



2024 INSC 970

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 14328/2024
@ SLP (CIVIL) NO. 27723 OF 2024

NAVRATAN LAL SHARMA

...APPELLANT(S)

VERSUS

RADHA MOHAN SHARMA & ORS.

...RESPONDENT(S)

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

1. Leave granted.
2. The appellant initially filed a suit for declaration and injunction, which was dismissed by the Trial Court. The appellant then filed a first appeal. During its pendency, the parties reached a compromise, agreeing to dispose of the appeal based on its terms. On 14.07.2022, the High Court decided the appellant's application under Order 23, Rule 3 of the Code of Civil Procedure, 1908¹ and disposed of the first appeal in terms of the compromise. However, when the respondent failed to comply with the compromise terms, the appellant filed an application to restore the appeal.

¹ Hereinafter "CPC".

Unfortunately, this application was dismissed by the order impugned before us, citing that the High Court had not granted liberty for restoration of the appeal while recording the compromise.

3. After careful consideration of the statutory framework and Order 23, Rules 3 and 3A, as informed by relevant judicial precedents, we have allowed the appeal. We have directed that, in such circumstances, restoration is the sole remedy, which the aggrieved party may exercise as a statutory right.

4. The short facts are that the appellant is the owner of the suit property. He filed a suit against the respondents for cancellation of the power of attorney dated 19.07.2010 and 27.07.2010, sale deeds dated 31.08.2010 and 15.09.2010, and grant of permanent and mandatory injunction on the ground that respondent no. 1 forged the abovementioned power of attorney and subsequently entered into the abovementioned sale deeds for the suit property in favour of respondent no. 2. The Trial Court dismissed the suit on 17.02.2014, and the appellant preferred a first appeal before the Rajasthan High Court.

5. During the pendency of the first appeal, the appellant and respondent no. 2 entered into a compromise, recorded in deed

dated 18.05.2022 and corrigendum compromise dated 08.07.2022. The compromise contemplated development of the suit property, as per which certain amounts were to be paid by respondent no. 2 to the appellant. Paras 4 and 7 of the compromise deed dated 18.05.2022 are relevant and extracted hereinbelow for ready reference:

“(4) That there is a first appeal no. between the parties in the Honourable State High Court. 210/2014 is pending. The said compromise will be presented in other cases and both the parties will be able to get them resolved on the basis of the compromise, but if the terms of the compromise are violated then the second party will have the right to get the said appeal number 210/2014 reinstated by submitting an application.

(7) That the first party issued a check dated 18/5/22 to the second party, check no. 160711 amount of Rs 11,00,000/- has been given today itself, payment can be taken by presenting the check in the bank on the date written in it. After giving the lease of the developed land, an amount equal to the value of the said amount will be transferred to Khasra No. Out of 11, the second party will give it to the first party. If any check is dishonoured, the agreement will be considered void.”

6. The parties filed an application under Order 23, Rule 3 of the CPC for disposal of the first appeal as per the compromise, wherein it was stated that respondent no. 1 does not have any objection to the compromise and that the appellant can file for restoration of the appeal if the agreed payment is not completed and the cheques are dishonoured.

7. By order dated 14.07.2022, the High Court disposed of the first appeal by taking the compromise dated 18.05.2022 and the

corrigendum compromise dated 08.07.2022 on record and making them a part of its order. However, it also held that the parties do not have liberty to get the first appeal restored. The relevant portion of the order reads:

“5. This Court, without entering into the merits of appeal but without giving any liberty to get restored the first appeal, is of considered opinion that when both parties have entered into the terms of compromise and have agreed to abide by the terms of compromise, this appeal deserves to be disposed of accordingly.

6. Hence the compromise dated 18.05.2022 along with corrigendum compromise dated 08.07.2022 is taken on record and the first appeal is disposed of in terms of compromise.

