
COMPROMISE DECREE: APPEAL AND OPERATION OF RES JUDICATA

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Introduction

'Compromise' refers to a resolution of any disagreement that is accepted by all parties. A legal dispute ends when such a compromise is reached. It is generally understood that any issue that can be resolved through litigation may also be resolved by compromise¹. The term "compromise" essentially means settlement of dispute by mutual consent. In such process, the adversarial claims come to rest. The cavil between the parties is given a decent burial. A compromise arrived at by the parties puts an end to litigative battle. Sometimes parties to a dispute feel that it is an unfortunate bitter struggle and allow good sense to prevail to resolve the dispute. In certain cases, by intervention of well-wishers, conciliatory process commences and eventually, by consensus and concurrence, rights get concretized. A reciprocal settlement with clear mind is regarded as noble. It signifies magnificent and majestic facets of human mind².

The compromise of suits is provided under Rule 3 of order 23 of the civil procedure code which state as follows:

*“ **Compromise of suit**— Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by 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*

¹ Prithvichand v. S.Y. Shinde, (1993) 3 SCC 271 (*in passing*).

² Bimal Kumar v Shakuntala Debi, (2012) 3 SCC 548 (*in passing*).

subject-matter of the agreement, compromise or satisfaction is the same as the subject matter of the suit].”

The conditions, thus, that must be satisfied before a consent decree is passed are as follows:

- (i) There must be an agreement or compromise;
- (ii) It must be in writing and signed by the parties;
- (iii) It must be lawful agreement;
- (iv) It must be recorded by the court; and
- (v) A compromise (consent) decree must have been passed.

The parties must file a joint interlocutory application stating that the parties have arrived at a compromise, with the copy of the written agreement signed by both the parties and/or their counsels. The terms of the agreement are perused by the court and decides on whether the terms are lawful and are in order or not. Then the consent decree is drawn up by the Court which is executable as any other decree, and the parties are bound by the terms of the agreement. The Court fees is refunded to the plaintiff, the quantum of which is determined by the Court³.

Appeal against a compromise decree

The proviso to Rule 3 of Order 23 gives the Court the authority to ascertain the true nature of the parties' agreement and render judgement on it if the parties contest the legitimacy of their compromise. It states that,

“Provided that where it is alleged by one party and denied by the other 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

³ Kunhipurayil Khalid v A.K. Ramachandran and Ors. MANU/KE/2226/2023.

⁴ Pushpa Devi Bhagat v Rajinder Singh, (2006) 5 SCC 566.

deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment ”

A dispute regarding the genuineness of the compromise can always be raised by the parties, and the jurisdiction of the Court to try such dispute always lies with the court which recorded the compromise and passed the consent decree. However, the code under rule 3A specifically bars filing of a fresh suit to decide such a dispute. The rule reads:

*“**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”.*

However, even though a fresh suit is barred under rule 3A of the code, the party to the decree has a vested right to appeal under rule 1A of order 43, which is made operational under section 96 (1) of the code. Regarding the question of whether appeal filed under section 96 (1) of the code is maintainable, the two-judge bench of the apex Court in *Pushpa Devi Bhagat v Rajinder Singh*⁴ (2006) held that,

“ 16. Section 96 provides for appeals from original decrees. Sub section (3) of section 96, however, provides that no appeal shall lie from a decree passed by the Court with the consent of the parties. We may notice here that Order 43 Rule 1(m) CPC had earlier provided for an appeal against the order under Rule 3 Order 23 recording or refusing to record an agreement compromise or satisfaction. But clause (m) of rule 1 order 43 was omitted by act 104 of 1976 with effect from 1/2/1977. Simultaneously, a proviso was added to rule 3 order 23 with effect from 1/2/1977. We extract below the relevant portion of the said proviso;

“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;”

Rule 3A was also added in order 23 with effect from 1-2-1977 barring any suit to set aside a decree on the ground that the compromise on which the decree is based was not lawful.

17. The position that emerges from the amended provisions of order 23 can be summed up thus;

(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in section 96(3) CPC.

(ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of clause (m) of rule 1 order 43.

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

(iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to rule 3 order 23.

