SUPREME COURT OF INDIA

Y.Sleebachen

Vs.

Superintending Engineer WRO/ PWD

C.A.Nos.7164-7166 of 2014

(J. Chelameswar and A.K. Sikri JJ.)

04.08.2014

JUDGMENT

A.K. SIKRI, J.

1. Leave granted.

2. By the common judgment dated 29.02.2012, the Madras High Court has decided three Civil Miscellaneous Appeals filed under Section 37 (1) (b) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'). Those three appeals were filed by the respondents herein challenging the orders dated 28.04.2011 which were passed by the Principal District Judge, Tirunelveli, Tamil Nadu. The reasons for disposing of the appeals by one single order was the commonality of the parties as well as the issue involved in the said three appeals.

3. It so happened that the appellant, who is an Engineering Contractor, was awarded three contracts by the respondents herein particulars whereof are as under:

> (i) For the rehabilitation and modernization of Gundar Reservoir system in Tirunelveli District the bids were called and in which the Petitioner became the successful bidder to execute the work for a contract price of Rs.80,14,605/- under registered Agreement dated 02.04.1998 within a period of 15 months to complete the contract work.

(ii) For the rehabilitation and modernization of Karuppanadhi Reservoir system in Tirunelveli District the bids were called and in which the Petitioner became the successful bidder to execute the work for a contract price of Rs.55,82,633/- under the Registered Agreement dated 20.07.1998 within a period of 18 months to complete the contracts work.

(iii) For the rehabilitation and modernization of Kannadian Anicut and Channel Reach " 1 in Tirunelveli District the bids were called and in which the Petitioner became the successful bidder to execute the work for a contract price of Rs.69,24,038/- under registered agreement 28.07.1998 within a period of 26 months to complete the contract work.

4. Certain disputes and differences arose between the parties relating to all these contracts. According to the appellant, delays were caused by the Department in handing over the sites where the works were to be undertaken by the appellant and in addition, various other breaches were committed by the Department in not fulfilling its obligations under the three contracts. The appellant raised his claims in respect of all the three contracts. The Department appointed Mr. Velu as the Arbitrator in one case and Mr. S. Krishnamurthy was appointed as Arbitrator in other two cases. After adjudication of the disputes, awards were passed in all the three cases to the following effect:-

(i) Award dated 09.06.2006 by Mr. Velu in favour of the appellant in the sum of Rs.52,90,776/- together with interest at the rate of 18% p.a. from 09.06.2006 until payment or realisation.

(ii) Award dated 25.04.2006 vide which appellant was awarded a sum of Rs.39,74,964/- together with interest at the rate of 18% p.a. from the date of award until payment or realisation.

(iii) Award dated 25.04.2006 in favour of the appellant whereby respondent No.1 was directed to pay an amount of Rs.42,56,419/- together with interest at the rate of 18% p.a. from the date of the award until payment or realisation.

5. The respondent No.1 challenged all the awards by filing three petitions under

Section 34 of the Act, seeking to set aside these awards. The appellant filed his replies contesting those petitions. All these petitions were listed before the Principal District Judge, Tirunelveli. While these proceedings were pending before the Principal District Judge, the Government Public Works Department issued letter dated 02.12.2008 whereby it directed its officers to negotiate with the appellant for settlement of arbitration awards amount. Accordingly, there were meetings between the parties on 19.12.2008 and 09.01.2009 to negotiate out of court settlement. Officials, including the Superintending Engineer, had discussions with the appellant, wherein the appellant was requested to reduce 40% of the principal awarded amount for all the three works covered under the independent arbitration Awards. The contractor instead, came forward to reduce 40% of the interest accrued on the total awarded amount for all the three works, particularly with reference to interest in respect of the three works, which worked out to 12.81% towards the principal award amount covered under the three Awards. However, the Superintending Engineer insisted for further reduction of the principal amount. Ultimately in the meeting held in the Chamber of the Superintending Engineer on 9.1.2009, the contractor was asked to offer 10% reduction in the principal award amount, besides 40% offer made on the interest amount accrued. The appellant, however, agreed to only 5% reduction in the principal amount, in addition to 40% reduction in the interest amount. Because of the aforesaid position taken by the parties, the negotiation could not be fructified and fell through. The Principal Secretary to the Government wrote a letter dated 9.1.2009 to the officials concerned, directing them to pursue the applications under Section 34 of the Act in respect of the three awards pending before the Court.