7. The compromise dated 18.05.2022 along with corrigendum compromise dated 08.07.2022 shall be treated as part of this order.”
(emphasis supplied)

8. When the cheques issued by respondent no. 2, said to be in furtherance of the compromise were dishonoured, the appellant moved the High Court for restoration of the appeal alleging fraud and illegal interference with his possession and attempts to get the land converted without paying the agreed amounts. By the order impugned before us, the High Court dismissed the application on the only ground that in its order dated 14.07.2022, the Court clearly recorded that the parties were not given liberty to restore the appeal. The High Court observed that since the order dated 14.07.2022 was a consensual order and the parties were aware that there was no liberty to get the first appeal restored, the

application for restoration was not entertainable even if the compromise is not acted upon. The short order of the High Court dated 19.10.2023 is extracted hereinbelow:

“1. Instant misc. application has been filed by the appellant-plaintiff seeking to restore S.B. Civil First Appeal NO.210/2014 by recalling the order dated 14.07.2022 whereby and whereunder the first appeal was disposed of in terms of compromise dated 18.05.2022 arrived at between parties.

2. It has been stated in the application that cheques issued by respondents in terms of the compromise have been dishonoured and respondents have not adhered to the terms of the compromise, hence the first appeal be restored to be heard on merits.

3. By perusal of the order dated 14.07.2022, more particularly para No.5, it stands clear that this Court while disposing of the first appeal in terms of the compromise has clearly observed that parties would be not at liberty to get restore this first appeal. The order dated 14.07.2022 is consensual order and both parties were well aware that no liberty to restore the first appeal is available, even though the compromise may or may not be acted upon. Therefore, the application for restoration of first appeal is not entertainable.

4. Thus, in view of above, the prayer for restoration of the first appeal is uncalled for. In case, the terms of the compromise dated 18.05.2022 have not been complied with, the applicant-plaintiff is at liberty to take appropriate steps in accordance with law.

5. With aforesaid observations, without recalling of the order dated 14.07.2022, the misc. application stands disposed of.

6. Stay application and any other pending application, if any, stand disposed of.”

9. We have heard the learned counsels for the parties.

10. The relevant provisions under the CPC that govern compromise decrees are contained in Order 23, Rules 3 and 3A, which are extracted hereunder:

“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.

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.”*

11. This Court in *Banwari Lal v. Chando Devi*² has laid down the law on the disposal of a proceeding in accordance with a compromise between the parties and on recall of a compromise decree. It held that under Order 23, Rule 3, the Court must be satisfied upon applying judicial mind that the agreement between the parties is lawful before accepting the same and disposing the suit. Further, the proviso and the Explanation to Order 23, Rule 3 mandate that the court must “decide the question” of whether an adjustment or satisfaction has been arrived at, and it is clarified that void and voidable agreements under the Indian Contract Act, 1872³ shall be deemed to be not lawful.⁴ Upon such reading of the provision, it held that the court recording the compromise can examine the legality of the agreement, in accordance with the

² (1993) 1 SCC 581.

³ Hereinafter “the Contract Act”.

⁴ *Banwari Lal* (supra), paras 11-13.

provisions of the Contract Act, even after the compromise decree is passed and when a party moves an application for recall.⁵

12. The law on the issue is summarised in *Pushpa Devi Bhagat v. Rajinder Singh*⁶. In this case, the Court also took note of Section 96(3) of the CPC⁷ and the deletion of Order 43, Rule 1(m) of the CPC by way of an amendment in 1976, as well as Order 23, Rule 3A. The consequence of these is that an appeal against a consent decree and an order recording (or refusing to record) a compromise is not maintainable, nor can a fresh suit be filed for setting aside such decree. Hence, the only remedy available to the aggrieved party is to approach the court that recorded the compromise under the proviso to Order 23, Rule 3. The Court held:

“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.

⁵ *ibid*, para 14.

⁶ (2006) 5 SCC 566.

⁷ Section 96(3) of the CPC reads:

“96. Appeal from original decree.—

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.”

