

matter of condonation of delay in filing of the said appeal, more so, when the rights of the parties have not been determined on merits by the learned lower appellate Court, instead the appellants have been shut out at the very first stage, i.e. admission of the appeal. At the same time, the respondents, who are represented herein the present second appeal can be compensated adequately for holding up of the proceedings at the hands of the appellants as the latter had been able to obtain an order of *status quo* regarding possession from this Court at the time of issuance of motion i.e. 9th April, 2004.

(15) Resultantly, the appeal is accepted. Delay in filing of appeal by the appellants before learned lower appellate Court shall stand condoned. The matter is remanded to lower appellate Court with a direction to admit the appeal and decide the same within six months of the admission. The appellants shall pay a sum of Rs. 10,000 as costs to the respondents, who stand represented before this Court and stated to be the contesting respondents.

(16) Parties, through their counsel, shall appear before learned lower appellate Court on 21st July, 2008 for further proceedings.

R.N.R.

Before Permod Kohli, J.

MOORTI,—Appellant

versus

KAUR SINGH & OTHERS,—Respondents

R.S.A No. 3422 of 2005

14th March, 2008

Code of Civil Procedure, 1908-O.23 RI.3-A—Maintainability—Decree on basis of compromise passed—Allegations of fraud—Whether suit filed by respondents challenging compromise decree is maintainable—Held, no—Provisions of RI. 3-A of Order 23 imposes a restriction to challenge compromise decree by way of a separate suit—Only remedy available to avoid such consent decree to approach the Court which recorded the

compromise to consider & decide validity of compromise—Appeal allowed, judgments & decrees passed by Courts below set aside.

Held, that Order 23 rule 3 of the Code of Civil Procedure empowers the Court to pass a decree on the basis of the compromise between the parties. Explanation appended to the aforesaid provisions provide that the agreement referred to under Order 23 Rule 3 of the Code of Civil Procedure must conform to the test of a valid agreement/contract as prescribed under the Contract Act. However, Sub Rule 3-A imposes a restriction on the party to the compromise decree to challenge the compromise decree by way of a separate suit-meaning thereby that the remedy of the person who may be aggrieved of the compromise decree is to approach the same Court.

(Para 6)

Further held, that the plaintiff-respondents did not challenge the decree on the ground that the same is void and nullity and sought a declaration therefor. It is, however, settled law that even a void decree or action needs to be challenged to wash it out so that it may not create any cloud on the right of the person who is adversely affected by the void decree.

(Para 18)

M.S. Uppal, Advocate, *for the appellant.*

R.K. Battas, Advocate, *for the respondents.*

PERMOD KOHLI, J.

(1) I have heard the learned counsel for the parties at length.

(2) Notice of motion in this case was issued on 5th May, 2006. On 4th February, 2008 when this appeal came up for consideration, a question arose regarding the maintainability of the suit filed by the plaintiffs-respondents in view of the provisions of Order 23 Rule 3-A of the Code of Civil Procedure. Learned counsel for the respondent sought time to examine this issue on the following question :—

Whether the suit filed by the respondents challenging the compromise decree dated 25th October, 1994

passed in Civil Suit No. 647, 7th April, 1997, is maintainable in view of the specific provisions under Order 23 Rule 3-A of the Code of Civil Procedure ?

(3) It is admitted case of the parties that the plaintiff-respondents filed suit for declaration challenging the judgment and decree dated 25th October, 1994 referred to above. The allegations contained in the plaint are that the decree is a result of fraud committed by the defendant by way to impersonation and misrepresentation and is illegal, null and void, collusive and ineffective. Mutation No. 3676 entered on the basis of the aforesaid decree has also been challenged. The aforesaid decree came to be passed on the basis of the compromise by Bhag Singh allegedly on the basis of family settlement. The defendant also did raise a plea regarding the maintainability of the suit and the learned trial Court framed as many as 14 issues. However, the issue regarding maintainability seems to be misdirected. For the convenience issue No. 13 is reproduced as under :—

13. Whether the suit is barred by the principles of *res judicata* and Order 23 Rule 3 C.P.C. ? OPD

(4) Both the learned Courts below have decreed the suit filed by the respondent-plaintiffs, setting aside the decree allegedly on the basis of fraud. It is also admitted case that the decree impugned was passed by the learned Sub-Judge 1st Class, Bathinda.