6. The matters, however, lingered on in the Courts for some reason or the other. When they were listed in the Court on 09.04.2011, the appellant came forward with a memorandum to the effect that, apart from the offer made during the negotiations on 09.01.2009 for foregoing the interest at 40%, he was also willing to forgo further accrued interest on the award amount after 09.01.2009. This offer appeared to be fair to the Government Pleader. He made a written endorsement on the said memorandum, on behalf of the Government that it had no objection for this memo. As a result thereof, acting on this compromise, the petitions were partly allowed and the awards of the Arbitrators were modified whereby from the award amount, 5% reduction on the principal amount was ordered. Further apart from 40% reduction on the interest awarded till 09.01.2009; total interest accruing beyond that period, was also waived. However, from the date of award i.e. 25.04.2006 to 09.01.2009, interest was

calculated at 18% p.a. from where the reduction of 40 % in interest amount was granted.

7. To recapitulate the salient facts, the compromise talks took place between the parties at the instance of the respondents themselves expressing their intention to explore the possibility of settlement as per its letter dated 02.12.2008. Certain meetings were held for this purpose. The appellant had agreed to forgo substantial part of interest and also 5% of the principal amount. The Superintending Engineer, however, wanted 10% reduction in the principal sums awarded in favour of the appellant. It is because of this difference the settlement talks failed at that time and the Government decided to pursue the applications under Section 34 of the Act on merits. However, when the matter came up before the District Judge on 9.4.2011, the appellant agreed to forgo the entire interest accrued after 09.01.2009 as well, in addition to the concessions which were already given by the appellant and recorded above. When the Government Pleader was confronted with this offer given by the appellant, he took a view that it was a very fair offer and made an endorsement on the offer itself, to the effect that the Government had no objection for accepting the same. This resulted in modifying the award by the District Judge in terms of agreed conditions, vide his orders dated 28.04.2011 in all the three petitions.

8. The respondents, however, challenged the orders of the learned District Judge by filing appeals under Section 37 of the Act in the High Court, primarily on the ground that the Government had never agreed to the terms as endorsed by the Government Pleader, in as much as, he was never authorised for this purpose. It was argued that in the absence of any authorisation in favour of the Government Pleader, endorsement of the compromise given by him was not binding on the Government.

9. When the matter was heard by the High Court, even the High Court suggested that the State should once again consider the possibility of compromise and the matter was adjourned for this purpose. However, on the next date of hearing, the counsel for the respondents made a statement that Government was not interested in the settlement and wanted the matter to be heard on merits. The High Court, accordingly, heard the matter and vide impugned judgment, set aside the orders of the Principal District Judge passed in the three petitions, directing it to decide on merits the applications filed by the respondents under Section 34 of the Act. From the perusal of the order of the High Court, it is clear that the High Court has accepted the plea of the respondents

that in the absence of any material to show that Government Pleader was authorised to record the compromise, such a compromise was not binding on the respondents. It is in this backdrop, the appellant has preferred these appeals questioning the validity of the judgment of the High Court.

