



2025:DHC:4968



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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 13.05.2025***

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C.R.P. 137/2022, CM APPL. 38939/2022**JHARNA JHAVERI****.....Petitioner**Through: Mr. Abhimanve Shrestha and Mr.
Pritesh Patni, Advocates

versus

ANURAG SINGH**.....Respondent**Through: Mr. Jawahar Raja and Ms. Anjesh
Dahiya, Advocates**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed on behalf of the Petitioner seeking to challenge the Order dated 23.04.2022 passed by the learned Civil Judge-01 (South), Saket Court, New Delhi in Execution Petition No. 57/2017 titled *Anurag Singh v. Jharna Jhaveri* [hereinafter referred to as "Impugned Order"].

2. By the Impugned Order, the objections as filed by the Petitioner (Judgment Debtor before the Executing Court) under Section 47 read with Section 151 of the Code of Civil Procedure, 1908 [hereinafter referred to as the "CPC"] have been dismissed by the learned Trial Court.

3. A Coordinate Bench of this Court by an order dated 05.09.2022 directed that the proceedings before the learned Trial Court shall remain stayed and thereafter, the matter was listed for final hearing on 29.11.2022. The matter has continued as is since then.

4. Briefly the facts are that a suit for permanent and prohibitory



injunction being Suit No. 211/2004 captioned *Anurag Singh v. Jharna Jhaveri* was filed by the Respondent (Decree Holder before the Executing Court) against the Petitioner.

4.1 It is the case of the parties that the Petitioner and the Respondent established a partnership to produce films in the year 1992 and executed a partnership deed on 27.02.1998. Disputes arose between the parties which led to the filing of the Suit. In the Suit, the following were the prayers:

“a. Decree a suit for permanent, prohibitory injunction in favour of the Plaintiff and against the Defendant restraining her from:

i. Entering the premises of the plaintiff and coming within a radius of 50 meters of the premises of the Plaintiff; A- 11/1, SFS Flats, Saket, New Delhi-110017 or of the work places of the Plaintiff at H-75A, SFS Flats Saket and of the house of his parents at Shram Niketan, Village Jamudi, District Anuppur, Madhya Pradesh and of his brother Aman Namra at B 6T, Delhi Police Apartments, Mayur Vihar, Delhi-92

ii. Committing any further physical, verbal or other abuse upon the person of the Plaintiff or of his parents, brother, associate and co-tenant, or of other friends or visitors to his house

iii. Harassing the Plaintiff by screaming abuse against the Plaintiff in the vicinity of his house or elsewhere

iv. Making telephone calls, Texting/smsing/messaging, emailing or mailing through post the Plaintiff or his parents, brother or his associate/co-tenant or attempting to contact the Plaintiff directly through any other means

v. Putting his number upon the website”

4.2 Although the Petitioner entered appearance in the Suit, no Written Statement was filed by her.

4.3 The record reflects that during the pendency of the Suit, a joint Application under Order XXIII Rule 3 of the CPC, was filed by the parties, which was supported by affidavits of both the parties, wherein it was stated that the matter has been amicably settled between the parties. The statement



of both the Petitioner and the Respondent were recorded by the learned Trial Court and the Suit was disposed of as compromised on 31.08.2005 and a decree sheet was drawn up in respect thereof.

4.4 Thereafter, an Application under Order XXI Rule 32 of the CPC for enforcement of the Decree dated 31.08.2005 was filed by the Respondent on 20.10.2016. It was stated therein that the Petitioner is wilfully and intentionally disobeying the Decree passed by the Court on 31.08.2005 in Suit No. 211 of 2004 captioned *Anurag Singh v. Jharna Dhaveri*. Notice was issued in this Petition by the Executing Court on 27.05.2017.

4.5 The Reply was filed by the Petitioner denying that there had been any wilful disobedience/non-compliance. In essence, it was contended in the Reply that the Decree falls within the second part of the Order XXIII Rule 3 of the CPC, and thus, was a nullity and unenforceable. It was stated therein that the Court disposed of the Suit being conscious that the relief as contemplated cannot be granted, and thus, the Judgment and Decree dated 31.08.2005, which was passed by the learned Trial Court is unenforceable.

4.6 The Petitioner filed objections under Section 47 read with Section 151 of the CPC to the Ex. Petition. As stated above, the objections were dismissed by the learned Trial Court.

