



C.R.P.(MD)No.2145 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 21.10.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.2145 of 2024

and

C.M.P.(MD)No.12220 of 2024

Stalin Babu

... Petitioner / Respondent / Defendant

Vs.

Raju Jenika

... Respondent / Respondent / Plaintiff

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order in I.A.No.5 of 2023 in O.S.No.100 of 2015 on the file of the Additional District and Sessions Court, Padmanabhapuram, Kanyakumari District dated 20.06.2024 forthwith.

For Petitioner : Mr.V.M.Bala Mohan Thambi

For Respondent : Mr.D.Saravanan

* * *

ORDER

Heard both sides.



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2.The revision petitioner is figuring as the defendant in O.S.No.100 of 2015 on the file of the Additional District and Sessions Court, Padmanabhapuram. It is a suit for partition. The petitioner filed a petition under Order XXIII Rule 3 of Civil Procedure Code to record a compromise. The Court below vide order dated 20.06.2024 dismissed the petition. Challenging the same, this civil revision petition came to be filed.

3.There are nine items in the suit schedule. According to the learned counsel for the revision petitioner, the matter was compromised on 10.04.2017 and the resultant compromise agreement was signed not only by the parties but also by their respective counsel. He submitted that the petitioner was able to file only the photocopy of the compromise since the original document was with the respondent. The learned counsel contended that the Court below failed to note that the respondent admitted the existence of a compromise but only contended that the petitioner failed to fulfill the terms on the basis of the said compromise. He reiterated all the grounds set out in the memorandum of grounds of civil revision petition and called upon this court to set aside the fair and decreetal order of the court below and allow this civil revision petition.



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4.Per contra, the learned counsel appearing for the respondent submitted that the order is well-reasoned and does not call for interference.

5.I carefully considered the rival contentions and went through the evidence on record.

6.The Court below went by the fact that only photocopy of the compromise petition has been filed and that it cannot be marked as a document in the petition. The Court below came to the conclusion that the plaintiff denied the compromise agreement and that therefore, it cannot be recorded.

7.This may not be a correction conclusion. The plaintiff in her counter affidavit only stated that the defendant deliberately refrained from performing the obligations based on the compromise. Paragraph Nos.5 and 6 of her counter affidavit read as follows:

“5... It is true that a compromise talk had taken place between this respondent and the petitioner.

6. But the terms and conditions of the compromise were not fulfilled by the petitioner/defendant and he deliberately refrained from performing his obligations based on the compromise.”



It is significant to note that the fact that the compromise was entered into has not been denied by her anywhere. She did not dispute her signature or allege that the compromise was vitiated by coercion or fraud.

8.Order XXIII Rule 3 of Civil Procedure Code reads 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 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 not 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.”



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9. A careful reading of the first part of the provision makes it clear that all that Order XXIII Rule 3 contemplates is that there should be a lawful agreement or compromise arrived at between the parties, and that it should be in writing and signed by both the parties. The explanation to the rule clarifies that 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. As early as in 1930, in the decision reported in **1930 SCC OnLine PC 7** (vide ***Sourendra Nath Mitra v. Tarubala Dasi***), the Privy Council held as follows:

“3. The only remaining question is whether the compromise should have been recorded and a decree made in accordance therewith under Or. 23, r. 3, of the Code of Civil Procedure. The words of the rule do not in terms appear to confer a discretion on the Court, but their Lordships desire to say nothing to prejudge a contention that the Courts retain an inherent power not to allow their proceedings to be used to work a substantial injustice such as emerged in the case of Neale v. Gordon Lennox. In the present case no injustice of any kind was established, and as it was established that the suit had been adjusted either wholly or in part by a lawful compromise, it was the duty of the Court to record the agreement and pass a decree in accordance therewith.”



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10.It is not the case of the respondent that there was no compromise at all, or that her signature is fabricated, or that she was coerced into entering into the compromise. Her only grievance is that the Petitioner herein did not adhere to the terms and conditions set out in the compromise. In these circumstances, the Court below was obliged to find out if any obligation was cast on the defendant and whether he failed to discharge the same. Instead of doing so, the Court below went on the premise that there was no compromise at all. Para 12 of the impugned order reads as follows:

“12.Considering the counter filed by the respondent that there is no meeting of mind, there is no consensus ad idem, the respondent denied the compromise agreement. Therefore the court cannot record the satisfaction of the respondent”

This finding of the court below is factually incorrect and contrary to the record. The Hon'ble Supreme Court in the decision reported in **(2012) 3 SCC 548 (Bimal Kumar v. Shakuntala Debi)** held as follows:

“27. It is to be borne in mind that the term “compromise” essentially means settlement of differences by mutual consent. In such process, the adversarial claims come to rest. The cavil between the parties is given a decent burial. A compromise which is arrived at by the parties puts an end to the litigative battle. Sometimes the parties feel that it is an unfortunate bitter struggle and allow good sense to prevail to resolve the dispute. In certain cases, by intervention of



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well-wishers, the conciliatory process commences and eventually, by consensus and concurrence, rights get concretised. A reciprocal settlement with a clear mind is regarded as noble. It signifies magnificent and majestic facets of the human mind. The exalted state of affairs brings in quintessence of sublime solemnity and social stability.”

Order XXIII Rule 3 of Civil Procedure Code commences with the words “Where it is proved to the satisfaction of the Court”. Satisfaction cannot be arrived at in the absence of an inquiry that is based on appreciation of evidence from both sides. In this case, no such inquiry was conducted. The parties also did not adduce any evidence in the inquiry.

11. In this view of the matter, the impugned order is set aside and the matter is remitted to the file of the Court below. The Court below shall hold an inquiry. It shall proceed on the footing that a compromise was entered into between the parties. The only question which the Court below must answer is whether the defendant failed to fulfil the obligations cast on him in terms of the compromise. The Court below shall bear in mind the statutory mandate set out in Order XXIII Rule 3 of Civil Procedure Code and give a disposal to the I.A. I make it clear that I have not gone into the merits of the matter. The only positive finding I have rendered is that there was a compromise arrived between the parties and nothing else.



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12.The civil revision petition is allowed on these terms. No costs.

Consequently, connected miscellaneous petitions are closed.

21.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

The Additional District and Sessions Court,
Padmanabhapuram,
Kanyakumari District.



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G.R.SWAMINATHAN, J.

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