(5) Mr. Battas learned counsel appearing on behalf of the plaintiff-respondents has argued that the suit does not come within the mischief of Order 23 Rule 3-A of the Code of Civil Procedure and a separate suit is maintainable. For the brevity, Rule 3-A of Order 23 of Code of Civil Procedure is reproduced as follows :—

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

(6) Order 23 Rule 3 of the Code of Civil Procedure empowers the Court to pass a decree on the basis of the compromise between the parties. Explanation appended to the aforesaid provisions provide that

the agreement referred to under Order 23 Rule 3 of the Code of Civil Procedure must conform to the test of a valid agreement/contract as prescribed under the Contract Act. However, Sub Rule 3-A imposes a restriction on the party to the compromise decree to challenge the compromise decree by way of a separate suit-meaning thereby that the remedy of the person who may be aggrieved of the compromise decree is to approach the same Court.

(7) Mr. Battas has referred to **Kashmira Singh (Died) through L.R. versus Gram Panchayat of village Budha Khera and another, (1)**, wherein the following observations have been made :—

“In the instant case the Gram Panchayat which was represented in RFA by Roshan Lal, Panch, under resolution of the Gram Panchayat, made a statement before the learned Single Judge of this Court who acted on the compromise deed and passed the order which is sought to be recalled in this application under Section 151 C.P.C. The action of Roshan Lal, Panch, alleged to be vitiated by fraud, undue influence etc. cannot be said to be void *ab initio* but the same is only voidable and the same can be avoided till it is proved to be void in an appropriate civil suit filed before a Civil Court of competent jurisdiction.”

(8) He has also referred to **Ruby Sales and Services (P) Ltd. and another versus State of Maharashtra and others, (2)**. The question referred to in para 2 of the judgment, is reproduced as under :—

“The question involvd in all these matters is whether a consent decree whereunder the title to immovable property is conveyed expressly falls under the definition of “Conveyance” under Section 2 (g) or an “instrument” under Section 2 (l) of the Act or such consent decree falls outside the ambit and scope of the definition of “conveyance” or “instrument” under the Act.”

(1) (2000-3) Punjab Law Reports 195
(2) (1994)1 Supreme Court Cases-531

(9) This question has been answered in paragraph 10 of the judgment which is as under :—

“10. From the above recital in the consent decree there can be no manner of doubt that the parties to the transaction and the suit agreed that the consent decree itself shall operate as conveyance from defendants in favour of the plaintiffs in respect of the suit property particularly described in Ex. “A” to the plaint. Before the High Court it was not contested that the consent decree does not operate as “conveyance”.

(10) In this Judgment, the Court has further observed in paragraph 15, which is as follows :—

“15. As we have noticed earlier the definitions of “conveyance” and “instrument” start with the expression “includes” which shows that the definitions are very wide. It appears to us that the amendment was made out of abundant caution and it does not mean that the consent decree was not otherwise covered by the definitions given in Section 2(g) or 2(1) of the Act. As stated earlier it depends on the terms thereof. Merely because an agreement is put in the shape of a consent decree it does not change the contents of the document. It remains an agreement and it is subject to all rights and liabilities which any agreement and it is subject to all rights and liabilities which any agreement may suffer. Having a stamp of court affixed will not change the nature of the document. A compromise decree does not stand on a higher footing than the agreement which preceded it. A consent decree is a mere creature of the agreement on which it is founded and is liable to be set aside on any of the grounds which will invalidate the agreement.”

(11) Another judgment referred to by Mr. Battas is in the case of **S.P. Chengalvaraya Naidu versus Jagannath, (3)**, wherein paragraph 1 of the judgment it is held as under :—

“Fraud-avoids all judicial acts, ecclesiastical or temporal” observed Chief Justice Edward Coke of England about three centuries ago. It is settled proposition of law that a judgment or decree obtained by playing fraud on the Court is a nullity

(3) 1994(2) Civil Court Cases 131 (SC)

and *non est* in the eyes of law. Such a judgment/decreed by the first Court or by the highest Court, whether superior or inferior. It can be challenged in any Court even in collateral proceedings.”

