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] ”

Order 23 Rule 3 CPC provides the procedure and all the relevant factors which have to be taken into consideration by a court while recording a compromise before passing a decree on the basis of compromise. Prior to the amendment of CPC in the year 1976, an order recording or refusing to record an agreement, compromise or satisfaction was amenable to appeal under Order 43 Rule 1(m) CPC. However, as already observed herein above, the same was deleted by the Code of Civil Procedure (Amendment) Act of 1976.

The Amendment Act of 1976 brought material changes in the various provisions of the Code pertaining to compromise decrees. Prior to the said amendment, the prevailing practice was to file a separate suit to challenge a consent decree for setting it aside on various grounds which led to multiplicity of litigation. Therefore to prevent the aforesaid problems, Rule 3 of Order 23 CPC was amended. The Amendment Act inserted a requirement that all lawful agreements or compromise would be in writing and signed by the parties, to enable the court to satisfy itself about the authenticity of the compromise/agreement. Further, the following proviso was also inserted to Order 23 Rule 3 CPC:-

“[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].”

The aforementioned proviso empowers the court by whom a compromise decree was passed to determine the legality of the compromise, so arrived at between the parties. The explanation appended to the proviso further clarifies that an agreement or compromise which is void or voidable under the Indian Contract Act shall not be deemed to be lawful within the meaning of this rule. A new rule 3A was also inserted in Order 23 in the CPC by the same Amendment Act which bars institution of a separate suit to challenge a decree passed on the basis of a compromise, on the ground that such compromise is not lawful. Therefore, the intention of the legislature behind the aforementioned amendments and additions in Rule 3 as well as insertion of new Rule 3A was to check multiplicity in litigation by empowering the court which passed the decree to decide whether a compromise on the basis of which the decree was passed was lawful or not.

The said Amendment Act of 1976 also deleted Order 43 Rule 1 (m) CPC which provided for an appeal against such order, recording or refusing to record a compromise under Order 23 Rule 3 CPC. Further, at the same time a new provision was added to the CPC by the same Amendment Act i.e. Order 43 Rule 1A, which is reproduced herein below:-

“1A. Right to challenge non-appealable orders in appeal against decrees.- (1) Where any order is made under this Code against a party and thereupon any judgment is pronounced

against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced.

(2) In an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not, have been recorded.]”

The essential difference between Rule 1(m) and Rule 1A CPC is that Rule 1(m) CPC provided for an appeal from orders recording or refusing to record compromise, however, Rule 1A CPC is wider in its import. It provides for a “Right to challenge non-appealable orders in appeal against decrees.”

Rule 1A of Order 43 CPC does not provide for an appeal against an order simpliciter, but for an appeal against the decree as a whole wherein the order (non-appealable) on the basis of which such decree was passed can be challenged. Therefore, as per the recommendation of Law Commission in its 44th report the orders which are in the nature of final adjudication can now be challenged by preferring an appeal against the decree.

In the light of the above discussion and on reading of the Rule 1A (2) CPC, there is no manner of doubt that it shall be open to the appellant to challenge in appeal a decree passed on the basis of a compromise on the ground that such compromise should not have been recorded and thus the decree was wrongly passed on the basis of such

compromise. Thus, Rule 1A (2) provides for a remedy to challenge the validity of a compromise in an appeal against the decree.

That being so, there appears to be an apparent conflict between the two provisions of the Code i.e. Section 96(3) CPC which bars an appeal against a compromise decree and Order 43 Rule 1A(2) CPC which allows an appellant to question the validity of a compromise by preferring an appeal against a decree passed on the basis of such compromise. To resolve this conflict, it would be safe to go back to the basic tenets of interpretation. It is fundamental that when there appears to be some conflict between two provisions of a statute, they must be harmoniously construed so as to give effect to the intent of the legislature. Each provision in a statute book has to be read to have been enacted with a definite purpose.

