



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Revision Petition No. 71/2023

1. Umesh Kumar S/o Narayan Lal, Aged About 23 Years, R/o Biloda Tehsil, Dungla, Distict Chittorgarh.
2. Narayan Lal S/o Magni Ram, Aged About 52 Years, R/o Biloda Tehsil, Dungla, Distict Chittorgarh

----Petitioners

Versus

1. Lila Bai W/o Late Kishan Lal Ji, R/o Biloda Tehsil, Dungla, Distict Chittorgarh
2. State Of Rajasthan-State, Through Tehsildar Dungla, District Chittorgarh

----Respondents

For Petitioner(s) : Mr. Rajendra Singh Rathore

For Respondent(s) : Mr. Sanjay Nahar

HON'BLE MR. JUSTICE MANOJ KUMAR GARG

Judgment

REPORTABLE

RESERVED ON : 17/10/2024

PRONOUNCED ON : 23/10/2024

The present revision petition has been filed by the petitioner against the order dated 15.04.2023 passed by learned Additional District Judge No.1, Nimbahera, District Chittorgarh in Civil case No. 103/2022 by which the court below rejected the application filed by the petitioners under Order 7 Rule 11 CPC.

Respondent No.1 herein filed application under Section 151 CPC for cancellation of the compromise decree dated 01.02.2011 passed in Civil Original Suit No. 126/2010. She also filed an application under Order 18 Rule 16 CPC read with Order 19 rule 3



CPC with the prayer that her statement may be recorded. The petitioner no.1 filed reply to the application and raised a preliminary objection with regard to maintainability of the application filed under Section 151 CPC. Thereafter, the petitioners filed an application under Order 7 Rule 11 CPC with the prayer to reject the said application being barred by limitation. The respondent no.1 filed reply to the said application. The learned trial court after hearing arguments of both the parties rejected the said application by way of impugned order dated 15.04.2023.

Learned counsel for the petitioners submits that a perusal of the application under Section 151 CPC would go to show that the respondent levelled allegation that the petitioners had obtained the compromise decree dated 01.02.2011 by way of fraud and therefore, the compromise decree may be cancelled. It is argued that a compromise decree obtained on the basis of consent of the parties cannot be set aside on an application under Section 151 CPC and the only remedy available to the respondent no.1 is to file a civil suit for setting aside the decree. It is further argued that the compromise decree was granted in the year 2011 whereas, the application under Section 151 CPC for cancellation of compromise decree was filed in year 2022 i.e. after 11 years of the cause of action. Thus, the limitation for filing an application for cancellation of decree is three years but in the present case, the application has been filed after a delay of 8 years and therefore, the suit is clearly barred by law. It is further argued that Section 14 of Limitation Act provided that the period can be



excluded if someone has wrongly filed the suit but in the instant case, the respondent did not choose to file application under Section 14 of the Limitation Act and therefore, there was no occasion for the court below to exclude the period of eight years on the ground that the respondent had wrongly filed the suit for cancellation of compromise decree in the year 2012 which was withdrawn in the year 2022. Therefore, the application filed by the respondent itself is not maintainable and the suit is liable to be rejected. In support of his submission he has placed reliance of the decision of the Hon'ble Supreme Court in **Ajanta LLP vs. Casio Keisanki Kabushiki Kaisha d/b/a Casio Computer Co. Ltd. & another [(2022) 5 SCC 449]**.

Per contra, counsel for the respondents argued that respondent no.1 had filed a suit for cancellation of compromise decree, however, the same was withdrawn by her with liberty to file fresh application in accordance with law. Accordingly, the learned trial court vide order dated 16.07.2022 granted liberty to the respondent no.1 to file fresh application. Thus, the contention of the petitioners that the application is barred by limitation is not tenable. Further, it is argued that since the compromise decree was obtained by the petitioners by way of playing fraud, therefore, the Court can entertain an application under Section 151 of CPC for cancellation/modification of the compromise decree if the same has been obtained by fraud, mis-representation or mistake. Thus, it is submitted that the court below has rightly dismissed the application filed by the petitioners under Order 7 Rule 11 CPC, which does not call for any interference. In support of his



submission he has placed reliance of the decisions of the Hon'ble Supreme Court in **Compack Enterprises India (P) Ltd. v. Beant Singh [(2021) 3 SCC 702]**, **Compack Enterprises India (P) Ltd. v. Beant Singh [(2021) 3 SCC 702]**, **M/s. Sree Surya Developers and Promoters v. N. Sailesh Prasad and Ors. [2022 (5) SCC 736]**, **Ajanta LLP (Supra)**.

