
(2013) 03 AP CK 0064

In the Andhra Pradesh High Court

Case No : Second Appeal No. 285 of 2008

Hind Re-Rolling Industries and Others

APPELLANT

Vs

Muktar Steels Private Limited and Others

RESPONDENT

Date of Decision : 07-03-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, Order 23 Rule 3A, Order 43 Rule 1, Order 43 Rule 1(m), Order 43 Rule 1A

Citation : (2013) 4 ALD 500 : (2013) 5 ALT 272

Hon'ble Judges : Samudrala Govinda Rajulu, J

Bench : Single Bench

Advocate : A. Narasimha Reddy, for the Appellant; K. Sankaraiah, for the Respondent

Final Decision : Dismissed

Judgement

Samudrala Govinda Rajulu, J.—Unsuccessful defendant Nos. 1 and 3 to 6 are the appellants in this second appeal. Subject matter of this second appeal is recording of memorandum of compromise between the plaintiff and the defendants 1 to 6 as per Ex. A.9 (Photostat copy of which is marked as Ex. A.14) as modified by Ex. A.8 modified agreement. When the defendants disputed memorandum of compromise as well as modified agreement, about their correctness and validity, the trial Court made appropriate enquiry on the said points and found Exs. A.9 and A.8 to be true and valid; and accordingly recorded memorandum of compromise covered by Exs. A.9 and A.8 and passed compromise decree in terms thereof. On appeal by the defendants 1 and 3 to 6, the lower appellate Court confirmed the said compromise decree; and it led the defendants 1 and 3 to 6 to this second appeal. While admitting this second appeal on 11.04.2008, learned Judge of this Court passed the following order:

In view of the substantial question of law in the memorandum of grounds of appeal, ADMIT.

2. Memorandum of grounds of this second appeal gave 15 questions as

substantial questions of law. The learned Judge did not specify which of the said 15 questions is the substantial question of law.

Substantial questions of law mentioned in the memorandum of grounds of the second appeal are as follows:

1. Whether Ex. A.9 fits into the term "signed by the parties" as prescribed in Order 23 Rule 3?
2. Whether Ex. A.9 and A.14 are two distinct documents more particularly when the Ex. A.9 does not contain the signatures of the plaintiff?
3. Whether statements made by the defendant No. 4 in the sale deed ie., Ex. B.3, B.8, B.12 and Ex. B.22 to the effect that he is the absolute owner and proprietor of the assets of partnership company can take away the rights of other defendants?
4. Whether the finding recorded by the trial Court to the effect that plaintiff has been paying the rents is contrary to record?
5. Whether injunction is subsisting during the pendency of the suit?
6. Whether the trial Court was justified in recording a finding that defendant No. 4 is the sole owner of the defendant No. 1 firm ignoring the terms of compromise in Ex. A.9 and A.14 which formed basis for the decree?
7. Whether it was the duty of the defendant No. 6 to get her admitted signatures compared with her alleged signatures on Ex. A.9 and Ex. A.14?
8. Whether the appellate Court was justified in looking into Ex. A.14 when its original i.e. Ex. A.9 did not contain the signatures of plaintiff?
9. Whether the finding recorded by the appellate Court to the effect that Ex. A.9 contains the signatures of advocate of the plaintiff is contrary to record?
10. Whether the 4th defendant had any GPA to sign Ex. A.8 on behalf of D.3, D.5 and D.6?
11. Whether the appellate Court was justified in holding that the appeal against a consent/compromise decree is not maintainable in view of bar created u/s 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).
12. Whether the law laid down by the Supreme Court in AIR 2006 SC 2626 is contrary to Order 43 Rule 1A? if so, what is the effect of the law laid down by the Supreme Court?
13. Whether the trial Court is justified in decreeing the suit?
14. Whether the appellate Court justified in confirming judgment and decree of trial Court?

15. Whether the trial Court and appellate Court justified in recording finding which are contrary to evidence on record?

3. All the above so-called substantial questions of law are in the nature of issues in a suit or points in an appeal. Nos. 1 to 10 and 13 to 15 relate to questions of fact, which this Court may not be entertaining in this second appeal u/s 100 CPC. Only above question Nos. 11 and 12 are on points of law, which will be discussed herein.

4. The lower appellate Court held that the appeal against compromise decree is not maintainable. Sheet anchor of the appellant's counsel in this second appeal is Order XLIII Rule 1A C.P.C. The said rule reads as follows:

1A. Right to challenge non-appealable orders in appeal against decrees-(1) Where any order is made under this Code against a party and thereupon any judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced.

(2) In an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not, have been recorded.

