
(2004) 03 AP CK 0019
In the Andhra Pradesh High Court
Case No : SA No. 506 of 1999

Jaleel Ahmed Siddiqui

APPELLANT

Vs

Mohd. Mahmood Khan

RESPONDENT

Date of Decision : 23-03-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3

Citation : (2004) 4 ALD 520

Hon'ble Judges : Elipe Dharma Rao, J

Bench : Single Bench

Advocate : B.V.S. Sivarama Prasad, for the Appellant; P.V. Sanjeeva Rao, for the Respondent

Final Decision : Allowed

Judgement

Elipe Dharma Rao, J.—This second appeal is filed aggrieved by the judgment and decree, dated 16-4-1999, passed by the III Additional Chief Judge, City Civil Court, Hyderabad, dismissing the appeal in A.S. No. 86 of 1995 and also I.A. No. 685 of 1995, which was filed seeking to amend the written statement, confirming the judgment and decree, dated 30.1.1995, passed by the III Assistant Judge, City Civil Court, Hyderabad, in O.S. No. 2059 of 1986.

2. The appellant herein is the defendant and the respondent herein is the plaintiff in the suit.

3. The suit was filed for recovery of possession of plaint schedule property and for grant of mesne profits for the month of May, 1986, and also for future mesne profits from 1.6.1986 till the date of delivery of possession of the suit premises at Rs. 700/-per month.

4. The factual matrix in a narrow compass is that the plaintiff is the owner of plaint schedule property bearing Nos. 22-8-45/3 and 4, which is subsequently renumbered as 22-8-60/17, situated at Jamal Market, Chatta Bazar, Hyderabad. The construction of suit premises was completed in the year 1983 and the

defendant took the suit premises on monthly rent of Rs. 350/- i.e., Rs. 250/- towards rent and Rs. 100/- towards fixtures and fittings, excluding electricity consumption and water consumption charges and municipal tax, and executed a rental deed in favour of the plaintiff for a period of 11 months commencing from 1.6.1984 which expired on 30.4.1985 and thereafter defendant deemed to be a tenant on month-to-month basis on the same terms and conditions stipulated in the rental deed, dated 1.6.1984, and as per the said rental deed, the defendant has agreed to pay the rents on or before 5th of English calendar month and further the defendant is expected to pay municipal property tax, electricity and water consumption charges in respect of the leased out premises from inception of tenancy till the day of vacating and handing over possession of the said suit premises.

5. It is further case of the plaintiff that since the inception of tenancy, the defendant was irregular in payment of rents and was paying rents according to his whims and fancies, contrary to the terms and conditions of the rental deed. The cheques issued by the defendant towards rent were dishonoured. As per the terms of the lease deed, the defendant has agreed to pay Rs. 1,050/- towards security deposit free of interest, but has paid only an amount of Rs. 700/- and also failed to pay municipal tax, water and electricity consumption charges in spite of repeated demands of the plaintiff. He also stated that the defendant shall maintain the leased premises in good and usable condition and shall not have any rights to alter and undertake major repairs in the leased premises, but the defendant had violated the terms and conditions by providing a door on eastern side making an entrance to the adjacent property, which is also in his occupation, without the consent of plaintiff and he also constructed a over head water tank on roof of the leased premises. It is plaintiff's further case that he is residing in the rented house by paying huge rent and therefore he requires the premises leased to the defendant for his personal requirement. But, the defendant failed to vacate the suit premises in spite of promises. Therefore, the plaintiff got issued a legal notice, dated 11.3.1986, through his Advocate demanding payment of arrears of rent and delivery of vacant possession of the suit schedule premises by the end of 30.4.1986 by terminating the tenancy. If the defendant fails to vacate the premises by the said date, he is required to pay Rs. 700/- per month as mesne profits till he is evicted by due process of law. In spite of receipt of the legal notice, the defendant neither vacated the suit premises nor sent any reply.

