

Mohan Bai Vs. Jai Kishan

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Court : Rajasthan

Decided On : Feb-01-1983

Reported in : AIR1983Raj240; 1983()WLN203

Judge : Dwarka Prasad, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 23, Rule 3; Code of Civil Procedure (CPC) (Amendment) Act, 1974 - Order 3, Rule 4 - Order 6, Rule 14

Appeal No. : Civil Second Appeal No. 101 of 1982

Appellant : Mohan Bai

Respondent : Jai Kishan

Advocate for Def. : N.N. Mathur, Adv.

Advocate for Pet/Ap. : N.P. Gupta, Adv.

Disposition : Appeal dismissed

Judgement :

Dwarka Prasad, J.

1. The question raised in this appeal is as to whether a compromise petition filed under Order 23 Rule 3 C.P.C. should be signed by the party as well as by his counsel and a compromise petition, signed by the Advocate for the party only and

not by the party himself, would not form a valid basis for a compromise decree under Order 23, Rule 3, C.P.C.

2. Learned counsel for the appellant submits that on account of the amendment in the provisions of Order 23, Rule 3, C.P.C. by the Amending Act No. 104 of 1976 and on account of the addition of the words 'in writing and signed by the parties' in the aforesaid provision. a lawful agreement or compromise, before it can be given effect to by the court by recording the same under Order 23, Rule 3, C.P.C. should be signed by the party himself and such a compromise petition cannot be acted upon by the Court, if it is signed merely by the Advocate for that party.

2A. The provisions of Order 23, Rule 3, C.P.C. as they now stand after the amendment of the Civil P.C. by the Amending Act No. 104 of 1976, are as under.--

'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 as 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.

Explanation:-- An agreement or compromise which is void or voidable under the Indian Contract Act, 1872, shall not be deemed to be lawful within the meaning of this rule.'

3. Learned counsel for the appellant submits that the addition of the word 'in writing and signed by the parties' in the aforesaid provision, by way of amendment, signifies that the compromise should not only be in writing but it should be signed by

the parties personally. I am afraid learned counsel is trying to add the word 'personally' to the words 'in writing and signed by the parties', which have been added to the provisions of Order 23, Rule 3, C.P.C. by the Amending Act No. 104 of 1976, while the word 'personally' does not appear even in the amended provisions of Order 23, Rule 3, C.P.C. There is apparently no basis for the submission that reference to 'the parties' in the aforesaid provision should be construed as meaning parties personally and the signatures of the parties themselves would be essential before a compromise petition could be given effect to by the court under the provisions of Order 23, Rule 3, C.P.C.

4. It is settled law that an Advocate, who is duly authorised and empowered to appear on behalf of the party, has the implied or inherent authority to enter into a compromise on behalf of the party. The authority of the counsel to enter into a compromise emanates from the provisions of Order 3, Rule 1 and Order 3, Rule 4, C.P.C. and there is nothing in Order 23, Rule 3, C.P.C. to affect the authority or the right of the counsel to enter into a compromise on behalf of his client. The only change which has been effected, on account of the amendment introduced in Order 23, Rule 3, C.P.C. by the Amending Act No. 104 of 1976 is that the compromise should now necessarily be in writing and it should be signed by 'the parties', which expression includes the advocates for the parties as well. The remedy which the legislature desired to remedy by introducing the words "in writing and signed by the parties" in Order 23, Rule 3, C.P.C, was to avoid the setting up of an oral agreement or compromise, which had the effect of delaying the progress of the suit. But there is nothing to indicate, in the amended provisions of Order 23, Rule 3, C.P.C, that a compromise petition signed only by the advocates for the parties would not be given effect to by the court. It may be observed that whenever the framers of the Code thought it necessary that the parties themselves should place their signatures on some documents, specific provision to that effect has been made; as in Order 6, Rule 14, C.P.C it has been provided that every pleading shall be signed by the party and his pleader (if any). Where the Code does not provide specifically that a document presented before the court should be signed by the party personally, it is open to the party or his counsel to present the document or application with the signatures of either of them. I may also refer to the provisions of Order 10, Rule 2, C.P.C., whereby the court is empowered at the

first hearing of the suit to examine orally such of the parties to the suit 'appearing in person or present in court', with a view to elucidate matters in controversy in the suit. Clause (b) of Order 10, Rule 2, C.P.C, authorises the court to examine any authorised person on behalf of the parties, who is able to answer any material question relating to the suit and who is accompanied by any party appearing in person or present in Court or his pleader. Thus, where it was desired by the legislature that the party should act personally, specific provision in this regard has been made in the Civil P.C. and the necessary corollary is that where a specific mention has not been made in the Code that an act is to be performed by a party personally, then the party or his advocate, if any, could lawfully do such act.

