

---

**(1990) 09 J&K CK 0001**

**In the Jammu And Kashmir High Court**

**Case No :** Civil Miscellaneous Petition (Civil) No. 366 of 1989

The Jammu and Kashmir Bank Limited

APPELLANT

Vs

Packart and Others

RESPONDENT

---

**Date of Decision :** 07-09-1990

**Acts Referred:**

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

**Citation :** AIR 1992 J&K 15

**Hon'ble Judges :** R.P. Sethi, J

**Bench :** Single Bench

**Advocate :** T.S. Thakur, for the Appellant; A.V. Gupta, for the Respondent

**Final Decision :** Dismissed

---

## **Judgement**

R.P. Sethi, J.—In a suit for the recovery of Rs. 19,12,174.38 pending in this Court from 10-11-1987, defendants I & 2 filed this Civil Misc.

Petition on 3-5-1989 under Order XXIII Rule 3, C.P.C. for deciding the case in terras of the compromise allegedly entered into between the

parties. It is submitted that during the pendency of the suit the defendants approached the plaintiff for adjustment of the suit outside the court and

offered them that some of the partners of defendant No. 1 may be allowed to retire so that defendant No. 2 becomes the sole proprietor of the

concern of defendant No. 1 and that defendant No. 2 may be permitted to make available better surety for the money payable to the plaintiff and

that the unit of defendant No. 1 be rehabilitated by re-scheduling the payments which are to be made by the defendants. The request of the

defendant is stated to have come up for consideration before the board of Directors of the plaintiff-Bank on 10-5-1988 wherein it was resolved to

accept the offer of the defendants. It is submitted that after the decision of the

board of directors of the plaintiff-bank dated 10-5-1988, lower functionaries of the bank sought legal advice for implementation of the decision of the board of directors and the legal advisor of the bank vide his letter dated 14-7-1988 opined that on the day when the compromise decree is to be obtained from the court in the suit if Shri Magotra furnishes sound security/guarantee in favour of the bank for the outstanding amount then the bank shall agree to the schedule for repayment of the outstanding amounts due in three accounts including the costs and interest thereon. The re-schedule can be fixed amicably by the bank and Shri Magotra. It is submitted that on receipt of the letter the defendants under the overall supervision of the plaintiff-bank got the partnership of defendant No. 1 dissolved and as required by the Board of Directors of the plaintiff-bank and other functionaries, defendant No. 2 became the sole proprietor of defendant No. 2. The defendant further offered fresh security to the bank as was required. The Chief Manager (Advances), Central Officer, however, vide his letter dated 23-1-1989 directed defendant No, 2 to furnish better securities than the existing ones so that compromise is fully implemented. It is submitted that defendant No. 2 furnished better securities on 31-3-1989 and complied with all the requirements of law and the decision of the Board of Directors. It is submitted that the suit between the parties stands compromised and settled on the following terms :

- (a) Defendant No. 1, becomes the sole proprietor-ship concern of the defendant No. 2.
- (b) The plaintiff has accepted new securities offered by the defendant No. 1.
- (c) The suit of the plaintiff is to be treated as withdrawn.
- (d) The payments payable by the defendant No. 1 are to be re-scheduled by a new agreement amicably outside the court.

It is submitted that some officers of the plaintiff-bank are not interested in the settlement of the disputes amicably between the parties outside the Court and have resisted the adjustment of the suit. The said officers are alleged to have tried to hinder the process of withdrawal of the suit from this Court with the result that the counsel of the plaintiff insisted that the defendants should be compelled to file the written statement in the case.

2. In the objections filed on behalf of the plaintiff-bank it is submitted that the

application of the plaintiff was misconceived and mala fide in nature filed with a view to get adjournment from the Court for filing the written statement. No compromise or settlement was ever finalised between the parties justifying to filing of the application. It is admitted that defendant No. 1 approached the plaintiff-bank for the re-schedule of the loan amount on the condition precedent for the grant of said request of the defendants could not be satisfied by them with the result that no settlement was finally arrived at between the parties which could be made a basis for any compromise decree in the Court. The very fact that certain compromise talks had taken place between the parties for finalising a settlement did not amount to be the composition of the suit. It is submitted that the provisions of Order XXIII Rule 4, C.P.C. were inapplicable to the situation like the present and it is prayed that the application of defendants 1 & 2 be dismissed.

3. I have heard learned counsel for the parties and perused the record. Rule 3 of Order XXIII C.P.C. provides :

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:

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.

