

2022 LiveLaw (SC) 442

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

HEMANT GUPTA; V. RAMASUBRAMANIAN, JJ.

29th APRIL, 2022

CIVIL APPEAL NO.3492 OF 2022 (@ SLP(C) No.20075/2021)

VIPAN AGGARWAL & ANR. *Versus* RAMAN GANDOTRA & ORS.

Code of Civil Procedure, 1908; Order 23 Rule 3 and Order 43 Rule 1A - An aggrieved person against the compromise decree has a right to file an application before the Court which granted the decree - He has the right to avail either the remedy of appeal in terms of Order 43 Rule 1A CPC or by way of an application before the court granting decree. [Referred to *Banwari Lal V. Chando Devi (Smt.) (Through LRS.) & Anr.* (1993) 1 SCC 581]

(Arising out of impugned final judgment and order dated 30-07-2021 in OW104 No. 46/2013 passed by the High Court of Jammu & Kashmir and Ladakh at Jammu)

For Petitioner(s) Mr. Ninad Laud, Adv. Mr. Sahil Tagotra, AOR Mr. Rahul Sharma, Adv. Mr. Ivo D'Costa, Adv. Mr. Avniash Mathews, Adv.

For Respondent(s) Mr. Anupam Raina, AOR Mr. B.S. Jamwal, Adv. Mr. Sunando Rana, Adv.

ORDER

Leave granted.

The challenge in the present appeal is to an order dated 30.07.2021 whereby the revision petition filed by the appellant against the order dated 17.10.2012 passed by the 2nd Additional Munsiff, Jammu was not interfered with.

A compromise decree is said to have been passed on 13.09.2008. The appellants filed an application for recall of the said compromise decree for the reasons that such decree suffers from fraud and collusion. Such application was filed before the Court which granted the decree. The trial Court returned a finding that such application is not maintainable and such view was affirmed by the High Court.

This Court in a judgment reported in '**Banwari Lal V. Chando Devi (Smt.) (Through LRS.) & Anr.**' (1993) 1 SCC 581 held the question as to whether an aggrieved person against the compromise decree has a right to file an application before the Court which granted the decree or an appeal in terms of Order 43 Rule 1A of the Code of Civil Procedure, 1908 (for short, 'the CPC'). It was held as under:-

"13. When the amending Act introduced a proviso along with an explanation to Rule 3 of Order 23 saying 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", the Court before which a petition of compromise is filed and which has recorded such compromise, has to decide the question whether an adjustment or satisfaction had been arrived at on basis of any lawful agreement. To make the enquiry in respect of validity of the agreement or the compromise more

comprehensive, the explanation to the proviso says that an agreement or compromise "which is void or voidable under the Indian Contract Act..." shall not be deemed to be lawful within the meaning of the said Rule. In view of the proviso read with the explanation, a Court which had entertained the petition of compromise has to examine whether the compromise was void or voidable under the Indian Contract Act. Even Rule 1(m) of Order 43 has been deleted under which an appeal was maintainable against an order recording a compromise. As such a party challenging a compromise can file a petition under proviso to Rule 3 of Order 23, or an appeal under Section 96(1) of the Code, in which he can now question the validity of the compromise in view of Rule 1-A of Order 43 of the Code."

The appellants had thus the right to avail either the remedy of appeal in terms of Order 43 Rule 1A CPC or by way of an application before the court granting decree. Therefore, the application filed by the appellants before the Court which granted the decree cannot be said to be without jurisdiction.

Consequently, the order passed by the High Court is set aside. The matter is remitted back to the High Court for fresh decision on the application and the same will be decided on merits in accordance with law.

With the aforesaid observations, the appeal is allowed.

Pending application(s), if any, also stand disposed of.

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