IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR-6310-2019 (O & M)
Date of decision : 06.10.2020

Lachhman Dass .....Petitioner

Versus

Amarjit Singh Sahni and another ....Respondents

CORAM : Hon'ble Mr. Justice Gurvinder Singh Gill

Present: Mr. Viney Saini, Advocate for the petitioner.

Mr. G.S. Sawhney, Advocate for the respondents.

(Proceedings conducted through video conferencing)

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Gurvinder Singh Gill, J.

1. The petitioner assails order dated 9.9.2019 passed by Appellate Authority under the Haryana Urban (Control of Rent & Eviction) Act 1973, Yamuna Nagar at Jagadhri, whereby an application filed by the petitioner seeking disposal of his appeal on merits has been dismissed.

2. A few facts, necessary to notice for disposal of this petition are that respondents/landlords filed an application under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act 1973, seeking ejectment of the petitioner/tenant from residential premises situated in Yamuna Nagar on grounds of non-payment of rent and personal necessity. The Rent

Controller, Jagadhri passed an order dated 8.8.2018 assessing the provisional rent and directed the petitioner/tenant to pay the arrears of rent. The petitioner/tenant, however, preferred an appeal against the aforesaid order dated 8.8.2018 of Rent Controller, Jagadhri before the Appellate Authority (Additional District Judge). During the pendency of the aforesaid appeal before the Appellate Authority, the parties settled the matter amongst themselves and got their statements recorded before the Appellate Authority on 25.3.2019 leading the Appellate Authority to pass the following order on 25.3.2019:

> *" Both the parties have settled the matter as per their statements recorded separately. Now, the case is adjourned to 20.4.2019 for further proceedings.*
>
> *Sd/-*
> *Date : 25.3.2019* *ADJ/ Jagadhri"*

3. After the aforesaid settlement, the matter was adjourned to 20.4.2019 by the Appellate Authority for further proceedings. However, on the next date, the petitioner/tenant instead of taking any step for honouring the statement made by him earlier towards compromise, moved an application seeking disposal of his appeal on merits while taking a plea that he was allured into making a statement qua compromise by the landlords and his counsel in collusion with petitioner/tenant's counsel whereas he never intended to make any such statement. The averments to this effect made in paras 2 to 4 of the application (Annexure P-3) read as follows:

> "2. That previously on 25.03.2019, the appellant was allured by the respondents for making some statement in the

Court and the previous counsel of the appellant got obtained the signature of the appellant on statement in the Court on 25.3.2019.

3. That thereafter the respondents started harassing the appellant and threatened him without any reason or rhyme and stated that he has got made his statement regarding ejectment of the appellant from the premises.

4. That then the appellant engaged another counsel and inquired about the proceedings and came to know that the respondents in collusion with their counsel have got recorded the statement of appellant to the effect that the matter has been compromised and the appellant will vacate the premises upto 20.4.2019 after receipt of Rs. 50,000/- from the respondents whereas the appellant had never intended to make such statement and his statement has been got recorded under influence and allurement."

4. The aforesaid application was, however, dismissed by the Appellate Authority vide order dated 9.9.2019 which has been impugned by way of filing the instant revision petition.

5. The learned counsel for the petitioner submits that although the respondents claim that the matter stood compromised but infact there was no written instrument regarding compromise brought on record and that it is a case where at some stage the petitioner had been tricked into making such a statement on 25.3.2019 by way of allurement and collusion of counsel but the said statement was withdrawn on the very next date of hearing before the same could be acted upon i.e. on 20.4.2019 and that in these circumstances it cannot be said that there was any valid compromise

amongst the parties. The learned counsel submits that Order 23, Rule 3 of the Civil Procedure Code [hereinafter referred to as the 'CPC'] has been interpreted by Hon'ble Supreme Court in *1988(1) SCC 270 Gurpreet Singh vs. Chatur Bhuj Goel,* so as to hold that the requirement of a written compromise is mandatory.

