Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10755 OF 2013
(Arising out of S.L.P. (C) No. 36694 of 2013)
(CC No. 19728 of 2013)

Daljit Kaur and another ...
Appellants

Versus

Muktar Steels Pvt. Ltd. and others
...Respondents

J U D G M E N T

Dipak Misra, J.

Delay condoned.

2. Leave granted.

3. This appeal, by special leave, is directed against the judgment and decree dated 7.3.2013 passed in Second Appeal No. 285 of 2008 by the High Court of Andhra Pradesh whereby the learned single Judge has affirmed the judgment and decree passed by the first appellate court concurring with the view that the decree being a

consent decree was not assailable in appeal, and further giving the stamp of approval to the conclusion that the learned trial Judge, after conducting due enquiry as envisaged under the proviso to Order XXIII Rule 3 of the Code of Civil Procedure (CPC), had passed a consent decree.

4. The broad essential facts giving rise to the appeal are that the first respondent instituted OS No. 2261 of 1988 in the Court of IVth Additional Judge, City Civil Court, Hyderabad for declaration to the effect that the agreements and arrangements between the parties are in the nature of "Industrial Licence" and not "Leave and Licence" in respect of the suit premises situate in private industrial estate Sanathnagar, Hyderabad and also for permanent injunction. The suit was originally filed against the defendant No. 1, the Managing Partner of the firm but after his death defendant Nos. 2 to 6 were brought on record.

5. The firm filed its written statement contending, inter alia, that the terms and conditions of the agreement entered into between the plaintiff and the defendant

clearly indicate that the parties had entered into a "Leave and Licence" agreement and the licensor is the absolute owner. It is worthy to mention here that the facts with regard to the stand put forth in the plaint and the stance taken in the written statement may not be stated in detail, because the real fulcrum of the lis is whether the parties had entered into a lawful compromise and whether the learned trial Judge had followed the mandate as postulated under Order XXIII Rule 3 of the CPC.

6. Suffice it to state that during the pendency of the suit at the intervention of the elders both the parties, as alleged, entered into a compromise. As noted by the trial court as well as by the appellate court, the parties entered into a settlement which were reflectible from Exts. A-8, A-9 and A-14. I.A. No. 966 of 2001 was filed before the learned trial Judge for recording the compromise and passing a decree in terms of the settlement. It was urged before the trial court that as the defendant had disputed the compromise, it was imperative to conduct an enquiry. For the said purpose

I.A. No. 490 of 2002 was filed by the plaintiff. The said application was resisted by the defendant on many a ground. The learned trial Judge rejected the said application solely on the base that the plaintiff had not carried out the amendments in the plaint by complying with the order passed in I.A. No. 1015 of 1998 for amendment and hence, his claim for getting an enquiry done was not maintainable.

7. After completion of due formalities the suit was taken up and evidence was adduced. The learned trial Judge, at that juncture, adverted to the oral and documentary evidence brought on record, including Exts. A-8 and A-9. The learned trial Judge, relying on the letters exchanged between the parties, namely, Exts. A-15, A-16 and A-25 and discussing the contents of the letters in extenso, came to hold that the compromise deeds Ext. A-8, A-9 and A-14 had been acted upon with the understanding between plaintiff and defendant No.4 because the defendant No. 4 had sold away the portions of the land to different persons under sale deeds, Exts. B-3, B-12 and B-22, which apparently took

place subsequent to Ext. A-8 and A-9 and A-14. The trial court further held that had there been no compromise between the plaintiff and the defendant No. 4, there could have been any scope entitling the defendant No. 4 to sell portions of the land to the third parties under Exts. B-3, B-8, B-12 and B-22 during the pendency of the suit. The court also took note of the fact that possession had been handed over to the third parties. The learned trial Judge analyzing the oral and documentary evidence recorded a finding to the effect that in the compromise deed the terms and conditions contained about the sharing of the amount, taking possession of the machinery by defendant No. 4 through Gate passes and Exts. A-18 to A-23 clearly showed that the machinery was in the shed of the plaintiff who was put in possession of the schedule property in the year 1980. The learned trial Judge further opined that the defendants had no access or possibility to enter into the plaintiff's premises as there was an injunction operating, but because of the compromise deed between the parties it could materialize without any obstruction. For arriving at the

said conclusion the learned trial Judge took support from Exts. A-15, A-16 and A-25 written by the counsel for D.W. 1 to the plaintiff and his counsel. This position was admitted by P.W.3, the counsel then defending the defendants. It also weighed with the trial court that the defendants had continued P.W.3 as their advocate for about 2 years after the compromise without making any allegations against him. That apart, it observed that it was evident from Exts. A-18 to A-22 that the defendant No.4 took away the machinery and plaintiff installed new furnace after taking over the suit schedule premises and selling the old furnace under Ext. A-27 after effecting the compromise in the presence of defendant No. 4 who was a witness to the sale document Ex. A-27. On the basis of aforesaid reasoning the learned trial Judge opined that the compromise had been legally entered into between the parties and the same had been acted upon by both the parties to a major extent. Being of this view, he accepted the deed of compromise and decreed the suit accordingly.

