IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Ajoy Kumar Mukherjee

C.O. 3542 of 2019

Housing Development Corporation Bank Ltd.
–Versus-
Aninda Chatterji & Anr.

For the Petitioner	:	Mr. Ahin Chowdhury Mr. Saptangshu Basu Mr. Bhaskar Mukherjee
For the Opposite Parties (Opposite Parties In Person)	:	Mr. Aninda Chatterji
Heard on	:	21.08.2023
Judgment on	:	13.09.2023

Ajoy Kumar Mukherjee, J.

1. Being aggrieved by and dis-satisfied with the Order No. 15 dated 20th July, 2019 passed by the learned 3rd Civil Judge (Senior Division), Alipore, South 24-Parganas in Title Execution Case No. 38 of 2017 arising out of Title Suit No. 71 of 2011, the present application under Article 227 of the Constitution of India has been preferred.

2. The opposite party, who is appearing in person has filed the aforesaid Title Suit against the petitioner and proforma opposite party herein claiming that he was wrongfully dismissed from service and for which the suit was filed claiming various sum on account of alleged damages and also on account of various monetary benefits to which he would have been otherwise entitled.

3. The petitioner herein appeared in the said suit and contested the same by filing written statement along with counter claim. During pendency of the suit the entire claim of the plaintiff/opposite party was amicably settled out of Court and a joint petition of compromise was filed before the learned Court. It was agreed inter alia that petitioner would pay to the plaintiff a net amount of Rs. 55 lakhs without any deduction, as one-time payment on or before 20th February, 2017 after paying income tax @ 30% by the defendant company as full and final settlement in the suit and neither of the parties would bring any action against each other in any manner in future on any account whatsoever. The said joint compromise petition was signed by the parties and was filed before the learned Court below and the learned Court upon hearing the parties was pleased to decree the suit in terms of the said joint compromise petition.

4. Petitioner contended that in compliance of the said decree, petitioner by two cheques both dated 16th February, 2017 paid to the plaintiff, the entire decretal amount of Rs.55 lakhs. The said cheques were duly received by the opposite party and on copies of both the cheques, as acknowledgement receipt thereof, the opposite party duly endorsed “received with thanks in compliance with subject petition dt. 10.02.2017”.

5. Mr. Mukherjee learned counsel on behalf of the petitioner submitted that the opposite party being a legal practitioner, practicing in Courts, is fully aware that the said payment of Rs. 55 Lakhs was made in terms of and in compliance with the compromise decree passed on 10th February, 2017 and he was also aware that as a apart of his claim in the suit, relates to his Provident Fund dues that would only be paid by cheque issued from Housing Development Finance Corporation Ltd. Provident Fund drawn by the Trustee of the Provident Fund of the defendant company. The defendant company has an exempted provident fund and it is entitled to keep, maintain and disburse the provident fund through his trustees under the provisions of the Employees' Provident Fund (Miscellaneous Provisions) Act, 1952, which is entrusted with the Trustees thereof.

6. He further contended that on a mere perusal of the plaint of the suit, it would reveal that the plaintiff claims service benefit accrued from 1st September, 2000 upto the financial year ending on 31st March, 2011, including his Provident Fund dues, Gratuity, Privilege and leave etc, the details whereof were given in Schedule 'C' to the plaint.

7. He further submitted that the settlement was arrived at the composite amount of Rs. 55 Lakhs which was made to include the entire claims of the opposite party including the claim on account of Provident Fund and the net amount to be paid within 20th February, 2017, which the petitioner duly paid by two cheques. Since the settlement was a composite settlement so apart from said amount, the opposite party would not have and cannot have any claim or entitlement whatsoever.