6. The defendant filed his written statement denying all the material allegations averred in the plaint stating that according to the lease deed, he is a tenant of the premises bearing No. 22-8-60/12 and not premises bearing Nos. 22-8-15/3 and 4 or 22-8-60/17 and the suit house was constructed long back prior to 1975, so the Rent Control Act is applicable and Civil Court has no jurisdiction to try the suit. He further stated that he has not agreed to pay water tax and property tax. In fact, there is no water connection to the suit schedule premises and also as per the rental agreement, the plaintiff has to pay the property tax and the plaintiff is trying to mislead the Court by concealing real facts with an intention

to cause wrongful loss to him and to gain wrongfully. There is also a condition in the rental deed that after expiry of the period of tenancy, he shall increase Rs. 50/- from 1st June 1986 and so the suit is premature and is liable to be dismissed. He further stated that the defendant has been paying rents promptly and when there is no responsibility, the question of making payment of water tax and property tax does not arise. He also stated that he did not make any alterations or major repairs without the consent of the plaintiff and on the other hand, a door was erected only with the permission of the plaintiff, on condition that he should close the door as and when he vacates the premises and, therefore, there is no question of violation of any terms and conditions of the rental deed by him. The plaintiff filed the suit only to harass him and, therefore, he is entitled to claim damages of Rs. 5,000/- from the plaintiff.

7. On these rival pleadings, Trial Court framed the following issues.

1. Whether the suit premises was constructed prior to 1975 and this Court has no jurisdiction to entertain the suit?

2. Whether the notice issued by the plaintiff terminating the tenancy of the defendant is defective as contended by the defendant?

3. Whether the plaintiff is entitled for possession of the suit premises as prayed for?

4. Whether the plaintiff is entitled for mesne profits and if so, at what rate?

5. To what relief?

8. During the course of trial, the plaintiff examined himself as P.W.1 and got marked Exs.A.1 to A.7 on his behalf. On behalf of the defendant, the defendant examined himself as D.W.1 and two other witnesses as D.Ws.2 and 3 and got marked Exs.B.1 to B.20. Ex.C.1 is marked with consent of both parties.

9. Before the Trial Court, it was contended by the defendant that subsequent to the filing of the suit there was a compromise, in pursuance of which fresh rental deed under Ex.B.13 was executed by the plaintiff, and in view of the compromise, the notice under Ex.A.2 has to be ignored and that the plaintiff is not entitled to recover possession of the suit schedule property. The Trial Court observed that if both the parties are willing to get the said compromise recorded by the Court, they ought to have come with a petition for that purpose. It was also observed by the Trial Court that if one of the parties though entered into the compromise, subsequently is not willing to get the said compromise recorded by the Court and get disposal of the suit in terms of the compromise, the proviso to Order 23, Rule 3 of C.P.C., provides that "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 no 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." It was also further observed by the Trial Court that the documentary evidence filed by the defendant to some

extent probabalise the contention of the defendant that during the pendency of the suit there were certain efforts for compromise and it appears from the record that the plaintiff also received enhanced rent under the terms of the compromise. Ultimately, Trial Court rejected the plea of the defendant that there was a compromise on the ground that it was not acted upon, and the suit of the plaintiff was decreed. Aggrieved by the same, the defendant preferred an appeal in A.S. No. 86 of 1995 along with a petition in LA. No. 685 of 1995 seeking permission to amend the written statement.

10. In the said application, the defendant has stated that the suit was filed by the plaintiff on 3.6.1986 and the matter was compromised between the parties vide compromise, dated 16.8.1988, and the said compromise memo was presented by both the parties before the Trial Court on 22.7.1988 with signatures of plaintiff and defendant as well as the Counsel for defendant. However, the Counsel for the plaintiff refused to sign on the same. Subsequently the plaintiff during his cross-examination disputed the validity of the signatures on the said compromise memo. Then, the petitioner filed a petition for Expert opinion of signatures on the memo. The Expert was examined as D.W.3 and marked his opinion as Ex.B.1. As per Ex.B.1, the signature of the plaintiff on Ex.B.1 is tallying with the admitted signature of the plaintiff. But, the defendant could not take any steps to get the written statement amended, as the Counsel for the defendant had not advised to do the same. Now, the defendant, on legal advise, filed an application for amendment of the written statement because of the subsequent events that arose after filing of the suit as well as during the pendency of the suit, inasmuch as they are essential factors for final disposal of the lis between the parties.

