

Jaywantraj Punamiya and Others

Vs

H. Choksi & Co. Pvt. Ltd

Civil Appeal No. 702 of 1997

(K. Ramaswamy, G. T. Nanavati JJ)

03.02.1997

ORDER

1. This appeal by special leave arises from the judgment and order dated 10-1-1997 passed by the Bombay High Court in Civil Revision Application No. 9 of 1997. It is not in dispute that while the appeal was pending an application under order 23, Rule 3 CPC was filed for recording the compromise. The appellate court refused to record the compromise and on revision, it was dismissed. Thus, this appeal by special leave.

3. The compromise memo annexed as Annexure A at p. 21 of the paper-book records that : "We, the undersigned Shri Harshan A. Mehta, Director of H. Choksey & Co. Pvt. Ltd. and Mr. Jayavantraj Punamiya, Director of M/s. Sundeeep Plastics Pvt. Ltd. do hereby appoint Shri Mohanlal S. Mehta to sell 2 galas being Nos. D/8 and AB/14, situate at Nandanvan Cooperative Industrial Estate Ltd. at Thane. " The High Court recorded the finding that it being a compromise contingent upon the parties appointing Shri Mohanlal S. Mehta as a mediator, it cannot be recorded under Order 23, Rule 3 CPC. Shri Sitaramaiah, learned Senior Counsel for the appellants, contends that once parties have agreed to refer the matter to a third party to settle their disputes, it can be enforced under Order 23, Rule 3 CPC. In support of his contention, he relies upon a decision of the Allahabad High Court in Akbari Begam v. Rahmat Husain (AIR) 1933 All 861 : 1933 All LJ 1127). He also relied upon the judgment of this Court in Katikara Chintamani Dora v. Guntreddi Annamanaidu ((1974) 1 SCC 567 : (1974) 2 SCR 655). Having given consideration to the contention of the learned counsel, we think that in the facts and circumstances of this case, he is not right. It is seen that no doubt the parties have settled the terms of the compromise for reference of the Matter to Mohanlal S. Mehta, and as agreed upon, he will dispose of the two galas and after adjusting the outstanding amount and deducting the expenses, the balance would be given in equal shares to the parties. Shri Sitaramaiah has placed before us the evidence of Shri Mehta wherein he has suggested that he is willing to sell the property. It has been noted by the learned District Judge that Shri Mohanlal S. Mehta did not take steps to sell the disputed flats. Hence it cannot be said that there is complete agreement. The compromise is a contingent contract dependent upon the action of a third party, i.e., making adjustment. Thus, the very object of recording the compromise is to ensure that the dispute reaches its finality and does not lead to further litigation. In this case, since the dispute was not finally resolved, but the compromise was contingent upon action by Shri Mohanlal S. Mehta, it did not receive finality in that perspective. The Allahabad High Court had to consider the question in the context of reference to an arbitration for settlement of the dispute pending in the suit. In that context, a Full Bench came to lay down the law as extracted herein :

"When both parties make such admission simultaneously it amounts to an offer by one and acceptance by the other. Such reciprocal admissions would therefore, be a

valid agreement between them. Consideration is good because there is reciprocity. The statement of the referee would then be the admission of both the parties binding upon them. No doubt admissions are not conclusive; but where there has been mutuality of this kind and they have matured into an agreement, their conclusiveness follows from the principle of estoppel."

4. Equally, this Court in *Katikara Chintamani Dora* case ((1974) 1 SCC 567 : (1974) 2 SCR 655) had to consider the point in the context of the dispute having arisen between the parties who had agreed to abide by the decision of the court on the question whether a particular village notified by the State Government is an "estate" within the meaning of Section 3(2) (d) of the Madras Estate Lands Act, 1908 and whether the decision was appealable once there was a compromise. In that context, this Court had considered and held that the High Court had misunderstood the scope of the controversy and though a part of the decree had been settled, an appeal would lie. In view of the facts and circumstances and the observations mentioned hereinbefore, we think that the High Court was right in holding that the matter had not received finality and though it is a part of the decree, it cannot be recorded under Order 23, Rule 3 CPC.

5. The appeal is accordingly dismissed. No costs.