(12) In the case of **Asharfi Lal versus Smt. Koili (Dead)** by **LRs. (4)**, the question which fell for consideration of the Court is referred to in paragraph 14 of the judgment which reads as under :—

“14. The question for consideration is whether, apart from filing a separate suit for setting aside a decree on the ground of gross negligence on the part of his next friend, it is permissible for a minor to avoid a decree.”

(13) This question has been answered by the Hon’ble Supreme Court in the same paragraph of the judgment which is as follows :—

“14.In order words, in cases where an inference of fraud or collusion can be drawn from the negligence or gross-negligence of the next friend it would be permissible for a minor to avoid the judgment or decree passed in the earlier proceedings by invoking Section 44 of the Evidence Act without taking resort to a separate suit for setting aside the decree or judgment.”

(14) Another judgment relied upon is **M/s R. K. Plastics versus Punjab Land Development Reclamation & Corporation Ltd. (5)**, wherein paragraph 8 of the judgment, the following observations have been made :—

“8. It is true that fraud vitiates everything judgment obtained through fraud is an absolute nullity and nobody can be allowed to thrive on fraud.”

(15) The judgments referred to herein above, cannot come to the rescue of the plaintiff-respondents. The proposition that the fraud vitiates the proceedings is settled. In *Asharfi Lal’s case (supra)*, the question was the right of the minor to challenge the act of negligence or fraud on the part of his next friend resulting in a decree against the minor. Definitely in such proceedings the minor is required to institute

(4) 1996, HRR, 162

(5) 2002(3) Civil Court Cases, 47 (P&H)

a separate suit. This judgment has no application to the issue involved in the present case. In order judgment of **Ruby Sales and Services (P) Ltd's Case** (*supra*), again the question which the Hon'ble Supreme Court considered was "whether the consent decree having the title to the immovable property, falls within the definition of "conveyance" or an "instrument". In this case also, Hon'ble the Supreme Court has not considered the provisions of Order 23 Rule 3-A of the Code of Civil Procedure. As a matter of fact in the entire judgment there is no reference to Order 23 Rule 3-A of the Code of Civil Procedure, though in the Head Note reference is made to Rule 3-A of the CPC which seems to be deceptive. The question of bar of Section 3-A of the C.P.C. came up for consideration before the Hon'ble Supreme Court in the case of **Banwari Lal versus Chando Devi (Smt.) (through LRs) and another, (6)**, wherein in has been observed as under :—

“After the amendments which have been introduced, neither an appeal against the order recording the compromise nor remedy by way of filing a suit is available in cases covered by Rule 3-A of order 23. As such a right has been given under Rule 1-A(2) of Order 43 to a party, who challenges the recording of the compromise, to question the validity thereof while preferring an appeal against the decree.”

(16) This view is further reiterated by the Apex Court in **Pushpa Devi Bhagat (D) Th. LR. Smt. Sadhna Rai versus Rajinder Singh & ors. (7)**, wherein paragraph 12 of the judgment, it is observed as under :—

“12. The position that emerges from the amended provisions of Order 23, can be summed up thus :—

- (i)
- (ii)
- (iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3A.
- (iv)

(6) (1993)1 Supreme Court Cases 581

(7) 2006(3) Civ.C.C. 540

Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This so because a consent decree, is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made. The second defendant, who challenged the consent compromise decree was fully aware of this position as he filed an application for setting aside the consent decree on 21st August, 2001 by alleging that there was no valid compromise in accordance with law. Significantly, none of the other defendants challenged the consent decree. For reasons best known to himself, the second defendant within a few days thereafter (that is on 27th August, 2001), filed an appeal and chose not to pursue the application filed before the court which passed the consent decree. Such an appeal by second defendant was not maintainable, having regard to the express bar contained in Section 96 (3) of the Code.”