11. A 3rd party by name Mr. Mohd. Moid Khan, claiming to be the power of attorney holder of the plaintiff, filed counter-affidavit denying the material allegations in the petition and claimed that the petition is not maintainable either in law or on facts and that the matter was not compromised between the parties. The authority to file such counter-affidavit without permission of the Court is also assailed.

12. The lower appellate Court, based on the facts and circumstances of the case and taking into consideration the events subsequent to the filing of the suit, observed that as per Order 23, Rule 3 of C.P.C. when the defendant proves to the satisfaction of the Court that the suit has been compromised and the defendant has satisfied the plaintiff in respect of whole or in part of the subject-matter of the suit, then only the Court shall order the said agreement, compromise or satisfaction to be recorded and shall pass a decree in accordance therewith. Thus, the defendant and the plaintiff have not taken any steps for compliance of Rule 3 of Order 23. Further, at what time, the amendment has to be permitted in the interest of justice on the ground of delay as he could not file this petition within a period of three years and in the absence of such petition within the period of limitation, by permitting the defendant to amend the pleadings in his

written statement, the right accrued by the plaintiff cannot be done away, so the ground of subsequent events taken by the defendant cannot be taken into account to permit him to amend his written statement. Accordingly, the lower appellate Court turned down the said request of the defendant.

13. While considering the point in appeal as regards the petition, filed by the defendant, to amend the written statement, (he lower appellate Court recorded a finding that the defendant failed to file a petition under Order 23, Rule 3 and the events that took place after entering into a compromise cannot be said to be subsequent events, which the Court cannot take cognizance without filing a petition. Accordingly, the lower appellate Court while confirming the judgment and decree passed by the Trial Court, rejected the said LA.

14. Now, the present Second appeal raises the following substantial questions of law:

(a) Whether a separate petition to record compromise incorporated in the memorandum of compromise is required to be filed along with the said memorandum for the purpose of recording compromise under Order 23, Rule 3 of C.P.C., more so when the memorandum of compromise itself contains a prayer for the dismissal of the suit in terms of the compromise.

(b) Whether there is any period of limitation prescribed for filing a compromise petition under Order 23, Rule 3 of CPC.

(c) Whether any form is prescribed for a compromise petition and if so, whether a petition, which is not filed in the said form, can be dismissed on the sole ground that it is not in the proper form.

(d) Whether the subsequent events that have arisen subsequent to the filing of suit cannot be taken into consideration on the ground that no amendment was sought for when in fact the parties went to trial and led evidence on that aspect knowing fully well, the consequences that flow there from.

15. In support of his contentions, the learned Counsel for the defendant submitted that the suit was filed for recovery of possession of the plaintiff's scheduled property and for grant of mesne profits for the month of May, 1986, and for grant of future mesne profits from 1.6.1986 at Rs. 700/- per month and for costs. It was filed in the year 1986.

16. Learned Counsel for the defendant once again taken me to the evidence let in by both the parties to the effect that the defendant in his evidence categorically stated that it is true that on this issue they can enter into a compromise but the plaintiff failed to settle the matter under Ex.P.15. This oral evidence is corroborated by documentary evidence and it was recorded by the Trial Court in the judgment in para-9.

17. When the signature was denied by the plaintiff on the memo, it was referred to an Expert and as per the report of Expert, the signature was tallied.

Ultimately, the claims of the plaintiff were not accepted by both the Courts below observing that an application along with the compromise deed was not filed by the defendant.

18. The learned Counsel for the defendant further submitted that compromise deed was filed after affixing sufficient Court fee and with a specific prayer. It is alleged in the said petition that the Counsel has not taken proper steps to file a petition along with the compromise memo in compliance of Rule-3 of Order-23 of C.P.C. It is further submitted that for a mistake committed by the Counsel, the defendant could not have been mulcted, and therefore, he filed a petition before the lower appellate Court, seeking to amend the written statement.