5. The law is well settled so far as relating to the implied or inherent power of an advocate to enter into an agreement to compromise a suit, is concerned In *Sourendra Nath Mitra v. Tarubala Dasi* AIR 1930 PC 158 Lord Atkin, speaking for the Judicial Committee of the Privy Council, made the following statement of law on the subject:--

'We are of opinion that Mr. Sircar, as an advocate of the High Court had, when briefed on behalf of the defendant, in the Court of the Subordinate Judge of Hoogly, the implied authority of his client to settle the suit. Their Lordships have already said that he must be treated as though briefed on the trial of the suit. Their Lordships regard the power to compromise a suit as inherent in the position of an advocate in India. The considerations which have led to this implied power being established in the advocates of England, Scotland and Ireland, apply in equal measure to India. It is a power deemed to exist because its existence is necessary to effectuate the relations between advocate and client to make possible the duties imposed upon the advocate by his acceptance of the cause of his client.

The advocate is to conduct the cause of his client to the utmost of his skill and understanding. He must in the interests of his client be in the position, hour by hour, almost minute by minute, to advance this argument, to withdraw that; he must make the final decision whether evidence is to be given or not on any question of fact; skill in advocacy is largely the result of discrimination. These powers in themselves almost amount to powers of compromise; one point is given

up that another may prevail. But in addition to these duties, there is from time to time thrown upon the advocate, the responsible task of deciding whether in the course of a case he shall accept an offer made to him, or on his part shall make an offer on his client's behalf to receive or pay something less than the full claim or the full possible liability. Often the decision must be made at once. If further evidence is called or the advocate has to address the Court the occasion for settlement will vanish. In such circumstances, if the advocate has no authority unless he consults his client, valuable opportunities are lost to the client.'

In *Jiwi Bai v. Ram Kutnar* AIR 1947 Nag 17, a Full Bench of the Nagpur High Court considered the question and after an exhaustive discussion, dealing with the power of an advocate under Order 3, Rule 4, C.P.C. it was observed by the Full Bench that the type of power which is delegated to an advocate empowers him to plead, sign written statements, verifications and applications, produce documents and evidence, take them back, withdraw deposits, execute a power of attorney in favour of another pleader, pay process fees, swear affidavits, compromise and sign compromise petitions and to take inspection in respect of record etc. The Full Bench observed as under:--

'Brush unrealities aside and what do we get but a contract How much more is that the case in those parts of India where no solicitor intervenes and counsel and client meet face to face? How much more when there is an actual instrument of engagement or a power of attorney? How much more when the law requires writing?'

The conclusion, which was arrived at by the Full Bench, is as under :--

'Our answer to the second question is that counsel in India, whether Barristers, Advocates or pleaders, have inherent powers, both to compromise claims, and also to refer disputes in Court to arbitration, without the authority or consent of the client, unless their powers in this behalf have been expressly countermanded, and whether the law requires a written authority to 'act' or 'plead' or not.'

The same view was also taken by a Full Bench of the Kerala High Court in *Chengan Souri Nayakam v. A.N. Menon* AIR 1968 Ker 213. Mathew J., as he then

was, speaking for the Full Bench, observed as under (para 11):--

'The construction of a document appointing an agent is different from the construction of a vakalat appointing counsel. In the case of an agent the document would be construed strictly and the agent would have only such powers as are conferred expressly or by necessary implications. In the case of counsel the rule is otherwise because there we are dealing with a profession where well-known rules have crystallised through usage. It is on a par with a trade where the usage becomes an additional term of the contract, if not contrary to the general law or excluded by express agreement. That counsel is not a mere agent of the client would be made clear if we look at the nature of his duties and relationship with the public and the court. Counsel has a tripartite relationship; one with the public, another with the court, and the third with his client. That is a unique feature. Other professions or callings may include one or two of these relationships but no other has the triple duty. Counsel's duty to the public is unique in that he has to accept all work from all clients in courts in which he holds himself out as practising, however unattractive the case or the client.'

The Nagpur and Kerala Full Bench decisions, referred to above, were cited with approval by their Lordships of the Supreme Court in *Jamila Bai Abdul Kadar v. Shankerlal Gulabchand* AIR 1975 SC 2202, wherein the Supreme Court laid down the law on the subject as under (at pp. 2210-11)'--

'While we are not prepared to consider in this case whether an Advocate or pleader is liable to legal action in case of deviance or negligence, we must uphold the actual, though implied, authority of a pleader (which is a generic expression including all legal practitioners as indicated in Section 2(15), C.P.C.) to act by way of compromising a case in which he is engaged, even without specific consent from his client subject undoubtedly to two overriding considerations: (1) He must act in good faith and for the benefit of his client; otherwise the power fails (ii) It is prudent and proper to consult his client and take his consent, if there is time and opportunity. In any case, if there is any instruction to the contrary or withdrawal of authority, the implicit power to compromise in the pleader will fall to the ground. We need hardly emphasize that the Bar must sternly screen to extirpate the black-

sheep among them for Caesar's wife must be above suspicion, if the profession is to command the confidence of the community and the court.'

