Supreme Court of India
Gurpreet Singh vs Chatur Bhuj Goel on 15 December, 1987
Equivalent citations: 1988 AIR 400, 1988 SCR (2) 401
Author: A Sen
Bench: Sen, A.P. (J)

PETITIONER:
GURPREET SINGH

Vs.

RESPONDENT:
CHATUR BHUJ GOEL

DATE OF JUDGMENT15/12/1987

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
RAY, B.C. (J)

CITATION:
1988 AIR 400 1988 SCR (2) 401
1988 SCC (1) 270 JT 1987 (4) 665
1987 SCALE (2)1338

ACT:
Civil Procedure Code, 1908: order XXIII Rule 3-Settlement arrived at between parties in appeal-Compromise not reduced in "writing and signed by the parties"-Whether can be given effect to.

HEADNOTE:
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A suit filed by the respondent for the specific performance of a C contract entered into between him and the father of the appellant was decreed by the trial court. A Single Judge of the High Court affirmed the decree.

During the hearing of the Letters Patent Appeal filed by the appellant, a settlement was arrived at between the parties, and statements were made by them to that effect before the court. The case was adjourned to the date on which payment in terms of the compromise was to be made. Though the statements formed part of the proceedings, the compromise was not reduced in writing and signed by parties. Taking advantage of this, the respondent tried to resile from the compromise. When the case came up on the adjourned date, the Division Bench directed that since the respondent was not prepared to abide by the proposed compromise, the

appeal would be decided on merits and that the case should be placed before another Bench.

ln the appeal by special leave against the aforesaid decision, it was contended on behalf of the appellant that the requirements of order XXIII Rule 3 Civil Procedure Code were mandatory, that the claim in the suit for specific performance having been settled by a lawful compromise within the meaning of Rule 3, the High Court was not justified in directing that the appeal be placed before another Bench for decision on merits, that the word "in writing and signed by the parties" qualified the words "any lawful agreement or compromise" appearing in the first part and, therefore, where the parties made a statement before the Court that the dispute between them had been settled on certain terms, and the settlement so made formed part of the proceedings of the Court, there was no legal requirement to have an agreement in writing embodying the terms of the compromise.

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Dismissing the appeal,

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HELD: The whole object of the amendment of Rule 3 of the Civil Procedure Code, 1908 by adding the words "in writing and signed by the parties" is to prevent false and frivolous pleas that a suit has been adjusted wholly or in part by any lawful agreement or compromise, with a view to protract or delay the proceedings in the suit.[408C-D]

Under Rule 3 as it now stands when a claim in suit has been adjusted wholly or in part by any lawful agreement or compromise, the compromise must be in writing and signed by the parties and there must be a completed agreement between them. To constitute an adjustment, the agreement or compromise must itself be capable of being embodied in a decree. When the parties enter into a compromise during the hearing of a suit or appeal, there is no reason why the requirement that the compromise should be reduced in writing in the from of the an instrument signed by the parties to reduce the terms into writing. [408D-F]

The present case clearly does not come within the ambit of the second part of Order XXIII Rule 3 of the Code. Under the terms of the proposed compromise, the appellant was required to pay Rs.2,25,000 by a bank draft on March 17, 1987 but before the due date the respondent resiled form the promised compromise, saying that it was detrimental to his interest. That being so, that appellant could only fall back on the first part. But, in the absence of an agreement in writing, the High Court had no other alternative but to direct that the appeal be listed for hearing on merits. [409C-D]

Manohar Lal & Anr. v. Surjan Singh & Anr., [1983] Punj. Lj 402, overruled.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2035 of 1987.

From the Judgment and order dated 23.4.1987 of the High Court of Punjab and Haryana in C.M.P. No 19 of 1987.

S.N. Kacker and R.S. Sodhi for the Appellant. Mrs. Shyamla Pappu, A.M. Ashri, K.S. Thaper and V.K. Jain for the Respondents.

