Hardit Singh Obra Vs. Daljit Singh

Hardit Singh Obra Vs. Daljit Singh

SooperKanoon Citation : sooperkanoon.com/682500

Court : Delhi

Decided On : Jul-26-1974

Reported in : ILR1974Delhi571b

Judge : T.V.R. Tatachari and; V.S. Deshpande, JJ.

Acts : Code of Civil Procedure (CPC), 1908 - Order 23, Rule 3

Appeal No. : Election First Appeal No. 8 of 1971

Appellant : Hardit Singh Obra

Respondent : Daljit Singh

Advocate for Pet/Ap. : B.G. Singh and; Harish Chandra, Advs

Judgement :

V.S. Deshpande, J.

(1) The question for decision in this as also in the connected F.A.O. (O.S.) 43 of 1972 is whether certain terms of the compromise dated December 5, 1968 between the parties in Suit No. 283 of 1967 recorded by Jagjit Singh, J. could be said to 'relate to the suit' within the meaning of Order Xiii role 3 Civil Procedure Code so as to be embodied in a decree and whether the said part of the decree was executable.

(2) The appellant had sued the respondent in Suit No. 283 of 1967 in this court for three reliefs namely :- (1) dissolution of the partnership between the parties; (2) rendition of accounts to the appellant by the respondent; and (3) an injunction that the respondent be restrained from using certain premises of which the appellant was a lessee but which were used by the partnership of which the parties were partners.

(3) On December 6, 1968 the parties filed a compromise petition before Jagjit Singh, J. praying that the terms of the compromise thereof be recorded by the Court. Thereupon, the learned Judge passed the following order :

'THEcompromise, as arrived at between the parties and embodied in the application Ex. P/A, is recorded.

(4) In terms of the compromise between the parties the suit is dismissed but the defendant shall pay Rs. 2000.00 as cons to the plaintiff. The parties will also be bound by all the other terms contained in the application. Ex. P/A. The plaintiff shall also be entitled to withdraw the amount of Rs. 15,000.00 which is lying in deposit in the court and had been deposited by the defendant.'

(5) Briefly the compromise gave to the appellant the following three reliefs in place of the original three reliefs which had been claimed in the suit, namely: (1) the partnership between the parties was to continue for 5 years from December 15, 1967 to December 14, 1972, on which date it was to stand dissolved automatically; (2) the share of the appellant in the profits of the partnership was fixed and it was agreed that it would be paid to the appellant by the partnership irrespective of the partnership making any profit or not, and (3) at the end of the contractual period (December 15, 1967 to December 14, 1972) the respondent was to hand-over the exclusive possession of the premises to the appellant in cast the parties disagree to extend the existing period of the contract (of partnership).

(6) Acting on the terms of the compromise the respondent paid to the appellant his share of the profits for the previous year and also started paying to the appellant his share of profits for the current years at Rs. 2500 per month. When he committed default in payments of these Installments. Execution Case No. 27 of

1970 was instituted by the appellant against the respondent. In this Execution the respondent made the payment and the Execution was disposed of as satisfied. But default was again made by the respondent and another Execution No. 52 of 1970 was taken out by the appellant. In this Execution, for the first time, the respondent raised the objection that the compromise decree was not executable. The appellant replied that the respondent was barred from raising this contention by constructive res-judicata inasmuch as he had not raised it in the previous Execution No. 27 of 1970. After the arguments were heard and the case was reserved for orders, the parties entered into a compromise before Prithvi Raj, J. In accordance with the compromise the respondent paid to the appellant Rs. 5000.00 thus bringing to an end Execution No. 52 of 1970.

(7) The respondent again committed default in payment of the appellant share of the current profits of the partnership and Execution Cases No. 48 and 50 of 1971 were taken out by the appellant against the respondent for the recovery of the defaulted Installments. Again the respondent objected that the compromise decree was not executable. Execution Applications No. 48 and 50 of 1971 were dismissed by P. N. Khanna, J. on the following grounds, namely: (1) no executable decree resulted in favor of the appellant as a result of the compromise ; (2) the compromise of December 5, 1968 was itself a negation of the suit of the appellant inasmuch as the suit for dissolution of partnership, rendition of accounts and injunction was dismissed as a result of compromise and the partnership was continued as the agreement of the partnership had been merely amended by the compromise ; and (3) that the respondent was not precluded from raising the objections regarding the unexecutability of the decree inasmuch as no final decision between the parties had been given by the court holding that the decree was executable. E.F.A. (O.S.) 8 of 1971 has been filed by the appellant against this decision of P. N. Khanna, J. During the pendency of the E.F.A. (OS) 8 of 1971 two Interlocutory Applications No. 595 and 745 of 1972 were made by the appellant. The first praying that from the draft of the compromise decree prepared by the Registrar, the words 'suit is otherwise dismissed' should be deleted and the second praying that the terms of the compromise should form part of the compromise decree. I.A. 595 of 1972 was dismissed and I.A. 745 of 1972 was partly dismissed and partly accepted by Jagjit Singh, J. who held that (1) the

