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**(2004) 09 DEL CK 0159**  
**In the Delhi High Court**  
**Case No : CR No. 55 of 2004**

Shri Jaswant Rai APPELLANT  
Vs  
Shri Prem Chand Gaddodia RESPONDENT

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**Date of Decision :** 13-09-2004

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, Order 7 Rule 11, 151

**Citation :** (2004) 114 DLT 298 : (2004) 77 DRJ 213

**Hon'ble Judges :** Om Prakash Dwivedi, J

**Bench :** Single Bench

**Advocate :** Vijay Kishan and Vikram Jetly, for the Appellant; S.N. Kumar, for the Respondent

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## **Judgement**

O.P. Dwivedi, J.—This revision is directed against the order dated 14.1.2004 whereby the learned Additional District Judge dismissed the petitioner/ defendant's application under O. 23 Rule 1 & 3 CPC. Respondent/ plaintiff had filed a suit for recovery of Rs.15 Lakh as damages for defamation. Respondent/ plaintiff Prem Chand Gaddodia as Honorary Secretary of Rajasthan Co-operative Group Housing Society ( in short " RCGHS), had engaged petitioner/ defendant as Architect for their proposed complex of flats. In that suit respondent/ plaintiff made various allegations in respect of irresponsible handling of the project on the part of the petitioner / defendant. The petitioner/ defendant was also alleged to have made imputation against the respondent/ plaintiff on several occasions. Some instances were given in the plaint. On such allegations suit for recovery of Rs.15 Lakh as damages was filed. It appears from the record that during the pendency of the suit, there was some settlement between the parties and in this regard a settlement deed dated 15.4.99 was executed between the parties. Earlier defendant filed application under O. 7 Rule 11 CPC for rejection of the plaint in view of the settlement but the said application was rejected by the learned Single Judge on the original side. Petitioner/ defendant preferred FAO 329/2001 against the rejection of the application filed under O.7 Rule 11 CPC. FAO was dismissed on 3.8.2001 by the Division Bench with the observation that

it will be open to the petitioner/defendant to file appropriate application seeking dismissal of the suit on the ground that subsequent to the filing of the suit a settlement has been arrived at between the parties. In the meantime with the enhancement of the pecuniary jurisdiction of the District Courts, case was transferred to the Court of the learned Additional District Judge who rejected the application of the petitioner under O. 23 Rule 3 CPC, being of the view that this particular suit which contains the claim of damages is not specifically mentioned in the settlement deed dated 15.4.99. According to the learned Additional District Judge the memorandum of settlement dated 15.4.99 was signed between the society and the defendant. Of course respondent/ plaintiff had also signed memorandum of settlement but only as a confirming party on behalf of the society and not in his personal capacity. Accordingly, learned Additional District Judge dismissed the petitioner's application under O. 23 Rule 1 and 3 read with section 151 CPC. Feeling aggrieved, petitioner preferred this petition.

2. I have heard learned counsel for the parties and perused the record.

3. In order to decide the controversy between the parties, it is necessary to refer to the contents of memorandum of settlement dated 15.4.99. The opening sheet of the memorandum of settlement recites that this memorandum is being signed and confirmed by the respondent/ plaintiff Prem Chand Gaddodia, the President of RCGHS and other persons. It refers to earlier agreement dated 16.5.96 where under petitioner/ defendant was appointed as architect, thereafter the same was terminated vide letter dated 27.7.98. Memorandum further refers to civil suit being No. 1661/1998 filed against RCGHS. On page 4 of the memorandum of settlement there is specific reference to the present suit i.e. Suit No.67/1999 filed in the High Court against Jaswant Rai petitioner herein for recovery of Rs.15 lakh as damages on account of defamation. There is also reference to another suit No. 20/99 filed against Jaswant Rai by Lalit Gupta, Secretary of the Society for recovery of Rs.5 lakh on the same count. After referring to various suits pending between the parties, memorandum of settlement recites at page 4 as under:- " and whereas RCGHS Jaswant Rai, Prem Chand Gaddodia, Sh. Lalit Gupta and Baijnath Aggarwal have all decided that all pending litigation be ended and hereafter the parties shall have no claim whatsoever left against each other in any capacity that is as individuals or office bearers of RCGHS or otherwise". Now, this memorandum of settlement witnesseth as under:-

1. It is agreed between RCGHS and confirmed by the confirming parties that there has been an amicable and mutually satisfactory settlement of all disputes pending between the parties.