19. It is not known, under what circumstances, the lower appellate Court has accepted the counter-affidavit filed by the General Power of Attorney and dismissed the application filed by the appellant, observing that the petition is not maintainable either in law or on facts that the matter was compromised between the parties. It is also evident from the record that immediately after entering into the compromise, the memo of compromise was filed in the Court for its consideration, as per Rule 3 of Order 23 CPC, affixing proper stamps and with a specific prayer. Unfortunately, the Counsel representing the appellant has not filed any petition to take on record the Compromise Memo and pass a decree in terms thereof. When the matter was brought to the notice of the Trial Court that the parties have entered into compromise outside the Court and in part performance of the terms of compromise, the defendant has also filed documentary evidence i.e. rents receipts, and withdrawal of amounts by the plaintiff deposited by the defendant by way of cheques towards rents, the Courts below ought to have scrutinized the same in correct perspectives instead of rejecting the petition outright. It is apt to mention here that during the course of recording evidence, when the signature on the compromise memo was denied by the plaintiff, his signatures were sent to an Expert for opinion and when the signatures were tallied, the plaintiff accepted the same and therefore, having regard to these circumstances, when the compromise was proved to the satisfaction of the Court, the Courts below ought not to have rejected the plea of compromise merely on the ground that no petition was filed.

20. I am unable to appreciate the way in which the matter was dealt with by both the Courts below, contrary to law and is the result of non-application of mind ignorant of the fact that they are dealing with the rights of a tenant against the landlord. Practically there appears to be no delay in filing the compromise memo or filing a petition, as pointed out by the Courts below. The Courts below ought to have taken judicial notice of the fact that the compromise was entered into by the parties during pendency of the suit and, therefore, the rejection of the application on the basis of contentions raised by the third party that the plaintiff has not chosen to enter into the witness box. Thus the tenant was unnecessarily driven to this Court.

21. Departing from the facts and adverting to the substantial question of law as

to whether both the Courts below are right in rejecting the plea raised by the appellant herein that when the terms of compromise entered into between the parties were practically acted upon, though subsequently denied by the plaintiff, the rejection of compromise memo for the simple reason that it was not accompanied by a petition and there is delay in filing the same, is proper.

22. It is apposite here to extract Rule 3 of Order 23 of the Code, which reads thus:

"...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 of 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 no adjustment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment..."

23. A plain reading of this provision makes it clear that subject to the satisfaction of the Court that a suit has been adjusted wholly or in part by way of lawful agreement or compromise, which is written and signed by the parties thereto or where the defendant satisfies the plaintiff in respect of the whole or part of the claim, which is subject-matter of the suit, it shall record the same and pass a decree in accordance with such terms; but where one party to the said agreement, compromise or satisfaction denies the terms of such agreement, compromise or satisfaction, it is for the Court to decide that question, but without granting any adjournment, except for the reasons to be recorded in writing, as the Court thinks fit, can grant such adjournment. Explanation to this rule, expressly excludes the agreements or compromises, which are void or voidable under the provisions of the Indian Contract Act, 1872, from the purview of this rule, as lawful.

24. Evidently, to press Rule 3 of Order 23 into the field, the defendant should satisfy the plaintiff in respect of whole or any part of the claim i.e., subject-matter of the suit and that satisfaction to the plaintiff must be proved by the defendant to the Court that such a claim has been adjusted in whole or in part, then the Court shall pass a decree in accordance with the compromise, agreement or such satisfaction. The proviso carved out to this Rule casts a burden on the Court to decide the question where one party denies to the other the agreement, satisfaction or adjustment so arrived at and this decision shall be reached without granting adjournment, unless it is of the opinion that granting

adjournment is necessary, and that too after recording reasons in writing.

