

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 24th OF APRIL, 2024

MISC. PETITION No. 407 of 2023

BETWEEN:-

1. SMT. SHAMINA BANO W/O MOHAMMAD SHKIR, AGED ABOUT 52 YEARS, OCCUPATION: AGRICULTURE AND HOUSEWIFE R/O KHANPURA GATE GUDRI CHOWK MANDSAUR (MADHYA PRADESH)
2. MOHAMMAD SHAHRUKH S/O MOHAMMAD SHAKIR, AGED ABOUT 30 YEARS, OCCUPATION: AGRICULTURE AND BUSINESS KHANPURA GATE GUDRI CHOWK MANDSAUR (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI A. K. SETHI SENIOR ADVOCATE WITH SHRI RISHI AGRAWAL, ADVOCATE)

AND

1. MOHAMMAD SHAKIR S/O MOHAMMAD SHAFI, AGED ABOUT 53 YEARS, OCCUPATION: AGRICULTURE R/O KHANPURA GATE GUDRI CHOWK MANDSAUR (MADHYA PRADESH)
2. MOHAMMAD ASIF S/O MOHAMMAD SHAFI, AGED ABOUT 44 YEARS, OCCUPATION: AGRICULTURE AND BUSINESS KHANPURA GATE GUDRI CHOWK MANDSAUR (MADHYA PRADESH)
3. DURGAMAL S/O RAMCHANDRA KUMAWAT, AGED ABOUT 68 YEARS, OCCUPATION:

**BUSINESS NARSINGHPURA MANDSAUR
(MADHYA PRADESH)**

4. **LATE PIR MOHAMMAD S/O PYAR
MOHAMMAD MUSALMAN THR LRS
MOHAMMAD S/O PIR MOHAMMAD JI, AGED
ABOUT 42 YEARS, GRAM BUCHAKHEDI
TEHSIL AND DISTRICT MANDSAUR (MADHYA
PRADESH)**
5. **LATE PIR MOHAMMAD S/O PYAR
MOHAMMAD MUSALMAN THR LRS
MOHAMMAD HUSSAIN S/O PIR MOHAMMAD
JI, AGED ABOUT 40 YEARS, GRAM
BUCHAKHEDI TEHSIL AND DISTRICT
MANDSAUR (MADHYA PRADESH)**
6. **SANJAY KUMAR SINGH S/O RAJ SINGH
SOLANKI, AGED ABOUT 50 YEARS,
OCCUPATION: BUSINESS MAHANANDA
NAGAR UJJAIN (MADHYA PRADESH)**
7. **AJAY SINGH S/O RAJ SINGH SOLANKI, AGED
ABOUT 38 YEARS, OCCUPATION: BUSINESS
MAHANANDA NAGAR UJJAIN (MADHYA
PRADESH)**
8. **ASHOK KUMAR S/O KANHAIYALAL JI
PORWAL, AGED ABOUT 47 YEARS,
OCCUPATION: BUSINESS NAI ABADI
MANDSAUR (MADHYA PRADESH)**
9. **SAID AHMED S/O MUSHTAQ AHMED, AGED
ABOUT 46 YEARS, OCCUPATION: BUSINESS
NAYAPURA BADNAGAR DISTRICT UJJAIN
(MADHYA PRADESH)**
10. **LATE AJIJ MOHAMMAD S/O FAKIR
MOHAMMAD THR LRS SMT. BANO BEE W/O
LATE AJIJ MOHAMMAD, AGED ABOUT 65
YEARS, OCCUPATION: HOUSEWORK
KHANPURA MANDSAUR (MADHYA
PRADESH)**
11. **LATE AJIJ MOHAMMAD S/O FAKIR
MOHAMMAD THR LRS KHALIL**

MOHAMMAD S/O LATE AJIJ MOHAMMAD,
AGED ABOUT 45 YEARS, OCCUPATION:
AGRICULTURE KHANPURA MANDSAUR
(MADHYA PRADESH)

12. LATE AJIJ MOHAMMAD S/O FAKIR
MOHAMMAD THR LRS MOHAMMAD HANIF
@ RAJA S/O LATE AJIJ MOHAMMAD, AGED
ABOUT 40 YEARS, KHANPURA MANDSAUR
(MADHYA PRADESH)
13. LATE AJIJ MOHAMMAD S/O FAKIR
MOHAMMAD THR LRS MOHAMMAD RAIS
S/O LATE AJIJ MOHAMMAD, AGED ABOUT
35 YEARS, OCCUPATION: AGRICULTURE
KHANPURA MANDSAUR (MADHYA
PRADESH)
14. LATE MADHOLAL S/O KALURAM JI
PATIDAR THR LRS VIJAY S/O LATE
MADHOLAL JI PATIDAR, AGED ABOUT 50
YEARS, OCCUPATION: AGRICULTURE AND
MECHANIC PRATAPGARH ROAD
MANDSAUR (MADHYA PRADESH)
15. M.P. SASAN DWARA COLLECTOR
MANDSAUR (MADHYA PRADESH)
16. SHRIMAN UP PANJIYAK MAHODAYA UP
PANJIYAK KARYALAYA COURT PARISAR
KILA ROAD MANDSAUR (MADHYA
PRADESH)