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 is 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 only on the validity of the agreement or compromise on which it is made.For reasons best known to herself the second defendant filed an appeal and chose not to pursue the application fight before the court which passed the consent decree. Such an appeal by the 2nd defendant was not maintainable, having regard to the express bar contained in section 96 (3) of the code.”

The court while applying section 96(3) and rule 3A of order 23 held that neither an appeal nor a fresh suit against the consent decree is maintainable. However, this position of law is in direct conflict with that of the holding of the two-judge bench of the apex court in the case of *Banwari*

Lal vs Chando Devi (1992)⁴, wherein the Court had held that the appeal against the compromise decree are maintainable, and section 96(3) of the code is not a bar to such an appeal. The Court held;

“ 9. Section 96(3) of the court says that no appeal shall lie from a decree passed by the court with the consent of the parties. Rule 1A(2) of order 43 has been introduced saying that against a decree passed in a suit after recording a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should not have been recorded. When section 96(3) bars an appeal against decree passed with the consent of the parties, it implies that such decree is valid and binding on the parties unless set aside by the procedure prescribed or available to the parties. One such remedy available was by filing the appeal under order 43, Rule 1(m). If the order recording the compromise was set aside, there was no necessity or occasion to file an appeal against the decree. Similarly a suit used to be filed for setting aside such decree on the ground that the decree is based on an invalid and in legal compromise not binding on the plaintiff of the second suit. But after the amendments which have been introduced, neither an appeal against the order according the compromise nor remedy by way of fighting a suit is available in cases covered by rule 3A of order 23. As such a right has been given under rule 1A(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. Section 96(3) of the court shall not be apart to such an appeal because section 96(3) is applicable to cases where the factum of compromise or agreement is not in dispute”.

This stance was reiterated by the two judge bench of the apex court in *Horil v Keshav and another* (2012)⁵, wherein the court opined that the party challenging a compromise can file a petition under proviso to rule 3 of order 23, or an appeal under section 96(1) of the code, in which he can now question the validity of the compromise in view if Rule 1A of order 43 of the code. Further, it allowed filing of a fresh suit before the Civil Court against decrees passed by the Revenue Courts, by opining that these Courts are neither equipped nor competent to effectively adjudicate on

⁴ Banwari Lal vs Chando Devi, (1993) 1 SCC 581.

⁵ *Horil v Keshav and another*, (2012) 5 SCC 525.

allegations of fraud that have overtones of criminality and the courts really skilled and experienced to try such issues are the courts constituted under the code of civil procedure, and nothing in order 23 rule 3A bars such institution of a suit.

Since the purpose of inclusion of a compromise decree in the code is to put an end to the litigative battle, it is better off for the courts to follow the ratio of the case in *Pushpa Devi Bhagat v Rajinder Singh*. Moreover, the remedy of an appeal on the question of fraud, misrepresentation or any other unlawful agreement in a compromise decree is already available under section 151 of the code, wherein the court have inherent power to make orders for the ends of justice or to prevent abuse of the process of the court.

Operation of *res judicata* in a compromise decree

The line of conflicting judgments is not limited to the aspect of appeal in compromise decrees but also extends to the operation of *res-judicata*. There are two lines of judgements wherein on the one hand the court says that compromise decrees are not per se 'heard and finally decided' matters. They are merely a seal of the court on the agreement of the parties and hence they cannot operate as *res judicata*. On the other hand, the Courts have held that consent decree is as binding upon the parties thereto as a decree passed by invitum and thus have the binding force of *res-judicata*.

On one hand, in *Pulavarthi Venkata Subba Rao v Valluri Jagannadha Rao (deceased)* (1963)⁶, while observing that no distinction is made between decrees passed after contest and decrees passed on compromise, the Supreme Court opined that:

“..... the compromise decree was not a decision by the court. It was the acceptance by the court of something to which the parties had agreed. It has been said that a compromise decree merely sets the seal of the court on the agreement of the parties. The court did not decide anything. Nor can it be said that a decision of the court was implicit in it. Only a decision by the court could be res judicata, whether statutory under Section 11 of the Code of Civil Procedure, or constructive as a matter of public

⁶ *Pulavarthi Venkata Subba Rao v Valluri Jagannadha Rao (deceased)*, AIR 1967 SC 591.

policy on which the entire doctrine rests.”