25. The Apex Court interpreting Rule 3 of Order 23, in a decision *Gurpreet Singh Vs. Chatur Bhuj Goel*, , advertng to the submissions of the learned Counsel for the appellant therein that the requirements of Order 23, Rule 3 of the Code are mandatory and the claim in the suit for specific performance having been settled by a lawful compromise within the meaning of Rule 3, the matter ought not to have been directed to be posted before another Bench, that Order 23, Rule 3 of the Code is in two parts i.e., the words in writing and signed by the parties qualify the words any lawful agreement or compromise appearing in the first part and these words cannot obviously be read into the second part at all. It was further urged by the Counsel therein that the first part of Order 23, Rule 3 of the Code refers to an adjustment or settlement of the claim in suit by a lawful agreement or compromise outside the Court, meaning thereby that where the parties make a statement before the Court that the dispute between them has been settled on certain terms and the statements so made form part of the proceedings of the Court, there is no legal requirement to have an agreement in writing embodying the terms of the compromise. Dwelling upon these contentions, the Apex Court has held that under Rule 3, as it now stands, when a claim in suit has been adjusted wholly or in part by any lawful agreement or compromise, the compromise must be in writing and signed by the parties and there must be a completed agreement between them. To constitute an adjustment, the agreement or compromises must itself be capable of being embodied in a decree. The Apex Court further held that the words satisfies denotes satisfaction of the claim of the plaintiff wholly or in part, and for this there need not be an agreement in writing signed by the parties. It is open to the defendant to prove such satisfaction by the production of a receipt or payment through bank or otherwise. The satisfaction of the Court could also be established by tendering of evidence and it is for the Court to decide the question upon taking evidence or by affidavits as to whether there has in fact been such satisfaction of the claim and pass a decree in accordance with Order 23, Rule 3 of the Code.

26. Evidently, the defendant was examined as DW-1 and Exs.B-1 to B-20 were marked to substantiate the contention that the compromise was acted upon. Ex.B1 is the memorandum of compromise in between the plaintiff and the defendant and containing the signature of both. Ex.B-2 are the rough notes, said to be in the handwriting of plaintiff while Ex.B-3 is the letter addressed by the plaintiff to the defendant. Ex.B-4 is the receipt alleged to have been issued by the plaintiff in favour of the defendant for receiving the advance amount of Rs. 1050/- and Ex,B-5 is the receipt issued by the plaintiff dated 14.6,1988s in pursuance of the compromise. Ex.B-6 is the electricity consumption receipt with pass book. Exs.B-7 and 8 are the postal acknowledgments containing the signatures of the plaintiff. Ex.B-9 is the rent receipt issued by the plaintiff dated 15.6.1988 in terms of the rental deed dated 1.6.1988. Ex.B-10 is the draft agreement without signatures, said to be in the handwriting of the plaintiff. PW-1

admitted that the Exs.B-1 to B-10 are in his handwriting. Exs.B-11 is reply to Ex.A-3 legal notice while Ex.B-12 is the postal receipt of Ex.B-11. The defendant also filed Ex.B-13, another rental deed dated 10.3.1988 executed in pursuance of the compromise, pending suit. Ex.B-14 is the ledger extract of the account of the defendant and Ex.B-15 is the statement of account showing the details of payment of rents by the defendant to the plaintiff. Ex.B-16 is the letter dated 25.10.1990 written by the plaintiff to the defendant. Exs.B-17 and 18 are the returned cheques for revalidation while Exs.B-19 and B-20 are the evidences of certificate of posting. Apart from this documentary evidence, the defendant also got examined DW-2 to speak about the compromise. Ex.C-1 is the report of the Expert who was examined as DW-3 and who opined That the signature on Ex.B-13 is that of the plaintiff.

27. All the above documents, abundantly make it clear that the defendant has satisfied the plaintiff in respect of the claim in part. The documents filed by the defendant tender sufficient evidence and therefore, the Trial Court ought to have recorded such compromise and should have passed a decree in accordance therewith. Though the plaintiff denied to have entered into compromise, the defendant has satisfied the plaintiff in respect of the claim in part of the subject-matter and evidencing the same, the defendant filed "B" series document and adduced the oral evidence of DWs.1 to 3 corroborating with the documentary evidence. Therefore, the Courts below, instead of rejecting the claim of the defendant that compromise was entered into and acted upon, ought to have passed a decree in accordance with the terms of the compromise.

28. Therefore, having regard to these circumstances and in view of the decision of the Apex Court in Banwari Lal Vs. Smt. Chando Devi (through L.R.) and another, , wherein, Their Lordships have held that when it is alleged that the compromise recorded in a suit was not lawful, the Trial Court can entertain application for considering the said question and when it is found that the compromise recorded was not lawful within the meaning of Order 23, Rule 3 of the Code, the order recording compromise can be recalled, I deem it appropriate to set aside the impugned judgment and decree remand the matter back to the Trial Court for proper appreciation of the evidence afresh and pass judgment and decree as early as possible, not less than six months from the date of receipt of a copy of this order. The appeal is accordingly allowed. No order as to costs.