words suit is dismissed would have to form part of the compromise decree inasmuch as the suit of the appellant was dismissed when in the compromise the appellant gave up all the reliefs for which the suit had been originally brought, and (2) that 'the terms of the compromise regarding matters beyond the scope of the suit do not become part of the decree, even though the parties had agreed to be bound by them.' 'The learned single Judge, thereforee, ordered that the decree shall not contain the words that the terms of the compromise shall form part of the decree. The learned Judge, however, directed that the decree be completed without further delay. F.A.O. (OS) 43 of 1972 has been filed against this order of Jagjit Singh, J. and has been heard by us along with E.F.A. (OS) 8 of 1971.

(8) On hearing Bawa Gurcharan Singh for the appellant and Shri Harish Chandra for the respondent the legal position appears to us to be as follows :

1.Under order Xxiii rule 3 Civil Procedure Code Jagjit Singh, J. was satisfied that this suit of the appellant had been adjusted by a lawful agreement between the parties. The learned Judge, thereforee, ordered that the terms of the compromise be recorded. The only question, thereforee, which remained for consideration after the recording of the compromise was of passing 'a decree in accordance therewith so far as it relates to the suit'. For, some or all of the terms of the compromise may be of two kinds. Either they may 'relate to the suit' or they may not so relate to the suit. The expression 'so far as it relates to the suit' used in Order Xxiii rule 3 is important because a decree on a compromise can be passed only in respect of those terms of the compromise which relate to the suit. It is only in respect of those terms that a decree would be drawn up. Effect would be given to such a decree according to its terms. If the relief given by the compromise decree is only a declaration then the decree would be declaratory but if the compromise requires a party to do something then the decree would so require and to that extent it would be executable.

(9) The first part of the question, thereforee, is whether the terms of the compromise of December 5, 1968 related to the suit which had been adjusted by the compromise. For this purpose rule 3 of Order Xxiii has to be considered as a whole. It is divisible into two parts. Finely, the suit has to be adjusted by a lawful

compromise. Secondly, a decree in accordance with the compromise has to be passed 'so far as it relates to the suit.' These two parts may be separated from each other or may be inter-dependent on each other. That is to say, a suit may be adjusted by a compromise which may relate to the suit or which may not relate to the suit. In so far as it does not relate to the suit the compromise, though lawful and binding between the parties, shall remain only a contract between the parties. Such a contract will not, however, be a part of the decree to be passed by the Court. The rights of the parties arising out of such a contract will not be the subject matter of the decree for compromise but will have to be worked out separately by the parties. The Court has thus to find out the intention of the parties. Did the parties intend the compromise to be worked out by a decree in the same suit or did they intend it to be only a new contract between the parties to be worked out separately Such intention can be gathered on the one hand from the reliefs claimed in the suit and on the other hand from the reliefs given by the compromise. If these reliefs are identical then the compromise would merely amount to an admission of the whole claim and the decree would rather be called one on admission and not one on compromise. A compromise, properly speaking, would thereforee result in reliefs which would be somewhat different from the reliefs claimed in the suit. What has to be seen. thereforee, is whether the new reliefs given by the compromise are so related to the old reliefs claimed in the suit as to show that the parties intended that the new reliefs should be worked out by a decree in the same suit. If, thereforee, the old reliefs are the cause of the compromise while the new reliefs are the effect of the compromise then the two can be said to be consideration for each other. Such a consideration makes the contract of the compromise a valid contract. It also makes the suit and the compromise parts of an integral scheme. To judge whether the two are parts of the whole scheme many tests may be applied, such as the identity of the subject matter, identic of parties, identity of reliefs and so on. On a totality of all these considerations one can arrive at the conclusion whether the compromise or a part of it relates to the suit or is not related to the suit. Let us apply these tests to the reliefs claimed in the suit and the relief given by the compromise.

(10) The suit was firstly for dissolution of partnership. The compromise was that the partnership should continue for 5 years at the end* of which it should stand

automatically dissolved. P. N. Khanna, J. thought that the compromise merely amended the agreement of partnership in continuing the partnership rather than dissolving it. That was one way of looking at it. Another way to look at it is that while the appellant had sought to dissolve the partnership immediately by a preliminary decree of the Court, by agreement of parties the dissolution of the partnership was to take place on a fixed date that is December 14, 1972. Which of these two ways of looking at the compromise accords better with the intention of the parties If the parties merely wanted to extend the period of the running of the partnership, they need not have specified the date of the termination of the partnership. If their emphasis was on the continuance of the partnership then the suit should have been withdrawn or the parties should have agreed that the suit should be dismissed as the appellant had changed his mind. But this was not so. On the contrary, the appellant continued to insist on the dissolution of the partnership. Ordinarily the dissolution by a preliminary decree and taking up of the accounts resulting in a final decree would have taken some years Parties thereforee came to an agreement that the date of the dissolution should be fixed and the rendition of accounts should also be avoided by fixing the share of the profits of the appellant. We are of the view, thereforee, that the fixing of the date of the dissolution of the partnership was a term which related to the suit inasmuch as the relief claimed by the suit was also the dissolution of the partnership.