And this stance with respect to the applicability of *res-judicata* to compromise decree was again reiterated by the three-judge bench of the Supreme Court in *Dattatreya Shanker Mote v Anand Chintaman Datar* (1974)⁷.

While on the other hand, a three-judge bench of the Supreme Court in *Shankar Sitaram Sontakke v Balkrishna Sitaram Sontakke* (1954)⁹ opined that there is a bar of *res-judicata* in a compromise decree. It had held that:

“.....the compromise closed once for all the controversy and the party is bound by the terms of the compromise and the consent decree following upon it. The plaintiff is barred by the principle of res-judicata from reagitating the question in the present suit. It is well settled that a consent decree is as binding upon the parties thereto as a decree passed by invitum. The compromise having been found not to be vitiated by fraud, misrepresentation, misunderstanding or mistake, the decree passed thereon has the binding force of res judicata.”

This was reiterated again by the apex court in *Byram Pestonji Gariwala v Union Bank of India* (1992)⁸, wherein it held that:

“ 43. A judgment by consent is intended to stop litigation between the parties just as much as a judgment resulting from a decision of the Court at the end of a long drawn out fight. A compromise decree creates an estoppel by judgment. As stated by Spencer-Bower and Turner in Res judicata, (2nd edn., page 37):

Any judgement or order which in other respects answers to the description of a res judicata is nonetheless so because it was made in pursuance of the consent and agreement of the parties..... Accordingly, judgements, orders, and awards by consent have always held no less efficacious as estoppels than other judgments, orders or

⁷ *Dattatreya Shanker Mote v Anand Chintaman Datar* (1974) 2 SCC 799 (*in passing*).

⁹ *Shankar Sitaram Sontakke v Balkrishna Sitaram Sontakke*, AIR 1954 SC 352.

⁸ *Byram Pestonji Gariwala v Union Bank of India* (1992) 1 SCC 31 (*in passing*).

decisions, though doubts have been occasionally expressed whether, strictly, the foundation of the estoppel in such cases is not representation by conduct, rather than res-judicata”

Though both the lines of judgments are contradicting to each other with respect to the aspect of operation of res-judicata in compromise decree, it is of the opinion that the purposive interpretation adopted in *Shankar Sitaram Sontakke* (supra) and *Byram Pestonji Gariwala* (supra) are more relevant as a matter of public policy. It bodes well for the courts to bar appeal and operate *res judicata* in compromise cases to not only cut down the large number of pending cases but also to put an end to the long drawn bitter litigative battle between the parties. Also, with such an understanding of the compromise decree, it will ensure that the consent decrees are made executable as decrees passed by invitum. This may well result in increasing the degree of reliability of the in-court compromises, as the violation of the terms of the compromise can now come under the principles of estoppel and contempt of court. This factor of reliability well supports the State's objective of encouraging deployment of alternate dispute mechanisms in civil disputes.

The above suggested purposive interpretation of the compromise decree manifested itself in the decision of the Supreme Court in *Zenith Drugs and allied agencies private limited v Nicholas Piramal India Limited* (2019)⁹. The court here categorically held that the disputes between the parties after compromise is not arbitrable, even though the original agreement had a clause for arbitration. This decision, in my opinion is the recognition of the fact that the compromise deed substituted the original agreement between the parties, and any dispute with respect to the validity of the compromise is to be addressed only by the Civil Court which drew the compromise decree and not an arbitrator. This effectively recognize the principles of estoppel, contempt of court, bar on appeal or institution of a fresh suit and operation of res-judicata in compromise decrees.

Conclusion

The recognition of principles underlying a compromise decree that the reciprocal settlement with clear mind is a noble affair and it is signifying a magnificent and majestic facet of human mind by the Court, will go a long way in addressing the reliability factor of compromise decree. The

⁹ *Zenith Drugs and allied agencies private limited v Nicholas Piramal India Limited* (2020) 17 SCC 419.

operation of res-judicata, and a specific bar on institution of a fresh suit and appeals will strengthen the reliability on the compromise decree which will in turn support the regime of non-adversarial settlement of disputes.