5. Learned Counsel for the Petitioner has contended that the Suit proceeded *ex parte* and an Application to set aside the *ex parte* order was filed by the Petitioner, and during the proceedings of the Suit, the settlement talks were initiated which led to the recording of the settlement between the parties. It is further stated that since the Decree was passed



recording the satisfaction of the Respondent/Plaintiff, and not upon the satisfaction of the Court, the Decree is passed under the second part of the Order XXIII Rule 3 of the CPC, and thus, is not executable. Reliance is placed on the judgment of the Supreme Court in ***Pushpa Devi Bhagat (Dead) through LR Sadhna Rai (Smt.) v. Rajinder Singh & Ors.***¹ in this behalf.

5.1 In addition, it is contended that the Decree is void for being passed “to do or omit to do an uncertain act at an uncertain place.”

5.2 It is further contended that the Undertaking as given by the Petitioner unless accepted by the Court does not bind a party and does not act as an estoppel against the person who has made the statement. It is contended that since the Court did not decide or record the satisfaction on the jurisdictional facts or the legality of the compromise, the compromise was on the face of it void, thus, the Decree is an inexecutable decree, therefore, the Execution Petition is liable to be rejected.

5.3 It is submitted that a decree which cannot be passed on an adjudication cannot be passed on a compromise. Reliance is placed on the judgment of the Supreme Court in ***State of Punjab (now Haryana) & Ors. v. Amar Singh & Anr.***²

6. Learned Counsel for the Respondent on the other hand has contended that the Decree does not fall under the second part of Order XXIII Rule 3 of the CPC but falls under the first part of Rule 3 of the CPC, and is thus enforceable. Learned Counsel for the Respondent also seeks to rely upon

¹ (2006) 5 SCC 566



the ***Pushpa Devi Bhagat*** case in support of his contentions.

6.1 In addition, learned Counsel for the Respondent submits that the challenge that was raised by the Petitioner to the objections of the lawfulness of the Decree cannot be raised before the Executing Court but is required to be raised before the Court that has passed such a decree. In this behalf, reliance is placed on the judgment of the Supreme Court in ***R. Janakiammal v. S.K. Kumarasamy (D) through LRs & Ors.***³ and ***R. Rajanna v. S.R. Venkataswamy & Ors.***⁴.

6.2 In addition, it is contended that a presumption exists in favour of the Court that has passed the decree once a decree has been passed.

6.3 Learned Counsel for the Respondent has also argued that the meaning and purport of the judgment and decree must be gathered from the terms of the judgement and the decree and that a perusal of the Judgement and Decree dated 31.08.2005 shows that the judgment or the decree is not barred by any provision of the Indian Contract Act, 1872 or the Specific Relief Act, 1963. Reliance is placed on the judgments passed by this Court and the Supreme Court including in ***Wings Pharmaceuticals Pvt. Limited v. Pragatisheel Mazdoor Sangh Delhi Pradesh and Ors.***⁵, ***Vidya Sagar Institute of Mental Health and Neuro Sciences v. Vidya Sagar Hospital Union***⁶ and ***Kwality Restaurant v. Jagdish and Ors.***⁷

² (1974) 2 SCC 70

³ (2021) 9 SCC 114

⁴ (2014) 15 SCC 471

⁵ 2000 SCC Online Del 948

⁶ 2005 SCC Online Del 975

⁷ 2003 SCC Online Del 644



7. In order to better appreciate the contentions of the Petitioner, it is apposite, in the first instance, to set out the operative part of the Decree as well as the order dated 31.08.2005 passed by the learned Trial Court. The order dated 31.08.2005 and operative part of the decree dated 31.08.2005 is set out below:

“31/08/2005

...

Sh. Devraj counsel for defendant alongwith defendant in person.

A joint application was moved on behalf of both the opposite parties u/o 23 rule 3 CPC supported with the affidavits of both the parties. Today, both the parties stated on SA in respect of the said application/compromise deed.

In view of the aforesaid application and statement, I feel that the matter has been settled amicably between the parties and nothing remains in the present suit. The plaintiff has recorded his statement also regarding his satisfaction with the statement of the defendant.

The present suit is disposed of as compromised accordingly. No order as to costs. Decree sheet be drawn accordingly. The aforesaid application of the above-mentioned statement shall form part of this order/judgement/decreed. File be consigned to Record Room.”

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“SIMPLE MONEY DECREE

...