Under this rule a suit may be adjusted by the parties either wholly or in part after compliance of the conditions prescribed therein. The rule

envisages of a written agreement executed and signed by the parties and such an agreement should not be void or voidable under the Contract

Act. The Court has to be satisfied that the suit, in fact, has been adjusted by a

lawful agreement. If the Court is satisfied about the execution of a lawful written and signed agreement between the parties compromising the suit, a decree shall be passed in terms thereof. The words, "in writing and signed by the parties" were inserted in Rule 3 of Order XXIII by Act No, XI of 1983. The written agreement contemplated under the rule is an agreement between the parties in relation to the subject matter of the suit pending in the court. The lawful agreement cannot, therefore, be inferred from the correspondence which has ensued between the parties with respect to a prospective compromise to be ultimately arrived at on some terms and conditions between the parties preparatory to the final settlement or compromise of the suit. The compromise agreement must have been admittedly entered into by the parties for attracting the provisions of Rule 3 of Order XXIII. The question whether a particular agreement for compromise was entered into is a question of fact to be determined on the basis of the evidence led and keeping in view the specific circumstances of the case. The onus of establishing that the suit has been adjusted in a lawful manner by the execution of an agreement is on the person who alleges the same. The question can be decided by allowing the parties an opportunity to lead evidence in the usual way or upon affidavits. In order to attract the provisions of this rule there must be a complete agreement, between the parties and not an intended agreement. An agreement only providing for entering into a compromise on certain terms cannot be recorded as a compromise or adjustment within the meaning of this rule. To attract the provision of this rule for compromise or adjustment, the agreement executed between the parties must itself be capable of being embodied in a decree. Once a party enters into an agreement, it is not open for him to resile from it subsequently. The compromise contemplated by this rule is with respect to the subject matter of the suit and not with respect to other matters. If any other interpretation is put to this rule, the same would frustrate the provisions of law and shall be against the public policy inasmuch as in all the suits one party may file application on the basis of an alleged compromise resulting in prolonging of the adjudication of the real dispute between the parties and holding of the separate enquiry without effectively proceeding with the main suit between the parties. The requirement of the document being in

writing and signed by the parties is applicable only to agreement for compromise for adjustment of the suit under Order XXIII Rule 3 CPC and is

not attracted to the satisfaction of the plaintiff by the defendant in respect of the whole or in part of the subject-matter of the suit under the second

part of the rule. It was held in *Manohar Lal and Another Vs. Surjan Singh and Another*, : ""An analysis of Rule 3 would disclose two distinct kinds

of classes of compromises in suits. The first part of the rule visualises a lawful agreement or compromise arrived at out of the court by the parties. It

is this kind of agreement or compromise which the amendment of 1976 now in terms provides to be in writing and signed by the parties. It is to this

class, namely, out of the court agreements and compromises that the words ""in writing and signed by the parties"" expressly apply. Indeed they

immediately follow the words ""any lawful agreement or compromise"" and the legislature by way of amendment inserted the provision with regard to

same being in writing and signed by the parties designedly at the point in the body of the then existing Rule 3. On a plain and grammatical reading

of Rule 3, the requirement of ""in writing and signed by the parties"" therefore appends itself only to the lawful agreements or compromises arrived at

by the parties out of the court. It was to correct the abuse of setting up of an oral agreement or compromise outside the court and the attempts to

prolong the matters by leading evidence thereof that the legislature mandated that such agreements or compromise must not only be written but

equally that these must be signed by the parties.

4. In the instant case the defendants have prayed for a decree in terms of the alleged compromise arrived at between the parties and have not

pleaded satisfaction in respect of whole or in part of subject-matter of the suit. The second part of Rule 3 of Order XXIII C.P.C. is, therefore, not

applicable.

5. Mr. Gupta has referred to AIR 1936 Lah 321 : AIR 1954 J&K 45 : AIR 1978 J&K 114 in support of his contention to urge that by

correspondence the agreement between the parties as contemplated by Rule 3 is proved for the purposes of settlement of the suit. The aforesaid

judgments are not applicable in the instant case as in none of them any principle governing Order XXIII was discussed or decided.

6. In the instant case admittedly, no written agreement has been executed

between the parties. There is some correspondence on the record to show that the parties had tried for a compromise and even tentatively arrived at some conditions for settlement of the disputes outside the court.

The parties never intended to execute an agreement for the purposes of composition of the suit in the court in terms thereof. Defendants 1 & 2 who were under a legal obligation to prove the existence of such an agreement, have miserably failed to show the execution of a lawful agreement for the compromise of the suit in accordance with the terms and conditions allegedly settled or decided between the parties. The decision of the Board of Directors may be an offer to the defendants for a compromise but was never intended to be an agreement between the parties for settlement of the disputes in terms of Order XXIII Rule 3 C.P.C.

7. There is no merit in this petition which is hereby dismissed and the main suit along with other connected Civil Misc. Petitions is directed to be listed for further proceedings on 24th of September, 1990.