2. It is agreed that the confirming parties shall withdraw the respective suits filed by them against Mr. Jaswant Rai without any order as to costs. Shri Jaswant Rai specifically regrets and withdraws all statements made against Shri Gadodia and Shri Lalit Gupta which may have been understood to be defamatory to Shri Gadodia and Shri Lalit Gupta. Similarly RCGHS specifically regrets and withdraws the allegations made against AI, Mr. Jaswant Rai and his son Mr. Rajiv Aggarwal.

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5. The parties to this compromise/ settlement including the confirming parties agree that neither RCGHS, nor its office bearers nor its members, individually or collectively whether present or future nor Shri Jaswant Rai shall have any claim or dispute surviving against each other, relating to or touching upon the contract between AI and RCGHS dated 16.5.96 or arising there from whether directly or in any incidental or other manner whatsoever. The parties shall bear their respective costs/ legal expenses incurred till date.

6. It is further agreed between the parties that henceforth there shall be no defamation or tarnishing or image or any such other activity detrimental to the interests of any party by any other party to this agreement or by any such person having an obligation in terms of this settlement whether by writing letters/ complaints against the other directly or indirectly.

7. It is agreed that AI and RCGHS will move jointly before the Hon"ble High Court of Delhi at New Delhi in suit No. 1661/1998 in appropriate proceedings making this memorandum of settlement a part thereof and praying to the Hon"ble Court for passing of a consent order in terms of this memorandum of settlement.

4. A perusal of memorandum of settlement, as a whole, would clearly suggest that all the suits filed by Prem Chand Gaddodia, Lalit Kumar Gupta & Others in their personal capacity or as office bearers of the society were to be withdrawn. In concluding para 7 there is specific mention of suit No. 1661/98. There is no reference to the present suit 67/99 in concluding para 7 of the settlement but it does not mean that this suit was intended to be continued. Rather at page 3 of the memorandum there is specific mention of the present suit for recovery of Rs. 15 lakh on account of defamation and then para 2 of the memorandum clearly recites that " it is agreed that the confirming parties shall withdraw the respective suits filed by them against Jaswant Rai without any orders as to costs. Sh. Jaswant Rai specifically regrets and withdraws all statements made against Sh. Gaddodia, and Sh. Lalit Gupta which may have been understood to be defamatory to Sh. Gaddodia and Sh. Lalit Gupta". This clear citation in para 2 of the agreement leaves no room for doubt. Specific mention has been made of suit No. 1661/98 in para 7 of the memorandum because under the settlement both parties were required to move High Court jointly for making this memorandum of settlement a part thereof while passing a consent order in terms of the settlement. No joint move was required to be made by the parties for withdrawing suits for damages filed by Prem Chand Gaddodia and Lalit Gupta as they could withdraw their suits without assistance of the other party. In these circumstances, I think, Order 23 Rule 3 CPC comes into play. O. 23 Rule 3 CPC reads as under:-

ORDER XXIII Rule 3

## WITHDRAWAL AND ADJUSTMENT OF SUITS

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. It may be emphasised here that the execution of memorandum of settlement dated 15.4.99 between the parties is not disputed. The fact that parties had signed the same is also not disputed. The respondent tried to wriggle out of the agreement by raising an argument that the respondent / plaintiff did not sign the said agreement in his personal capacity. Rather he signed it on behalf of the society only as a confirming party, the agreement essentially being between the society and the petitioner. As already noticed the signatories to the agreement Jaswant Rai, Prem Chand Gaddodia, Lalit Gupta and Baijnath Aggarwal had agreed to put an end to all pending litigations either in their individual capacity or as office bearers of the Society. This recitation in agreement dated 15.4.1999 would clearly cover suits filed by the Prem Chand Gaddodia, Lalit Gupta in their individual capacity against Jaswant Rai. The respondent/ plaintiff did not choose to file reply to the petitioner's application under O. 23 Rule 1 CPC. It may also be pointed out here that other litigations between the parties have already been dismissed/ disposed of in terms of the settlement dated 15.4.1999.

6. Having given my thoughtful consideration to the respective submissions of learned counsel for the parties and the material on record, I am of the view that memorandum of settlement dated 15.4.99 signed between the parties in this case amounts to lawful agreement of compromise and meets requirements of Order 23 Rule 3 CPC.

7. Accordingly, this petition is allowed and the impugned order dated 14.1.2004 passed by the learned Additional District Judge, is hereby set aside. Petitioner's application under Order 23 Rule 1 and 3 read with section 151 CPC dated 11.9.2001 is hereby allowed and the present suit, being Suit No. 67/99 as registered in the High Court for the recovery of Rs.15 lakh as damages on

account of defamation, is hereby dismissed in view of the settlement dated 15.4.1999.