*Claim for Permanent, Prohibitory Injunction
Plaint presented on the 15.05.04.*

*The suit coming on this day for final disposal before me in the presence of Shri. Jawahar Raja Counsel for the plaintiff and Shri. Dev Raj Counsel for the Defendant. **It is ordered that suit is disposed of as compromised accordingly.** No order as to costs. Statement shall form part of this Order/Judgement/Decree*

...

Given under my hand and the seal of the Court, this 31st day of August, 2005

*Sd/-
TARUN SAHRAWAT
CIVIL JUDGE*



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[Emphasis supplied]

7.1 It is also apposite to set out the statement of the Petitioner as well as that of the Respondent which were recorded by the learned Trial Court on 31.08.2005. The statement of both the parties is set out below:

“Statement of Petitioner as recorded on 31.08.2005

Statement of Ms. Jharana Jhaveri D/o Late Sh. Harkishan Jhaveri R/o 701, Sulochana Building, Charkop, Kandiwali (West), Mumbai- 67.

ON SA

I have undertaken not to come within a radius of 500 meters of the residence of the plaintiff at A-11/1, SFS Flats, Saket, New Delhi- 17 or any other subsequent residence/ accommodation of the plaintiff, nor to come within a distance of 500 meters of the work place of the plaintiff at H-75 A, SFS Flats, Saket or the house of his parents at Sharm Niketan, Jamudi, district Anuppor or of his brother Aman Namra at B-6-T, D.P. Apartment, Mayur Vihar, New Delhi. Nor to commit any further physical, verbal or other abuse on the person of the plaintiff or his parents, brother, associate, cotenant or other friends or visitors to his house and not to harass the plaintiff by screaming abuse against the plaintiff in the vicinity of his house or elsewhere, not to make any telephone calls, text/SMS/message/E-mail or mail by post to the plaintiff or the other persons associated with him detailed above. Nor to put his telephone number on any Website. I also undertake to withdraw any and all reference to the plaintiff from the Website. All disputes have been amicably settled between us. I have no objection if the suit is decreed/disposed of accordingly.”

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“Statement of Respondent as recorded on 31.08.2005

Statement of Sh. Anurag Singh S/o Sh. Shyam Bahadur Namra R/o A-11/1, SFS Flats, Saket, New Delhi-17.

ON SA

I have heard the statement of the defendant and I am satisfied with the same. My suit may be disposed of as compromised accordingly...”

8. It is the case of the Respondent that after a period of time from the passing of the Decree dated 31.08.2005, the Petitioner started taking active



steps in violation of the Decree, which led to the filing of the Execution Petition. In this behalf, learned Counsel for the Respondent draws the attention of the Court to various complaints including criminal complaints made by the Respondent before the Police Station, Shivalik, Malviya Nagar, where the mother of the Respondent resides, the Police Station Mehrauli and the Police Station Tuglakh Road against the Petitioner.

9. Order XXIII Rule 3A of the CPC provides for a complete bar to a suit to set aside a decree on the ground that a compromise on which the decree is based on was not lawful. While Order XXIII Rule 3 of the CPC records that where a suit has been adjusted wholly or in part by a compromise in writing or where a defendant satisfies the plaintiff in respect of a whole or a part of the claim, the Court shall order such agreement, compromise to be recorded and pass a decree in terms thereof. A decree is defined under Section 2(2) of the CPC to mean a formal expression of an adjudication which conclusively decides or determines the rights of the parties. Section 2(2) of the CPC and Order XXIII Rule 3 of the CPC are extracted below:

*“2. **Definitions.**—In this Act, unless there is anything repugnant in the subject or context,—*

(2) “decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within [The words and figures “section 47 or” omitted by s. 3, ibid. (w.e.f. 1-2-1977)] section 144, but shall not include—...”

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“ORDER XXIII



...

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.]

9.1 Rule 3A of Order XXIII of the CPC bars the filing of a suit to set aside a decree. The Order XXIII Rule 3A of the CPC is reproduced below:

“3A. *Bar to suit.*— No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.”

10. It is settled law that any challenge to a compromise decree on the ground that it was not lawful has to be filed before the same Court which has recorded the compromise. The Supreme Court in ***R. Janakiammal*** case, while discussing the provisions of Order XXIII Rule 3 of the CPC as well as Order XXIII Rule 3A of the CPC has held that the only remedy available to a party to a compromise/consent decree to challenge such consent decree is to approach the court which recorded the compromise. The relevant extract of ***R. Janakiammal*** case is below:

“41. Order 23 Rule 3 provides for compromise of suit. In Rule 3 amendments were made by Act 104 of 1976 by which a proviso and an Explanation was added. Order 23 Rule 3 as amended is to the following



effect:

*"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 satisfies the plaintiff in respect of 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 no 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."