(17) This issue was also considered by this Court in the case of **Smt. Shanti Devi (dead) represented by LR versus Gian Chand**, RSA No. 1329 of 1985, decided on 17th September, 2007, wherein it has been held as follows :—

“In terms of explanation of Rule 3 of Order 23 of the Code of Civil Procedure, an agreement or compromise, which is void or voidable under the Indian Contract Act, 1872, shall not be deemed to be lawful within the meaning of this rule. Its natural corollary is, if any compromise is entered into between the parties, it must satisfy the requirements of a void contract. Fraud, coercion, mis-representation etc. vitiate the transaction and, thus, the contract entered into between the parties ceases to be a lawful. It is settled

proposition that a compromise is a contract/agreement between the parties. When it is presented in the Court, in any suit or proceedings and the Court is called upon to accept the compromise and pass consequential order, the court merely takes on record the agreement of the parties and satisfies itself regarding the voluntary nature of such a compromise. If any of the parties later on assails the compromise as invalid on account of exercise of fraud, coercion, misrepresentation etc. and pleads that the compromise/agreement was unlawful and involuntary, such a compromise cannot be challenged by a separate suit in view of the clear Bar created by Rule 3-A of Order 23 of the Code of Civil Procedure. Therefore, the suit filed by the present appellant-plaintiff on 6th December, 1979, after insertion of Rule 3-A in Order 23 of the C.P.C., was not maintainable.”

(18) Mr. Battas has lastly contended that a void decree, otherwise also, has no binding effect and, therefore, decree impugned in the suit filed by respondents does not bind the plaintiff-respondents even without being challenged. If this contention is accepted, then there was no necessity to file the suit. However, the fact remains that the plaintiff-respondents did challenge the decree on the ground that the same is void and nullity and sought a declaration therefore. It is, however, settled law that even a void decree or action needs to be challenged to wash it out so that it may not create any cloud on the right of the person who is adversely affected by the void decree. A similar view has been adopted by this Court in the case of **Sawarna Ram versus State of Punjab, (8)**, in which it was held as under :—

“It is settled proposition of law that even void orders have to be challenged so that the same can be declared void. Even void orders continue to have effect till the same are declared *non est*.”

(19) Hon’ble the Supreme Court in the case of **Sultan Sadik versus Sanjay Raj Subha and others (9)**, also held as under :—

“An order may be void for one and voidable for the other. An invalid order necessarily need not be non est ; in a given situation it has to be declared as such.”

(8) 2004(2) RCR (Civil) 25

(9) 2004(1) RCR (Civil) 767

(20) In view of the above, it is held that the suit filed by the plaintiff-respondents to challenge the compromise decree is not maintainable in view of the specific bar contained under Order 23 Rule 3-A of the Code of Civil Procedure. Accordingly, the judgments and decrees passed by the learned Courts below are set aside and consequently, the suit is dismissed with no order as to costs.

R.N.R.

Before M.M. Kumar & Sabina, JJ.

UNION OF INDIA & OTHERS,—Petitioners

versus

SATNAM SINGH & OTHERS,—Respondents

C.W.P. No. 12000/CAT of 2005

8th May, 2008

Constitution of India, 1950—Art. 226—Administrative Tribunals Act, 1985—S. 21—Central Administrative Tribunal Rules of Practice, 1993—Rl. 154—OA filed after about 5 years of passing of termination orders—Time barred—Objection raised by petitioner before the Tribunal should have been accepted—Merely names of respondents kept alive on live casual labour register by petitioners would not furnish them cause of action for grant of relief of regularization—Casual/temporary employees do not have any right to regular or permanent public employment—Order of Tribunal suffers from illegality and non-application of mind—Petition allowed.

Held, that it is evident from the perusal of Section 21(1)(a) of the Act that once a final order has been passed then OA is required to be filed within one year from the date such final order has been made. However, according to sub Section 3 of Section 21 of the Act the period of limitation has been extended by six months provided the applicant satisfies the Tribunal that he had sufficient cause for not making the application within the specified period. It is thus obvious that OA filed by the applicant-respondents in the year 2003 was hopelessly time