6. Opposing the petition, the learned counsel for respondents/landlords submits that a statement made by a party or by his counsel in a Court of law cannot be brushed aside lightly and that any such statement made by a party towards compromise in the Court cannot be said to be having lesser sanctity than the compromise entered into outside the Court before some Oath Commissioner/Notary Public or before any other authority. It has been submitted that Hon'ble Supreme Court in judgements delivered subsequent to *Gurpreet' Singh's* case (supra) has clarified that not only a statement made by the party towards compromise can be accepted but even a statement made by counsel on behalf of his client is to be duly honoured and accepted.

7. I have considered rival submissions addressed before this Court. Before proceeding further it is apposite to bear in mind the provisions of Order 23 Rule 3 CPC, as amended, which read as under:

ORDER 23 - RULE 3 of CPC

3. Compromise of Suit –

"Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part any lawful agreement or compromise, *in writing and signed by the parties*, or where the defendant satisfies the plaintiff in respect of the whole or any

part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit.

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation- An agreement or compromise which is void or voidable under the Indian Contract Act, 1972, (9 of 1972), shall not be deemed to be lawful within the meaning of this rule."

(emphasis supplied)

8. It is worthwhile to notice that prior to 1976 there was no specific requirement of a compromise to be taken down in writing and it was by way of amendment in the year 1976 that the said requirement was incorporated by way of insertion of words *"in writing and signed by the parties"* in Rule 3 of Order 23 CPC. The relevant portion of the Statement of Objects and Reasons for the 1976 amendment states that :

"It is provided that an agreement or compromise under Rule 3 should be in writing and signed by the parties. This is with a view to avoiding the setting up of oral agreements or compromises to delay the progress of the suit."

9. The question posed before this Court is as to whether in a case which is stated to have been compromised, it is mandatory, in all circumstances,

that such compromise should be taken down in writing by way of an instrument and as to whether in the absence of a written instrument the compromise cannot be enforced or acted upon.

10. A reading of amended provisions of Order 23 Rule 3 CPC, as reproduced above, does suggest that a compromise should be in writing. Hon'ble Supreme Court in *Gurpreet Singh's* case (supra), where a statement towards compromise had been made by a counsel held as follows:

> "10. Under Rule 3 as it now stands, when a claim in suit has been adjusted wholly or in part by any lawful agreement or compromise, the compromise must be in writing and signed by the parties there must be a complete agreement between them. To constitute an adjustment, the agreement or compromise must itself be capable of being embodied in a decree. When the parties enter into a compromise during the hearing of a suit of appeal, there is no reason why the requirement that the compromise should be reduced in writing in the form of an instrument signed by the parties should be dispensed with. The Court must, therefore, insist upon the parties to reduce the terms into writing."

11. However, the Supreme Court, in a subsequent case in *2003(11) SCC 372 Jineshwardas (D) through L.Rs. and others Vs. Smt. Jagrani and another*, observed in categoric terms that if the counsel representing a party makes a statement towards compromise, then the party would be equally bound by it. In the said case, the parties were litigating in respect of a suit for specific performance, wherein during the pendency of appeal (RSA) before High Court, the respective counsel made statements expressing that the matter had been settled amongst the parties. The order recorded by the

High Court on 9.5.2002 in *Jineshwardas's* case (supra) reads as follows:

> "Both the counsel are in agreement to settle the matter. The learned counsel for the respondents submits that respondents will pay an amount of Rs. 25,000/- to the appellant within a period of one month, otherwise it will carry interest at the rate of 12% per annum from the date of today. On this agreed submission, this appeal is decided and judgment and decree passed by the Court below is modified to this extent.
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> 1. The respondents will pay Rs. 25,000/- (Rupees twenty five thousand) to the appellants within a period of one month.
> 2. If this amount is not deposited in the court on or before 10th June, 2002, the above amount will carry interest @ 12% per annum till its realization.
> 3. Cost of the litigation will be borne by both the parties.
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> The appeal is disposed of in view of the above said agreed submissions."