42. By the same amendment Act 104 of 1976, a new Rule i.e. Rule 3-A was added providing:

*"3-A. **Bar to suit.** - No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful."*

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44. **Reading Rule 3 with proviso and Explanation, it is clear that an agreement or compromise, which is void or voidable, cannot be recorded by the courts and even if it is recorded the court on challenge of such recording can decide the question.** The Explanation refers to the Contract Act. The Contract Act provides as to which contracts are void or voidable. Section 10 of the Contract Act provides that all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

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53. **Order 23 Rule 3 as well as Rule 3-A came for consideration before this Court** in large number of cases and we need to refer to a few of them to find out the ratio of judgments of this Court in context of Rule 3 and Rule 3-A. In **Banwari Lal v. Chando Devi [Banwari Lal v. Chando Devi, (1993) 1 SCC 581], this Court considered Rule 3 as well as Rule 3-A of**



Order 23. This Court held that the object of the Amendment Act, 1976 is to compel the party challenging the compromise to question the court which has recorded the compromise. In paras 6 and 7, the following was laid down: (SCC pp. 584-85)

“6. The experience of the courts has been that on many occasions parties having filed petitions of compromise on basis of which decrees are prepared, later for one reason or other challenge the validity of such compromise. For setting aside such decrees suits used to be filed which dragged on for years including appeals to different courts. Keeping in view the predicament of the courts and the public, several amendments have been introduced in Order 23 of the Code which contain provisions relating to withdrawal and adjustment of suit by the Civil Procedure Code (Amendment) Act, 1976. Rule 1 Order 23 of the Code prescribes that at any time after the institution of the suit, the plaintiff may abandon his suit or abandon a part of his claim. Rule 1(3) provides that where the Court is satisfied: (a) that a suit must fail by reason of some formal defect, or (b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw such suit with liberty to institute a fresh suit. In view of Rule 1(4) if the plaintiff abandons his suit or withdraws such suit without permission referred to above, he shall be precluded from instituting any such suit in respect of such subject-matter. **Rule 3 Order 23 which contained the procedure regarding compromise of the suit was also amended to curtail vexatious and tiring litigation while challenging a compromise decree.** Not only in Rule 3 some special requirements were introduced before a compromise is recorded by the court including that the lawful agreement or a compromise must be in writing and signed by the parties, **a proviso with an Explanation was also added which is as follows:**

‘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 no 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.’

7. By adding the proviso along with an Explanation the purpose and the object of the amending Act appears to be to compel the



party challenging the compromise to question the same before the court which had recorded the compromise in question. That court was enjoined to decide the controversy whether the parties have arrived at an adjustment in a lawful manner. The Explanation made it clear that an agreement or a compromise which is void or voidable under the Contract Act shall not be deemed to be lawful within the meaning of the said Rule. Having introduced the proviso along with the Explanation in Rule 3 in order to avoid multiplicity of suit and prolonged litigation, a specific bar was prescribed by Rule 3-A in respect of institution of a separate suit for setting aside a decree on the basis of a compromise saying:

'3-A. Bar to suit.—No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.' ”

[Emphasis supplied]

11. It is no longer *res integra* that a settlement between the parties is to be considered as a decree under Section 2(2) CPC. The Supreme Court in ***Pushpa Devi Bhagat case*** has held that where the Court is satisfied that a suit has been adjusted either wholly or in part by an agreement or a compromise in writing, a decree follows in terms of what is agreed between the parties and that the only remedy available to a party to a consent decree is to approach the Court which recorded the compromise and the said Court would decide the question whether there was a valid compromise or not. The Court held that no separate independent suit can be filed to challenge a compromise decree and only an Application under the proviso to Order XXIII Rule 3 CPC can be filed.

11.1 The relevant extract of the ***Puspha Devi Bhagat*** case, which sets out the remedy available to challenge a consent decree, is reproduced below:

“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. The second defendant, who challenged the consent compromise decree was fully aware of this position as she filed an application for setting aside the consent decree on 21-8-2001 by alleging that there was no valid compromise in accordance with law. Significantly, none of the other defendants challenged the consent decree. For reasons best known to herself, the second defendant within a few days thereafter (that is on 27-8-2001) filed an appeal and chose not to pursue the application filed before the court which passed the consent decree. Such an appeal by the second defendant was not maintainable, having regard to the express bar contained in Section 96(3) of the Code.”

