

A JAYWANTRAJ PUNAMIYA AND ORS.

v.

M/S. H. CHOKSI AND CO. PVT. LTD.

FEBRUARY 3, 1997

B [K. RAMASWAMY AND G.T. NANAVATI, JJ.]

*Code of Civil Procedure 1908 : Order 23—Rule 3.*

C *Compromise decree—Enforceability of—Application for recording compromise filed by parties during pendency of appeal—Refusal by appellate Court to record compromise—High Court recording a finding that it being a compromise contingent upon the parties appointing a mediator, it cannot be recorded under Order 23 Rule 3—Appeal—Held the compromise was a contingent contract dependent upon action of third party—Hence it cannot be said that there was complete agreement—Thus the very object of recording the compromise was 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 third party, it did not receive finality—The High Court was right in holding that the matter had not received finality and though it was a part of the decree, it cannot be recorded under Order XXIII, Rule 3, CPC.*

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*Mt. Akbati Begum v. Rahmat Husain & Ors., AIR (1973) All. 861 F.B. and Katikara Chintamani Dora & Ors. v. Guntreddi Annamnaidu & Ors., [1974] 2 SCR 655, distinguished.*

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 702 of 1997.

From the Judgment and Order dated 10.1.97 of the Bombay High Court in C.R.A. No. 9 of 1997.

G C. Sitaramiah, A.M. Khanwilkar and Mrs. V.D. Khanna for the Appellants.

The following Order of the Court was delivered :

H Leave granted.

This appeal by special leave arises from the judgment and order dated January 10, 1997 passed by the Bombay High Court in Civil Revision Application No. 9/97. It is not in dispute that while the appeal was pending an application under Order XXIII, 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.

The compromise memo annexed as Annexure A at page 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 No. D/8 and AB/14, situate at Nandanvan Co-operative 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 XXIII, Rule 3, CPC. Shri Sitaramaih, learned senior counsel for the appellants contends that once parties have agreed to refer the matter to a third party to settle their dispute, it can be enforced under Order XXIII, Rule 3, CPC. In support of his contention, he relies upon a decision of the Allahabad High Court in *Mt. Akbari Begum v. Rahmat Husain & Ors.*, AIR (1973) Allahabad 861 F.B. He also relied upon the judgment of this Court in *Katikara Chintamani Dora & Ors. v. Guntreddi Annamnaidu & Ors.*, [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 and deducting the expenses, the balance would be given in equal shares to the parties. Shri Sitaramaih 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 action of 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

A 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 :

B "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 any they have matured into an agreement, their conclusiveness follows from the principle of estoppel."

D Equally, this Court in *Katikana Chintamani Dora's* case 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 '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 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 XXIII, Rule 3, CPC.

F The appeal is accordingly dismissed. No costs.

T.N.A.

Appeal dismissed.