

HEMANTHA KUMAR

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v.

R. MAHADEVAIAH & ORS.

(Civil Appeal No. 4108 of 2022)

JULY 11, 2022

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[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Code of Civil Procedure, 1908 – Or.XXIII, r.3 – Consent decree – Grant of – The original plaintiff instituted suit for specific performance of the agreement to sell – Before the Trial Court plaintiff and defendants submitted an application under Or.XXXIII, r.3 and requested to pass consent decree as parties have settled the dispute – Trial Court referred the matter to Lok Adalat – Lok Adalat passed the consent decree – Defendants filed writ petition before the High Court challenging the consent decree on ground of fraud – High Court set aside the consent decree, observing that counsel for the plaintiff had mislead the trial Court in obtaining decree while referring the matter to Lok adalat r/w the compromise – Plaintiff preferred the appeal before the Supreme Court – Held: Merely because the trial court have referred the matter to Lok Adalat that alone cannot be a ground to doubt the genuineness of the consent decree – No fraud committed – High Court has committed grave error in setting aside the consent decree passed in the Lok Adalat – Judgment and order of High Court quashed and set aside – Consent decree passed by the Lok Adalat restored.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4108
of 2022.

From the Judgment and Order dated 30.11.2020 of the High Court of Karnataka at Bengaluru in Writ Petition No. 35073 of 2015 (GM-RES).

Anand Sanjay M. Nuli, Ms. Agam Sharma, Nanda Kumar K. B.,
Shivashankar H. Manur, Ms. Shweta S. Manur for M/s Nuli & Nuli,
Advs. for the Appellant.

S. N. Bhat, Sr. Adv., D. P. Chaturvedi, Tarun Kumar Thakur,
Ms. Parvati Bhat, Ramesh Kumar Mishra, Advs. for the Respondents.

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- A The Judgment of the Court was delivered by
M. R. SHAH, J.
- B 1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Karnataka at Bengaluru in Writ Petition No. 35073 of 2015 by which the High Court has set aside the consent decree passed in the Lok Adalat and consequently has restored the original suit, original plaintiff has preferred the present appeal.
- B 2. The facts leading to the present appeal in a nutshell are as under:-
- C 2.1 That the appellant herein – original plaintiff instituted Original Suit No. 94 of 2006 in the Court of learned Civil Judge (Sr. Dn.) at Kunigal for specific performance of the agreement to sell/contract. The suit originally was filed against three defendants, however, one of the defendants – defendant No. 3 came to be deleted by the plaintiff. The suit came up for hearing before the learned Trial Court on 18.08.2007.
- D The plaintiff and the original defendant Nos. 1 and 2 submitted an application under Order XXIII Rule 3 CPC, in which it was stated that the parties have settled the dispute and it was requested to pass a consent decree. The defendant Nos. 1 and 2 admitted execution of the agreement to sell dated 26.04.2005 in favour of the plaintiff and also admitted receipt of Rs. 30,000/- towards the part sale consideration. In the application under Order XXIII Rule 3 CPC, it was specifically stated that the defendant Nos. 1 and 2 have received the remaining sale consideration amount of Rs. 70,000/- from the plaintiff. Therefore, it was requested to pass the decree as prayed for in the suit as well as in terms of the compromise petition.
- F 2.2 The said consent compromise/compromise deed/compromise petition was signed by the Advocates for the respective parties. However, instead of decreeing the suit passing a consent decree though requested, the learned Trial Court referred the matter to Lok Adalat. Before the Lok Adalat, which was presided over by the very learned Civil Judge (Sr. Dn.), Kunigal, the Advocates for the plaintiff as well as the original defendant Nos. 1 and 2 remained present and prayed to pass a consent decree as per the application under Order XXIII Rule 3 CPC. Consequently, by judgment and decree dated 27.08.2007, the learned Trial Court passed the consent decree.
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2.3 That thereafter the original plaintiff filed the Execution Petition No. 88 of 2013 to execute the consent decree and for seeking execution of the sale deed in his favour. That thereafter, the defendant Nos. 1 and 2 filed the writ petition before the High Court being Writ Petition No. 35073 of 2015 challenging the consent decree passed by the Court of Lok Adalat on the ground that the consent decree was obtained by fraud.