[Emphasis Supplied]

12. The Respondent has relied upon the *Amar Singh* case to submit that by entering into a compromise a party cannot achieve what is contrary to law and a compromise cannot be a permit to violate statutory requirements. The relevant extract is below:

“33. Another argument was suggested that the order, even though passed on a compromise was as valid and binding as one, passed on contest. May be, that as a broad proposition one may assent to it. But where a compromise goes against a public policy prescription of a statute or a mandatory direction to the Court to decide on its own certain foundational facts, a razi cannot operate to defeat the requirement so



specified or absolve the Court from the duty. The resultant order will be ineffective. After all, by consent or agreement, parties cannot achieve what is contrary to law and a decree merely based on such agreement cannot furnish a judicial amulet against statutory violation. For, “by private agreement, converted into a decree, parties cannot empower themselves to do that which they could not have done by private agreement alone”. (See Mulla: Civil Procedure Code, Vol. II, p. 1300). The true rule is that “the contract of the parties is not the less a contract, and subject to the incidents of a contract, because there is superadded the command of the Judge”. The learned author, Mulla, in his commentary on Order 23, Rule 3 (Civil Procedure Code, Vol. II, pp. 1299-1300) cites many authorities for this proposition and observes:

“If a decree is passed under this rule on a compromise which is not lawful, the Court should not enforce the decree in execution proceedings. Thus, a sale of an office attached to a temple is against public policy. Hence, if in a suit against the holder of such an office a compromise is arrived at whereby the holder of the office consents to the office being sold in satisfaction of the debt due to the plaintiff, and a decree is passed on the compromise, the Court should notwithstanding the consent decree refuse to sell the office in execution. It is clear that if the matter had rested in contract only, the Court could not have enforced the sale in a suit brought for that purpose. The mere fact that the contract is embodied in a decree does not alter the incidents of the contract.”

It may be right to conclude that any authority, like the Collector, here, enjoined to apply Section 10A(b) and (c) may decline to act on a compromise which has ripened into an order if the agreement between the parties disposes of property in violation of a statutory mandate. He can and must lift the veil and look the agreement of the parties in the face. The vice of contravention of Section 10A(b) is writ large in Annexure-A.

34. A few decisions of this Court bearing on the efficiency of consent decrees were cited at the bar and they are exhaustively dealt with in Chari v. Seshadri: (1973) 1 SCC 761. The other rulings of this Court all rendered under the Rent Control Law are Bahadur. Singh v. Muni Subrati; (1969) 2 SCR 432, Kaushalya Devi v. K. L. Bansal: (1969) 1 SCC 59, and Ferozi Lal Jain v. Man Mal: (1970) 3 SCC 181. The core principle or ratio that is revealed in these cases is that in cases where a statute, embodies a public policy and consequentially prescribes the presence of some conditions for grant of reliefs, parties cannot by-pass the law by the exercise of a consent decree or order and mere judicial imprimatur may not validate such decree or order where the Court or Tribunal is not seen to have



applied its mind to the existence of those conditions and reached its affirmative conclusion thereon. Such mindless orders are a nullity but where the stage of the proceedings, the materials on record and/or the recitals in the razi disclose the application of the judicial mind, the order is beyond collateral attack merely on the score that it does not ritualistically write into the judgment what is needed by the statute. The important facet of the law clarified in these decisions is that where high public policy finds expression in socio- economic legislation contractual arrangements between interested individuals sanctified into consent or compromise decrees or orders cannot be binding on instrumentalities of the State called upon to enforce the statute, although the tribunals enjoined to enforce the law may take probative note of the recitals in such compromise or consent statements in proof of facts on which their jurisdictions may have to be exercised. Further, if there is no evidence either by way of admissions in consent statements and razis or otherwise on the record, the reliefs sanctioned by the statute cannot be granted and order or decrees which purport to grant them sans proof of the legal requirements will be a nullity”

[Emphasis Supplied]

13. The Petitioner has contended that the Decree has been passed under the ‘second’ part of Order XXIII Rule 3 of the CPC and is not executable in view of the judgment in ***Pushpa Devi Bhagat*** case. Thus, it is averred that the Execution Petition should be dismissed.

