

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6506 OF 2023

Gulzar Ismail Shaikh & Ors.

.. Petitioners

Versus

Ramesh Balmohan Dhobi & Ors.

.. Respondents

.....

- Ms. Megha Rajaram Shigavan for Petitioners

.....

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 24, 2024

P. C.:

1. Heard Ms. Shigavan, learned Advocate for Petitioners.
2. On 17.01.2024, this Court passed the following order:-

“1. Not on Board. Mentioned. Taken on Board.

2. The impugned order is passed in an Application filed below exhibit 42. Perused the impugned order.

3. Heard Ms. Shigavan, the learned Advocate for the Petitioners.

4. Petitioners filed the suit for declaration and injunction where the principal challenge was maintained to a consent decree. Admittedly, Petitioners were not a party to the consent terms which were filed in Court. By virtue of Application filed below exhibit 42, Petitioners who were the Plaintiffs desired to withdraw the suit after a hiatus of six years and sought liberty to file a fresh appropriate proceedings before the appropriate Court. In the Application, Petitioners also sought the benefit of Section 14 of the Limitation Act, 1963 in order to arrest the period of limitation incurred for prosecuting the subsisting suit since the year 2017.

5. Learned trial Court while adjudicating the Application seeking withdrawal has correctly held that it is settled law that compromise decree can be challenged by the parties to the compromise before the same court and no other Court. However, parties who are not a party to the compromise decree are entitled to file an Appeal or a separate suit considering the bar provided under Order 23 Rule 3-A of the Code of Civil Procedure, 1908 which can be allowed when the party intends to file a fresh suit. In the present

case, the Plaintiffs have nowhere stated that they intended to file a fresh suit. In that view of the matter, the Application was dismissed with cogent grounds.

6. There is no substance on merits in the submissions made by the Petitioners in the present Writ Petition and therefore the order dated 20 October, 2022 deserves to be sustained.

7. At the request of Ms. Shigavan, Writ Petition is kept after two weeks to enable the learned Advocate to obtain proper instructions from the Petitioners.

8. Stand over to 24 January 2024.”

3. Today Ms. Shigavan has at the outset placed the decision of the Supreme Court in the case of **Triloki Nath Singh Vs. Anirudh Singh & Ors.**¹ and another decision of the Supreme Court in the case of **Sree Surya Developers and Promoters Vs. N. Sailesh Prasad & Ors**² in support of her submissions and to maintain a challenge to the impugned order dated 20.10.2022.

4. She has drawn my attention to the decision in the case of Triloki Nath Singh (*1st supra*) and would contend that the facts in that case were similar and identical to the facts in the present case wherein the question which had arisen for consideration was whether the decree passed on a compromise could be challenged by a stranger to the proceedings in a separate suit. Without going into the facts of that case, the question framed by the Supreme Court has in fact been clearly answered by the learned Trial Court while passing the impugned order. Undoubtedly, on the application of the provisions of

1 AIR 2020 SC 2111

2 AIR 2022 SC 1031

Order 23, Rule 3A, a stranger or a third party can undoubtedly maintain a challenge by filing an Appeal or a fresh Suit. The facts in the present case incidentally are to the effect that the existing suit filed by the Plaintiffs for declaration is sought to be withdrawn by praying for leave to arrest the period of limitation of 7 years under Section 14 of the Limitation Act spend on prosecuting the Suit. In that view of the matter, the learned Trial Court has rightly held that the challenge maintained by the Plaintiffs in the Suit for declaration was not permissible in law as the Plaintiffs never intended to file a fresh suit to challenge the compromise. Hence, the facts in the case of Triloki Nath Singh (*1st supra*) are clearly distinguishable with the facts in the present case and do not *ispo fact* apply to the present case.

5. In the decision in the case of Sree Surya Developers and Promoters (*2nd supra*), she has drawn my attention to the findings returned in paragraph Nos. 6, 7 and 8 of the said decision on the applicability of the provisions of Order 23, Rule 3 as well as Rule 3-A. She would submit that on a plain reading of Order 23, Rule 3-A, it would mean that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is passed was not lawful. She would submit that in this decision, the Supreme Court has

referred to the decision in the case of **Pushpa Devi Bhagat Vs. Rajinder Singh**³ and noted as under:-

“(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in Section 96(3) Code of Civil Procedure.

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

“(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 3-A.

“(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 of an application under the proviso to Rule 3 Order 23.”

6. On the basis of the aforesaid submissions, she would submit that as on plain reading of the proviso to Order 23, Rule 3, the compromise decree would therefore have to be challenged before the same Civil Court. In that view of the matter, she would submit that the request made by the Plaintiffs for arresting the period of limitation under Section 14 of the Limitation Act should be conferred upon the Plaintiffs since Plaintiffs desire to file a fresh Suit to challenge the compromise decree.

7. It is seen that in the present case, it is not the case of the Plaintiffs that it desires to withdraw the fresh suit which was filed and once again file a fresh suit. However today when the matter is argued before me, Ms. Shigavan would submit that the Plaintiffs desire to file

³ (2006) 5 SCC 566

a fresh suit to challenge the compromise decree and as such leave be granted by the Court. That leave has in fact been granted by the Trial Court itself in the findings returned in paragraph No. 4 of the impugned order. In that view of the matter, Plaintiffs are entitled to maintain a fresh suit and if any such fresh suit is filed, the same shall be proceeded strictly in accordance with law. Period of limitation on the 7 year period spent by the Plaintiffs to prosecute the earlier Suit cannot be dispensed with while granting such leave. The impugned order is therefore correctly passed and cannot be faulted with.

8. In view of the above, the impugned order dated 20.10.2022 is sustained. Resultantly the challenge in the Petition fails.

9. Writ Petition is dismissed.

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[MILIND N. JADHAV, J.]

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2024.02.07
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