I have heard learned counsel for the parties and carefully gone through the record.

Respondent no.1 had earlier filed suit for cancellation of compromise decree which was subsequently withdrawn by her with liberty to file fresh application in accordance with law. The said prayer was accepted by the court below on 16.07.2022 with liberty to the respondent no.1 to file fresh application. Accordingly, the respondent no.1 file the application under Section 151 CPC for cancellation of the compromise decree. Therefore, application under section 151 CPC is not barred by limitation.

The main contention of the petitioners is that an application under Section 151 CPC is not maintainable for cancellation of a compromise decree signed by both the parties and the respondent defendant no.1 ought to have filed a suit.

Order 23 rule 3A of Code of Civil Procedure, 1908 is reproduced hereinunder for our reference:

Bar to suit.—No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.

A bare reading of the aforesaid provision leaves no doubt that second suit would not lie on ground that the compromise



arrived at between the parties on the basis of which the decree in the first suit was passed was not lawful. This provision is designed to uphold the finality of compromise decrees and prevent further litigation based on claims of unlawfulness of the compromise. The primary purpose of Order 23 Rule 3A is to enhance the definitiveness of court rulings and reduce the burden of litigation on the courts. The provisions of CPC encourages parties to settle their disputes efficiently and amicably by prohibiting challenges to compromise decrees. Whereas order 23 rule 3A gives a strong barrier to challenges the compromise decrees, but it does not mean that a compromise cannot be questioned if evidence is presented that it was obtained by deception or coercion. These challenges, however, must be brought within the CPC and cannot be pursued as independent lawsuits. In the case **R. Rajanna Vs. S.R. Venkataswamy and Others** reported in **2014 (15) SCC 471** has observed that:

“11. It is manifest from a plain reading of the above that in terms of the proviso to Order 23 Rule 3 where one party alleges and the other denies adjustment or satisfaction of any suit by a lawful agreement or compromise in writing and signed by the parties, the Court before whom such question is raised, shall decide the same. What is important is that in terms of Explanation to Order 23 Rule 3, the agreement or compromise shall not be deemed to be lawful within the meaning of the said Rule if the same is void or voidable under the Contract Act, 1872. It follows that in every case where the question arises whether or not there has been a





lawful agreement or compromise in writing and signed by the parties, the question whether the agreement or compromise is lawful has to be determined by the court concerned. What is lawful will in turn depend upon whether the allegations suggest any infirmity in the compromise and the decree that would make the same void or voidable under the Contract Act. More importantly, Order 23 Rule 3A clearly bars a suit to set aside a decree on the ground that the compromise on which the decree is based was not lawful. This implies that no sooner a question relating to lawfulness of the agreement or compromise is raised before the court that passed the decree on the basis of any such agreement or compromise, it is that court and that court alone who can examine and determine that question. The court cannot direct the parties to file a separate suit on the subject for no such suit will lie in view of the provisions of Order 23 Rule 3A CPC. That is precisely what has happened in the case at hand. When the appellant filed OS No. 5326 of 2005 to challenge the validity of the compromise decree, the court before whom the suit came up rejected the plaint under Order 7 Rule 11 CPC on the application made by the respondents holding that such a suit was barred by the provisions of Order 23 Rule 3A CPC. Having thus got the plaint rejected, the defendants (respondents herein) could hardly be heard to argue that the plaintiff (appellant herein) ought to pursue his remedy against the compromise decree in pursuance of OS No. 5326 of 2005 and if the plaint in the suit has





been rejected to pursue his remedy against such rejection before a higher court.”

