

S. Silver Screen Enterprises

Vs

Devki Nandan Nagpal

Civil Appeal No. 1896 of 1967

(J.C. Shah, K.S. Hegde JJ)

28.11.1969

JUDGMENT

HEGDE, J. -

1. This appeal by special leave arises from the decision of the High Court of Punjab and Haryana in Civil Revision No. 189 of 1966 on its file. [Reported in ILR (1968) 1 Punj 621.] The respondent is the owner of a Cinema House. That Cinema House had been leased to the appellant. The respondent filed an application under Section 13(2)(i) of the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act 3 of 1949) for the ejectment of the tenant on the ground of non-payment of rent. That application was dismissed by the Rent Controller. Against that order the respondent went up in appeal. At the same time there were several other litigations between the appellant and the respondent. By an agreement, dated January 7, 1964, the appellant and the respondent settled all their pending disputes excepting one Regular First pending in the High Court or Punjab and Haryana. One of the disputes pending at that time was an application made by the appellant to the Rent Controller for fixing a fair rent for the Cinema House in question. As per the agreement the respondent was required to withdraw the appeal filed by him against the order dismissing his application to eject the appellant from the premises in question. That agreement also provided that the appellant should withdraw his application for fixing a fair rent for that premises. The appellant accordingly withdraw his application but when the appeal in respect of the ejectment proceedings came up for hearing the respondent refused to withdraw the same. The appellant moved the Court to dismiss the appeal on the strength of the compromise referred to earlier. The appellant Court accordingly dismissed the appeal. As against that order the respondent went up in revision to the High Court. The High Court allowed that revisions petition and set aside the order of the Appellate Court holding that there was no provision in the Code of Civil Procedure under which an appellant can be compelled to withdraw his appeal.

2. The High Court did not hold against the correctness of the compromise put forward or as to its validity. The only ground on which the appeal was allowed was as mentioned earlier that the appellate court was in incompetent to compel the appellant to withdraw his appeal. This conclusion ignored the fact that the appellant court could always dismiss an appeal on the ground that it has been settled out of Court.

3. The compromise in question specifically say that the parties thereto have compromised all their dispute mentioned therein including the two matters referred to earlier. On the basis of that compromise both the appellant and the respondent were required to withdraw all the pending proceedings excepting the one mentioned earlier. There is not dispute that one of the matters compromised is that relating to the appeal with which we are concerned herein. Once a dispute is

validity settled out of Court, it is open to a party to a litigation to move the Court to pass a decree in accordance with the compromise. Rule 3 of Code of Order XXIII of Code of Civil Procedure provides that where it is provide to the satisfaction of the Court that a suit (which expression includes an appeal) has been settled wholly or in part by any lawful agreement, the Court shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree in accordance therewith so far as it related to that suit. This is a mandatory provisions. It is some-what surprising that the High Court should have felt itself helpless under the circumstances of the case to do justice between the parties. Clause 12 of the compromise provides that if the respondent does not carry out the terms of the compromise, he shall be held responsible for all the losses that the appellant may suffer because of its breach. This clause does not preclude the appellant from putting forward the compromise and asking the Court to dismiss that appeal in accordance the compromise and asking the Court to dismiss the appeal in accordance with its terms. Both the factum and the validity of the compromise are not in dispute. Hence the appellate court was bound to accept the same. That Court acted in accordance with law in dismissing the appeal. Hence the High Court was clearly wrong in interfering with the judgment of the appellate court.

4. In the result this appeal is allowed and the decree judgment of the High Court are set aside and that of the appellate Court restored. The respondent shall pay the costs of the appellant in the High Court and in this Court.

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