

JUDGMENT

MIANGUL HASSAN AURANGZEB, J.---Through the instant civil revision petition, the petitioners impugn the judgment dated 10.04.2018, passed by the Court of the learned Additional District Judge, Islamabad, whereby respondent No.1 to 1-D's appeal against the order dated 17.01.2017, passed by the learned Civil Court/Executing Court, was allowed and the said order dated 17.01.2017, was set-aside. Vide the said order dated 17.01.2017, the learned Civil Court/Executing Court dismissed the execution petition filed by respondent No.1-A (Shakeel Akhtar) for the execution of the order dated 25.07.2015, passed by the learned Appellate Court. Vide the said order dated 25.07.2015, the learned Appellate Court disposed of Civil Appeal No. 194/2014, titled "Muhammad Naeem Khan and others v. Qamar Zaman and others" in terms of the compromise arrived at between the parties to the said appeal. The said appeal was filed by the petitioners against the judgment and decree dated 02.06.2014, passed by the learned Civil Court, whereby the suit for specific performance and permanent injunction instituted by respondent No.2 (Qamar Zaman Khan) and respondent No.1 (late Jameel Akhtar Khan) against the predecessor of petitioners Nos.1 to 2-D (Abdul Rauf Khan Ghouri) and respondent No.3 (Khalid Bashir Cheema), was decreed.

2. Learned counsel for the petitioners submitted that neither the judgment and decree dated 02.06.2014, passed by the learned Civil Court nor the order dated 25.07.2015, passed by the learned Appellate Court on the basis of the compromise between the parties could be executed by the learned Civil Court/Executing Court; that the respondents could have instituted an independent suit for the enforcement of the terms of the compromise arrived at between the parties on 25.07.2015; that the judgment and decree dated 02.06.2014, passed by the learned Civil Court was replaced by the order dated 25.07.2015, passed by the learned Appellate Court; and that the appellate order dated 25.07.2015 could not have been executed because no decree had been passed by the learned Appellate Court. In making his submissions, learned counsel for the petitioners placed reliance on the judgments reported as 2009 SCMR 1268 and 2017 YLR 1788. Learned counsel for the petitioners prayed for the revision petition to be allowed and for the impugned judgment dated 10.04.2018 to be set aside.

3. On the other hand, learned counsel for the private respondents submitted that the learned Executing Court had dismissed the execution petition seeking the execution of the judgment and decree dated 02.06.2014, passed by the learned Civil Court and the order dated 25.07.2015, passed by the learned Appellate Court; that the suit for specific performance and permanent injunction filed by the private respondents was decreed on 02.06.2014 by the learned Civil Court; that the said decree was challenged in an appeal; that during the pendency of the appeal, the parties arrived at compromise on 25.07.2015; that after recording the statements of the contesting parties, the learned Appellate Court disposed of the appeal in terms of the compromise; that since the petitioners refused to show compliance with the terms of the compromise, the private respondents filed an execution petition for the execution of the judgment and decree dated 02.06.2014, passed by the learned Civil Court and the order dated 25.07.2015 passed by the learned Appellate Court; that vide order dated 17.01.2017, the learned Executing Court dismissed the execution petition; and that the said judgment and decree passed by the learned Civil Court and the order passed by the learned Appellate Court was strictly in accordance with law. Learned counsel for the private respondents prayed for the revision petition to be dismissed. In making his submission, learned counsel placed reliance on the judgments reported as 2009 SCMR 1268, 1991 SCMR 2457, 2015 CLD 1590, 2014 CLC 1284, 2013 CLD 2080, 2003 CLC 1306, 1995 CLC 1207, PLD 1973 Karachi 409 and PLD 1961 Dacca 842.

4. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. The record shows that on 10.02.2006, the private respondents filed a suit for specific performance and permanent injunction against Abdur Rauf Khan Ghauri (the predecessor of the present petitioners) and Khalid Bashir Cheema (respondent No.3) before the learned Civil Court at Islamabad. Vide judgment and decree dated 02.06.2014, the said suit was decreed. Against the

said judgment and decree, the petitioners preferred an appeal before the Court of the learned Additional District Judge, Islamabad. During the pendency of the said appeal, the contesting parties arrived at a compromise. A joint statement was filed by the contesting parties before the learned Appellate Court. The terms of the compromise as reflected in the joint statement filed before the learned Appellate Court are reproduced in "Schedule-A" hereto.

6. The learned Appellate Court, after recording the statement of the contesting parties, disposed of the appeal in terms of the compromise, vide order dated 25.07.2015. For the purposes of clarity, the said order is reproduced herein below:-

"Initially on 25.06.2015, this appeal was adjourned to 27.07.2015, in the meantime on 15.07.2015, an application for summoning the main file of appeal and disposal thereof on the basis of compromise was filed between the parties. Today again an application for urgent hearing and summoning the file is filed to record the terms of compromise is filed which was allowed and the appeal is ante-dated for today at the request of both the counsel. Accordingly the statements appellant No.1 and of counsel for respondents 1 and 2 were recorded and the statement of compromise between the parties is brought on record as Exh.A1 and this appeal in terms thereof is disposed of with all pending applications if any, which applications have become infructuous."

7. After dispute arose between the parties as to showing compliance with the said compromise, the private respondents filed an execution petition seeking the execution of the order dated 25.07.2015. The petitioners filed objections to the said execution petition. The primary ground taken in the objection petition was that the earlier judgment and decree dated 02.06.2014, passed by the learned Civil Court was no longer in the field on account of the compromise; and that the execution petition could not have been filed for the implementation of the terms of the compromise. Vide order dated 17.01.2017, the learned Executing Court dismissed the objection petition on the ground that a consent decree passed on the basis of a compromise between the parties is in the nature of a contract, the violation whereof furnishes the party seeking its enforcement with a fresh cause of action to institute a suit.

8. The private respondents appeal against the said order dated 17.01.2017 was allowed by the learned Appellate Court, vide judgment dated 10.04.2018. The Appellate Court was of the view that since the judgment and decree dated 02.06.2014, passed by the learned Civil Court had not been specifically set aside by the learned Appellate Court, the same continued to remain in the field and could have been enforced. Furthermore, it was held that the compromise dated 25.07.2017 was an acknowledgment made by the parties of what had already been decided by the learned Civil Court in its judgment and decree. The said judgment passed by the learned Appellate Court has been assailed by the petitioners in the instant revision petition.

9. The vital question that needs to be determined is whether the appellate order dated 25.07.2015 which was passed on the basis of the compromise arrived at between the contesting parties could have been enforced by the learned Executing Court. The learned Executing Court in dismissing the execution petition placed reliance on the judgment passed by the Hon'ble Supreme Court in the case of *Peer Dil v. Dad Muhammad* (2009 SCMR 1268).

10. In the case of *Montgomery Flour and General Mills, Sahiwal v. MCB Bank Ltd.* (2015 CLD 1590), it was held that the Executing Court would be in a position to execute the consent decree under section 47, C.P.C., and no separate suit was required to be filed. In the said case, the Division Bench of the Hon'ble Lahore High Court aptly distinguished the judgment in the case of *Peer Dil v. Dad Muhammad* by observing that in the said case, it was held that whether a subsequent suit is barred by reason of section 45, C.P.C. depended upon the existence of a decree and whether the earlier contract was superseded by a later contract. In the case at hand, it is an admitted position that an earlier consent decree had not been superseded by a subsequent agreement. Rather a decree passed on the merits of the case by the learned Civil Court had been superseded by the compromise between the parties.

