

CASE NO.:
Appeal (civil) 5325 of 2003

PETITIONER:
GANGADEEP PRATISTHAN PVT. LTD. & ORS.

RESPONDENT:
M/S. MECHANO & ORS.

DATE OF JUDGMENT: 23/02/2005

BENCH:
B.P.SINGH & ARUN KUMAR

JUDGMENT:
J U D G M E N T
(ALONGWITH THE RECORD OF S.L.P.(C) NO.12016 OF 2002)

B.P.SINGH, J.

Application for condonation of delay in filing additional documents is allowed.

In this appeal by special leave the appellants have impugned the judgment and order of 16th August, 2002 of the High Court of Judicature at Calcutta allowing the appeal of Respondent No.1 herein and setting aside the consent decree passed by the learned Single Judge of the High Court dated 12.1.1998. We may briefly refer to the

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facts of the case so far as they are relevant for the disposal of this appeal :

The Respondent No.1 herein was running a factory in a part of the premises in question measuring about 1040 sq. ft. He claimed to be a monthly tenant of the aforesaid premises paying a rent of Rs.200/- per month. The aforesaid respondent filed a suit for injunction before the second Munsif, Alipore Court to restrain his landlord from making any construction on the premises in question. The suit was ultimately transferred to the High Court of Calcutta and was registered as E.O. Suit No.11 of 1996. The landlord disputed the tenancy claimed by the respondent herein and in the written statement a counter claim was made for recovery of possession from him. The appellant herein purchased the premises from the former landlord of Respondent No.1. It is the case of the appellant that he entered into a compromise with the contesting respondent under which Respondent No.1 agreed to vacate the premises subject to fulfilment of certain terms and conditions which included payment of Rs.7.50 lacs to him. The case of the appellant is that the consent

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terms were drawn up on 29.12.1997 which was signed by the parties including Respondent No.1 on the basis of which a prayer was made for passing a consent decree. The consent decree was passed on 12.1.1998. According to the appellant the Respondent No.1 vacated the premises in terms of the settlement reached between the parties.

On 11th February, 1998 Respondent No.1 herein filed an application before the learned Single Judge who had passed the decree praying for recalling of the order decreeing the suit on the basis of the consent terms, alleging that the consent of Respondent No.1 had been obtained under duress and coercion. The consent allegedly given by Respondent No.1 was therefore, vitiated and the decree also stood vitiated by such reason. Learned Judge by his Order dated 24th March,

1998 rejected the said application.

After rejection of the application for recalling the Order dated 12.1.1998, Respondent No.1 for the first time filed an appeal against the consent decree dated 12.1.1998 on 19.8.1998, i.e. after about seven months. No doubt it was accompanied by an application for condonation

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of delay. During the pendency of the appeal, the High Court appointed a Receiver namely Mr. Basudeo Banerjee. The High Court also passed an order to the effect that application for condonation of delay in filing the appeal as well as the appeal be heard together. The appellant herein was aggrieved by this order and filed a special leave petition before this Court which was disposed of by this Court by Order dated November 20, 2001 directing the High Court to consider the question of condonation of delay and maintainability of the appeal first, before considering the merit of the appeal. By Order dated 3rd May, 2002 the High Court condoned the delay in preferring the appeal. This order was challenged before this Court by the appellant by filing a special leave petition No.12016 of 2002. However, the High Court by Judgment and Order dated 16.8.2002 decided the appeal on merit. This judgment and order dated 16th August, 2002 is the subject matter of challenge before us.

Before advertng to the findings recorded by the High Court a few other facts need to be noticed. According to the appellant the consent terms were settled on

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29.12.1997 and 15 cheques of Rs.50,000/- each were handed over to Respondent No.1 on that day. It is not disputed that out of the 15 cheques which were deposited by the Respondent in his account, 5 of them were not honoured for some reason and therefore, the appellant substituted those cheques by pay orders issued by the Bank. The pay orders were deposited and encashed. It is also the case of the appellant that in terms of an earlier order of the High Court dated 7.10.1996 both the parties informed the police in advance before action was taken to get the premises vacated. For that reliance is placed on a letter written by Respondent No.1 on 29.10.1997 to the police confirming the settlement and stating that he had vacated the premises. The Respondent No.1 had also written a letter to the appellant stating the fact that he had surrendered the possession of the premises. The Respondent No.1 later wrote to the Police Commissioner on 2nd January, 1998 withdrawing his letter addressed to him dated 29.12.1997. Thereafter again by letter dated 4.1.1998 the Respondent No.1 withdrew his letter dated 2.1.1998. We shall refer to the contents of the letters later.

