

In the High Court of Madhya Pradesh**C.R. No. 644/2017****Shiv Singh vs. Smt. Vandana****Gwalior, dtd. 6-2-2019**

Shri Ankur Mody, Counsel for the applicant

None for the respondent, though served.

Heard finally.

This Civil Revision under Section 115 of Civil Procedure Code, has been filed challenging the order dated 20-11-2017 passed by Principal Judge, Family Court, Datia in case No.177/2015, by which the application filed by the applicant for dismissal of proceedings initiated by the respondent for recall of compromise decree has been rejected.

The necessary facts of the disposal of the present revision in short are that the parties are husband and wife. They filed an application under Section 13(B) of Hindu Marriage Act, for grant of divorce on mutual basis. The Trial Court granted a decree of divorce on mutual basis.

The respondent, thereafter, filed an application for recall of compromise decree on the ground that the same was obtained by the applicant, by playing fraud on her. It was pleaded by the respondent, that the applicant had persuaded her to obtain a decree of divorce as the same is required for some official work, however, he further promised that he would continue to maintain the respondent and her daughter. Being the obedient wife, the respondent signed the papers. However, after the decree of divorce was passed, the behavior of the applicant has changed and now he is insisting that the respondent should leave her matrimonial house and is now threatening that he would perform second marriage.

The applicant filed an application under Order 7 Rule 11 C.P.C. for dismissal of the application.

The Court below, by the impugned order, has rejected the application filed under Order 7 Rule 11 C.P.C.

Challenging the impugned order dated 20-11-2017, it is submitted by the Counsel for the appellant as a compromise decree has been drawn, therefore, the only

option available with the respondent is to file a civil suit for declaration of the compromise decree as null and void being obtained by fraud, and not for recall of compromise decree. The Counsel for the applicant, in support of his contention has relied upon the judgment passed by **Andhra Pradesh High Court** in the case of **Anita Vs. R. Rambilas** reported in **AIR 2003 AP 32**.

None for the respondent, though served.

Heard the learned Counsel for the applicant.

In the case of **Anita Vs. R. Rambilas (Supra)**, it has been held by the High Court, that the only option available with the litigant is to file a separate suit for challenging the compromise decree. However, the provision of Order 23 Rule 3-A of C.P.C. has not been taken into consideration.

Order 23 Rule 3-A of C.P.C. reads as under :

"3-A. Bar to suit :No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful."

Thus, the observation made by the High Court in the case of **Anita Vs. R. Rambilas (Supra)** to challenge a compromise decree, only a separate suit is maintainable, is contrary to the provisions of Order 23 Rule 3-A of C.P.C.

Where a compromise decree has been passed, a party to the litigation will have a remedy of filing an appeal as per Order 43 Rule 1-A(2) of C.P.C. which reads as under :

"1-A. Right to challenge non-appealable orders in appeal against decrees – (1) Where any order is made under this Code against a party and thereupon any judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced.

(2) In an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not, have been recorded.

2. Procedure – The rules of Order XLI shall apply, so far as may be, to appeals from orders."

Thus, it is clear that against a compromise decree, an appeal is maintainable.

Now the moot question for determination is that whether an application can be filed for recall/review of the compromise decree ?

The question involved in the present case is no more *res integra*.

The Supreme Court in the case of **Banwari Lal Vs. Chando Devi**, reported in **(1993) 1 SCC 581** has held as under :

"14.The court before which it is alleged by one of the parties to the alleged compromise that no such compromise had been entered between the parties that court has to decide whether the agreement or compromise in question was lawful and not void or voidable under the Indian Contract Act. If the agreement or the compromise itself is fraudulent then it shall be deemed to be void within the meaning of the explanation to the proviso to Rule 3 and as such not lawful. The learned Subordinate Judge was perfectly justified in entertaining the application filed on behalf of the appellant and considering the question as to whether there had been a lawful agreement or compromise on the basis of which the court could have recorded such agreement or compromise on February 27, 1991. Having come to the conclusion on the material produced that the compromise was not lawful within the meaning of Rule 3, there was no option left except to recall that order."

The Supreme Court in the case of **Y. Sleebachen v. State of T.N.**, reported in **(2015) 5 SCC 747** has held as under :-

"17. 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 the 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."

The Kalkata High Court in the case of **Ashim Kumar Dey Vs. Calcutta Wholesale Medicine Market Area Committee of Bengal Chemists and Druggists Association and others** (**2006 SCC OnLine Cal 221**) has held as under :-

"Para 9. In our opinion, the aforesaid contention of Mr. Tandon is a misconceived one. According to Order 23 Rule 3A of the Code of Civil Procedure, a fresh suit at the instance of the parties to compromise on the basis of which decree was passed is barred and if any of the parties to the alleged compromise is of the view that such compromise was effected by practising fraud or

otherwise not lawful, it is his duty to apply before the same-self Court and the Court should decide whether such compromise should be recorded.....It is now well settled law that even after passing of a decree on the basis of compromise, the affected party can apply for recalling the decree on the ground that the compromise was not lawful and if such application is filed, it is the duty of the Trial Court to decide such objection. [See paragraph 13 of the judgment in the case of *Banwarilal (Supra)*]"

The Counsel for the applicant has also relied upon the judgment passed by the Madras High Court in the case of **Chinnapaiya @ Chinnathambi Vs. A. Mohamed Yusuf** passed on 29-7-2013 in C.R.P. (NPD) No. 2553 of 2009 and submitted that the only option available with the respondent is to file an appeal and the application for recall is not maintainable.

In the case of **Chinnapaiya (Supra)** it has been held as under :

"14. Thus, I am of the view that the petitioners have to only file an appeal under Order 43 Rule 1-A(2) of CPC and not by filing an application under Order 23 Rule 3 CPC. As I have already pointed out that such exercise is contemplated under the proviso to Order 23 Rule 3 only on the day when the compromise was recorded by the Court without any adjournment or on the adjourned day, if the Court is satisfied that such adjournment is necessary."

The judgment passed in the case of **Chinnapaiya (Supra)** does not lay down the good law as it is contrary to the dictum of the Supreme Court in the case of **Banwarilal (Supra)** and **Y. Sleebachen (Supra)**.

Considering the facts and circumstances of the case, this Court is of the considered opinion, that where the wife has alleged that the applicant has obtained the compromise decree by playing fraud on her, then instead of filing an appeal, the respondent has rightly approached the Trial Court for recall of the compromise decree.

Accordingly the order dated 20-11-2017 passed by Principal Judge, Family Court, Datia in case No. 177/2015 is affirmed.

The interim order dated 1-12-2017 is hereby vacated.

As the further proceedings before the Court below have remained stayed for a period of more than one year, therefore, the Trial Court is directed to decide the

application within a period of three months from today.

The revision fails and is hereby **Dismissed** with cost of Rs. 10,000/- to be deposited by the applicant before the Trial Court, by the next date of hearing. **The entire cost shall be paid to the respondent.**

(G.S. Ahluwalia)
Judge