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 supplied)

13. In the present case, the appellant has alleged fraud by the respondents in his recall application, which he bears the burden to prove.⁸ The Explanation to Order 23, Rule 3 clearly states that void and voidable agreements under the Contract Act shall not be deemed to be lawful. By alleging fraud in his recall application, the appellant is effectively impugning the legality of the compromise as proving the same would render the agreement voidable under the Contract Act.⁹ When the court disposes of a proceeding pursuant to a compromise under Order 23, Rule 3, it bears the duty to examine this issue and be satisfied that the agreement or compromise is lawful. The proviso explicitly obligates the court that entertains the petition of compromise to determine this issue, and as per the law laid down by this Court in *Banwari Lal* (supra),

⁸ *Shanti Budhiya Vesta Patel v. Nirmala Jayprakash Tiwari*, (2010) 5 SCC 104; *K. Srinivasappa v. M. Mallamma*, (2022) 17 SCC 460.

⁹ Section 19 of the Contract Act provides that when consent to an agreement is caused by fraud, it is voidable at the option of the party whose consent was so caused.

this issue can be agitated by way of a recall application even after the compromise decree has been passed.

14. By the impugned order, the High Court dismissed the application solely on the ground that the order dated 14.07.2022 recording the compromise does not grant liberty to restore the appeal. We are of the opinion that this is not the correct approach, as it defeats the statutory right and remedy available to the appellant under the CPC. This Court in *Pushpa Devi Bhagat* (supra), as well as several other cases,¹⁰ has held that only the court that entertains the petition of compromise can determine its legality, at the time of recording the compromise or when it is questioned by way of a recall application. No other remedy is available to the party who is aggrieved by the compromise decree as an appeal and fresh suit are not maintainable under the CPC.

15. In view of this legal position, the High Court was not correct in curtailing the statutory remedy available to the appellant in the first place.¹¹ In fact, when there is a statutory remedy available to a litigant, there is no question of a court granting liberty to avail of such remedy as it remains open to the party to work out his

¹⁰ *R. Rajanna v. S.R. Venkataswamy*, (2014) 15 SCC 471, para 11; *Triloki Nath Singh v. Anirudh Singh*, (2020) 6 SCC 629, paras 17 and 18; *R. Janakiammal v. S.K. Kumaraswamy*, (2021) 9 SCC 114; *Sree Surya Developers & Promoters v. N. Sailesh Prasad*, (2022) 5 SCC 736, para 9; *Basavaraj v. Indira*, (2024) 3 SCC 705, para 9.

¹¹ See *Bhanu Kumar Jain v. Archana Kumar*, (2005) 1 SCC 787, paras 28 and 36.

remedies in accordance with law.¹² Therefore, there was no occasion for the court to deny liberty to file for restoration by its order dated 14.07.2022 and the consequent dismissal of the recall application by the impugned order on this ground alone does not arise. Further, as a matter of public policy, courts must not curtail statutorily provisioned remedial mechanisms available to parties.

16. It is also relevant that para 4 of the compromise deed dated 18.05.2022 recognises the appellant's right to file for restoration of appeal in case of non-compliance. Further, para 7 stipulates that the compromise will be considered void in case of non-payment. Reading these clauses together, it is clear that the compromise deed itself recognises the parties' right to approach the court to question its validity in certain circumstances. These clauses are in line with the public policy consideration of access to justice reflected in Section 28 of the Contract Act that stipulates that agreements which restrain a party from enforcing his rights through legal remedies are void.

17. In this view of the matter, we allow the appeal, set aside the impugned order dated 19.10.2023, and remand the matter to the High Court to decide the application for recall on its own merits.

¹² See *Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers*, (2003) 6 SCC 659, para 36.

Needless to say that we have not expressed any opinion on the merits of the matter.

18. No order as to costs. Pending applications, if any, stand disposed of.

.....**J.**
[PAMIDIGHANTAM SRI NARASIMHA]

.....**J.**
[MANOJ MISRA]

NEW DELHI;
DECEMBER 12, 2024.