

(1999) 12 DEL CK 0042

In the Delhi High Court

Case No : IA. 10875/99 in Suit No. 837/99

T. Sekharan

APPELLANT

Vs

Rajat Jain and Others

RESPONDENT

Date of Decision : 17-12-1999

Acts Referred:

Citation : (2000) 2 AD 257 : (2000) 83 DLT 387 : (2000) 52 DRJ 424 : (2000) 2 RCR(Civil) 703

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Mr. Anees Ahmad, for the Appellant; Mr. C.M. Rao and Mr. Deepak Khadaria, for the Respondent

Judgement

Mukul Mudgal, J.—This is an application, on behalf of the plaintiff u/s 151 CPC, praying for setting aside the Order dated 27.9.1999 which disposed of the suit in terms of an application under Order XXIII, Rule 3 CPC.

2. The main plea of the learned counsel for the applicant/plaintiff is that u/s 18(1) of the Contract Act the settlement was not lawful. He further pleads that the settlement was voidable in view of Section 18 the Contract Act. His plea is that this Agreement was void or voidable under the Contract Act as per the Explanation under Order XXIII and hence not lawful.

3. The only factual basis for this plea found in the pleadings raised is that the applicant was misled by his counsel to agree to sign the application under the belief that the application incorporated the contents of the affidavit dated 2.9.99 and that there was not sufficient time available for the applicant to acquaint himself with the contents of the application sought to be challenged. It is his plea that the applicant/plaintiff who does not know either English or Hindi was persuaded in a hurry to sign the application under the belief that it incorporated the terms of the Affidavit - dated 2.9.99 into the Agreement. He Therefore signed this agreement and accordingly misunderstood the scope of the agreement and consequently the agreement is voidable as being unlawful. He

further submits that the agreement occasioned substantial miscarriage of justice insofar as the applicant is concerned.

4. The only ground to substantiate this plea has been that even though the erstwhile counsel of the applicant were Shri V. Shekhar & Mr. M.A. Chinnaswamy, who were Tamil-speaking, even then the applicant/plaintiff had been misled into signing the application dated 27.9.99 on the presumption that it reflected and incorporated the affidavit dated 2.9.99. It is not possible to believe the plea that the applicant could be under the impression that the affidavit of 2.9.99 formed the sole basis for the application under Order XXIII, Rule 3 CPC filed on 27.9.99. It is significant that subsequent to 2.9.99 there were six hearings, i.e., on 6.9.99, 10.9.99, 13.9.99, 21.9.99, 22.9.99 & 24.9.99 which obviously shows that the terms of the affidavit dated 2.9.99 was not acceptable to the parties and these hearings were for agreeing to terms of settlement different from the affidavit dated 2.9.99.

5. The provisions of Order XXIII, Rule 3 CPC are meant to accord sanctity to and formalize settlements between the parties and 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 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:]

1 [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.]

1[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.]"

6. The requirement of this provision is that the agreement should be signed by the parties and their counsel. It is not in dispute that this requirement of the aforesaid Section was fully satisfied. If the plea taken by the applicant is permitted, the sanctity of the proceedings under Order XXIII, Rule 3 CPC can be annulled by raising collateral challenges to the scope of the misunderstanding of the communication by the counsel to the party and this will entirely negate the purpose behind Order XXIII, Rule 3 CPC. The very fact that the parties are required to sign the settlement is to prevent the occurrence of such a situation. The learned counsel's challenge is founded on the plea that at best the settlement is a contract between the parties with the imprimatur of the Court

behind it.

7. He further submits that such a settlement can be challenged on the ground that it is void or voidable under the Indian Contract Act. The basis for doubting the legality of the settlement is based on misrepresentation and misinformation which falls foul of Section 18 read with Section 13 of the Indian Contract Act, 1872.

8. The learned counsel for the applicant has relied upon the judgments which are reported as Shankar Sitaram Sontakke and Another Vs. Balkrishna Sitaram Sontakke and Others, and Maimun Nisa and Another Vs. Mohammad Khodabin and Others, to contend that a settlement based upon misrepresentation, mistake can be set aside.

9. The above plea of the learned counsel for the applicant is unexceptionable but the pleadings in the case do not demonstrate that there is any ground made out factually for inferring misrepresentation. It cannot be lost sight that the main ground for showing that the plaintiff/applicant misunderstood the scope of the settlement was the averment that he does not understand the Hindi and English and is a Tamil-speaking person.

10. The fact that the erstwhile counsel of the applicant against whom the plea of misrepresentation is levied were both Tamil-speaking however negates this plea.

11. Significantly, the settlement dated 27.9.1999 was sought to be challenged by the present application dated 27.10.1999. This application was eventually moved for the first time on 3.11.1999. As no details of misrepresentation have been given by the plaintiff/applicant, the bare averment of misrepresentation cannot be believed.

12. In the light of this discussion while no exception can be taken to the plea regarding the challenge to the compromise on the ground that it was voidable as being violative of Sections 18 and 13 of the Contract Act, yet there is no occasion to invoke the said principle because on the facts and pleadings on record, the plaintiff/applicant has been unable to demonstrate that he was misled. Similarly, the pleading regarding mistake of the plaintiff as to the contents of the application on the contrary cannot be believed in view of the fact that no details thereof have been given.

13. In view of the aforesaid discussion, there is no merit in the present application, which is accordingly dismissed.

14. is stands disposed of.