10. It was argued by the learned counsel for the appellant that he was in acute financial crisis and needed to satisfy the creditors including his bankers and in view of the said circumstances, he filed separate memos dated 06.04.2011 before the learned District Judge stating that he was ready to forgo further interest accrued on the awarded amounts after 09.01.2009 apart from the earlier offer made during the negotiations on 09.01.2009 provided that the amount so arrived at be paid in lump sum i.e. in one single installment and the said payment should be made within 3 months. In the said memo the appellant made it clear that the said offer is made without prejudice to the rights of the appellant to contest the petition on merit. In response to such offer to forgo further interest from 10.01.2009 for the three award amounts, on 09.04.2011, the Government Pleader, on behalf of the respondent, made a written endorsement that the offer under the above said memos are in accordance with the negotiations made on 09.01.2009 and offer to forgo entire interest amount from 09.01.2009 was beneficial to the Government. He also affirmed that the Government has no objection for these memos. It was thus argued that when the Government Pleader made the aforesaid endorsement in the manner stated above, and it resulted into passing in agreed order on the basis of settlement arrived between the parties, it was not open to the respondents to back out therefrom. It was further submitted that the respondents were stopped from contending that the Government Pleader was not authorised to make such a statement. It was also argued that admittedly no action was taken by the respondents against the Advocate who had appeared on its behalf who continued as the Government Pleader.

11. Learned counsel for the respondents, on the other hand, justified the impugned orders passed by the High Court submitting that it was not open to the Government Pleader to accept the offer of the appellant without any authorisation, more particularly, when it had already been decided by the Government, vide letter dated 09.01.2009, to contest the cases on merits. Therefore, such an endorsement made by the Government Pleader on behalf of the respondents was not binding upon the respondents.

12. We have bestowed our careful consideration to the respective arguments advanced by the counsel for the parties. The appellant has produced on record the copies of the 3 memos dated 06.04.2011 which were filed by the appellant before the Principal District Court on which endorsement was made by the Government Advocate as well. All these memos filed by the appellant are identically worded and the relevant extract thereof makes the following reading:

> Now in consideration of the exigencies and in deference to the suggestion by this Hon'ble Court apart from the above offer made during negotiations on 09.01.2009 this respondent is offering to forgo further interest accrued on the award after 09.01.2009, provided the petitioner observes the following and acts accordingly:
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> 1. The payment is made in lump sum and in one single installment.
>
> 2. The payment is made within three months from today.
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> It is humbly submitted that the respondent is making the above offer due to his acute financial crisis and need for satisfying his creditors including his bankers. Therefore the above offer is without prejudice to the right of the 1st respondent to contest the petition pending before this Court completely on merit. It is submitted accordingly.
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> Dated this 6th day of April 2011.

13. The endorsement of the Government Pleader on these 3 memos, which is also identically worded, reads as under:

> Received Copy. This Memo Offer is in accordance with 09.01.2009 negotiation. Moreover interest benefit for the Government from 09.01.2009. Hence no objection for this memo.
>
> 09-04-2011
>
> Government Pleader

14. It is clear from the above that the Government advocate who appeared for the respondents, had not only found the offer of the appellant to be in the interest of the Government and beneficial to the Government, but the same was also in accordance with the negotiations held earlier between the parties on 09.01.2009. As noted above, the parties had on an earlier occasion entered into negotiations to find an amicable, out of Court, resolution of the disputes. At that stage, the petitioner had agreed to forgo substantial part of the benefit which had accrued to him under the awards. However, the respondents/Government wanted more concessions which was not agreed to by the appellant at that time. This resulted in impasse' and the respondents decided to press its objections under Section 34 of the Act, on merits. No doubt about this. However, when the matter came up before the Court on 09.04.2011 and the appellant gave an offer to even forgo further interest accrued under the award after 09.01.2009, and the same was discussed in the Court, this offer was found to be attractive to the Government pleader who was of the view that such an offer was in the interest of the respondents and was also in accordance with negotiations held earlier on 09.01.2009. He accepted the same and the Court passed orders in terms of the settlement between the parties.