The Judgment of the Court was delivered by A SEN, J. The controversy in this appeal by special leave centres, s around the words 'in writing and signed by the parties' added to order XXIII, r. 3 of the Code of Civil Procedure, 1908 by the Code of Civil Procedure (Amendment) Act, 1976 and the precise question is whether when a settlement is arrived at between the parties in appeal before the Court, the compromise cannot be given effect to under Order XXIII, r. 3 of the Code unless the terms of the compromise are embodied in an agreement in writing.

First as to the facts. The respondent herein Chatur Bhuj Goel, a practising advocate at Chandigarh first lodged a criminal complaint against Colonel Sukhdev Singh, father of the appellant, under s. 420 of the Indian Penal Code, 1860 after he had served the respondent with a notice dated July 11, 1979 forfeiting the amount of Rs.40,000 paid by him by way of earnest money, alleging that he was in breach of the contract dated June 4, 1979 entered into between Colonel Sukhdev Singh, acting as guardian of the appellant, then a minor, and the respondent, for the sale of a residential house at 1577, Sector 18D, Chandigarh for a consideration of Rs.2,85,000. In terms of the agreement, the respondent was to pay a further sum of Rs.1,35000() to the appellant's father Colonel Sukhdev Singh by July 10, 1979 when the said agreement of sale was to be registered and vacant possession of the house delivered to him, and the balance amount of Rs. 1,10,000 on or before January 31, 1980 when the deed of conveyance was to be executed. The dispute between the parties was that according to Colonel Sukhdev Singh, there was failure on the part of the respondent to pay the amount of Rs.1,35,000 and get the agreement registered, while the respondent alleged that he had already purchased a bank draft in the name of the appellant for Rs.1,35,000 on July 7, 1979 but the appellant's father did not turn up to receive the same. The respondent met him at his residence at Chandigarh on the morning of July 16, 1979 when it was agreed that they would meet in the District Court precincts later in the day for the purpose of registration of the agreement, but again the appellant's father did not turn up. Although the learned Additional Chief Judicial Magistrate by order dated October 31, 1979 dismissed the complaint holding that the dispute was of a civil nature and no process could issue on the complaint, a learned Single Judge of the High Court by his order dated February 11, 1980 set aside the order of the learned Additional Chief Judicial Magistrate holding that the facts brought out clearly warranted an inference of dishonest intention on the part of Colonel Sukhdev Singh and accordingly directed him to proceed with the trial according to law. Aggrieved, Colonel Sukhdev Singh came up in appeal to this Court by special leave.

This Court by its order in Criminal Appeal No. 595/80 dated September 2, 1980 reversed the judgment of the High Court on the ground that the dispute was purely of a civil nature and the

criminal 13 process could not have been employed for the purpose of coercing the appellant's guardian Colonel Sukhdev Singh to specifically perform the contract. It was directed that Colonel Sukhdev Singh should return the earnest money of Rs.40,000 to the respondent on or before October 5, 1980 and in the meanwhile, the respondent was at liberty to file a suit for specific performance of the contract, if so advised. It was observed that the return of the said amount of Rs.40,000 by Colonel Sukhdev Singh would be without prejudice to the rights and contentions of the parties, including the right of the respondent to claim specific performance of the contract, if he was in law otherwise so entitled. Pursuant thereto, the appellant's guardian Colonel Sukhdev Singh refunded the amount of Rs.40,000 to the respondent. On October 3, 1980 the respondent instituted the suit in the Court of the District Judge, Chandigarh, out of which this appeal arises, for specific performance of the contract and, in the alternative, claimed Rs.2,50,000 by way of damages. Both the learned District Judge as well as a learned Single Judge on a consideration of the evidence came to the conclusion that the breach of contract was on the part of the appellant's guardian Colonel Sukhdev Singh and not on the part of the respondent and accordingly decreed the suit for specific performance. Thereupon, the appellant preferred an appeal under cl. 10 of the Letters Patent.