6. In *Employers in relation to Monoharbahal Colliery Calcutta v. K.N. Mishra* AIR 1975 SC 1632, their Lordships of the Supreme Court relied upon the implied authority of the counsel to compromise a civil case on behalf of his client and observed that there was no lack of authority in the action taken by the counsel.

7. Every counsel has a duty to his client fearlessly to raise every issue, advance every argument, and ask every question, however distasteful, which he thinks will help his client's case. But, as an officer of the Court, concerned in the administration of justice, he has an overriding duty to the Court, to the standards of his profession, and to the public, which may and often does lead to a conflict with his client's wishes or with what his client thinks are his personal interests. Counsel must not mislead the Court, he must not lend himself to casting aspersions on the other party or witnesses for which there is no sufficient basis in the information in his possession, he must not withhold authorities or documents which may 'ell against his clients but which the law or the standards of his profession require him to produce. And by so acting he may well incur the displeasure or worse (wrath?) of his client so that if the case is lost, his client would or might seek legal redress if that were open to him.

8. Learned counsel for the appellant placed reliance on the decision of a learned single Judge of the Andhra Pradesh High Court in *Kesarla Raghuram v. Dr. Narasipalle Vasundara*, AIR 1983 Andh Pra 32 in support of the proposition, that recent amendment introduced in Order 23, Rule 3, C.P.C. made it incumbent that the compromise memo should not only be in writing but it should be initialled by the parties and the compromise memo filed before the court and signed by the advocates of both the parties concerned, without being signed by the parties themselves, cannot be acted upon. With great respect to the learned Judge, who decided the aforesaid case, I would like to observe that the object with which the recent amendment has been introduced in Order 23, Rule 3, C.P.C., as mentioned in its objects and reasons is of avoiding the setting up of oral agreements or compromises to delay the progress of the suit and not to cut down the implied

authority of the counsel. It was thought proper by the Parliament in its wisdom that in order to avoid delay in the progress of the suit, often caused on account of setting up of oral compromises and taking lot of time in trying to prove the same, a compromise which can be given effect to by the court must be in writing. Once the compromise is required to be in writing, then naturally it must be signed by the parties, which expression includes the advocates for the parties. It may be respectfully submitted that there is no indication in the amended provisions that signatures by the counsel on behalf of the parties were excluded, or that the parties were personally required to sign compromise petitions. In case the legislature intended to depart from the accepted proposition laid down in the Full Bench judgments of the Nagpur and Kerala High Courts and approved by their Lordships of the Supreme Court in the cases referred to above, regarding the implied authority of the Advocate to enter into a compromise on behalf of his client, then specific provision would have been made to indicate that the parties should personally sign the compromise petitions, like the provisions contained in Order 6, Rule 14, C.P.C. about signing the pleadings. Where it has been made obligatory that the party should himself sign the pleadings; and if it is shown that by reasons of absence or otherwise, the party was unable to sign the pleadings then it should be signed by a person duly authorised by him in this behalf. The signatures of the pleader would not be enough, so far as the pleadings are concerned, as has been made explicit in the provisions contained in Order 6, Rule 14, C.P.C. In the absence of any such specific provisions, it would not be proper to cut down the inherent or implied authority, of a counsel derived by him on the basis; of the provisions of 6. 3, Rule 4, C.P.C., to act on behalf of the party. In my humble view, Order 23, Rule 3, C.P.C. does not debar a counsel from signing a compromise petition nor it interferes with his inherent right to enter into an agreement or compromise on behalf of his client. Thus, the court can act upon such a compromise petition which is signed only by the counsel for the parties and has not been signed by the parties themselves personally.

9. Of course, as observed by their Lordships of the Supreme Court in Abdul Radar's case (AIR 1975 SC 2202), the counsel has the power to compromise a case subject to two overriding considerations, namely, that he must act in goodfaith and for the benefit of his client, otherwise the power shall fail, and it is

proper for him to consult his client and to take his consent, if time and opportunity permit him to do so. The aforesaid considerations must be strictly observed by the counsel, while entering into a compromise on behalf of his client.

10. Learned counsel for the appellant submits that an application has been filed by the appellant in the first appellate court for setting aside the compromise.

11. The application filed before the first appellate court for setting aside the compromise shall be considered by that court on its own merits.

12. Subject to the aforesaid observations the appeal has no merit and is dismissed.