15. The only ground which has prevailed with the High Court in accepting the appeals of the respondents against the aforesaid orders are that the Government pleader was not authorised by the respondents to enter into such a settlement. It is difficult to accept this reasoning, in the scenario which prevails on the record. In the first instance, it is to be kept in mind that nothing has been brought out by the respondents which would show that advocate was not authorised to enter into such a settlement. On the perusal of the grounds of appeal submitted before the High Court by the respondents and even in the counter affidavit filed in this appeal, there is no allegation of any sort against the Government pleader. On the contrary, a categorical statement has been made that the action of the respondent was fair and just in this regard as the respondent has not initiated any proceeding against the District Government Pleader. Furthermore, and most importantly, there is not even an iota of a pleading explaining as to how the Government Pleader was not authorised to record consent or that he in any manner lacked authority. It is not even remotely suggested in any of these grounds that the Government Pleader he acted improperly. On the contrary, what is sought to be suggested is that there was a failure of compromise, or that no compromise was recorded or agreed upon before the Court, which is contrary to the record of the Court and the statements recorded in the judgment of the District Court, and therefore

impermissible as a ground of challenge. In this behalf, we would like to reproduce the following discussion in the judgment of this Court in the case of State of Maharashtra v. Ramdas Nayak, (1982) 2 SCC 463.

> 4. When we drew the attention of the learned Attorney General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation". Per Lord Atkinson in Somasundaran v. Subramanian We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is' incumbent, upon the party, while the matter is still fresh in the minds of the judges, to call attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. Per Lord Buckmaster in Madhusudan v. Chanderwati That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an Appellate Court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.

16. It is also pertinent to point out that here also, no application was filed by the

respondents before the District Court immediately after the passing of decrees in compromise terms, or even thereafter, for recall of the compromise order with the plea that such a compromise was unacceptable as the Government Pleader was not authorised to enter into any such settlement. Instead appeals were filed before the High Court. We are of the opinion that respondents should have approached the trial court in the first instance as it is the trial judge before whom the compromise was recorded and as he was privy to events that led to the compromise order, he was in a better position to deal with this aspect.

17. That apart, we find that as per the provisions of Order III Rule 4, once the counsel gets power of attorney/authorisation by his client to appear in a matter, he gets a right to represent his client in the Court and conduct the case. Further, in the case of Bakshi Dev Raj v. Sudhir Kumar, (2011) 8 SCC 679, this Court held that though Order XXIII Rule 3 of the CPC requires a compromise to be in writing and signed by parties, the signature of the advocate/counsel is valid for the said purposes. Detailed discussion on this aspect which ensues in the said judgment and is relevant for our purpose, reads as under:

> 25. Now, we have to consider the role of the counsel reporting to the Court about the settlement arrived at. We have already noted that in terms of Order 23 Rule 3 CPC, agreement or compromise is to be in writing and signed by the parties. The impact of the above provision and the role of the counsel has been elaborately dealt with by this Court in Byram Pestonji Gariwala v. Union Bank of India and observed that courts in India have consistently recognised the traditional role of lawyers and the extent and nature of implied authority to act on behalf of their clients. Mr Ranjit Kumar, has drawn our attention to the copy of the vakalatnama (Annexure R-3) and the contents therein. The terms appended in the vakalatnama enable the counsel to perform several acts on behalf of his client including withdraw or compromise suit or matter pending before the court. The various clauses in the vakalatnama undoubtedly gives power to the counsel to act with utmost interest which includes to enter into a compromise or settlement.
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> 26. The following observations and conclusions in paras 37, 38 and 39 are relevant:

37. We may, however, hasten to add that it will be prudent for counsel not to act on implied authority except when warranted by the exigency of circumstances demanding immediate adjustment of suit by agreement or compromise and the signature of the party cannot be obtained without undue delay. In these days of easier and quicker [pic]communication, such contingency may seldom arise. A wise and careful counsel will no doubt arm himself in advance with the necessary authority expressed in writing to meet all such contingencies in order that neither his authority nor integrity is ever doubted. This essential precaution will safeguard the personal reputation of the counsel as well as uphold the prestige and dignity of the legal profession.