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The application filed by Respondent No.1 on 12.2.1998 for recalling the compromise decree of 12.1.1998 recited the fact that on 27.12.1997 the Special Officer with a gang of anti social elements engaged by defendant Nos. 3 to 17, accompanied by police force, raided the business premises of the plaintiff, destroyed his machinery, papers, tools etc. and started demolishing the structure occupied by Respondent No.1. Thus Respondent No.1 suffered a loss of about Rs. 50 lacs. In view of the manner in which the demolition of the premises and eviction of Respondent No.1 was carried out, the Respondent No.1 felt so threatened by the anti social elements that he signed whatever

papers were placed before him, and under duress and coercion he mechanically consented to withdraw the suit on 12.1.1998. It is admitted by Respondent No.1 that the terms of settlement were signed on 29.12.1997 under duress and coercion. It was not signed with free will as it was under threat. In these circumstances it was prayed that he should be permitted to proceed with the suit and the order dated 12.1.1998 decreeing the suit in terms of the settlement should be recalled.

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As noticed earlier this application was rejected by a learned Judge of the High Court on 24th March, 1998. The order rejecting the application was not appealed from but an appeal was filed against the consent decree passed on 12.1.1998.

In the appeal two questions arose for consideration namely, whether there was sufficient explanation for condonation of delay in filing the appeal, and secondly, whether the appeal was maintainable. The second question arose on account of the fact that against a consent decree there could be no appeal. Obviously, therefore, the High Court had to first record its finding as to whether the consent decree was a valid consent decree, or whether the same was vitiated on account of duress and coercion exercised by the appellant. If the High Court came to the conclusion that the compromise was vitiated by duress and coercion, there could be no objection to entertain the appeal on merit.

The High Court has condoned the delay in filing the appeal by its order dated 3rd May, 2002. Though the High Court was not really satisfied with the explanation furnished by Respondent No.1 yet it found some explanation

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for the delay. Keeping in view the fact that the allegations in the case were of serious nature, the Court was of the view that the delay should be condoned and the matter investigated. We are also not satisfied that any real and satisfactory explanation was furnished for condoning the delay of about 7 months (122 days) in preferring the appeal. No doubt against the consent decree passed on 12th January, 1998 an application for recalling the decree was filed on 12.2.1998 which was rejected on 24.3.1998. But, there is hardly any explanation for the delay of about 5 months thereafter in preferring the appeal. However, since the High Court has exercised its discretion and condoned the delay primarily for the reason that the facts alleged by Respondent No.1, were of such nature that in the interest of justice the matter required to be investigated, we do not wish to interfere with that order.

The question then arises as to whether the consent of Respondent No.1 was vitiated by duress and/or coercion.

We have carefully perused the judgment and order of the High Court. We also requested the counsel appearing

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for Respondent No.1 to show us a clear finding in the judgment that the consent given by Respondent No.1 was vitiated by duress and/or coercion. The learned Counsel was unable to point out to us a clear finding in this regard, but reading the observations of the learned Judges in different paragraphs of the order he submitted that the High Court after considering the plea raised by Respondent No.1 before it has concluded that they must be accepted. There is no real discussion of any material on record to conclude that in fact on account of duress and coercion the Respondent No.1 was compelled to sign the consent terms. What appears to have impressed the High Court is that the record

disclosed that apart from a sum of Rs.7.50 lacs paid by cheques, a sum of Rs.7.50 lacs was also paid to the Respondent No.1 by cash. This, according to the High Court was a very "disturbing" feature of the case and in view of this fact the consent decree could not be permitted to remain on the records of the Court as that "would be a sad perversion of the truth", "and a permission to allow the parties to pervert the truth with the help of sacrosanct Court records". It was observed that although a

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Court has jurisdiction to record a compromise, which adjusts only a part of the suit, yet, it has no jurisdiction to record only a part of the compromise which ends or adjusts the suit before it, wholly or partly. This reasoning of the High Court does not appeal to us. It is no doubt true that the records disclose that the Respondent No.1 had also received a sum of Rs.7.50 lacs in cash apart from payment of Rs.7.50 lacs by cheques. The parties agreed not to make this a term of the compromise, and this payment was made perhaps on the basis of mutual faith. But the finding cannot be read as a finding that the consent was vitiated by duress or coercion.

The other circumstance pointed out by the High Court is that the Respondent No.1 questioned his eviction alleging that the delivery of possession by him was not peaceful, but obtained by intervention of the police as well as hooligans on the basis of an order which was obtained just before the Court closed for the Christmas vacation. Though the High Court has recorded the plea of the respondent No.1, we find no finding in the judgment to the effect that the material on record established that Respondent No.1 was evicted from the premises by use of

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force or any other illegal means. In the absence of any such finding recorded by the High Court, we felt compelled to consider the material on record. To us it appears that all the circumstances that appear on record go against the case set up by the Respondent No.1. We may discuss them briefly hereafter.

