

(1990) 12 KL CK 0051
In the High Court Of Kerala
Case No : C.R.P. No. 2189 of 1990

Sukumaran

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 21-12-1990

Acts Referred:

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

Citation : (1991) 1 KLJ 171

Hon'ble Judges : M.M. Pareed Pillay, J

Bench : Single Bench

Advocate : N. Nandakumara Menon, for the Appellant; T.L. Ananthasivan, for the Respondent

Final Decision : Allowed

Judgement

M.M. Pareed Pillay, J.—Revision Petitioners are Defendants 1 and 5 in O.S. 329 of 1986 of the Principal Sub Court, Paravur. The first Respondent (Plaintiff) filed the suit for realisation of money. As the advocates appearing for the Defendants withdraw their contentions by endorsing to that effect on the written statements, the suit was decreed in terms of the plaint.

2. Contention of the revision Petitioners is that they did not authorise their advocates to make any endorsement on the written statement to withdraw their contentions and so the endorsement is not binding on them. They filed I.A. 1934 of 1989 to review the judgment and decree on the ground that their advocates unauthorisedly withdrew their contentions in the suit and so it has no legal validity. The Sub Judge rejected the petition holding that there is nothing on record to show that the advocates withdrew the contentions without instructions from the revision Petitioners.

3. The question for consideration is whether an advocate is entitled to effect a compromise without the written consent of the party. For the answer we have to refer to Order 23 Rule 3 CPC Order 23 Rule 3 provides that where the suit is

adjusted wholly or in part by any lawful agreement or compromise it should be in writing and signed by the parties. The words "in writing and signed by the parties" were added by CPC Amendment Act 104 of 1976. Prior to the amendment the legal position was that the advocate enjoyed implied authority to enter into a compromise binding on his client. Such power stands crippled now in view of the Amendment Act 104 of 1976. As the law stands now, the essential requirement of a compromise is that it should be effected by a written document signed by the parties. Though the advocate can give any undertaking on behalf of his client before the Court, he cannot compromise a suit by withdrawing the defence contentions without it being recorded in writing and signed by his client. Though the advocate engaged by a party can represent him throughout the proceedings, Order 23 Rule 3 imposes restriction in the advocate's power in compromising the suit. In view of the Rule that a compromise should be in writing and signed by the parties, the advocate cannot on his endorsement withdraw defence contentions and compromise the suit. As Rule 3 specifically envisages compromise of the suit or proceeding only by writing and signed by parties endorsement by the advocate withdrawing defence contentions is of no significance and not binding on the party. The Sub Judge was not justified in holding that the advocates were competent to compromise the suit on behalf of their clients/overlooking the mandate of Order 23 Rule 3. That finding cannot be sustained. It is set aside.

4. The Sub Judge held that the review petition is barred by limitation. Except stating so he has not adverted to anything about the delay. Whether there is actual delay or not has to be considered in view of the specific stand of the revision Petitioners that the petition was filed before the Court in time.

5. The Sub Judge shall consider afresh whether the review petition is filed within time or not after hearing both sides. The C.R.P. is allowed. No costs.