12. However, subsequently, the appellants therein in *Jineshwardas's* case (supra) filed an application for review of order 9.5.2002 on the ground that since the appeal had primarily been disposed of on the basis of compromise, the compromise was required to be taken down in writing in terms of provisions of Order 23 Rule 3, Civil Procedure Code, and the same not having been done in writing and signed by the parties, such compromise could not be made a basis for disposal of the appeal. It was also contended therein that submission, if any, made in this regard by the counsel appearing for the appellants in the High Court was without any instructions of the appellants. It was, thus, submitted before the High Court that the order dated 9.5.2002 disposing off the appeal ought to be reviewed. However, the review application was rejected vide order dated

15.7.2002 leading to filing of SLP in Supreme Court wherein strong reliance was placed upon *Gurpreet Singh's* case(supra) to contend that in the absence of compliance with the provisions contained in Order 23 Rule 3, Civil Procedure Code, regarding a written compromise, the judgment of the High Court could not sustain.

13. Hon'ble Supreme Court, however, dismissed the appeal while relying upon its earlier judgment i.e. *1992(1) SCC 31 Byram Pestonji Gariwal vs. Union Bank of India*. The relevant extract from the judgement rendered in *Jineshwardas's* case(supra) reads as follows:

> " 7. We have carefully considered the submissions of the learned counsel appearing on either side. Though, in *Gurpreet Singh's* case (supra) this Court explained the object and purport of Rule 3 Order 23 Civil Procedure Code, by laying emphasis on the words, "in writing and signed by parties", to be necessitated in order to prevent false and frivolous pleas that a suit had been adjusted wholly or in part by any lawful agreement or compromise with a view to protract or delay the proceedings in the suit itself. It was also observed therein that as per Rule 3 Order 23 Civil Procedure Code, when a claim in the suit has been adjusted wholly or in part by any lawful agreement or compromise, such compromise, must be in writing and signed by the parties and there must be complete agreement between them and that to constitute an adjustment the agreement or compromise must itself be capable of being embodied in a decree. The fact that the parties entered into a compromise during the hearing of the suit or appeal was considered not to be sufficient, to do away with the requirement of the said rule and that courts were expected to insist upon the parties to reduce the terms into writing. In *Byram Pestonji Gariwala v. Union Bank of*

India & Others [(1992) 1 SCC 31), this Court while adverting to the very amendment in 1976 to Rule 3 Order 23 Civil Procedure Code, noticed also the effect necessarily to be given to Rule 1 Order 3, Civil Procedure Code, as well and on an extensive review of the case law on the subject of the right of the counsel engaged to act on behalf of the client observed as follows:

> ' 37.We may, however, hasten to add that it will be prudent for counsel not 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 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 counsel as well as uphold the prestige and dignity of the legal profession.
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> 38. Considering the traditionally recognised role of counsel in the common law system, and the evil sought to be remedied by Parliament by the C.P.C. (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 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.
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> 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 duty 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.
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> 40. Accordingly, we are of the view that the words 'in writing and signed by the parties', inserted by the C.P.C. (Amendment) Act, 1976, must necessarily mean, to borrow the language of Order 3 Rule 1 Civil Procedure Code.
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> > "any appearance, application or act in or to any court, required or authorised 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 recognised agent, or by a pleader, appearing, applying or acting as the case may be, on his behalf.
> >
> > Provided that any such appearance shall, if the court so directs, be made by the party in person.'
> >
> > (emphasis supplied)

8. We are in respectful agreement with the above statement of law. Consequently it is not permissible for the appellant, to contend to the contrary. That apart we are also of the view that a judgment or decree passed as 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, as in this case."

14. In other words, the Hon'ble Supreme Court reiterated the position of law that a counsel could compromise a dispute on behalf of his client and that the decree that followed could be the result of a consensus arrived at before the Court and that consensus may not necessarily be a compromise or settlement and adjustment and the same, in a given case, could be a judgement on admission.