8. Mr. Mukherjee argued that it is unfortunate that even after due satisfaction of the entire decretal amount in or about August, 2017, the plaintiff/opposite party herein filed an execution case being Title Execution Case No. 38 of 2017, against the petitioner herein claiming a sum of Rs. 10,89,125/- as still due and payable under the said decree dated 10th February, 2017. After receiving the entire decretal amount in terms of the decree and encashing both the said cheques, the opposite party proceeded to execute the decree for a further sum of Rs. 10,89,175/- on the plea that the said payment received by the opposite party by the separate cheque being no. 000488 amounting to Rs. 10,89,175/- was not part of the compromise decree. The said execution case was taken up *ex parte* for verification and explanation by the learned Court below on 16th December, 2017 and the Court below by the impugned order directed the judgment debtor to show cause as to why the property of the judgment debtor shall not be attached for non-payment of the balance decretal amount of Rs. 10,89,125/-.

9. Mr. Mukherjee strenuously argued that in terms of the said order the judgment debtor duly submitted its cause where the judgment debtor furnished details of the cheques issued to the plaintiff/opposite party in satisfaction of the decretal amount. It was also averred in the said cause that the plaintiff/opposite party accepted the entire decretal amount without any objection and in full satisfaction of the decretal amount as stated in the compromise decree. The said show cause petition along with objection and reply were taken up by the Court below but curiously by the impugned order learned Court below overstepped his jurisdiction and recorded that the amount of Rs. 10,89,125/- was not paid by the petitioner herein in terms of decree but said amount of Rs. 10,89,125/- paid by the separate cheque was paid as provident fund settlement by the trustee's for HDFC Ltd. Provident Fund. He further recorded going beyond his jurisdiction that there is no such clause in the compromise petition which stipulates any payment to be made towards the provident fund settlement and on the basis of the same, the Court below rejected the cause shown in the petition by the petitioner.

10. It is further submitted on behalf of the petitioner, that the Court below has failed to appreciate correctly the decree dated 10th February, 2017 and being an Executing Court he had no jurisdiction to pass any order beyond the decree for realization of same amount which was paid by the petitioner and accepted by the opposite party in terms of the decree.

11. In fact, learned trial Judge ignored that the claims on account of provident fund was already a claim in the suit and the composite amount of compromise decree included the opposite party's claim on account of provident fund. Learned Judge ignored the fact that after realization of the said amount, by the opposite party, he mischievously claiming the same amount in the nature and garb of execution, in order to unjustly enrich himself. He further contended that the finding of the court below that in the case record no terms of inclusion of any provident fund settlement mentioned in the compromise petition, is clearly without any jurisdiction. The claim in the entire suit was settled and the suit apparently included the plaintiff's claim on account of provident fund and this was ignored by the learned Judge. Moreover, the decree itself contains the schedule of the plaint. The executing court was supposed to execute the schedule which impleaded the claim in the suit on account of provident fund. In view of this, the observation that the compromise petition did not mention any provident fund dues is without any jurisdiction.

12. The opposite party appears in person and submits that from the cheque being no. 000488, it is clear that the said cheque amounting to Rs. 10,89,125/- has not been signed by the authorised signatories of the defendant company who has signed the decretal part payment of Rs. 44,10,825/- being cheque no 147970. The said cheque has been signed by the trustees of the office of the Provident Fund department of the defendant company which according to the terms of the compromise decree is not at all a decretal payment as alleged by the judgment debtor. In fact, the compromise petition does not entitle the defendant/judgment debtor to include the plaintiff's statutory provident fund due amount to form a part of the decretal payment. Mode of dealing with the plaintiff's provident fund amount was not the subject matter of the compromise decree. The plaintiff/decree holder never gave consent to deal with provident fund amount to anybody in any manner. The judgment debtor has not stated before the court as to which terms/clause of the compromise petition and/or decree, the judgment debtor was entitled to include the plaintiff's provident fund due amount of Rs. 10,89,125/- to form the part payment of the decretal amount to justify their alleged claim raised in the show cause. Instead of issuing a single cheque of the decretal amount, the defendant/judgment debtor issued two cheques in fractional amounts in dubious attempt to create confusion with unholy intention to include the plaintiff's provident fund dues of Rs. 10,89,125/- to form a part of the decretal amount which was not settled in the compromise decree. The judgment debtor is making misleading settlements at this stage to cover up their lacuna for denying payment of the balance decretal amount of Rs. 10,89,125/- in utter disregard of the compromise decree. Hence the judgment debtor is liable to pay the decree holder the balance decretal amount of Rs. 10,89,125/- after paying income tax as settled in the compromise petition. Consequent to the non-payment of the said provident fund amount, decree holder compelled to file the execution proceeding. He further contended that by making the endorsement that he received with thanks in compliance of settlement petition dated 10.2.2017, he had never acknowledged that he has received the entire decretal amount. Two cheques which were received by the plaintiff/decree holder on 20.2.2017 is subject to compliance with the settlement petition dated 10.2.2017. It was never settled in the compromise petition/decree that the defendant company will pay the decretal amount of Rs. 55,00,000/- which would include the provident fund due amount of the plaintiff. Therefore, the cheque payment of Rs. 10,89,125/- is the plaintiff's provident fund due payment, which has no relevance or connection with the decretal payment according to the compromise decree.

