
(1981) 05 AHC CK 0049
In the Allahabad High Court
Case No : Second Appeal No. 2267 of 1974

Raj Narain

APPELLANT

Vs

Hari Shanker and Another

RESPONDENT

Date of Decision : 07-05-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1981) AWC 480

Hon'ble Judges : Chandra Prakash, J

Bench : Single Bench

Advocate : H.N. Shukla, for the Appellant; Shitla Pd., for the Respondent

Final Decision : Dismissed

Judgement

V.K. Mehrotra, J.—This is a Plaintiff's second appeal.

2. The first respondent Hari Shanker, a Defendant in the suit out of which this present appeal arises, filed suit No. 258 of 1968 in which the Plaintiff-Appellant and his brother Satya Narayan, who is Respondent No. 2 were Defendants. The Plaintiff and his brother filed separate written statement in that suit. The Plaintiff had engaged Sri Kali Prasad as his counsel in the suit. The suit was decided in terms of a compromise dated December 15, 1970. Sri Kali Prasad entered into the compromise on behalf of the Plaintiff.

3. The case of the Plaintiff is that even though he had engaged Sri Kali Prasad as a counsel in the suit he had not authorised him nor had he ever instructed him to enter into the compromise with the Plaintiff of that suit on his behalf. Sri Kali Prasad exceeded his authority in entering into the compromise. As such, the decree following upon that compromise was not binding upon the Plaintiff. The Plaintiff unsuccessfully applied u/s 151 CPC to the trial Court for setting aside the compromise. Thereafter he had to file the present suit for a declaration that the compromise was not binding upon him.

4. In the suit, out of which this appeal arises, the Plaintiff in the earlier suit

(Hari Shanker) was arrayed as the first Defendant while Satya Narain brother of the Appellant was arrayed as the second Defendant. The case of Hari Shanker was that the Plaintiff had authorised the counsel to enter a compromise on his behalf and that the compromise was binding upon the Plaintiff. Satya Narain, the second Defendant, however, supported the Plaintiff in the sense that he did not oppose the grant of relief to the Plaintiff.

5. The trial Court aswell as the lower appellate Court have taken the view that Sri Kali Prasad having been authorised to compromise the suit on behalf of the Plaintiff in the present case, the compromise decree was binding upon the Appellant. This view is assailed by the Plaintiff Appellant in the present appeal.

6. The Vakalatnama through which the Appellant had engaged Sri Kali Prasad in the case is on the record of the suit as Ext. A-I. The Appellant does not deny that he engaged Sri Kali Prasad as a counsel through this Vakalatnama. A perusal of Ext. A-I shows that there was an express authority given to the counsel to enter into a compromise on behalf of the Appellant and to deal with any application, inter alia, in the matter of compromise appropriately.

7. In *Jamilabai Abdul Kadar Vs. Shankarlal Gulabchand and Others*, it was observed by the Supreme Court that there was an implied authority in a pleader which included all legal practitioners to act by way of compromising a case in which he is engaged even without specific consent of his client. Further that this authority was subject to two overriding considerations namely, that he must act in good faith and for the benefit of his client & that it is prudent and proper to consult his client and take his consent if there is time and opportunity. In the present case the Appellant expressly authorised Sri Kali Prasad to compromise the case if necessary. There is no suggestion in the plaint by the present Appellant that the counsel did not act bona fide. In fact in the various paragraphs of the plaint, the averment of the Plaintiff Appellant only is to the effect that he had never instructed or authorised his counsel to compromise the matter. In these circumstances, the courts below committed no error of law in taking the view that the compromise entered into by the counsel was binding upon the Appellant. May be, as is contended by the counsel for the Appellant the terms of the compromise act harshly upon the Appellant. On that ground, however, it is not open to take the view that the compromise entered into by the counsel was not binding upon the Appellant. Of course as observed by the Supreme Court in *Jamilabi's* case it would have been prudent and proper for the counsel to consult his client before entering into any compromise on his behalf.

8. The appeal is dismissed but having regard to the circumstances of the case, parties are directed to bear their own costs throughout.