5. It is contended by the appellant's counsel that in view of Sub-Rule (2) of Rule 1A of Order XLIII C.P.C. the prohibition for filing appeal against consent decree vide Section 96(3) C.P.C. cannot prevail Section 96(3) C.P.C. reads as follows:

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

6. According to the appellants, since order XLIII Rule 1A was inserted simultaneously while deleting Order XLIII Rule 1(m), it cannot be said that appeal against consent or compromise decree is not maintainable in view of Section 96(3) and Order XXIII Rule 3A C.P.C. The lower appellate Court came to the above conclusion on the basis of dictum of the Supreme Court in Pushpa Devi Bhagat V. Rajinder Singh AIR 2006 SC 2626 . According to the appellants, the said dictum of the Supreme Court is contrary to Order XLIII Rule 1A C.P.C. The Supreme Court held therein:

(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in Section 96(3) C.P.C.

(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) 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 3A.

(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 of Order 23.

7. The appellants' counsel placed reliance on Pandit Dhareshwarji's Ashram School Vs. Arya Pratinidhi Sabha and Another, of single Judge of this Court wherein this Court after considering Pushpa Devi Bhagat AIR 2006 SC 2626 (supra) of the Supreme Court observed:

19. As can be seen from the decision of the apex Court, Order 43 Rule 1A of the Code had not been considered, in the context of Section 96(3) of the Code, only the said decision had been delivered. Hence, the decision of the apex Court is distinguishable.

20. While interpreting the different provisions of the Code, the provisions are to be harmoniously constructed. Section 96(3) of the Code to be harmoniously read with Order 43 Rule 1A of the Code. In the event of any doubt, the same to be clarified by introducing appropriate Amendments to the relevant provisions of the Code if need be.

21. As already referred to supra, this Court is not inclined to express any opinion touching the merits and demerits of the matter.

8. While observing so, the Learned Single Judge of this Court came to the limited conclusion in that matter to the effect that as a compromise decree being a decree, regular appeal would lie and not a civil miscellaneous appeal and therefore, the said civil miscellaneous appeal was not maintainable. The Learned Judge did not express any opinion on the effect of Order XLIII Rule 1A on the prohibition/bar contained in Section 96(3) C.P.C. Order XLIII Rule 1A C.P.C. was introduced by the amending Act 104 of 1976 with effect from 01.02.1977. Section 96 including Sub-section (3) thereof has been in existence from the date of commencement of the Code of Civil Procedure, 1908. The said Code came into force on 01.01.1909, vide Section 1(2) C.P.C. In case it was intention of the Parliament to provide an appeal against a compromise decree or consent decree, then nothing prevented the Parliament from deleting Sub-section (3) from Section 96 C.P.C. in the year 1976 itself when vast and drastic amendments were made to the Code of Civil Procedure, 1908. Since it was not done and since Sub-Section (3) of Section 96 still remains in the statute book, the bar contained therein from filing an appeal against a decree with the consent of all the parties, continuous to be in force. Sub-Rule (2) of Rule 1A of Order XLIII does not make a provision for filing an appeal against a compromise decree or consent decree. The said Sub-rule only refers to an appeal against a decree passed in a suit, which decree may be after recording a compromise or after refusing to record a compromise. It is open to the appellant in such an appeal to contest the decree on the ground that the compromise should have been or should not have been recorded. It is only an enabling provision for the parties in such an appeal to put forward the ground. The said Sub-rule does not in so many words express any

contrary position from that of Section 96(3) C.P.C. Order XLIII Rule 1A(2) deals with a different fact situation mentioned therein and does not deal with right of a party to a consent decree to file an appeal against such decree. Therefore, Order XLIII Rule 1A(2) has no over riding effect on Section 96(3) C.P.C. Section 96(3) C.P.C. in unequivocal terms prohibits filing of an appeal against a decree with consent of parties.

9. In the case on hand, the decree under appeal is only a compromise decree or consent decree which was passed by the trial Court after making an enquiry under Order XXIII Rule 3 proviso C.P.C., after which enquiry the compromise under Exs. A-9 and A-8 were found to be true and correct.

10. Therefore, I find on the above substantial questions of law Nos. 11 and 12 that the lower appellate Court rightly came to the conclusion that the appeal against compromise decree or consent decree is not maintainable and that Order XLIII Rule 1A C.P.C. is not going to alter the dictum laid down by the Supreme Court in Pushpa Devi Bhagat (1 supra) on right of a party to question compromise decree or consent decree by way of an appeal.

11. The Courts below after making enquiry in which oral and documentary evidence was recorded, came to the conclusion that the compromise arrived at by the parties vide Ex. A-9 (Ex. A-14), is true and valid and that amendment of terms of compromise contained in Ex. A-8 signed by the counsel is valid and binding on all the parties in view of Pushpa Devi Bhagat (1 supra) of the Supreme Court. Hence, I find that the Courts below committed no error of law or error on facts which can be assailed in this second appeal u/s 100 C.P.C. In the result, the second appeal is dismissed with costs.