13. Mr. Chatterji/opposite party in person further submitted that the terms of compromise decree is an independent contract entered by and between the parties and is binding upon both the parties. The plaintiffs' Provident Fund Cheque No. 000488 for Rs. 10,89,175/- is not a part of the settlement amount of Rs. 55 Lakhs. The said term of compromise does not entitle the defendant petitioner to deduct the plaintiffs' statutory Provident Fund due. He did not give any consent for realization of payment of his statutory provident dues or dealing with same in any manner whatsoever by the trustee of the Provident Fund department of the petitioner. In fact for non-payment of the balance decretal amount of Rs. 10,89,175/- the plaintiff/opposite party was constrained to institute the execution case for recovery of the balance decretal dues.

14. Mr. Chatterji further contended that on perusal of the terms of compromise in Title Suit no. 71 of 2011, it appears that the defendant company was supposed to pay net amount of Rs. 55,00,000/- to the plaintiff without any deduction as one time payment. The said term never entitled the judgment debtor/petitioner to deduct the plaintiff's provident fund due amount from the decretal amount in violation of the compromise decree by clubbing, to logically convince that the compromise decree got satisfied. According to the said terms of compromise, the judgment debtor company was directed to pay income tax upon the payment of Rs. 10,89,175/- but since the terms was paid out of plaintiff's provident fund dues, it was not a part payment of the decretal amount because the judgment debtor company had paid no income tax thereupon. The judgment debtor/petitioner never paid the balance decretal dues after paying income tax thereupon as agreed in the said terms of the compromise decree. Accordingly, Mr. Chatterjee, submits that the petitioner is liable to pay balance decretal amount of Rs. 10,89,175/- without any further delay. Accordingly he concluded that the order impugned is just and sustainable in law and as such does not call for interference.

15. I have considered the submissions made by both the parties.

16. The only question that falls for consideration is whether observation of the Executing court below that the amount of Rs. 10,89,175/- disbursed vide cheque no. 000488 has not been paid in terms of compromise petition but said amount was paid outside the compromise decree as provident fund settlement by the trustee for HDFC Ltd, is perverse and/or amounts to overstepping of Jurisdiction or not.

17. On perusal of the plaint of Title Suit no. 71 of 2011, it appears that in Schedule "C", the plaintiffs claim comprises of provident fund amount of Rs. 3,71,209/- including interest and gratuity and Rs. 1,76,836/- and leave encashment amount of Rs. 1,86,787/- and said claim is for the period from 1.9.2000 till 31.3.2011. Moreover, plaintiffs claim of Rs 3,71,209/- towards provident fund in the schedule of plaint is divided into two parts, Rs. 3,42,679/- towards principal amount and Rs. 28,530/- towards interest. Now when the full and final settlement was made in terms of the compromise petition, it has been mentioned in paragraph 4(i) of the application as follow:-

> 4.(i) "Defendant company shall pay to the plaintiff a net amount of Rs. 55,00,000/- without any deduction as one time payment by way of fund transfer directly to the Savings Bank Account no. 01051050004208 of the plaintiff, held with HDFC Bank Ltd, on or before 20th February, 2017 after paying income tax @ 30% by the defendant company as agreed as full and final settlement in this suit. HDFC Bank IFSC Code for said fund transfer is HDFC 0000105."