15. In yet another case i.e. *2006(5) SCC 566 Pushpa Devi Bhagat (D) through LR. Smt. Sadhna Rai Vs. Rajinder Singh & others* , where a tenant during the course of ejectment application agreed to vacate the premises by a certain date and the trial Court recorded statements of both the counsel and thereafter passed a consent decree which was later challenged by the tenant, the Hon'ble Supreme Court held that statements recorded by the Court will amount to a compromise in writing. The relevant extract reads as such:

> "24. Let us now turn to the requirement of 'in writing' in Rule 3. In this case as noticed above, the respective statements of plaintiffs' counsel and defendants' counsel were recorded on oath by the trial court in regard to the terms of the compromise and those statements after being read over and accepted to be correct, were signed by the said counsel. If the terms of a compromise written on a paper in the form of an application or petition is considered as a compromise in writing, can it be said that the specific and categorical statements on oath recorded in writing by the court and duly read over and accepted to be correct by the person making the statement and signed by him, can be

said to be not in writing ? Obviously, No. We may also in this behalf refer to Section 3 of the Evidence Act which defines a document as any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means intended to be used or which may be used for the purpose of recording the matter. The statements recorded by the court will, therefore, amount to a compromise in writing.

25. Consequently, the statements of the parties or their counsel, recorded by the court and duly signed by the persons making the statements, would be 'statement in writing signed by the parties'. The court, however, has to satisfy itself that the terms of the compromise are lawful. In this case we find from the trial court records that the second defendant had executed a vakalatnama empowering her counsel Sri Dinesh Garg to act for her in respect of the suit and also to enter into any compromise. Hence there can be no doubt that Sri Dinesh Garg was authorised by the second defendant to enter into a compromise. We also find that the counsel for the plaintiffs and counsel for the defendants made solemn statements on oath before the trial court specifying the terms of compromise, which were duly recorded in writing and signed by them. The requirements of the first part of Rule 3 Order 23 are fully satisfied in this case."

16. Taking the aforesaid legal position a step further, Hon'ble Supreme Court in *2011(8) SCC 679 Bakshi Dev Raj and another Vs.Sudhir Kumar* held that a counsel making a statement upon instructions from client either for withdrawal of appeal or for modification of the decree is well within his competence, though it hastened to add that it is desirable to get such instructions in writing from the client.

17. The position of law, as discerned from the above referred judgments of Hon'ble Supreme Court, leaves no manner of doubt that a statement made by a party or by his counsel towards compromise which is taken down in writing is as good as a written compromise and would satisfy the requirements of Order 23 Rule 3 CPC, particularly as regards the provision in Rule 3 which was inserted by way of amendment in the year 1976 i.e. *"in writing and signed by the parties"*. It will not be out of place to refer to a judgement of a Division Bench of our High Court also wherein the same issue has been discussed in context of the definition of the term 'document'. The relevant extract from *1987 AIR(Pb. & Hr.) 60 Smt. Raksha Rani vs. Ram Lal (DB)* reads as under:

> "5…… …… ……. ……. Admittedly, statements of the parties were recorded by the trial Court containing the terms of the compromise which were duly signed by them. Can it then be said that the compromise should not be considered to be in writing and signed by the parties? Should terms of the compromise scribed on a piece of paper and signed by them be given preference to their categoric statements made in writing before the Court which they duly signed? In our candid opinion, the requirements of the first part of rule 3 are adequately satisfied when the parties make statements before the Court in writing and sign the same. Such signed statements are covered by the definition of "document" given in section 3 of the Indian Evidence Act. Therein "document" has been defined as under :-
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> > "Document' means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter".

> A plain reading of the definition would show that any matter expressed or described, upon any substance, by writing is a document. The first illustration given under the definition of "document" also clarified that "a writing is a document". Thus, by no stretch of reasoning the statements of the parties recorded by the trial Court and signed by them can be considered to be violating the requirement of "in writing and signed by the parties" mentioned in the first part of rule 3."