11. In the case of *Samba Bank Ltd. v. Syed Bhais* 2013 CLD 2080), the Division Bench of the

Hon'ble Lahore High Court held that in the absence of a material change in the compromise decree by subsequent agreements, the Executing Court would be in a position to execute the compromise decree under section 47, C.P.C. and could also taken into consideration the agreements and the understanding arrived at between the decree holder and the judgment debtor after the passing of the compromise decree. In the case of Dilshad Ahmad Khan v. Ali Muhammad (1995 CLC 1207), the Hon'ble High Court of Sindh gave directions on the basis of a compromise arrived at between the contesting parties. In the case of Muhammad Younis v. Zardad (2014 CLC 1284), it was held that a judgment based on a compromise was executable and a party to such a compromise would not be allowed to resile therefrom. In the said case, the Hon'ble Peshawar High Court, dismissed a revision petition against the orders passed by the learned Executing Court as well as the learned Appellate Court for executing the judgment based on a compromise which was held to be executable in the same manner as an ordinary decree.

12. In the case of Khaveer Saeed Raza v. Wajahat Iqbal (2003 CLC 1306), a civil suit was disposed of in terms of the compromise arrived at between the contesting parties. Although a decree in terms of the contract was not drawn by the Court, the compromise had been admitted by the parties. It was held by the Hon'ble Lahore High Court that even if there was no decree in existence and order disposing of a suit in terms of a compromise was very much there, and binding on the parties. The order disposing of a suit in terms of a compromise was held to be executable.

13. It is pertinent to bear in mind that the private respondents had sought execution of the order dated 25.07.2015, passed by the learned Appellate Court, and not the judgment and decree dated 02.06.2014, passed by the learned Civil Court. While disposing of the appeal through order dated 25.07.2015, the learned Appellate Court did not pass any decree. There is nothing preventing the private respondents from applying to the learned Appellate Court to pass a decree in terms of the compromise dated 25.07.2015. Once such a decree is passed, the Executing Court can continue with the execution proceedings.

14. Be that as it may, the learned counsel for the petitioners did not deny that a compromise had been entered into between the contesting parties on 25.07.2015, and that the learned Appellate Court had disposed of the appeal in terms of the compromise. Regardless of whether or not the judgment and decree passed by the learned Civil Court had been specifically set aside by the learned Appellate Court, it is an admitted position that the compromise between the parties had replaced the said judgment and decree. The order passed by the learned Appellate Court recording the compromise between the parties had not been assailed by the petitioners. Therefore, it is my view that this Court in its revisional jurisdiction must apply equitable considerations and by applying such considerations, the petitioners cannot be permitted to add the private respondents' woes by insisting that they ought to institute a fresh suit for the enforcement of the terms of the compromise, which had formed the basis of the order dated 25.07.2015, passed by the learned Appellate Court.

15. In view of the above, the instant revision petition is dismissed with no order as to costs.

"SCHEDULE-A'

THE TERMS OF THE COMPROMISE

2. That both the parties have come to the settlement/compromise is as under:-

i. That the late elder brother of the appellant namely Abdul Rauf Ghouri has sold out Unit No. 6, 79-E, Al-Rehman Chambers, Blue Area, Islamabad (consisted on two basements, one shop on ground floor and two office on mezzanine floor) to respondents Nos. 1 and 2.

ii. That it has been mutually settled between the parties that appellant namely Naeem Khan Ghouri on behalf of all legal heirs of Abdul Rauf Ghauri has agreed/ready to transfer the 2 Basements, our shop on round floor and 2 offices on mezzanine and also roof of the above said unit in name/favour of respondents or duly authorized by respondents.

iii. That both the parties mutually agreed that they will not interfere in each other matters, regarding above said property and shall not make any claim against the said property.

iv. Therefore the parties are hereby agreed to give the above statement before the Honourable Court in which the appeal is pending adjudication, so that the appeal may be disposed off accordingly.

v. That in above circumstances the respondents have no objection if the decree will be set aside by the Honourable Court.

3. That the main condition of the said settlement is to transfer the suit property in the name of respondents or authorized persons of the respondents or otherwise there will be legal effect in case of refusing to transfer the above said property by the appellant.

4. That the parties and their legal heirs are bound as per above said settlement terms.

5. That the parties have understood the settlement terms and therefore signed it accordingly.

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