Summary of cases

1. Kunhipurayil Khalid v A.K. Ramachandran and Ors (2023)

The plaintiff had filed a suit for specific performance. The suit was decreed in part directing the defendants to return the advance sale consideration, along with interest to the plaintiff. Aggrieved by the denial of specific performance, appeal was filed before the Kerala High Court. The parties jointly filed application incorporating a compromise agreement entered under Order 23 Rule 3 of the code. The court having gone through the terms of the agreement found that the compromise entered is lawful and disposed the appeal by passing a decree in terms of the compromise. Also, the Court ordered refund of half of the court fees paid on this appeal to the appellant.

2. Pushpa Devi Bhagat v Rajinder Singh (2006)

The Respondents are the landlords of the suit property and had lent the same to the Appellants for residential use. The landlords terminated the tenancy agreement by notice to the appellant and filed a suit in the District court for recovery of the possession of the suit property. After contesting the matter for more than 10 years, the parties arrived at an agreement and the terms were negotiated between various parties. The decree was obtained based on admission. One of the parties, filed application under section 151 of the code for setting aside the decree alleging that she had not instructed her counsel to enter into an agreement and that there was no written compromise, and hence there was no lawful agreement. The District Court allowed the application and held that the passing of consent decree was unlawful. The aggrieved landlords then approached the Delhi High Court which allowed the appeal holding that the compromise was valid as it satisfied the claim of the plaintiff under order 23 rule 3 of the code and did not require any document in writing signed by the parties. The tenants filed an appeal in the Supreme Court against the order of the High Court.

The apex court while deciding the question whether an appeal against the consent decree is maintainable, observed that the validity of a consent decree depends wholly on the validity of the

agreement or compromise on which it is made and no appeal is maintainable against a consent decree having regard to the specific bar contained in section 96 (3) CPC. The only remedy available to a party to a consent decree to avoid such consent decree is to approach the court, under proviso to Rule 3 of Order 23, which recorded the compromise and made a decree in terms of it and establish that there was no compromise.

3. Banwari Lal vs Chando Devi, (1993)

There was a compromise petition filed, but had not been signed by both the parties as required under Order 23 Rule 3 of the Code. The court disposed of the suit on the grounds of it being an unlawful compromise and directed the restoration of the suit. On being aggrieved, the defendant filed a revision application before the High Court citing Section 96(3) and Order 23 Rule 3A of CPC. The court observed that as petition of compromise was an application filed on behalf of the appellant for withdrawal of the suit under Order 23, Rule 1 of the Code, and as the appellant had voluntarily withdrawn the suit there was no occasion to recall the order treating it to be an order under Order 23, Rule 3 of the Code. Later, the matter went before the Hon'ble Supreme Court and it confirmed the findings of the High Court and observed that although the suit is barred as per order 23 rule 3A for setting aside the decree on the ground of Compromise is not lawful and appeal is also barred under Section 96(3) against the decree passed with the consent of parties. Therefore, referring to the provisions under CPC, it was held that the compromise was not lawful within the meaning of Rule 3 which led to recall the order and further stated that an appeal under Order 43, Rule 1-A is maintainable depending on the fact that compromise should or should not have been recorded in the suit.

4. Horil v Keshav and another, (2012)

The appellant had filed a suit before the Munsif Court seeking a declaration that the decree passed by the Assistant Collector under the Land reforms Act, 1950 as fraudulent. According to the appellant, the suits instituted by the Defendants were filed with fake signature and on that basis the Asst. Collector had passed consent decree. The matter came before the Munsif court, wherein it held that the suit was maintainable before a civil court. The district judge further had affirmed the order of the Munsif. The Allahabad High Court, however, set aside the order of the District judge

holding that the suit was not maintainable. The matter was appealed before the apex court.

The Supreme court followed the *Banwari Lal vs Chando Devi* rationale and held that the party challenging a compromise can file a petition under proviso to rule 3 of order 23, or an appeal under section 96(1) of the code, in which he can now question the validity of the compromise in view of Rule 1A of order 43 of the code. Further, it allowed filing of a fresh suit before the Civil Court against decrees passed by the Revenue Courts, by opining that these Courts are neither equipped nor competent to effectively adjudicate on allegations of fraud that have overtones of criminality and the courts really skilled and experienced to try such issues are the courts constituted under the code of civil procedure, and nothing in order 23 rule 3A bars such institution of a suit.