38. Considering the traditionally recognised role of counsel in the common law system, and the evil sought to be remedied by Parliament by the CPC (Amendment) Act, 1976, namely, attainment of certainty and expeditious disposal of cases by reducing the terms of compromise to writing signed by the parties, and allowing the compromise decree to comprehend even matters falling outside the subject-matter of the suit, but relating to the parties, the legislature cannot, in the absence of express words to such effect, be presumed to have disallowed the parties to enter into a compromise by the counsel in their cause or by their duly authorised agents. Any such presumption would be inconsistent with the legislative object of attaining quick reduction of arrears in court by elimination of uncertainties and enlargement of the scope of compromise.

39. To insist upon the party himself personally signing the agreement or compromise would often cause undue delay, loss and inconvenience, especially in the case of non-resident persons. It has always been universally understood that a party can always act by his duly authorised representative. If a power-of-attorney holder can enter into an agreement or compromise on behalf of his principal, so can counsel, possessed of the requisite authorisation by vakalatnama, act on behalf of his client. Not to recognise such capacity is not only to cause much inconvenience and loss to the parties personally, but also to delay the progress of proceedings in court. If the legislature had intended to make such a fundamental change, even at the risk of delay, inconvenience and needless expenditure, it would have expressly so stated.

27. In Jineshwardas v. Jagrani this Court, by approving the decision taken in Byram Pestonji case held:

8. that a judgment or decree passed as a result of consensus arrived at before court, cannot always be said to be one passed on compromise or settlement and adjustment. It may, at times, be also a judgment on admission.

28. In Jagtar Singh v. Pargat Singh it was held that the counsel for the appellant has power to make a statement on instructions from the party to withdraw the appeal. In that case, Respondent 1 therein, elder brother of the petitioner filed a suit for declaration against the petitioner and three brothers that the decree dated 4-5-1990 was null and void which was decreed by the [pic]Subordinate Judge, Hoshiarpur on 29-9-1993. The petitioner therein filed an appeal in the Court of the Additional District Judge, Hoshiarpur. The counsel made a statement on 15-9-1995 that the petitioner did not intend to proceed with the appeal. On the basis thereof, the appeal was dismissed as withdrawn. The petitioner challenged the order of the appellate court in the revision. The High Court confirmed the same which necessitated the filing of SLP before this Court.

29. The learned counsel for the petitioner in Jagtar Singh case contended that the petitioner had not authorised the counsel to withdraw the appeal. It was further contended that the court after admitting the appeal has no power to dismiss the same as withdrawn except to decide the matter on merits considering the legality of the reasoning of the trial court and the conclusions either agreeing or disagreeing with it. Rejecting the said contention, the Court held as under:

3. The learned counsel for the petitioner has contended that the petitioner had not authorised the counsel to withdraw the appeal. The court after admitting the appeal has no power to dismiss the same as withdrawn except to decide the matter on merits considering the legality of the reasoning of the trial court and the conclusions either agreeing or disagreeing with it. We find no force in the contention. Order 3 Rule 4 CPC empowers the counsel to continue on record until the proceedings in the suit are duly terminated. The counsel, therefore, has power to make a statement on instructions from the party to withdraw the appeal. The question then is whether the court is required to pass a reasoned

order on merits against the decree appealed from the decision of the Court of the Subordinate Judge? Order 23 Rules 1(1) and (4) give power to the party to abandon the claim filed in the suit wholly or in part. By operation of Section 107(2) CPC, it equally applies to the appeal and the appellate court has coextensive power to permit the appellant to give up his appeal against the respondent either as a whole or part of the relief. As a consequence, though the appeal was admitted under Order 41 Rule 9, necessarily the court has the power to dismiss the appeal as withdrawn without going into the merits of the matter and deciding it under Rule 11 thereof.

4. Accordingly, we hold that the action taken by the counsel is consistent with the power he had under Order 3 Rule 4 CPC. If really the counsel has not acted in the interest of the party or against the instructions of the party, the necessary remedy is elsewhere and the procedure adopted by the court below is consistent with the provisions of CPC. We do not find any illegality in the order passed by the Additional District Judge as confirmed by the High Court in the revision.