(11) The second relief claimed in the suit was rendition of accounts. This would have meant the appointment of a Commissioner to take accounts and the disputes between the parties as to the amount of profits payable to the appellant. The respondent could even have pleaded that the partnership made no profits at all. The parties decided to end the delay and the disputes by agreeing that fixed amount should be paid to the appellant as his shares of the profits of the partnership for the past years as well as the current years. This part of the compromise, thereforee, completely related to the relief for the rendition of accounts.

(12) The third relief was an injunction that the respondent should quit the premises of the appellant given to the partnership and should not use it. This relief was also virtually granted by the compromise which said that the possession of the

premises be handed-over to the appellant by the respondent at the end of the contractual period (of 5 years).

(13) On this analysis of the reliefs claimed in the suit and the terms of the compromise we are of the view that the later entirely related to the suit and thereforee the court was bound to pass a decree in accordance with the terms of the compromise under order Xxiii rule 3 Civil Procedure Code This is not to say, however, that each of the terms of the compromise decree is executable and none of them is merely declaratory. In these appeals we are only concerned with the question whether the terms of the compromise shall form part of the decree and whether the payment of the share of the profits of the appellant is an executable part of such a decree. Both these questions are answered by us in the affirmative. But we are not called upon to go further and consider whether the other parts of the compromise such as the continuance of the partnership for 5 years and the handing over of the possession of the premises by the respondent to the appellant are also executable and are not merely declaratory. For. those parts will have to be considered by the Executing Court when the appellant tries to execute the decree in respect of those parts.

2.The words 'suit is dismissed' were added by Jagjit Singh, J. in the order recording the compromise. Under Order Xxiii rule 3 Civil Procedure Code the Court has to accept the compromise as it is if it is legal. There is no discretion in the Court to add to or vary the terms. Further, the Court has to pass a decree in accordance with the compromise so far as it relates to the suit. The appellant in the order appealed against in F.A.O. (OS) 43 of 1972 made a grievance that the words 'suit is dismissed' should not have been added by the order recording the compromise. Shri Harish Chandra, for the respondent rightly pointed out that if the appellant was aggrieved by these words in the order recording compromise then his remedy was to file an appeal against such order under order Xliii rule 1 (m) Civil Procedure Code. As no such appeal was filed within limitation, the complaint against these words by the appellant was out of place and time barred. The appellant would have been in serious difficulty if we would have taken the view that the words 'suit is dismissed' in the order recording the compromise gave the appellant a cause of action for filing an appeal under Order Xliii rule 1(m) Civil

Procedure Code and that because of these words either the compromise could not be recorded or if so recorded a decree could not be passed according to it. To take such a view would be hypertechnical and unjust. After all, parties enter into compromise with some purpose and to shorten the process of litigation. The Court should be, thereforee, sympathetic to the purpose of the compromise and try to effectuate it rather than take a technical view which would result in defeating the purpose. In our view, the words 'suit is dismissed' used by Jagjit Singh, J. can have only one meaning. It was that the reliefs originally claimed in the suit were denied to the plaintiff and in that sense or to that extent the suit was dismissed. The Registrar so understood their meaning in preparing the draft decree and, thereforee, in the draft decree he used the words 'suit is otherwise dismissed'. If the words were intended to mean that the appellant was to be out of Court and was to get no relief from the Court, then the learned Single Judge would have regarded the whole of the compromise as not relating to the suit. In that event, no part of the compromise would have been either embodied in or executable as a decree. But it is admitted by both the parties that much of the compromise was immediately acted upon with the help of the Court such as payment of the past profits to the appellant and subsequent payments of the current profits also in execution proceedings. The Court thus treated that part of the compromise which related to the payment of the profits to the appellant as executable. If so it related to the suit and a decree had to be drawn up in respect of at least that part of the compromise. The position would be inconsistent with the dismissal of the suit if such a dismissal meant a total dismissal and grant of no relief whatever. Such contradiction is avoided if the words 'suit is dismissed' are construed to mean 'suit is dismissed' in respect of the original reliefs in the plaint. On this view no harm was done to the appellant by the use of these words by Jagjit Singh J. As the whole of the compromise was recorded and only the original reliefs claimed in the plaint were disallowed, the plaintiff appellant was fully satisfied and he could not have filed any appeal under order Xliii rule 1(m) Civil Procedure Code.

