

**Kamla Devi Vs. Prabhat Chand**

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**Court :** Delhi

**Decided On :** Feb-04-1997

**Reported in :** 1997IIAD(Delhi)236; AIR1997Delhi317; 1997(2)ARBLR89(Delhi); 65(1997)DLT986; 1997(40)DRJ749; 1997RLR200

**Judge :** M.J. Rao, C.J. and; Manmohan Sarin, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Order 23, Rule 3

**Appeal No. :** First Appeal No. 331 of 1995

**Appellant :** Kamla Devi

**Respondent :** Prabhat Chand

**Advocate for Pet/Ap. :** M.L. Mehra,; J.K. Seth and; Shalini Kapoor, Advs

**Judgement :**

M. Jagannadha Rao, C.J.

(1) This is an appeal against the Judgment of the learned Single Judge dated 8.10.1995 in I.A. 338/95 in Suit NO. 635-A/84. The suit was one filed under Section 20 of the Arbitration Act. It was filed by the 1st respondent Mr. Prabhat Chand.

(2) Prabhat Chand (plaintiff-1st respondent), Smt. Kamla Devi (1st defendant) and Miss Manju Aggarwal (3rd defendant) were partners of M/s S.C.S. Publishers

Distributors, under a deed dated 1.3.1977, having equal shares. It appears that the plaintiff, after serving notices dated 24.5.1983 and 11.9.1983, offered to retire from the firm and also sent reply notice dated 23.9.1983 on the defendants calling upon them to finalise the accounts and render the same to the plaintiff and pay his dues from the assets, goodwill and profits. On failure by the defendant, the plaintiff moved an application under Section 20 of the Arbitration Act. According to the plaintiff, his share in the assets and goodwill was Rs. 2.50 lakhs plus interest.

(3) There were certain orders of temporary injunction in I.A. 2005/84 against the defendants and a Local Commissioner was appointed to conduct inventory. Later in I.A. 2121/84 a Receiver was appointed to take possession of all the account books and for locking up the shop. Police aid was granted. Books of account were, it is stated, not produced before the Receiver.

(4) It appears that, before the learned Single Judge, the defendants offered to compromise the dispute. A statement of accounts dated 30.6.1984 was prepared and produced before the learned Single Judge on 18.12.1984. But according to plaintiff, the defendants, by producing the same played fraud on him, and he was made to agree for the compromise on the presumption that the said statement of accounts signed by defendants or their attorney was correct. Plaintiff was told that under the statement he could recover a sum of Rs. 1,43,254.27 from various debtors who owed monies to the firm. Plaintiff says that defendants played fraud and made the plaintiff agree to have recourse to the said debtors towards the amount due to the plaintiff and that plaintiff agreed for the same and did not press his Section 20 application. On the basis of the above, the Court passed an order on 18.12.1984 wherein the learned Single Judge mentioned what the parties who were present in Court stated before her and she held that the suit was disposed of as per what the parties had stated before her.

(5) Thereafter, the plaintiff-respondent moved the application to set aside the order dated 18.12.1984 on the ground of fraud and also on the ground that there was no compromise signed by the parties as required by Order 23, Rule 3 CPC. He also contended that the defendants had represented that they would help the plaintiff to recover the amounts from third parties by applying details in seven days and that

they did not supply. Plaintiff had to move I.A.338/85 to direct defendants to file the list of debtors. It was filed and plaintiff found that several debts owed to the firm were time barred, some were for 0.01 paise, 0.10 paise, 0.20 paise and 0.60 paise, some were to be recovered from Tamil Nadu and others living in far off places. Plaintiff stated that the defendants had not revealed to the Court on 18.12.1984 that the defendants i.e. Kamla Devi had withdrawn Rs. 1,42,501.53 on 23.9.1980, Mr. Subhash Chand had drawn Rs. 1,72,965.51 on 23.9.1980 and Miss. Manju Aggarwal had drawn Rs. 1,37,004.25 on 30.9.1980.

(6) This application for setting aside the order dated 18.12.1984 was contested by the appellants defendants.

(7) The learned Single Judge set aside the order dated 18.12.1984 on the ground that the compromise was not in writing nor was signed by all parties. He did not think it necessary, therefore, to go into allegations of fraud on the plaintiff or on the Court.

(8) Aggrieved by the order of the learned Single Judge dated 18.10.1995, this appeal has been filed by the defendants Smt. Kamla Devi and Shri Subhash Chand Aggarwal impleading the plaintiff (Petitioner in I.A.) Mr. Prabhat Chand as 1st respondent and the other partner, Miss Manju Aggarwal as 2nd respondent.

(9) The main point for consideration is whether the learned Single Judge who passed the order on 18.10.1995 was right in setting aside the order dated 18.12.1984 on the ground that there was no compromise in writing and signed by the parties as required by Order 23, Rule 3, CPC

(10) Before we consider the aforesaid main contention raised in appeal, we may note a submission of the appellants that provisions of Order 23 Rule 3 of the Code of Civil Procedure are not applicable. The argument being that the respondent had himself offered to recover the money directly and on this basis the matter was settled and suit disposed of. The order dated 18.12.1984, inter alia, records '.....since the major amount is due to the petitioner, parties are agreed that Prabhat Chand be permitted to recover the entire amount due to the firm and they authorize him to do so.....'. The language, tenor and substance of the order

dated 18.12.1984 clearly shows that it recovered the agreement reached between the parties, thereby attracting provisions of Order XXIII Rule 3 of the Code of Civil Procedure. The submission of the appellants is devoid of merit.

(11) Coming to the main contention we may point out that this is not a case where pursuant to an oral compromise, parties had reduced the compromise into writing or signed the same. Nor is it a case where each of the oral statements of parties made before the Court on 18.12.1984 was reduced to writing and got signed by each of them. We only have, in the order of the learned Single Judge dated 18.12.1984, a record as to what the parties had orally agreed before the Court.

(12) Appellants argued that to allow a party to go back upon what he had orally agreed in open Court would be unjust and that strict compliance with Order 23, Rule 3 was not required. But then, the language of Order 23, Rule 3 is quite clear that the compromise must be in writing and signed. Further the facts in the Judgment of Supreme Court in *Gurpreet Singh Vs . Chatur Bhuj Goel* : [1988]2SCR401 are almost similar and show that strict compliance with Order 23, Rule 3 is necessary. In that case too, before a Division Bench which heard the appeal, parties or counsel made oral submission on 28.1.1987 stating that the appeal could stand dismissed as respondent agreed to receive Rs. 2,25,000 from appellant. The case was adjourned to 17.3.1987 to check if the money as agreed to on 28.1.1987 was paid. But later the respondent went back, taking advantage of Order 23, Rule 3. 'Admittedly the compromise was not reduced to writing and signed by the parties'. The respondent on February 9, 1987 made an application by which he tried to resile from the compromise. therefore on 17.3.1987, the Court directed the parties to argue the appeal. Appellant relied on Order 23, Rule 3, but the same was not accepted because the compromise was not in writing nor signed by parties. On further appeal to the Supreme Court, the same was dismissed holding that there was no written compromise signed by the parties as required by Order 23, Rule 3. The order in which the respective submissions of the parties in relation to the compromise was recorded, was not sufficient. The Judgment of the Supreme Court is directly on point and, therefore, we strictly require compliance of the strict language of Order 23, Rule 3 CPC.

(13) Following the Supreme Court Judgment, we dismiss the appeal on the short ground that the compromise was neither in writing nor signed by the parties.

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