8. On appeal being preferred, the learned Additional Chief Judge, City Civil Court, Hyderabad, reappreciated the evidence and came to hold that both the parties had entered into a compromise vide agreements, namely, Exts. A-8 and A-9 and the learned trial Judge had correctly placed reliance on the same. The learned appellate Judge opined that as it was a consent decree, no appeal would lie under Section 96(3) of the CPC.

9. Being grieved by the dismissal of the appeal the appellant preferred a second appeal. The learned single Judge addressed the following two substantial questions of law: -

> "1. Whether the appellate Court was justified in holding that the appeal against a consent/ compromise decree is not maintainable in view of bar created under Section 96(3) of CPC, Order 23 Rule 3-A while ignoring Order 43 Rule 1-A which is inserted simultaneously while deleting Order 43 Rule 1(m).
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> 2. Whether the law laid down by this Honourable Court in AIR 2006 SCC 2626 is contrary to Order 43 Rule 1A? If so, what is

the effect of the law laid down by the Supreme Court?"

10. Analyzing Section 96(3) of the CPC, Order XLIII Rule 1A and placing reliance on ***Pushpa Devi Bhagat (dead) through LR. Sadhna Rai (Smt.)* v. *Rajinder Singh and others***[1], the learned single Judge came to hold that the decree in question was a consent decree and hence, the appeal was not maintainable. However, it adverted to the facts and eventually dismissed the appeal.

11. We have heard Mr. P. Vishwanath Shetty, learned senior counsel appearing for the appellants and Mr. D. Rama Krishna Reddy, learned counsel appearing for the respondents.

12. Assailing the defensibility of the judgment passed by the High Court affirming the view expressed by the courts below, the learned senior counsel for the appellants has contended that an erroneous conclusion has been arrived at that the appeal was not maintainable on the assumption that it was a consent decree. It is urged that the decision rendered in

[1] (2006) 5 SCC 566

Pushpa Devi Bhagat (supra) had not considered Order XLIII Rule 1A of the CPC and hence, the said decision could not have been placed reliance upon. It is contended that Section 96(3) and Order XLIII Rule 1A of the CPC should have been harmoniously construed by the High Court as it is open to the appellant to take a stand that the compromise should not have been recorded. It is his further submission that the High Court has failed to appreciate the perversity of approach by the courts below and concurred with the findings recorded by them baldly stating that it is a question of fact and such an approach has resulted in miscarriage of justice, and, more so, when the learned single Judge had already opined that the appeal was not maintainable.

13. Mr. D. Rama Krishna Reddy, learned counsel for the respondents, resisting the aforesaid submissions, urged that the appellants had entered into a lawful compromise with the respondents and the same had been duly acted upon to a great extent and hence, the acceptance of the same by the learned trial Judge on the basis of material brought on record cannot be found

fault with. It is further submitted that because of the said conclusion, the decree had earned the status of a consent decree and hence, the conclusion arrived at by the High Court is absolutely impeccable.

14. The pivotal issue that arises for consideration is whether in the present case the appeal could have been preferred against the judgment and decree passed by the learned trial Judge. As is evincible, the lower appellate court as well as the High Court has placed reliance on ***Pushpa Devi Bhagat*** (supra) to come to hold that the appeal was not maintainable. In ***Pushpa Devi Bhagat*** (supra) a two-Judge Bench, dealing with a contention canvassed for the first time before this Court that the appeal before the first appellate court or before the High Court was not maintainable as there was a consent decree, permitted the contention to be raised and heard both parties on that score. In the context, it referred to Rules 3 and 3-A of Order XXIII and analyzing the said provisions summed up the statement of law emerging from Order XXIII that (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 XLIII; (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; and (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 XXIII. Thereafter the learned Judges proceeded to state thus: -

> "... 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. 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."