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2.4 By the impugned judgment and order, the learned Single of the High Court has allowed the said writ petition and set aside the consent decree passed by the learned Trial Court passed in the Lok Adalat. This is mainly on the ground that looking to the compromise amongst the parties and the dates and events, *prima facie* it is evident that counsel for the plaintiff must have mislead the Trial Court in obtaining the decree on 18.8.2007 while referring the matter to Lok-Adalat r/w the compromise and drawing up of decree. By observing so, the High Court has set aside the consent decree passed by the learned Trial Court passed in the Lok Adalat and directed to restore the original suit to the file and the learned Trial Court has directed to re-commence the proceedings from the date of referring the matter to the Lok Adalat.

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2.5 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the original plaintiff has preferred the present appeal.

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3. Learned counsel appearing on behalf of the appellant – original plaintiff has vehemently submitted that in fact the plaintiff and the defendant Nos. 1 and 2 jointly submitted the application under Order XXIII Rule 3 CPC before the learned Trial Court and requested the learned Trial Court to pass a consent decree. It is submitted that, however, instead of passing the consent decree, the learned Trial Court referred the matter to the Lok Adalat. It is contended that merely because the matter was referred to the Lok Adalat cannot be a ground to doubt the genuineness of the consent decree/consent compromise and also the filing of the application under Order XXIII Rule 3 CPC.

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3.1 It is further submitted by the learned counsel appearing on behalf of the appellant – original plaintiff that in fact the defendant Nos. 1 and 2 received the balance sale consideration of Rs. 70,000/- as mentioned in the consent application/application under Order XXIII Rule 3 CPC.

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- A 3.2 It is further submitted that before the learned Trial Court as well as the Lok Adalat, which was presided over by the very learned Presiding Judge, learned Advocates appearing on behalf of the respective parties appeared and prayed to pass a consent decree on the basis of the application filed under Order XXIII Rule 3 CPC and only thereafter the learned Trial Court in the Lok Adalat passed the consent decree.
- B It is submitted that therefore, there was no reason for the High Court to doubt the genuineness. It is submitted that as such while passing the impugned judgment and order and quashing and setting aside the consent decree passed in the Lok Adalat, the High Court has observed that looking to the compromise amongst the parties and the dates and events, *prima facie* it is evident that counsel for the plaintiff must have mislead the Trial Court in obtaining the decree on 18.8.2007 by referring the matter to the Lok-Adalat r/w the compromise and drawing up of decree. It is submitted that as such, such observations are not warranted at all. That even otherwise the observations were not *prima facie* in nature. The High Court has observed that the counsel for the plaintiff mislead the Trial Court, however, what about the Advocates for the defendant Nos. 1 and 2, who signed the application under Order XXIII Rule 3 CPC and appeared before the learned Trial Court and even appeared before the Lok Adalat. It is submitted that there are no allegations and/or observations against the Advocates for the defendant Nos. 1 and 2. It is submitted that in that view of the matter, the High Court has erred in setting aside the consent decree passed by the learned Trial Court passed in the Lok Adalat.

- F 4. Present appeal is vehemently opposed by Shri S.N. Bhat, learned Senior Advocate appearing on behalf of the respondents – original defendant Nos. 1 and 2. It is vehemently submitted by Shri Bhat, learned Senior Advocate, appearing on behalf of the defendant Nos. 1 and 2 that as such the chronology of dates and events creates serious doubt about the genuineness of the consent compromise/consent decree. It is contended that first of all, the plaintiff deleted the defendant No. 3 and the suit came to be dismissed qua defendant No. 3. That immediately thereafter Order XXIII Rule 3 application was submitted. That as such once there was an application under Order XXIII Rule 3 CPC and the parties agreed and requested to pass the consent decree, there was no reason for the learned Trial Court to refer the matter to Lok Adalat. It is submitted that therefore, the decree not being passed by the learned Trial Court and referring of the matter to the Lok Adalat itself creates

serious doubt. It is submitted that therefore when the defendant Nos. 1 and 2 alleged fraud, the defendant Nos. 1 and 2 should have been given the opportunity to prove the alleged fraud.

4.1 Making above submissions, it is submitted that the High Court has not committed any error in quashing and setting aside the consent decree obtained by the plaintiff in the Lok Adalat. Therefore, it is requested to dismiss the present appeal.

5. We have heard the learned counsel appearing for the respective parties at length and perused the impugned judgment and order passed by the High Court. We have also gone through the relevant material on record. We have minutely considered the dates and events, which led to the passing of the consent decree in the Lok Adalat presided over by the learned Trial Court.