18. Perhaps the only exceptional circumstance under which a party may be able to wriggle out from a statement made by him in the Court or by his counsel could be wherein he is able to establish that such statement was made by way of fraud or deception. Even in such a case he would ideally be required to file a suit for getting such order/judgement/decree set aside on the basis of alleged fraud by specifically pleading as well as by leading cogent and convincing evidence to establish such fraud. No doubt in the present case the plaintiff in his application on which the impugned order was passed has pleaded therein that his statement came to be recorded on account of allurement and collusion of his counsel but there is nothing on record to establish the said assertions. Had the petitioner really been sanguine about his stand regarding collusion of his counsel, then it remains unexplained as to why he did not take any other action against his counsel. There is nothing to show that the petitioner had ever filed any complaint in the Bar Council regarding the alleged fraud and collusion by his counsel. It is very convenient for any party to level such kind of allegations against his counsel when he wishes to wriggle out of any such situation which does not suit him. The statement regarding compromise was made and signed by the petitioner/tenant in the Court of Law and in

the presence of his counsel. The translated gist of the statement made by the tenant/petitioner Lakshman on 25.3.2019 before the Appellate Authority is to the following effect:

> *"I have compromised the matter with the respondent. As per compromise, I will hand over the vacant possession of the demised premises to the landlord by 20.4.2019 and the landlord would pay me an amount of ₹ 50,000/-. I will be bound by my statement."*

19. The respondents/landlords also suffered a statement to the following effect:

> *" I have heard and understood the statement made by the tenant and admit the same to be correct. I will be bound by my statement."*

20. The aforesaid statements were recorded in a Court of law by a Judicial Officer who would have taken all care and caution before recording such statements. The statements were recorded in the presence of respective counsel of the parties and who had duly identified them in the Court. Such statements recorded before a Judicial Officer in a Court of law cannot be said to have lesser sanctity then an instrument of Compromise drawn outside the Court attested by some Oath Commissioner/Notary Public or any other authority. A certain sanctity is attached to a statement made by a party in the Court and it has to be presumed that the same was recorded voluntarily. In case a party is permitted to wriggle out of such statements by conveniently raising some frivolous allegations against his counsel or against opposing counsel, then it will virtually lead to mockery of the

Court.

21. It is apparent that the very purpose of incorporating that a compromise should be in writing was to ensure that everything is there in black-and-white and that there is no ambiguity in respect of the terms of compromise so that either of the party does not turn round at a later stage to back out on some terms or tries to misinterpret some terms and conditions of settlement, as is seen in the present case. The purpose was to avoid undue harassment and wastage of precious time of Court lest the parties would keep on agitating matter time and again. The Hon'ble Supreme Court in *Pushpa Devi Bhagat's* case (supra), went further ahead to hold that attempts of tenants in such matters to protract the litigation indefinitely by raising frivolous and vexatious contentions regarding the compromise and going back on the solemn undertaking given to Court, should be deprecated.

22. Examining the aforesaid factual position in light of the legal position laid down on in *Jineshwardas's* case (supra), *Byram Pestonji Gariwal's* case (supra), *Pushpa Devi Bhagat's* case (supra) and *Bakshi Dev Raj's* case (supra), as has been discussed above and upon finding that there is nothing to suggest that there was any collusion between the counsel of the petitioner and the opposite party, this Court does not find any ground to interfere with the impugned order. The petition is sans merit and is hereby dismissed. The Appellate Authority or the Executing Court, as the case may be, shall afford reasonable time to the parties, given the current

situation of spread of pandemic, to comply with directions issued in order dated 9.9.2019 passed by the Appellate Authority.

(GURVINDER SINGH GILL)
JUDGE

06.10.2020
(kamal)

Whether reasoned / speaking? **Yes / No**

Whether reportable? **Yes / No**