14. This Court is unable to agree. The compromise between the parties as is set out in paragraph 7 above shows that a joint application was filed in the Court under Order XXIII Rule 3 of the CPC duly affirmed and supported by affidavits of both the parties. Both the Petitioner and the Respondent appeared before the learned Trial Court. The statement of both the parties was also recorded. Upon being satisfied, the learned Trial Court passed an order dated 31.08.2005 disposing off the suit as settled between the parties. The order of the learned Trial Court thus falls under the ‘first’ part of Order XXIII Rule 3 of the CPC and not the ‘second’ part.



14.1 The Supreme Court in ***Pushpa Devi Bhagat*** case has held that the Order XXIII Rule 3 of the CPC consists of two parts, first part is where it has been provided to the satisfaction of the Court that the suit has been adjusted wholly or in part by a lawful agreement of compromise in writing and signed by the parties, the Court shall order the agreement or compromise to be recorded and pass a decree in terms thereof.

14.2 The second part of the Order XXIII Rule 3 of the CPC is where a defendant satisfies the plaintiff in respect of whole or part of the subject matter of the suit, the Court shall order such agreement or compromise to be recorded and shall pass a decree in accordance therewith.

14.3 It was held that the difference between the first and the second part is that the first part refers to situations where an agreement or compromise is entered into in writing and signed by the parties and placed before the Court. However, the second part refers to situations where the defendant has satisfied the plaintiff about a claim and nothing further remains to be done or to be enforced and there is no question of enforcement or execution of the decree to be passed in terms thereof. The relevant extract of ***Pushpa Devi Bhagat*** case is below:

“18. Order 23 deals with withdrawal and adjustment of suits. Rule 3 relates to compromise of suits, relevant portion of which is extracted below:

“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 satisfies the plaintiff in respect of 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.”

The said Rule consists of two parts. The first part provides that 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, the court shall order such agreement or compromise to be recorded and shall pass a decree in accordance therewith. The second part provides that where a defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the court shall order such satisfaction to be recorded and shall pass a decree in accordance therewith. The Rule also makes it clear that the compromise or agreement may relate to issues or disputes which are not the subject-matter of the suit and that such compromise or agreement may be entered not only among the parties to the suit, but others also, but the decree to be passed shall be confined 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. We are not, however, concerned with this aspect of the Rule in this appeal.

19. What is **the difference between the first part and the second part of Rule 3? The first part refers to situations where an agreement or compromise is entered into in writing and signed by the parties. The said agreement or compromise is placed before the court. When the court is satisfied that the suit has been adjusted either wholly or in part by such agreement or compromise in writing and signed by the parties and that it is lawful, a decree follows in terms of what is agreed between the parties. The agreement/compromise spells out the agreed terms by which the claim is admitted or adjusted by mutual concessions or promises, so that the parties thereto can be held to their promise(s) in future and performance can be enforced by the execution of the decree to be passed in terms of it. On the other hand, the second part refers to cases where the defendant has satisfied the plaintiff about the claim.** This may be by satisfying the plaintiff that his claim cannot be or need not be met or performed. It can also be by discharging or performing the required obligation. Where the defendant so “satisfies” the plaintiff in respect of the subject-matter of the suit, nothing further remains to be done or enforced and there is no question of any “enforcement” or “execution” of the decree to be passed in terms of it. Let us illustrate with reference to a money suit filed for recovery of say a sum of rupees one lakh. Parties may enter into a lawful agreement or compromise in writing and signed by them, agreeing that the defendant will pay the sum of rupees one lakh within a specified period or specified manner or may agree that only a sum of Rs 75,000 shall be paid by the defendant in full and final settlement of the claim. Such agreement or compromise will fall under the first part and



