

(1998) 05 AHC CK 0135
In the Allahabad High Court
Case No : Civil Revision No. 232 of 1998

Lokumal Topan Dass and Another	Vs	APPELLANT
Allahabad Bank and Others		RESPONDENT

Date of Decision : 13-05-1998

Acts Referred:

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

Citation : AIR 1998 All 398

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : A.K. Tiwari and Swami Dayal, for the Appellant; P.K. Bisaria, for the Respondent

Final Decision : Dismissed

Judgement

O.P. Garg, J.—This revision application is directed against the order dated 2-4-1998 passed by Sri V.B. Rai, Vth Additional District Judge, Etawah rejecting the applications paper Nos. 34-Ka, and 42-Ka, moved by the defendant revisionist in suit Nos. 97 of 1996 and 99 of 1996 instituted by Allahabad Bank for recovery of Rs. 6136,671.18P and Rs. 1,75,95,489.45P respectively. It was alleged by the defendant-revisionist in the aforesaid applications that an agreement/compromise has been arrived at between them and the plaintiff-Bank and on the basis of the alleged compromise a decree may be passed in accordance there with by invoking the provisions of Order XXIII, Rule 3, CPC and accordingly the two suits be decided. The plaintiff-Bank filed objections and denied the factum of compromise/agreement. After taking into consideration the affidavits, correspondence and circumstances of the case, the Court below has come to the conclusion that it is proved that a compromise/agreement was arrived at between the parties in the aforesaid two suits but refused to decide the suits in the absence of an agreement/ compromise in writing and duly signed by the parties for invoking the provisions of Order XXIII, Rule 3, CPC.

2. Heard Sri Swami Dayal, learned counsel for the defendant-revisionist and Sri

B.K. Bisaria, learned counsel for the plaintiff-Bank-opposite party.

3. It is indubitable fact that there is no compromise/agreement in writing and signed by the parties. Now the moot point for consideration is whether in the absence of any written and signed compromise/agreement, between the parties, a decree in accordance with the alleged compromise which has been proved otherwise, can be passed under the provisions of Order XXIII, Rule 3, CPC.

4. The provisions of Order XXIII, Rule 3, CPC were amended by Act No. 104 of 1976. Prior to the said amendment, there was an amendment made by the High Court of Allahabad. The amended provisions of Rule 3 of Order XIII read as follows :--

"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 satisfies 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 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."

5. Learned counsel for the defendant-revisionists urged that the above provisions are in two parts. According to him, 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 that the first part of Order XXIII, Rule 3, CPC refers to an adjustment or settlement of claim in a 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. In support of his contention, the learned counsel for the defendant-revisionists placed reliance on a decision of the Supreme Court reported in Gurpreet Singh Vs. Chatur Bhuj Goel, A specific reference was made to paragraph 11 at page 404 of the said decision, in which it was observed "the word "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 claim could also be established by tendering of evidence. It is for the Court to decide the question upon taking evidence or by affidavit as to whether there has in fact been such satisfaction of the claim and pass a decree in accordance with Order XXIII, Rule 3 of the Code.

6. Rule 3 of Order XXIII, as it stands, makes it clear that when a claim in a 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 completed agreement between them. To constitute an adjustment, the agreement or compromise must itself be capable of being embodied in a decree. When the parties enter into a compromise during the hearing of a suit or appeal, there is no reason why the requirement that the compromise should be reduced in writing in the form of an instrument signed by the parties should be dispensed with. In Gurpreet Singh's case (supra) it was held that the Court must, therefore, insist upon the parties to reduce the terms into writing. The whole object of the amendment by adding the words "in writing and signed by the parties" is to prevent false and frivolous plea that a suit has been adjusted wholly or in part by any lawful agreement or compromise with a view to protract or delay the proceedings in the suit.

7. I have thoroughly scanned and closely scrutinised the holding of the Apex Court in Gurpreet Singh's case (supra) and find that the observations made in the aforesaid case, instead of supporting the case of the defendant-revisionists, fortify the stand taken by the learned counsel for the plaintiff-Bank and lends due weight and assurance to the findings recorded by the Court below. It is not a case where the defendants had satisfied the plaintiff-Bank in respect of whole or any part of the subject-matter of the suit. The facts, as have been asserted by the defendant-revisionists in their applications, paper Nos. 34-Ka and 42 Ka, setting up a lawful agreement or compromise even if otherwise provide cannot be taken notice or be made a basis for passing a decree in accordance therewith, for one simple reason that the agreement/compromise is not in writing and signed by the parties. In any event the present case clearly does not come within the ambit of the second part of Order XXIII, Rule 3 CPC. On the other hand, it clearly falls within the first part of the aforesaid provision. Therefore, even if it be accepted, as argued by the learned counsel for the defendant-revisionists, in keeping with the observations of the Supreme Court in paragraph 11 of the decision in Gurpreet Singh's case (supra), that in a case where the defendant has satisfied the claim of the plaintiff, wholly or in part, an agreement in writing signed by the parties is not required to be brought on record, the position in the instant case would boil down to this that a written agreement or compromise duly signed by the parties was an essentiality to decree the suit in terms of the agreement/compromise as contemplated in the first part of Rule 3 of Order XXIII, CPC.

8. The trial Court has rightly come to the conclusion that the agreement/ compromise, as set up by the defendant-revisionists, cannot be taken note of under the provisions of Order XXIII, Rule 3, CPC as no such compromise/ agreement, induced in writing and duly signed by the parties has been brought on record. The finding recorded by the Court below is according to law. It does not suffer from any illegality or material irregularity calling for interference by the revisional Court. The two suits, referred to above, relate to the relief of recovery of substantial amount of money, i.e., more than rupees one crore. It does not stand to reason that the plaintiff-Bank, or for that matter, the defendant-revisionists shall come to final terms to compromise the matter without reducing in writing a compromise or agreement duly signed by the parties. It is quite likely that certain talks between the parties may have taken place but they remained inchoice and consequently, no agreement in writing for being signed by the parties was brought into existence. In the backdrop of the above facts, the applications 34-Ka and 42-Ka were moved by the defendant-revisionists with an avowed object of delaying the disposal of the suit on merits.

9. In the result, I find that the revision application is devoid of any merits and substance, and is accordingly dismissed with costs.