18. Accordingly, it is clear that the claim of the suit includes the claim over provident fund account accumulated for the period from 1.9.2000 till 31.3.2011 and the settlement was made towards full and final settlement in the suit. In the said compromise petition, it has also been averred in paragraph 4(iv)

> 4. (iv) "Neither of the parties shall bring any action against each other in any manner in future on any account whatsoever".

19. The Trial court while passed the compromise decree specifically recorded that

> "Let the compromise petition do form a part of the decree. Save and except the terms and condition as enumerated in the compromise petition, neither party can claim anything against each other".

20. Most importantly when the plaintiff received the cheque admittedly he has made endorsement therein ***"received with thanks in compliance with subject petition dated 10.2.2017"***. The application for compromise is dated 10.2.2017 and accordingly the entire settlement amount has been received by him with thanks in compliance with the settlement arrived at in the petition dated 10.2.2017.

21. In the present case where parties have compromised the suit and according to compromise, the decree is passed, the prayer for executibility of some other amount depends upon the intention of the parties which can be gathered on interpretation of the compromise decree, which emanated from the signed compromise petition, in the light of facts and circumstances of the case. It is gathered on interpretation of compromise petition that by using the terms like "as full and final settlement", "Neither of the parties shall bring any action against each other in any manner in future on any account whatsoever", the intention of the parties appears to have resolved the issue once for all and there was no apparent intention of the parties to keep the decree alive.

22. The executing court cannot go beyond what has been mentioned in the decree. The question related to the validity or correctness of the decree cannot be determined by such a court, unless the decree suffers from vagueness and/or ambiguity. Here the decree in no uncertain terms declares full and final settlement in respect of entire claim made in the suit, including schedule 'C' to the plaint. As judgement debtor objects to the execution on the ground of it being discharged or satisfied by making full payment, the executing court will either refuse to execute the decree or will execute the decree. It has no other power. If a decree holder wants to interpret and enforce a liability, other than the judgment debtor's decreetal liability, it would strictly be not a question of execution of the decree and not within the jurisdiction of executing court.

23. A question of fact and law cannot be raised by the parties in the suit for the first time in execution proceeding. It is impermissible to plead any fact contrary to the compromise decree passed in terms of settlement between the parties, which should normally not to be interfered with or reexamined by the executing court and the decree has to be executed as it stands. The executing court cannot sit in judgment over any direction or even observation of the court in a judgment passed on compromise. It is not the function of executing court to review judgment passed by the court having jurisdiction. He must take the decree according to it's tenor.

24. Here the question is whether the compromise agreement could be looked into by the executing court. The answer is executing court cannot vary the original decree and executing court is not supposed to interpret the agreement in order to assume jurisdiction and whatever rights, if any, the decree-holder has, beyond such terms of compromise, must be enforced by a separate suit. The executing court cannot go into the decree or decide issues that ought to have been looked into by the deciding court, who has passed the decree on compromise. Any such enquiry or change made in the compromise decree is beyond the jurisdiction of the executing court and is clearly liable to set aside on the ground of overstepping jurisdiction.

25. In such view of the matter, the order impugned dated 20.7.2019 is hereby set aside and putting thereby the Title Execution Case no. 38 of 2017 become infructuous.

26. Accordingly, C.O. 3542 of 2019 stands allowed. The execution proceeding being Title Execution Case no. 38 of 2017 is hereby set aside.

27. Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)