15. The analysis made in the aforesaid decision and the dictum laid down therein has to be appositely understood. In fact, the Court was adjudicating a controversy pertaining to assail of a consent decree where the parties concerned had filed an application before the Court that had passed the consent decree alleging that there was no valid compromise but chose not to pursue the same and filed an appeal. In that factual context the Court had ruled that in view of the express bar under Section 96(3) the appeal was not maintainable. Thus, we are inclined to think that the view expressed therein only conveys the principle that a consent decree is not appealable being barred under Section 96(3) of CPC. Be it noted, what weighed with the court was that the application filed for setting aside

the compromise was not pursued. Therefore, the said decision has to be confined to the facts exposited therein, for the fundamental factum was that the facet of consent was not contested.

16. In ***Kishun alias Ram Kishun (dead) through LRs. v. Behari (dead) by LRs***[2]**.,** a three-Judge Bench was dealing the maintainability of appeal in the backdrop of Section 96 (3) of the Code which provide that no appeal shall lie from a decree passed by the Court with the consent of the parties. In that case, the High court had allowed the second appeal holding that the first appellate court could not have entertained an appeal against a compromise decree. In the said case, one of the facets that arose for consideration whether the High Court was justified in holding that the appeal preferred against the decree under Section 96 (3) was maintainable. After discussing the factual matrix the court opined thus :-

> "When on a dispute in that behalf being raised, an enquiry is made (now it has to be done in view of the proviso to Order 23 Rule 3 of the Code added by Act 104 of 1976) and the suit is decreed on the basis of a compromise based on

[2] (2005) 6 SCC 300

that enquiry, it could not be held to be a decree passed on consent within the meaning of Section 96 (3) of the Code. Section 96 (3) contemplates non-appealability of a decree passed by the court with the consent of parties. Obviously, when one of the parties sets up a compromise and the other disputes it and the court is forced to adjudicate on whether there was a compromise or not and to pass a decree, it could not be understood as a decree passed by the court with the consent of the parties. As we have noticed earlier, no appeal is provided after 1.2.1977, against an order rejecting or accepting a compromise after an enquiry under the proviso to Order 23 Rule 3, either by Section 104 or by Order 43 Rule 1 of the Code. Only when the acceptance of the compromise receives the imprimatur of the court and it becomes a decree, or the court proceeds to pass a decree on merits rejecting the compromise set up, it becomes appealable, unless of course, the appeal is barred by Section 96 (3) of the Code. We have already indicated that when there is a contest on the question whether there was a compromise or not, a decree accepting the compromise on resolution of that controversy, cannot be said to be a decree passed with the consent of the parties. Therefore, the bar under Section 96 (3) of the Code could not have application."

[Emphasis added]

17. The ratio laid down in the aforesaid case applies on all fours to the case at hand. The defendants-respondents had raised a dispute with regard to validity of the compromise and the concerned court had conducted an enquiry. Thus, a decree had been passed

on the basis of the compromise based on that enquiry and, therefore, it cannot be said to be a consent decree. The decision in ***Pushpa Devi Bhagat*** (supra) has to be understood that when a decree is passed without any dispute being raised or contested in the court of first instance, the decree being passed on consent cannot be appealed against. As the present controversy is covered by the decision rendered in ***Kishun*** (supra), we are not required to dwell upon the applicability of Order XLIII, Rule 1A of the CPC.

18. Next aspect, that is highlighted by Mr. Shetty, is that the High Court has really not dwelled upon the perversity of approach of the courts below and cryptically given the stamp of approval to the conclusion and it is manifest as the fundamental premise, the Court was concerned with, pertained to the issue of maintainability of appeal. We have discussed the analysis of the learned trial Judge who has discussed the evidence while dealing with the dispute raised by the defendants in the suit pertaining to entering of compromise. We have also noticed the

analysis made by the first appellate court. On a careful perusal of the judgment of the High Court, it is noticeable that it has, at the commencement of the judgment, adverted to the facts relating to the manner in which the compromise decree had been passed and opined that the enquiry conducted by the learned trial Judge related to the evidence brought on record had been rested on proper application of oral and documentary evidence. On the aforesaid analysis, the High Court has concurred with the conclusion of the first appellate court that the decree in question was a consent decree. To satisfy ourselves, we have discussed the approach of the learned trial Judge and that of the first appellate court and we find that the High Court, after stating the facts and referring to the documents by which it has been recorded and further taking note of the fact how the settlement had been acted upon by both the parties, has expressed its opinion and hence, it cannot really be found fault with.

19. In view of the aforesaid analysis, we do not find any merit in this appeal and, accordingly, the same stands dismissed without any order as to costs.

.....J.
[Anil R. Dave]

.....J.
[Dipak Misra]

New Delhi;
November 19, 2013.