In the case of **Compack Enterprises India (P) Ltd. v. Beant Singh** Reported in **(2021) 3 SCC 702** has observed that:

“18. Before advertng to the specific contentions raised by the learned senior counsel for the Petitioner, it may be useful to briefly summarise the law governing consent decrees that shall inform our conclusions on the present matter. It is well settled that consent decrees are intended to create estoppels by judgment against the parties, thereby putting an end to further litigation between the parties. Resultantly, this Court has held that it would be slow to unilaterally interfere in, modify, substitute or modulate the terms of a consent decree, unless it is done with the revised consent of all the parties thereto. (Gupta Steel Industries v. Jolly Steel Industries Pvt. Ltd. & anr., (1996) 11 SCC 678; Suvaran Rajaram Bandekar & ors. v. Narayan R. Bandekar & ors., (1996) 10 SCC 255).

19. However, this formulation is far from absolute and does not apply as a blanket rule in all cases. This Court, in Byram Pestonji Gariwala v. Union Bank of India & ors., (1992) 1 SCC 31, has held that a consent decree would not serve as an estoppel, where the compromise was vitiated by fraud, misrepresentation, or mistake. Further, this Court in the exercise of its inherent powers may also unilaterally rectify a consent decree suffering from clerical or arithmetical errors, so as to make it conform with the terms of the compromise.”





In the case of **Ajanta LLP case (supra)** the Hon'ble Apex Court has observed that:

"13. A consent decree would not serve as an estoppel, where the compromise was vitiated by fraud, misrepresentation, or mistake. The Court in exercise of its inherent power may rectify the consent decree to ensure that it is free from clerical or arithmetical errors so as to bring it in conformity with the terms of the compromise. Undoubtedly, the Court can entertain an Application Under Section 151 of the Code of Civil Procedure for alterations/modification of the consent decree if the same is vitiated by fraud, misrepresentation, or misunderstanding. The misunderstanding as projected by the learned Senior Counsel for the Appellant between parties relates to use of "FX" or "991" as separate marks in the Settlement Agreement. The understanding between the parties was with respect to "FX-991ES PLUS" as a whole and not with reference to "FX". A close scrutiny of the correspondence between the parties would show that the Settlement Agreement was arrived at after detailed consultation and deliberations. Thereafter, the parties were communicating with each other and they took six months to arrive at a settlement. The final Settlement Agreement was approved by the mediator. The High Court applied its mind and passed a decree in terms of the Settlement Agreement dated 16.05.2019. Though, the High Court dismissed the Application by refusing to entertain the Application on the ground that it was filed Under Section 152 of the Code of Civil





Procedure, we have considered the submissions of the parties to examine whether the Appellant has made out a case for modification of the decree by treating the Application as one under the proviso to Order 23 Rule 3 read with Section 151 of the Code of Civil Procedure. There is no allegation either of fraud or misrepresentation on the part of the Respondent. We are unable to agree with the Appellant that there was a mistake committed while entering into a settlement agreement due to misunderstanding. Correspondence between the advocates for the parties who are experts in law would show that there is no ambiguity or lack of clarity giving rise to any misunderstanding. Even assuming there is a mistake, a consent decree cannot be modified/alterd unless the mistake is a patent or obvious mistake. Or else, there is a danger of every consent decree being sought to be altered on the ground of mistake/misunderstanding by a party to the consent decree."

In the opinion of this Court, if the compromise decree was tainted by fraud, misrepresentation or mistake and Court under inherent powers conferred under Section 151 CPC may rectify the decree for alternations/modification of the consent decree. In the present case, the specific allegation of the respondent no.1 is that the petitioners have obtained the decree by way of playing fraud. Whether the petitioners have obtained the compromise decree by playing fraud is a subject matter of evidence. So, the trial court had not committed any error in dismissing the application under





Order 7 Rule 11 CPC filed by the petitioners. Thus, the present revision petition being devoid of merit, is liable to be dismissed, which stands dismissed accordingly.

Stay petition also stands disposed of. Record of the trial court be sent back forthwith.

(MANOJ KUMAR GARG),J

162-BJSH/-

