
(2001) 02 J&K CK 0024
In the Jammu And Kashmir High Court
Case No : CIA No. 32/94

N.D.Chemicals Gangyal Jammu

APPELLANT

Vs

K.V.Associates Pvt.Ltd

RESPONDENT

Date of Decision : 28-02-2001

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 — Order 23 Rule 3

Citation : (2001) KashLJ 276

Hon'ble Judges : A.M.Mir, J

Bench : Single Bench

Advocate : S.D.Sharma, R.Sharma, M.A.Bhat, Advocates appearing for the Parties

Judgement

1. This appeal is directed against a judgement passed by the District Judge, Jammu on 10.5.1994 whereunder the appellant has been called upon

to pay an amount of rupees two lacs to the plaintiffappellant alongwith costs. The judgement and decree has been based upon an offer made by

Sh. Raghu Mehta, counsel for the appellant, before the trial court. In this behalf the observations of the trial court are required to be placed on

record in verbatim asunder :

Mr. Raghu Mehta had made an offer that defendants are ready to suffer a decree for Rs. two lacs including pendentelite interest. This offer was

accepted by Mr. Goni.

Trial court has incidentally adjudged issue no. 3 and 4 also.

2. The argument of learned counsel for the appellant is that a compromise of the parties during the pendency of a suit, is regulated by Rule 3 of

order 23 CPC. In this behalf he has drawn my attention to the text of this rule. Mr. M.A. Bhat appearing for the respondents has on the other hand

raised a preliminary objection that the decree emanating out of the consent of the parties is not appealable in terms of Section 96(3) CPC. The

stand taken by the appellant here is that Mr. Raghu Mehta was not under any instructions from the appellant to advance an offer like the one he

has made and secondly the procedure as envisaged under rules 3 of order 23 CPC having not been followed, this is no consent at all. I agree to

this proposition, because if this were a consent decree, then the appellants were statutorily stopped from resiling from the stand they had taken.

Rule 3 of order 23 CPC reads asunder :

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 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".

3. A bird's eye view of the rule shows that the court should be satisfied that the claim projected in the suit has been adjusted partially or wholly.

Rule 3 (supra) provides the following two modes for proving adjustment of the claim :

a) By proving that an agreement or compromise was arrived at by the parties. The two commitments of such agreement or compromise are that

the same should be firstly lawful and secondly it should be reduced into writing and signed by the parties.

b) By factual satisfaction of the plaintiff in respect of the subject matter of the suit.

4. After being satisfied about such adjustment Rule 3 makes it obligatory for the court to record the agreement, compromise or satisfaction. It is

only after recording the agreement, compromise or satisfaction that a decree can be passed.

5. I have examined the trial court file. The court below has not followed the procedure as laid down in Rule 3 supra.

6. Their lordships of the Supreme Court in a case titled Gurpreet Singh vs.

Chatur Bhuj Goel reported in AIR 1988 SC 400 had an occasion to deal with a case where the trial court had passed a decree on the strength of an agreement which was not in writing. It may be noticed that the factum of agreement in that case was not denied. But the apex court found that the court below had acted upon an unwritten agreement. Their lordships held that the court should have insisted upon reducing the compromise into writing. The Supreme Court held as under:

Under Rule 3 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 complete 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. The court must, therefore insist upon the parties to reduce the terms into writing".

7. In this judgement the Supreme Court also dealt with a situation where satisfaction of the suit amount was claimed to have been made outside the court. The argument that such satisfaction would absolve the parties from reducing the agreement into writing was rejected.

8. Again in a case titled Banwarilal Vs. Smt. Chandra Devi, reported in AIR 1993 SC 1139 their lordships reiterated the same view point which was taken in AIR 1988 SC 400. The order of recording the compromise was recalled. The Apex Court also held that a party challenging the compromise has two options open against such a decree and judgement (i) to come up in appeal and (ii) to file an application before the same court under Rule 3 Order 23 CPC for recalling of such a decree. Here the liberal attitude adopted by the Supreme Court is required to be noticed and this attitude has been adopted only to ensure that the real consent of the parties holds the field in the ultimate analysis.

9. In the backdrop of the law laid down by Rule 3 (supra) and the judgements of the Supreme Court discussed above, I am of the firm view that the judgement and decree of the Trial Court does not conform to law. The appeal is therefore allowed and the judgement and decree under appeal

are set aside. The case is remanded back to the Trial Court for returning a finding on the issues in accordance with law. Learned counsel for the

parties have been directed to appear before the Trial Court on 20.4.2001.

10. Let a copy of this judgement be sent to all the Subordinate Courts of the State for guidance.