.....RESPONDENTS

(BY SHRI MOHD SOHAIL CHHIPA, ADVOCATE FOR RESPONDENT
NO.3 AND MS. GEETANJALI CHAURASIA, P.L./G.A.)

.....
*This petition coming on for admission this day, the court passed
the following:*

ORDER

Heard finally, with the consent of the parties.

- 2] This petition has been filed by the petitioners under Article 227

of the Constitution of India against the order dated 24.12.2022, passed in Civil Suit No.R.C.S.A.39/2018 by First Additional District Judge, Mandsaur whereby, the application filed by the parties under Order XXIII Rule 3 of CPC has been rejected on the objection raised by the defendant No.3, Durgamal.

3] In brief, the facts of the case are that a civil suit has been filed by the petitioners/plaintiffs against the respondents/defendants for declaration, and injunction and in the aforesaid civil suit, the parties entered into a compromise and thus, an application under Order XXIII Rule 3 of the CPC was filed on 12.11.2022, which was signed by all the parties concerned. On the said application, the parties also gave their evidence before the continuous Lok Adalat of the District Court on the same day, except the plaintiff No.1, who was not present, and the matter was fixed for 16.11.2022, on which date the plaintiff No.1 Smt. Shamina also got her statements recorded. Thereafter, the matter was fixed on 29.11.2022, however, on account of the absence of plaintiffs and their Advocate, the matter was fixed for 02.12.2022, on which date the counsel for the plaintiffs again sought time to argue the matter on the compromise application, and the matter was then fixed on 08.12.2022, on which date, the defendant No.3 Durgamal appeared along with his new Advocate and filed an application that the compromise entered into between the parties be cancelled, which application has been finally allowed by the impugned order, and the compromise application has been rejected on the ground that it has not been filed with the consent of the parties, and also that it contains the relief which was not sought in the plaint.

4] Shri A.K. Sethi, learned senior counsel along with Shri Rishi Agrawal, has submitted that after the statements of the witnesses were recorded in support of the application filed under Order XXIII Rule 3 of CPC before the Lok Adalat, it was not open for the defendant to resile from his statement and to file an application for cancellation of compromise.

5] In support of his submissions, counsel for the petitioner has relied upon the decision rendered by the High Court of M.P. in the case of *Diviya Vs. Pyarelal and Ors* passed in S.A. No.102/1991.

6] Shri Sethi has also drawn the attention of this Court to the National Legal Services Authority (Lok Adalat) Regulations, 2009 and Regulation 13 provides for procedure in Lok Adalat and has also referred to the various regulations to submit that such a consent cannot be subsequently withdrawn, and has also relied upon the decision rendered by the Supreme Court in the case of *Canara Bank Vs. G. S. Jayarama* passed in *Civil Appeal No.3872/2022* wherein, the Supreme Court has also reflected upon the mandatory nature of conciliation proceedings in the Lok Adalat.

7] Counsel for the respondent No.3, Mohd. Sohail Chhipa, on the other hand, has opposed the prayer and it is submitted that no case for interference is made out as after the application was filed by the parties, even though the statements were recorded in Lok Adalat, still no decree was passed by the District Court and thus, there was no finality attached to the statements given by the parties concerned and in such circumstances, if one of the parties to the *lis* intends to resile from the agreement, it cannot be said to be impermissible, as merely

giving an affidavit or giving a statement does not create a right in favour of the other party. Thus, it is submitted that no case for interference is made out and the petition deserves to be dismissed.

8] Heard counsel for the parties and perused the record.

9] From the record it is apparent that the parties *viz.*, the petitioners/plaintiffs herein, namely, Smt. Shamina Bano and Mohammad Shahrukh filed a joint application under Order XXIII Rule 3 of CPC with the defendant No.3, who is the respondent No.3 herein. In the said proceedings, the defendant No.3 Durgamal Kumawat's statements were also recorded on 12.11.2022, before the National Lok Adalat at Mandsaur, but as the plaintiff No.1 herself was not present on the said date, the matter was fixed on 20.01.2023 and subsequently on 16.11.2022 the statements of Shamina Bano were also recorded and the matter the was fixed on 29.11.2022 for consideration of the compromise application. After a couple of adjournments, on 08.12.2022, an objection was filed by the defendant No.3 on the compromise entered into between the parties, a copy of which was also provided to the counsel for the plaintiffs. After a couple of dates, on 24.12.2022, the matter was heard by the learned Judge of the Trial Court on the said objection filed by the defendant No.3, and observed that although the defendant No.3's contention is that the compromise application was filed without his consent but it was also observed that the parties have sought the relief which is not even prayed for in the plaint itself and thus, the Court has allowed the application filed by the defendant No.3 on 08.12.2022, holding that the compromise was not consensual, and has rejected the application.