30. The analysis of the above decisions make it clear that the counsel who was duly authorised by a party to appear by executing the vakalatnama [pic]and in terms of Order 3 Rule 4, empowers the counsel to continue on record until the proceedings in the suit are duly terminated. The counsel, therefore, has the power to make a statement on instructions from the party to withdraw the appeal. In such a circumstance, the counsel making a statement on instructions either for withdrawal of appeal or for modification of the decree is well within his competence and if really the counsel has not acted in the interest of the party or against the instructions of the party, the necessary remedy is elsewhere.

18. Likewise in 2011, this Court in Jineshwardas (D) through L.R.s and Ors. v. Smt. Jagrani and Anr., (2003) 11 SCC 372, has held as under: If a power-of-attorney holder can enter into an agreement or compromise on behalf of his principal, so can counsel, possessed of the requisite authorization by vakalatnama, act on behalf of his client.

19. We find that in the present case the Government Pleader was legally entitled to enter into a compromise with the appellant and his written endorsement on the Memo filed by the appellant can be deemed as a valid consent of the Respondent itself. Hence the Counsel appearing for a party is fully competent to put his signature to the

terms of any compromise upon which a decree can be passed in proper compliance with the provisions of Order XXIII Rule 3 and such decree is perfectly valid. The authority of a Counsel to act on behalf of a party is expressly given in Order III Rule 1 of Civil Procedure Code which is extracted hereunder;

> Any appearance, application or act in or to any court, required or authorized by law to be made or done by a party in such court, may except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader, appearing, applying or acting as the case may be, on his behalf.
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> Provided that any such appearance shall, if the court so directs, be made by the party in person.

20. There is another very important aspect in this case which cannot be sidetracked and needs to be highlighted by us At the time of arguments, on a pertinent query from the learned counsel for the respondents as to whether any action was taken against the Government Pleader, the learned counsel was candid in accepting that not only no action was taken, the said counsel continued to be on the panel of the Government and was entrusted in with further briefs of Court cases. This itself shows that the respondents have tried to wriggle out of a valid compromise by taking such spacious plea which cannot be countenanced.

21. Here is a case where arbitral awards were given in favour of the appellant way back in April and June, 2006. However, the appellant is yet to reap the benefits thereof. Respondent No.1 challenged these awards by filing applications under Section 34 of the Act. When these proceedings were pending, the respondents themselves came out with the proposal to negotiate and try to amicably settle the matters, keeping in view the otherwise laudable decision taken by PWD to settle such disputes as is clear from the letter dated 02.08.2008. Negotiations took place thereafter. Though the appellant had agreed to forgo substantial part of the award in terms of interest etc., the talks failed at that time as the respondents wanted 10% reduction in the principal amount as well, whereas the appellant was conceding to give up only 5% of the principal amount. Be, as it may, the appellant agreed to give further concessions in the Court when the matter came on 09.04.2011 vide his 3 memos dated 6.4.2011 filed on that date. These memos show that the appellant had given the said

offer due to the acute financial crisis he was suffering from as he wanted to satisfy his creditors including his bankers to whom he owed substantial amounts. Alas, even after the settlement was fructified, resulting into passing of agreed orders, it has resulted into legal tangle even thereafter, and the appellant has not been able to get even the said agreed amount. We are, therefore, of the opinion that the High Court was not justified in setting aside the consent decree passed by the learned District Judge. Such a consent decree operates as an estoppel and was binding on the parties from which the respondents could not wriggle out by taking an after thought plea that its lawyer was not authorised to enter into such a settlement.

22. These appeals are accordingly allowed. The impugned judgment of the High Court is set aside and the consent decrees dated 28.04.2011 passed by the trial court are restored. The appellant shall also be entitled to costs which is quantified at Rs.25,000/- in each of these appeals.