if the defendant does not fulfil the promise, the plaintiff can enforce it by levying execution. On the other hand, the parties may submit to the court that the defendant has already paid a sum of rupees one lakh or Rs 75,000 in full and final satisfaction or that the suit claim has been fully settled by the defendant out of court (either by mentioning the amount paid or not mentioning it) or that the plaintiff will not press the claim. Here the obligation is already performed by the defendant or the plaintiff agrees that he will not enforce performance and nothing remains to be performed by the defendant. As the order that follows merely records the extinguishment or satisfaction of the claim or non-existence of the claim, it is not capable of being “enforced” by levy of execution, as there is no obligation to be performed by the defendant in pursuance of the decree. Such “satisfaction” need not be expressed by an agreement or compromise in writing and signed by the parties. It can be by a unilateral submission by the plaintiff or his counsel. Such satisfaction will fall under the second part. Of course even when there is such satisfaction of the claim or subject-matter of the suit by the defendant and the matter falls under the second part, nothing prevents the parties from reducing such satisfaction of the claim/subject-matter, into writing and signing the same. The difference between the two parts is this: where the matter falls under the second part, what is reported is a completed action or settlement out of court putting an end to the dispute, and the resultant decree recording the satisfaction, is not capable of being enforced by levying execution. Where the matter falls under the first part, there is a promise or promises agreed to be performed or executed, and that can be enforced by levying execution. While agreements or compromises falling under the first part can only be by an instrument or other form of writing signed by the parties, there is no such requirement in regard to settlements or satisfaction falling under the second part. Where the matter falls under the second part, it is sufficient if the plaintiff or the plaintiff’s counsel appears before the court and informs the court that the subject-matter of the suit has already been settled or satisfied.”

[Emphasis supplied]

15. Thus, for the Petitioner to contend that the order was not a valid compromise or an order under Order XXIII Rule 3 of the CPC was without merit, the Petitioner would first have to approach the Court that passed the decree. This Court in the case of *Anuradha Prasad v. Mira Kulkarni*⁸ has dealt with the provisions of Order XXIII Rule 3 of the CPC and has held



that a fresh suit is not maintainable to challenge a compromise decree and that the party has to approach Court that passed the decree. The relevant extract is below:

*“30. **For the provision of Order XXIII Rule 3 CPC to be applicable, a lawful agreement in writing and signed by both the parties, should exist as part of the record**, which, is present as the family settlement Agreement. It is not disputed that the family settlement has been placed on record and even acted upon. On the basis thereof, a first floor flat has been purchased for the Appellant which has not been denied [by the Appellant] and even substantial monetary consideration has been stated to have been received by the Appellant. Subsequently, the Order dated 16.11.2007 has been passed. The definition of decree under Section 2(2) CPC includes an order which conclusively determines the rights of the parties, and to that extent the Order dated 16.11.2007 is such an Order. It also records a direction that “the parties shall abide by the terms of the compromise contained in the said family settlement.*

*“31. In these circumstances, the bar as set out in Order XXIII Rule 3A CPC is applicable. **As stated in the Pushpa Devi Bhagat case, the remedy, if any, of the Appellant was to approach the Court that passed the decree. However, instead the Appellant filed a fresh suit which is impermissible in law** and was rightly dismissed by the learned Trial Court under the provisions of Order VII Rule 11(d) CPC.”*

[Emphasis supplied]

16. It is also settled law that the Executing Court cannot go behind a decree. Clearly, the remedy of the Petitioner if he wishes to challenge the decree is before the Court that has passed the decree.

16.1 In the present case, as stated above, a settlement was entered into between the parties and a joint application was filed by the parties. . The Respondent is not challenging the Compromise Decree, the Petitioner is.

17. One of the findings of the Impugned Order is that the compromise decree falls under first part of Rule 3 of Order XXIII CPC as the statement

⁸ 2025 SCC OnLine Del 34



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made by Petitioner is with respect to certain acts to be done or not to be done in the future and not with respect to the acts already done or obligations already discharged. The learned Trial Court further states that any objection to the lawfulness of the compromise decree has to be decided by the court that has passed the decree as provided under the proviso to Order XXIII Rule 3 CPC and the executing court cannot go behind a decree. Also, a compromise decree creates an estoppel upon the parties and parties are precluded from contradicting such an agreement unless fraud, misrepresentation etc. are proved by the parties. The compromise decree has been passed by the learned Trial Court with an endeavour to prevent multiplicity of proceedings between the parties and to amicably resolve the matter.

18. In view of the foregoing, this Court finds no infirmity with the Impugned Order which would merit interference by this Court.

19. For the reasons as stated above, the Petition is dismissed. Costs in the sum of Rs. 50,000/- is imposed on the Petitioner for taking up judicial time. The same shall be deposited by the Petitioner within six weeks from today. All Pending Application stands disposed of.

20. The parties shall act based on digitally signed copy of the order.

TARA VITASTA GANJU, J

MAY 13, 2025/ha

[Click here to check corrigendum, if any](#)