3.In number I above we have held that the whole of the compromise related to the suit. We are unable to agree thereforee with the view of Jagjit Singh J. in the order appealed against in F.A.O.(OS) 43 of 1972 that the terms of the compromise shall not form part of the decree. It is the right of the appellant that a decree embodying

the terms of the compromise shall be drawn up by the Court. It is the duty of the Court to draw such a decree and it is not necessary that the party should make any application to the Court for drawing up such a decree or should pursue the matter in the Court for getting the decree drawn up. It is a settled principle that the failure of the Court to do its duty to draw up such a decree will not prejudice the rights of the party to execute such a decree. As soon as the compromise was recorded by the Court, the Court became bound to pass a decree insofar as it related to the suit thereon and the appellant as a decree-holder had the right to execute the executable part of the decree irrespective of the question whether a decree was actually drawn up by the Court or not. This conclusion is supported by the following provisions of the Civil Procedure Code:-

(1)Order Xxiii rule 3 makes it mandatory for the Court to pass a decree on the compromise insofar as it relates to the suit.

(2)Section 2(2) certainly defines 'decree' to mean the formal expression of an adjudication, but this does not mean that the right of the decree-holder to execute a decree is defeated after the Court fails to do its duty in drawing up a decree.

(3)Section 33 also says that on the delivery of a Judgment 'a decree shall follow'.

(4)Order Xx rule 6(1) says that 'the decree shall agree with the judgment'.

(5)Order Xx rule 7 says that 'the decree shall bear the date of the day on which the judgment was pronounced'.

(6)Order Xxi rule 10, unlike Order Xli rule 1, does not require that an execution application shall be accompanied by a copy of the decree to be executed.

(7)Order Xxi rule 11(1) expressly states that where a decree is for the payment of money the Court may, on the oral application of the decree-holder, order immediate execution thereof at the time of the passing of the decree by the judgment debtor prior to the preparation of a warrant if be is within the precincts of the Court.

(14) The passing of a decree in the eye of law thereforee means the delivery of a judgment on which a decree has to be drawn up compulsorily by the Court. The delay on the part of the Court in drawing up of the decree will not mean that no decree is passed in favor of a successful party until it is actually drawn up and signed by the Court. There is a distinction, thereforee, between the passing of a decree arid, the drawing up of a decree. This is why the Explanationn to section 12 of the Limitation Act 1963 says that in computing the time requisite for obtaining a copy of a decree any time taken by the Court to prepare the decree betore an application for a copy of it is made shall not be excluded. The time to file appeals thereforee runs from the delivery of the judgment or order onwards and not from the date on which the decree is drawn up. This is why the date of the decree must be the same as the date of the judgment even, though the decree may have been actually drawn up long after the judgment was delivered. The failure of the Court to draw up a decree would not thereforee be construed (as was done by P. N. Khanna J.) to mean that the terms of the compromise did not relate to the suit and were not meant to be followed by a decree.

(15) 4. When the appellant filed Execution Case No. 27 of 1970 and the respondent made the payment to the appellant in their execution. no objection was raised by the respondent on the ground that the compromise decree was not executable. As stated above, in the eye of law, the compromise decree was passed even though it was not actually drawn up. It was, thereforee, incumbent on the respondent to raise such an objection if he wanted to oppose the executability of the decree. As he did not raise the objection at that time as he 'might and ought' to have done, he is precluded by Explanationn No. Iv to section 11 Civil Procedure Code from raising such an objection subsequently by the rule of constructive rest judicata. P. N. Khanna, J. has pointed out that no decision on merits was given as to the executability of the decree. But the learned Single Judge does not seem to have considered that objection as to the executability was barred not by actual rest judicata but by constructive rest judicata. We find, thereforee, that so far as the payment of money to the appellant by the respondent under the terms of the compromise was concerned, the compromise decree was executable and also that the objection to its executability not having been raised in Execution No. 27 of 1970, the respondent was barred by constructive rest judicata from raising it at any

subsequent time.

(16) As the legal position stated above is clear on principle, we have not thought it necessary to refer to the decisions cited by the learned counsel of the parties in proof of points which are self-evident. For the above reasons, thereforee, we allow both the appeals, set aside the orders appealed against and direct as follows :

(1)All the terms of the compromise of December 5, 1968 relate to the suit and shall thereforee form part of the decree which shall be drawn up according to the terms of the compromise as ordered to be recorded by Jagjit Singh J.

(2)The terms of the compromise relating to the payment of money by the respondent to the appellant are held to be an executable part of the compromise decree. The Executing Court is left free to decide as to the executability about the other parts of the compromise decree.

(3)The respondent shall pay to the appellant the costs of both the appeals.