The above dichotomy has been resolved by the Supreme Court in ***Banwari Lal's case (supra)*** wherein the Supreme Court has observed as under:-

“9. Section 96(3) of the Code says that no appeal shall lie from a decree passed by the Court with the consent of the parties. Rule 1A(2) has been introduced saying that against a decree passed in a suit after recording a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should not have been recorded. When [Section 96 \(3\)](#) bars an appeal against decree passed with the consent of parties, it implies that such decree is valid and binding on the parties unless set aside by the procedure prescribed or available to the parties. One such remedy available was by filing the appeal under Order 43, Rule 1(m). If the order

*recording the compromise was set aside, there was no necessity or occasion to file an appeal against the decree. Similarly a suit used to be filed for setting aside such decree on the ground that the decree is based on an invalid and illegal compromise not binding on the plaintiff of the second suit. But after the amendments which have been introduced, neither an appeal against the order recording the compromise nor remedy by way of filing a suit is available in cases covered by Rule 3A of Order 23. As such a right has been given under Rule 1A(2) of Order 43 to a party, who challenges the recording of the compromise, to question the validity thereof while preferring an appeal against the decree. **Section 96(3) of the Code shall not be a bar to such an appeal because Section 96(3) is applicable to cases where the factum of compromise or agreement is not in dispute.**"*

The Supreme Court in *Vipan Aggarwal's case (supra)* has reiterated the ratio of law as laid down in *Banwari Lal's case (supra)* in the following terms:-

"13. When the amending Act introduced a proviso along with an explanation to Rule 3 of Order 23 saying that where it is alleged by one party and denied by other that an adjustment or satisfaction has been arrived at, "the Court shall decide the question", the Court before which a petition of compromise is filed and which has recorded such compromise, has to decide the question whether an adjustment or satisfaction had been

arrived at on basis of any lawful agreement. To make the enquiry in respect of validity of the agreement or the compromise more comprehensive, the explanation to the proviso says that an agreement or compromise "which is void or voidable under the [Indian Contract Act...](#)"shall not be deemed to be lawful within the meaning of the said Rule. In view of the proviso read with the explanation, a Court which had entertained the petition of Compromise has to examine whether the compromise was void or voidable under the [Indian Contract Act](#). Even Rule 1(m) of Order 43 has been deleted under which an appeal was maintainable against an order recording a compromise. As such a party challenging a compromise can file a petition under proviso to Rule 3 of Order 23, or an appeal under Section 96(1) of the Code, in which he can now question the validity of the compromise in view of Rule 1A of Order 43 of the Code."

The appellants had thus the right to avail either the remedy of appeal in terms of Order 43 Rule 1A CPC or by way of an application before the court granting decree. Therefore, the application filed by the appellants before the Court which granted the decree cannot be said to be without jurisdiction.

The rules of procedure are a hand maiden of justice and should not stand in the way of substantial justice being done between the parties.

The Hon'ble Supreme Court in ***Banwari Lal's case (supra)*** has thus categorically held that a party challenging a compromise decree can file

an application under the proviso to Order 23 Rule 3 CPC before the same court by which the said decree was passed or an appeal under Section 96(1) CPC wherein it would be open for a party to question the validity of the compromise in view of Order 43 Rule 1A of the Code. While discussing the ratio of law laid down in *Banwari Lal's case (supra)*, the Hon'ble Supreme Court in *H.S.Goutham's case (supra)* held that an appeal against a compromise decree in terms of Order 43 Rule 1A CPC was maintainable. The Hon'ble Supreme Court in *R.Rajann's case (supra)* held that a separate suit challenging a consent decree was not maintainable, however a party aggrieved by a decree passed on the basis of a compromise could apply before the same court which passed the decree to challenge the validity of the compromise.

As a sequel to the above discussion and in view of the law laid down by the Hon'ble Supreme Court, this Court has no hesitation in holding that a party aggrieved by a decree passed on the basis of a compromise has a right to either challenge the compromise decree by way of an appeal or to approach the same court which passed such decree by way of an appropriate application in terms of provision laid down in Order 23 Rule 3 CPC.

Since the aggrieved party has preferred to file an appeal against the judgment and decree based on compromise before the lower Appellate Court, instead of filing an application before the trial court which passed the decree in question, the instant revision petition is allowed and the impugned order dated 07.03.2022 passed by the lower Appellate Court, Gurugram, is set aside. The case is remanded back to the lower Appellate Court to decide it on merits in accordance with law. The parties shall appear before the lower Appellate Court on 25.05.2022.

Since the main revision petition stands disposed of, no separate order is required to be passed in the pending civil miscellaneous applications.

16.05.2022
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(MANJARI NEHRU KAUL)
JUDGE

Note: Whether speaking/reasoned	Yes / No
Whether Reportable:	Yes / No