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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1632 OF 2017

Shrishail Shivappa Lade

PETITIONER

VERSUS

Nagraj Siddram Lade and Others

RESPONDENTS

.....

Mr. Parag V. Barde, Advocate for the petitioner

Mr. Sanatosh N. Patne, Advocate for respondents No. 1 and 2

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 4th JULY, 2023

ORDER :

1. By this petition, filed under Article 226 and 227 of the Constitution of India, a compromise decree passed in Lok Adalat is sought to be challenged by the petitioner, on the ground of fraud.

2. Predecessor of the petitioner was defendant in Regular Civil Suit No. 744 of 2005. The said suit was filed by respondents No.1 and 2 - plaintiffs for simplicitor injunction. The said suit was compromised before Lok Adalat on 18th December, 2005, wherein compromise terms were settled. The Trial Court, on the basis of the said compromise, passed a decree on the same day, thereby decreeing the suit, on the basis of the terms

of compromise.

3. When the suit was for simplicitor injunction, the terms of compromise recorded are in respect of specific performance of the contract.

4. Defendant No.1 – predecessor of the petitioner expired on 26th January, 2012. The respondent – plaintiffs, thereafter filed Regular Darkhast No. 18 of 2014, seeking execution of the said compromise decree. The petitioner appeared in the execution proceedings and filed application Exhibit-24 contending that the decree is not executable. The said application is rejected by the Executing Court. The petitioner has challenged the compromise decree in the present writ petition.

5. Heard learned advocate for the petitioner and the learned advocate for the respondent – plaintiffs. Perused the memo of writ petition, documents annexed along with it and the citations relied on by the learned advocates for the parties.

6. Learned advocate for the petitioner has placed reliance on the judgment of the Supreme Court in "***State of Punjab and Another V/s Jalour Singh and Others***" AIR 2008 SC 1209, in support of his submissions.

7. Per contra, learned advocate for the respondent – plaintiffs by placing reliance on "***R. Janakiammal V/s S.K. Kumarasamy and Others***" (2021) 9 SCC 114 and "***K. Srinivasappa and Others V/s M. Mallamma and Others***" 2022 SCC OnLine SC 636 submits that the petitioner has to approach the same court which has passed the decree and prove the allegation that the decree is obtained by fraud and the same is invalid.

8. In "***K Srinivasappa***" (supra), the Apex Court, in the similar facts, has held :

"41. In Pushpa "Devi Bhagat (dead) through LR. Sadhna Rai V. Rajinder Singh – [(2006) 5 SCC 556], this Court held that since no appeal would lie against a compromise decree, the only option available to a party seeking to avoid such a decree would be to challenge the consent decree before the Court that passed the same and to prove that the agreement forming the basis for the decree was invalid. It is therefore imperative that a party seeking to avoid the terms of a consent decree has to establish, before the Court that passed the same, that the agreement on which the consent decree is based, is invalid or illegal.

42. It is a settled position of law that where an allegation of fraud is made against a party to an agreement, the said allegation would have to be proved strictly, in order to avoid the agreement on the ground that fraud was practiced on a party in order to avoid the agreement on the ground that fraud was practiced on a party in order to induce such party to enter into the agreement. Similarly, the terms of a compromise decree, cannot be avoided, unless the allegation of fraud has been proved. In the absence of any conclusive proof as to fraud on the part of the objectors, the High Court could not have set aside the compromise decree in the instant case."

9. In "*R. Janakiammal*" (*supra*), it is held :

"54. ... 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 of compromise on which it is made."

10. In view of the above ratio, learned advocate for the petitioner, on instructions, seeks permission to withdraw the writ petition, with a prayer to continue the ad interim relief granted in his favour for a period of four weeks, so as to enable him to file a substantive suit challenging the compromise decree.

11. Writ petition is disposed of as withdrawn with liberty as prayed for. *Ad interim* stay granted by this Court shall continue to operate for a period of four weeks from today.

[NITIN B. SURYAWANSHI]
JUDGE