



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

977 SECOND APPEAL NO. 359 OF 2015

BHAUSAHEB MOHAN KHATANE AND ANOTHER
VERSUS
SUBHASH KALYANRAO JADHAV AND ANOTHER

...

Advocate for Appellant : Mr. Shingare Keshav F.
Advocate for Respondent nos. 1 & 2 : Mr. A.B. Jagtap

CORAM : SHAILESH P. BRAHME, J.

DATE : 22.08.2025

PER COURT :

Heard both sides.

2. Present appeal is preferred by the original defendants against order of refusing to condone the delay of 8 years in preferring appeal under Section 96 of the Code of Civil Procedure. Undisputedly, appeal under Section 96 was preferred against a decree dated 22.08.2004 passed in Regular Civil Suit No. 367/2004 in the Lok-Adalat, in pursuant of the compromise arrived between the parties.

3. My attention is adverted to the latest pronouncement of the Supreme Court in the matter of **Manjunath Tirakappa Malagi and anr Vs. Gurusiddappa Tirakappa Malagi (dead through LRS) in Special Leave Petition (Civil) No. 4812 of 2023, decided on 21.04.2025**, Hon'ble Apex Court *inter alia* relying upon judgment in the matter of **Pushpa Devi Bhagat Vs. Rajinder Singh, (2006) 5 SCC 566**, has made the position of law very clear. I find it apposite to quote para 12 of that judgment:

“12. The only remedy against a compromise decree is to file a recall application. This Court in **Pushpa Devi Bhagat v.**

Rajinder Singh, (2006) 5 SCC 566 summed up the position of law as follows:

"17. The position that emerges from the amended provisions of Order 23 can be summed up thus:

(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in Section 96(3) CPC.

(ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion 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 on an application under the proviso to Rule 3 Order 23.

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 or compromise on which it is made..."

(Emphasis Provided)

Thus, even if we accept the contention of the appellants that their father was coerced by his brothers and father (appellants' grandfather) to enter into a compromise, which led to the

passing of the consent decree, a fresh suit is still not a valid remedy. In that situation, the appellants' father should have filed a recall application before the Court that had passed the decree. The appellants' father has never done so! Moreover, he had admitted the consent decree and never questioned its validity.”

4. In view of the ratio laid down by the Supreme Court, the learned counsel for the appellant seeks permission to withdraw the present appeal so as to approach the same forum, which disposed of the suit.

5. In view of the judgment of the Supreme Court, there is no remedy of appeal to challenge the compromise decree and the only course open for him is to approach the same forum, which passed the compromise decree. In the present case the compromise decree was passed on 22.08.2004. His client is ready to approach the concerned forum with appropriate application for condonation of delay.

6. The learned counsel for the respondent does not have objection for withdrawing the second appeal.

7. In view of the above, the second appeal is permitted to be withdrawn with liberty to avail the remedy as permissible in law.

8. This Court has not expressed any opinion either on the merit of the matter or on the condonation of delay.

(SHAILESH P. BRAHME, J.)

mkd/-