

PETITIONER:
DHIRENDRA KUMAR GARG AND ORS.

Vs.

RESPONDENT:
SMT. SUGANDHI BAI JAIN & ORS.

DATE OF JUDGMENT 23/09/1988

BENCH:
SHARMA, L.M. (J)
BENCH:
SHARMA, L.M. (J)
PATHAK, R.S. (CJ)
KANIA, M.H.

CITATION:
1989 AIR 147 1988 SCR Supl. (3) 196
1989 SCC (1) 85 JT 1988 (3) 778
1988 SCALE (2) 1539

ACT:

Code of Civil Procedure, 1908: 0.32. Rule 7--Compromise decree--Minor represented by guardian--Application for leave Court to see that compromise was not one sided.

HEADNOTE:

The husband of respondent No. 1 sought eviction of the appellants-tenants. The suit was decreed in his favour along with money decree for arrears of rent and damages. During the pendency of the appeal the plaintiff died and his legal representatives were substituted as respondents. Some of his children who were minor were placed under the guardianship of respondent No. 1. Consequent to a petition by the parties a compromise decree was passed setting aside the entire decree. The respondents thereafter challenged the compromise decree. The trial court dismissed the suit. On appeal the first appellate court reversed the decision. The High Court dismissed the appeal, preferred by the appellants.

In this appeal by special leave it was contended for the appellants that as a consideration for the compromise they were giving up their right to claim costs which might have been decreed by the appellate court in case of their success on merits. The respondents' case was that the guardian of the minors was guilty of gross negligence in entering into the compromise by failing to take into consideration the interest of the minors.

Dismissing the appeal,

HELD: The decision of the courts below does not call for any interference. The compromise decree is fit to be set aside on the ground of gross negligence. [199F; 199C]

The compromise was one sided whereby the minors were giving up their right under the trial court's decree both in respect of eviction as well as arrears of rent and damages. In view of the provisions of Order XXXII, Rule 7 of the Code of Civil Procedure it was essential for the Court to have

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granted permission to the guardian to enter into the compromise only after considering all the relevant circumstances. [198F; 198C-D]

The earlier civil appeal is restored to its file before the Additional District Judge for disposal in accordance with law. [199G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 350 of 1977.

From the Judgment and Order dated 19.10.1976 of the Madhya Pradesh High Court in Second Appeal No. 385 of 1974.

S.N. Kacker and Shri Narain for the Appellants.

Harish N. Salve, Mrs. P.S. Shroff, S.S. Shroff and S.A. Shroff for the Respondents.

The Judgment of the Court was delivered by

SHARMA, J. This appeal by special leave arises out of a suit filed by the respondent for setting aside the decree in an earlier suit being Suit No. 61-A of 1955 instituted by Dammu Lal, husband of the respondent No. 1 and father of respondent No. 2 to 12, for eviction of the appellants from a building in Raipur which is in their occupation as tenants. Dammu Lal also prayed for a decree for arrears of rent and damages. The prayer for eviction was allowed along with a money decree for Rs.260 as arrears of rent and Rs.137 as damages the tenants filed an appeal which was numbered as Civil Appeal No 7-A of 1965. During the pendency of the appeal Dammu Lal died and his legal representatives were substituted as respondents. Some of his children were minor who were placed under the guardianship- of their mother Smt. Sugandhibai, respondent No. 1. An application purporting to be a compromise petition on behalf of all the parties was filed before the court which was recorded and the suit was disposed of in its terms by the appellate court on 23.4.1966. According to the compromise the entire decree was set aside and the suit was dismissed, with the parties bearing their own costs. The respondents have challenged the compromise decree by the present suit.

2. The trial court dismissed the suit. On appeal the first appellate court reversed the decision, set aside the compromise decree and directed the Civil Appel No. 7-A of 1965 to be disposed of afresh¹ in accordance with law. By

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the impugned judgment the High Court dismissed the second appeal preferred by the appellants.

3. Mr. Kacker, the learned counsel appearing in support of the appeal, placed the facts relevant to the several questions raised by the parties and decided by the courts below and contended that the decision of the High Court is illegal on several grounds. We do not consider it necessary to go into all the questions disposed of by the courts below as the respondents are, in our view, entitled to succeed in the suit on one of the several points urged on their behalf which is discussed below.

4. As has been stated earlier, some of the party-respondents in Civil Appeal No. 7-A of 1965 including Kamal Kumar, one of the sons of Dammu Lal, were minor and were represented by Mr. Makasdar, Advocate. In view of the provisions of Order XXXII, Rule 7 of the Code of Civil Procedure, it was essential for the court to have granted permission to the guardian to enter into the compromise only after considering all the relevant circumstances. From the records of the case it appears that the court before recording the compromise sanctioned leave in the following words:

"As the appellant is prepared to forego the entire cost

of the proceedings, it is in the interest of the minors and benefit of the minors that this appeal be compromised. The minor-respondents are represented by senior counsel and his opinion is that it will be in the interest of the minor to compromise the appeal. In view of this, I have no reason to disagree with him. I am satisfied that the compromise is in the interest of the minors, hence, I allow the application and grant the necessary permission under Order 32 Rule 7 C.P.C. to the learned counsel of the minor respondents to compromise the appeal."

On the face of it, the compromise was one sided whereby the minors were giving up their right under the trial court's decree both in respect to eviction as well as arrears of rent and damages. It is said that as a consideration for the compromise the appellants were giving up their right to claim costs which might have been decreed by the appellate court in case of their success c.n merits. According to the respondents' case which has been accepted by the two courts below the guardian of the minors was guilty of gross negligence in entering into the compromise by failing to take into account the interest of the minors. On behalf of the appellants it has been contended

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that during the pendency of Civil Appeal No. 7-A of 1965 the M.P. Accommodation Control Act was passed and the decree of the trial court was likely to be set aside. In that view, it is urged, the minor's guardian through Mr. Makasdar acted rightly in settling the dispute and thus saving a decree for costs which could have been passed against them.

5. According to the further case of the respondents the relevant circumstances and the terms of the compromise were never explained to the respondent No. 1 and Mr. Mokasdar asked for the court's permission to enter into the compromise on behalf of the minor without any instruction from their guardian in this regard. It is also urged that the language of the order whereby the court granted its permission indicates that the court did not apply its mind independently. However, we do not consider it necessary to decide these points as also several others raised by the parties as in our view the compromise decree must be set aside on the ground of gross negligence.

6. It has not been suggested on behalf of the appellants in the present case that there was any ground available to them to successfully challenge the money decree passed in the earlier suit. Mr. Kacker also has not suggested any possible ground against that part of the decree. He, however, said that the decree was not for a substantial amount as it was for less than Rs.400, and should therefore be ignored for the purposes of this case. The question as to whether the amount was substantial or not has to be judged in the light of the circumstances in the case. Here the building in question was a small one fetching a small amount of rent and a sum of Rs.400 could not be ignored as inconsequential or unsubstantial. It has also to be remembered that even the cost in such a suit which was the sole consideration for the compromise could not be a large sum. Besides, neither the minors advocate nor the court appears to have really considered the impact of the rent Act on the fate of the appeal which came in force during the pendency of the litigation. We, therefore, hold that the compromise decree is fit to be set aside, and the decision of the court below does not call for any interference. Accordingly Civil Appeal No. 7-A of 1965 is restored to its file before the II Additional District Judge, Raipur and will now be disposed of in accordance with law. The appeal

is dismissed with costs payable to respondents No. I to 12.
P. S . S . Appeal dismissed .

JUDIS