6. At the outset, it is required to be noted that as such the plaintiff and the defendant Nos. 1 and 2 and their Advocates filed the application before the learned Trial Court under Order XXIII Rule 3 CPC and requested to pass a consent decree submitting that the parties have settled the disputes. Filing of the application under Order XXIII Rule 3 CPC is not disputed by the defendant Nos. 1 and 2. That thereafter instead of passing the consent decree on the basis of the application filed under Order XXIII Rule 3 CPC as requested and prayed, for whatever reason, the learned Trial Court referred the matter to the Lok Adalat. Before the Lok Adalat, the learned Advocates appearing on behalf of the plaintiff and defendant Nos. 1 and 2 appeared and they requested to pass the consent decree and accordingly in the Lok Adalat, which was presided over by the very learned Judge, a consent decree came to be passed. Merely because the learned Trial Court, before whom the application was presented, referred the matter to the Lok Adalat, cannot be a ground to doubt the genuineness of the consent decree. Many a time, it happens that for whatever reason, instead of passing the decree/consent decree in the Court, the matter is referred to the Lok Adalat and directed to be placed before the Lok Adalat and therefore, a consent decree was passed as prayed by the parties. The aforesaid procedure adopted in the instant case cannot be a ground to doubt the genuineness of the consent decree. From the aforesaid, it cannot be said that there was a fraud committed and/or the counsel on behalf of the plaintiff to mislead the Court to refer the matter to the Lok Adalat. The matter was referred to the Lok Adalat by the Court and even the Lok

- A Adalat was presided over by the very same learned Trial Court Judge. Therefore, as such, the High Court has committed a grave/serious error in doubting the consent decree.

- B 7. Even otherwise, it is required to be noted that while setting aside the consent decree passed in the Lok Adalat, the High Court has observed in paragraph 6 as under:-

- C “6. Writ petition could not have been entertained in view of the fact that O.S. No. 94/2006 was referred to Lok-Adalath and ordered to draw decree on 18.8.2007 while referring to the Lok-Adalath on 30.7.2007. However, compromise among the parties and dates and events prima-facie it is evident that counsel for the plaintiff must have misled the trial Court in obtaining decree on 18.8.2007 with reference to referring the matter to Lok-Adalath r/w the compromise and drawing up of decree.....”

- D 8. Therefore, the High Court has observed that the counsel for the plaintiff must have misled the Trial Court in obtaining the decree on 18.8.2007 with reference to referring the matter to Lok-Adalat r/w the compromise and drawing up of decree. On what basis and/or the material, the High Court has observed so and that too ‘prima facie’, cannot be appreciated by us. Though, the High Court has commented about the counsel for the plaintiff, however, the High Court has not at all appreciated
- E the fact that the application under Order XXIII Rule 3/consent application was presented and signed by the Advocates for the defendant Nos. 1 and 2 also the parties, who had also appeared before the learned Trial Court as well as before the Lok Adalat. There are no allegations at all against the counsel appearing on behalf of the defendant Nos. 1 and 2.

- F 9. It is also to be noted that neither are there any observations by the High Court that on submitting the application under Order XXIII Rule 3 CPC before the learned Trial Court and requesting for passing the consent decree, defendant Nos. 1 and 2 had objected to submitting the application under Order XXIII Rule 3/consent application in which it was requested to pass a consent decree. It is to be noted that in the application under Order XXIII Rule 3 CPC, it was further stated that defendant Nos. 1 and 2 have been paid the balance sum of Rs. 70,000/- It is not the case on behalf of the defendant Nos. 1 and 2 that they have not received the balance sale consideration of Rs. 70,000/- as mentioned in the consent application / application under
- G H Order XXIII Rule 3 CPC.

10. In view of the above, the High Court has committed a grave/ serious error in setting aside the consent decree dated 18.08.2007 passed in the Lok Adalat, which was presided over by the very learned Trial Court Judge. The impugned judgment and order passed by the High Court is unsustainable, both in law as well as on facts. A

Under the circumstances, the impugned judgment and order dated 30.11.2020 passed by the High Court in Writ Petition No. 35073 of 2015 is hereby quashed and set aside. The consent decree passed by the learned Trial Court passed in the Lok Adalat is hereby restored. B

Present Appeal is Allowed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs. C

Ankit Gyan
(Assisted by : Aarsh Choudhary, LCRA)

Appeal allowed.