10] This Court is of the considered opinion that the filing of the application for rejection of the compromise application under Order XXIII Rule 3 of CPC is one thing whereas, its rejection on the ground that in the application under Order XXIII Rule 3 of CPC additional reliefs have also been sought by the parties, is another. It is trite law that a plaintiff in an application filed under Order XXIII Rule 3 of CPC can also seek any additional reliefs which are not the subject matter of the suit itself. Thus, the learned Judge of the Trial Court was wrong in rejecting the application on the ground that some other relief was also sought by the plaintiffs. In this regard, reference may be had to Rule 3 of Order XXIII which reads as under:-

“3. 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 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, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.]”

(Emphasis Supplied)

Reference in this regard may be had to the decision rendered by this Court in the case of *Sandeep Kumar Lohia and Another Vs. Himani*

Lohia passed in *C.R. No.299 of 2022* dated *04.07.2022*, (para 10).

11] However, the question is whether the defendant No.3 can be allowed to take a U-turn and to resile from the application and his statement made in the Court, reference may be had to the proviso to Rule 3 of Order XXIII, which is already reproduced hereinabove the proviso to which clearly provides that, *“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.”*

12] A perusal of the application filed by the defendant No.3 for rejection of the compromise reveals that it has been filed on the ground that certain conditions of compromise have not been met by the plaintiffs, the application filed on 08.12.2022 reads as under:-

- “1. यह कि, उक्त प्रकरण में प्रस्तुत समझौता मुझ प्रतिवादी क्रमांक 03 दुर्गामल को स्वीकार नहीं।
2. यह कि, प्रकरण में प्रस्तुत समझौता आवेदन पर प्रार्थी के हस्ताक्षर प्रार्थी की अस्व.स्थिता की स्थिति में कराये गये थे तथा समझौता प्रार्थना पत्र पढने का भी अवसर नहीं दिया था। वादी ने भूखण्ड के सम्बन्धम जो शर्तें तय की थी वह भी पूरी नहीं की तथा जो रकम मुझ प्रतिवादी क्रमांक 03 को भूखण्ड के एवज में दिये जाने के सम्बन्ध में मौखिक रूप से तय किया था उसकी भी पूर्ति वादी की ओर से नहीं की गई है। समझौता मुझ प्रतिवादी क्रमांक 03 को स्वीकार नहीं। प्रकरण में प्रस्तुत समझौता प्रार्थना पत्र में वर्णित शर्तें वादी एवं प्रतिवादी क्रमांक 01 ने आपस में मिलकर तय की है जिनका मुझ प्रतिवादी क्रमांक 03 से कोई सम्बन्ध नहीं है।
3. यह कि , मुझ प्रतिवादी क्रमांक 03 दुर्गामल ने भूखण्ड सप्रतिफल/सहप्रतिफल क्रय किया है तथा उक्त भूखण्ड के सम्बन्ध में प्रतिवादी क्रमांक 03 समझौता नहीं चाहता, समझौता प्रार्थना पत्र मुझ प्रतिवादी क्रमांक 03 दुर्गामल के पुर्त निरस्तह किया जायें।”

13] It is apparent from the aforesaid application that according to the defendant No.3, the plaintiffs have not adhered to their part of the

agreement as is alleged by the defendant No.3, and in such circumstances, it was incumbent upon the learned Judge of the Trial Court to decide the aforesaid objection/question, instead of rejecting the application simply observing that there was no consent between the parties, and that the plaintiffs have sought additional reliefs in the application filed under Order XXIII Rule 3 of CPC.

14] In such circumstances, the impugned order dated 24.12.2022 is hereby set aside, and the matter is remanded back to the learned Judge of the Trial Court with a request to decide the application filed by the defendant No.3 on 08.12.2022, in accordance with law and as observed by this Court in this order as aforesaid.

15] So far as the decisions relied upon by the counsel for the petitioners are concerned, the same have no application in the facts and circumstance of the case as admittedly, no final order has been passed by the Lok Adalat.

16] With the aforesaid directions, the petition stands *disposed of*.

(SUBODH ABHYANKAR)
JUDGE

Bahar