
(1951) 01 CAL CK 0043
In the Calcutta High Court
Case No : Civil Suit No. 2792 of 1950

Harbans Singh Chauhan

APPELLANT

Vs

Bawa Singh Chauhan and Others

RESPONDENT

Date of Decision : 25-01-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3
Contract Act, 1872 — Section 19

Citation : AIR 1952 Cal 73

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Sridhar Chatterjee, for the Appellant; M. Hazra, for the Respondent

Final Decision : Allowed

Judgement

Sinha, J.—This is an application for recording certain terms of settlement arrived at between the plff. & deft. 1, on 22-7-1950, settling this suit as between them, on certain terms. The terms are contained in a document in writing signed by both the plff. & deft. 1.

2. This suit was filed on or about 6-7-1950, for a declaration that the business mentioned in the plaint was a partnership business, for a declaration that the Yugoslavia Cement business & sole agency were partnership business, and/or carried on for the benefit of the partnership, for a declaration that the business carried on by the limited companies mentioned in the plaint were also partnership business and/or carried on for the benefit of the partnership, for dissolution of the partnership, accounts, injunction & for other reliefs.

3. It appears that some time in May 1950, the deft. 1 instituted criminal proceedings against the plff. before the Additional Chief Presidency Magistrate, Calcutta, u/s 420, Penal Code. The complaint was made on the ground that deft. 1 had paid the plff. a sum of Rs. 50,000/- by cheque, against a cheque issued, by the plff. for the identical sum of Rs. 50,000/-. The cheque issued by deft, 1

was cashed, but the plff's. cheque was dishonoured. It further appears that bail was granted to the plff. for Rs. 10,000/-, which was subsequently increased to Rs. 25,000/-.

4. On July 21st, certain terms were arrived at between the parties & a receipt was given by the plff. for Rs. 40,000/-. The parties, however, altered the terms arrived at on July 21st, on July 22nd, & on 22-7-1950, Messrs. T. Banerjee & Co. forwarded what is described as a "true copy of the terms of settlement signed by the parties" to Mr. Ahad, Solicitor for deft. 1. What is called a "true copy" appears to be a copy of the terms containing the original signatures of the parties. There must have been more than one copy with the original signatures of the parties.

5. In the suit, an application was made on or about 11-7-1950, & an interim injunction has been passed. Thereafter, the motion appeared in the list for directions, & necessary directions were given for filing of affidavits. The suit & the motion both appeared in the list on several occasions, when attorneys for both the parties informed the Court that the suit & the motion had been settled & the terms of settlement would be filed in due course. Upon the terms having been arrived at, the criminal proceedings were withdrawn in terms thereof.

6. On or about 23-1-1950, Mr. Ahad on behalf of deft. 1 wrote to the Registrar to list the suit and the motion for settlement. But the solicitors for the plff. informed the Registrar that there had been no concluded terms of settlement. Thereafter, this application was taken out for recording the terms of settlement.

7. The criminal proceedings, as stated before, were u/s 420, Penal Code, which is a compoundable offence, & there is nothing against policy in agreeing to withdraw a complaint of this description.

8. The plff. appears & opposes this application on the ground that although he had executed the terms, he was compelled to subscribe his signature thereto by exercise of undue influence, threats & pressure of criminal prosecution. He admits that he not only executed the terms but gave instructions to his attorneys to send a copy to the attorney for deft. 1 & to request learned counsel to file the terms. He says that the alleged terms were signed "in terrorism & fear." Learned counsel on behalf of the plaintiff says that his client-had no alternative" but to sign the terms, regard being had to the fact that a criminal action was hanging on his client's head, that there was a heavy amount of bail, that his claim in the partnership business was not being admitted & he was put to great trouble. It is, however, admitted that the terms were signed, that the criminal prosecution was withdrawn & that out of the Rs. 50,000/- received Rs. 10,000/- was paid back. It is quite clear that the terms of settlement had been arrived at & acted upon.

9. Under the provisions of Rule 3 of Order 23 the Court must order a compromise to be recorded where it is proved to its satisfaction that a suit had been adjusted wholly in or part by any "lawful agreement or compromise." Fraud, undue influence or coercion makes a contract voidable & not void. The question arises whether, in an application under Order 23, Rule 3 the Court must consider the

contract as not a lawful agreement or compromise because one party seeks to avoid it on the ground of fraud, undue influence or coercion. In "Qadri Jahan Begum v. Fazal Ahmad" 50 All. 748, it was held by Kendall J. & Sulaiman J., that a contract, which was brought about either by undue influence, misrepresentation or fraud (under Section 19A, Contract Act) was merely voidable & not absolutely illegal or unlawful, as was necessary if it was to be rejected under Order 23, Rule 3. Kendall, J. stated as follows:

"We think that the word "lawful" in Order 23, Rule 3 refers to agreement which in their very terms or nature are not "unlawful", & may, therefore, include agreements which are voidable at the option of one of the parties thereto, because they have been brought about by undue influence, coercion or fraud."

The learned Judge held that such questions could not be agitated in an application under Order 23, Rule 3, but should form the subject matter of a separate suit. This decision was followed in "Husain Yar Beg v. Radhakishan" 57 All. 426. Niamatullah J. stated as follows:

"It is highly inexpedient that questions of the character raised in the present case should be enquired into in a miscellaneous proceeding started by an application under Order 23, Rule 3, C. P. C. If such an enquiry is allowed, all the various stages of a regular suit will have to be gone through in disposing of that application. For these reasons we do not think that a proceeding of the nature* above referred to is within the purview of Order 23, Rule 3, & that a party alleging fraud cannot be allowed to avoid the compromise admittedly executed by it in proceedings started by an application under Order 23, Rule 3, Civ. P. C."

In both these cases it was conceded that the Court had, in an appropriate case, power to interfere u/s 151 of the Code. In "The Western Electric Company, Limited Vs. Kailas Chand, , Kania J. followed these decisions save & except that he wished to go a little further & held that the term "lawful agreement" excluded not only unlawful agreements, the object or consideration for which was unlawful as defined in the Contract Act, but all agreements which were-on the face of them void. The learned Judge-agreed that the word "lawful" could not be construed as wide enough to include an enquiry as to" whether the agreement was voidable or not.

10. I fully agree with the statement of law as stated by Kania J.

11. It is quite clear that the applicant entered into the terms, got rid of the criminal proceedings, & is now attempting to resile from the contract.

12. I have also before me a certified copy of the application made before the Additional Chief Presidency Magistrate, Calcutta, signed by the plff. & deft. 1 on 22-7-1950, which runs as follows:

"All disputes between the complainant & the accused having been settled amicably, the complainant in the above case prays that your Honour will be pleased to grant the necessary permission: to withdraw the above case."

It appears also that a copy of these terms of settlement dated 22-7-1950, was placed before the Magistrate, who ultimately granted leave & the proceedings were withdrawn.

13. In the circumstances the applicant has shown to my satisfaction that the suit has been adjusted by a lawful compromise. There will be an order in terms of Clause (a) of the notice, it being made clear that the suit is adjusted & a decree passed only between the parties to the settlement, namely, the plff. & deft. 1. The certified copies of the criminal proceedings, which were looked into by me with consent of both the parties, as also a copy of the receipt dated 21-7-1950, may be kept on the file. The plff. must pay the costs of this application.