5. Pulavarthi Venkata Subba Rao v Valluri Jagannadha Rao (deceased) (1963)

The respondents were members of an undivided Hindu family. One of the members had taken loans on promissory notes from ancestors of the present appellants. A suit was filed by the creditors and the suit ended in a compromise decree with the scaling down of the claim amount. After the compromise an amendment was passed to the Madras agriculturists relief Act, 1938, based on which the debtors sought further reduction in the decretal amount. For this, the court had to first decide on the question whether the decree passed based on the compromise is a court's decision or not.

The apex Court dealt with this question and observed that a decree passed based on the compromise could not be called a decision by the court. In terms of compromise decree, the court accepts something that the parties of the suit agreed and nothing else. The court also mentions that in passing a compromise decree, the court puts the court's seal on the agreement made and produced by the parties of the suit. The court did not decide anything, and it cannot be said a decision of the court is included in it. A compromise decree cannot be covered as a decision on a case heard by the parties and decided. It cannot be covered under the criteria of *res judicata*. However, a compromise decree may create estoppel if any conflict arises between the parties, but that should be specifically mentioned in pleading.

6. Shankar Sitaram Sontakke v Balkrishna Sitaram Sontakke (1954)

This appeal before the apex court arises out of a partition between 6 brothers of a joint Hindu family. The parties tried to have partition effected between them through arbitrators but the attempt failed. All the brothers filed a suit for partition against the plaintiff of all joint family properties including the accounts of all the businesses. The suit was numbered 39 of 1945. It was compromised. One of the brothers filed a suit, whose case was that the compromise was made in a hurry, that the parties omitted to provide in the compromise about the future conduct of the motor business as the motor business was still a joint family business and that he had a right to ask for accounts of that business. In defence it was pleaded that the compromise was made after due deliberation, that accounts of the motor business and grocery shop should have been taken up to the date of disruption of the joint family status, but the parties agreed by way of compromise that account of all family businesses should be taken up to certain date. It was also pleaded that the claim was barred by *res judicata*.

On the question of *res judicata*, the Court held that, a consent decree is as binding upon the parties thereto as a decree passed by *invitum*. The compromise having been found not to be vitiated by fraud, misrepresentation, misunderstanding or mistake, the decree passed thereon has the binding force of *res judicata*.

7. Zenith Drugs and allied agencies private limited v Nicholas Piramal India Limited (2020)

The Appellant, Zenith entered into an agreement dated 1 May 1997 with M/s Rhone Poulenc India Limited (“RPIL”). Pursuant to the Agreement, RPIL appointed Zenith as its clearing and forwarding agent. The Agreement contained an arbitration clause. RPIL informed Zenith that their company is getting merged with the Respondent/ Nicholas Piramal India Ltd. (“NPIL”) and that pursuant to the merger, RPIL shall cease to exist as a legal entity. Therefore, with effect from three months from the date of the letter, the Agreement shall stand terminated.

Zenith filed a Title Suit praying for declaration that the Agreement was valid, subsisting, legal and continuing and for further declaration that RPIL and NPIL cannot terminate Zenith as clearing and forwarding agent. The issues between the parties were resolved vide a compromise deed and the suit was decreed. Further, Zenith alleged that NPIL refused to honor the terms of the compromise deed and filed a case for execution of the Compromise Deed. Thereafter, NPIL filed an application

under Section 8 of the Arbitration and Conciliation Act, 1996, relying on the arbitration clause under the Agreement, for referring the parties to arbitration in the suit. The Trial Court dismissed NPIL's application. NPIL filed a Revision Petition before the High Court of Guwahati challenging the order of the Trial Court. The High Court allowed the Revision Petition and referred the dispute to arbitration. Aggrieved by the Impugned Order, Zenith appealed before the Supreme Court.

The Court *inter alia* held that from a reading of the Compromise Deed, the parties have substituted a new agreement by way of compromise. As per the Agreement, Zenith was the clearing and forwarding agent. The Court further held that when the parties have settled their differences and compromised the matter, arbitration clause in the prior agreement cannot be invoked in the dispute subsequently arising between the parties.