According to Mr. Ranjan Mukherjee, counsel for Respondent No.1 the alleged occurrence in which Respondent No.1 was forcibly evicted took place on 24th December, 1997 though the case of the Respondent No.1 in the High Court was that he was evicted on 27.12.1997. The consent terms were finalised on 29.12.1997 which were signed by all the parties concerned. On the application of the parties a consent decree was passed on 12.1.1998. If the Respondent No.1 was forcibly evicted in an illegal manner on 24.12.1997, what steps did he take to report the matter to the higher authorities, complaining to them that he had been forcibly evicted and made to sign certain papers? The first document which is on record is a letter written by Respondent No.1 to the Commissioner of Police, Calcutta dated 2nd January, 1998. Though this letter was written almost a week after the alleged occurrence on 24.12.1997

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it is conspicuous for its failure to mention two important facts, namely, that police force was present when the eviction took place, and secondly, Respondent No.1 was forced to sign certain documents. This letter of 2nd January, 1998 was however withdrawn by the Respondent No.1 on 4.1.1998 stating that under some misunderstanding that letter had been written. What is also significant is the fact that the letter of 2nd January, 1998 was written much after alleged written settlement

recorded on 29.12.1997. Even if we assume for a moment that on 24.12.1997 Respondent No.1 was forcibly evicted, there appears no justification for him to have signed the settlement terms on 29.12.1997. As noticed earlier between these two dates, Respondent No.1 made no complaint to anyone about the manner in which he was evicted or about his having been forced to sign certain documents.

Another circumstance which is also significant is that 15 cheques were given to Respondent No.1 totalling a sum of Rs.7.50 lacs on 29.12.1997. He deposited all the cheques in his account for encashment and barring 5 cheques the rest were encashed. Those 5 dishonoured cheques were substituted by pay orders issued by the Bank

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which were deposited and encashed by Respondent No.1. Thus all the cheques given to Respondent No.1 on 29.12.1997 were encashed by him. This conduct of Respondent No.1 is wholly inconsistent with the stand that he had been forcibly evicted from the premises on 24.12.1997, and that the settlement was recorded on 29.12.1997 under duress and coercion. If we read the plea of Respondent No.1 closely, the settlement was got signed on the date on which the eviction took place, and if that be so, the settlement terms must have been signed on the same date on which Respondent No.1 was evicted. Surprisingly, the date of the settlement is 29.12.1997 and that is not disputed by Respondent No.1. Moreover, if the cheques were given to Respondent No.1 on 29.12.1997 he would not have encashed those cheques if he was compelled to sign the consent terms and the cheques were forced upon him. In normal course, what was expected of him was to move the Court or the police authorities for appropriate action, which he failed to do promptly. The fact that he encashed those cheques is itself a proof of the fact that he held himself bound by the terms of settlement. It appears that only later he changed his mind and gave a twist to the

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happenings that took place on 24.12.1997 or 27.12.1997 or 29.12.1997. The failure of Respondent No.1 to take prompt action after he was dispossessed on 24.12.1997, the fact that he signed the terms of settlement on 29.12.1997, coupled with the fact that he encashed the cheques given to him on 29.12.1997 almost conclusively establish that Respondent No.1 held himself bound by the consent terms and acted in accordance therewith. His failure to report the incident to the concerned authorities promptly leads us to hold that no such incident took place in the manner alleged, and the Respondent No.1 voluntarily surrendered possession in terms of the settlement reached between the parties.

We are, therefore, of the view that the High Court was not justified in setting aside the consent decree on a finding that the consent of Respondent No.1 was vitiated by duress and coercion. Accordingly, we allow the appeal, set aside the impugned judgment and order of the High Court dated 16th August, 2002 and hold that the consent decree passed on 12.1.1998 is a consent decree valid in law.

Civil Appeal is allowed.

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Pursuant to the Order of this Court dated 28th July, 2003, Counsel for the Respondent No.1 states that the sum of Rs.7.50 lacs was deposited with the Registrar, Calcutta High Court and that in view of the dismissal of the appeal he may be permitted to withdraw the same. The prayer is not opposed. We direct the Registrar of Calcutta High Court to refund the amount to Respondent No.1 on application being made. Any interest earned on the said amount, if kept in deposit, shall also be paid to Respondent No.1.

SPECIAL LEAVE PETITION(C) 12016 OF 2002

The Special Leave Petition which is preferred against the order of the High Court dated 3rd May, 2002 condoning the delay is rejected as we have held in our judgment that we do not wish to interfere with the exercise of discretion by the High Court in condoning the delay.

JUDIS