The hearing of the Letters Patent Appeal commenced before a Division Bench on January 14, 1987 and continued for three days. On January 16, 1987, the appellant's counsel had not concluded and there fore the hearing was adjourned to January 28, 1987. On that date, after the appellant's counsel had addressed the Court for a while, the parties took time to explore the possibility of a settlement. At the resumed hearing later in the day, the appellant's father Colonel Sukhdev Singh made a statement to the effect:

> "I make an offer that I shall personally pay Rs.2,25,000 to the respondent Chatur Bhuj Goel by way of full and final settlement of the dispute between him and the appellant. The said amount shall be paid by a bank draft in Court on 17.3.87. In the event of failure on my part to pay the amount as stipulated on that date, the Letters Patent Appeal No. 734 of 1983 shall stand dismissed and the appellant shall have no right to file an appeal against the decision to the Supreme Court."

The above statement was duly endorsed by Shri V.K. Sharma, learned counsel appearing for the appellant and stated: B "The appellant makes an offer that in full and final settlement of the dispute between the parties, the appellant Gurpreet Singh in his personal capacity or through his father Colonel Sukhdev Singh shall pay Rs.2,25,000 to the respondent on 17.3.87 by a bank draft payable at Chandigarh, if the respondent agrees to the Letters Patent Appeal No. 734 of 1983 being allowed and that in the event of non-payment of the amount on the stipulated date, the said appeal shall stand dismissed and the appellant shall have no right to file an appeal in the Supreme Court." The respondent Chatur Bhuj Goel who, as already stated, is a practising advocate, was respondent by Shri Bhagirath Dass, a senior advocate practising at Chandigarh. Apparently, the respondent on mature deliberation made the following statement in the presence of his counsel "I accept the offer made by Colonel Sukhdev Singh and Shri V.K. Sharma, counsel for the appellant Gurpreet Singh. ' Thereupon, the learned Judges adjourned the appeal to March 17, 1987 i.e. the date on which the payment of Rs.2,25,000 was to be made. The aforesaid statements form part of the proceedings of the Court. Admittedly, the compromise was not reduced in writing and signed by the parties. Taking

advantage of this fact, the respondent on February 9, 1987 made an application by which he tried to resile from the compromise stating:

> "on 28th January 1987, the offer of compromise was made by the appellant, which was recorded. The statement of the respondent was also recorded. The respondent however did not sign the statement. That the statement was made by the respondent without thinking of the repercussions of his statement. He was influenced by the stand, which was adopted by his Senior Advocate Shri Bhagirath Dass. If the statement recorded by the Court which has not been signed by the respondent is given effect to, the respondent would suffer a tremendous loss."

On the adjourned date i.e. March 17, 1987, the learned Judges directed that in view of the fact that the respondent was not prepared to abide by the proposed compromise, the appeal would now be heard and decided on merits, with a further direction that it be placed before another Bench. Hence, this appeal by special leave.

In support of the appeal Shri S.N. Kacker, learned counsel for the appellant, contends that the requirements of order XXIII, r. 3 of the Code are mandatory and the claim in the suit for specific performance having been settled by a lawful compromise within the meaning of r. 3, the learned Judges were not justified in directing that the appeal be placed before another bench for decision on merits. The learned counsel submits that order XXIII, r. 3 of the Code is in two parts. According to him, the words 'in writing and signed by the parties' qualify the words 'any lawful agreement or compromise' appearing in the first part and these words cannot obviously be read into the second part at all. It is urged that the first part of order XXIII, r. 3 of the Code refers to an adjustment on settlement of the claim in suit by a lawful agreement or compromise outside the Court, meaning thereby that where the parties make a statement before the Court that the dispute between them has been settled on certain terms and the statements so made form part of the proceedings of the Court, there is no legal requirement to have an agreement in writing embodying the terms of the compromise.

For a proper appreciation of the contentions advanced, it is necessary to set out the Statement of objects and Reasons which is in these terms:

> "Cl. 77-Sub-cl(iii). It is provided that an agreement or compromise under rule 3 should be in writing and signed by the parties. This is with a view to avoiding the setting up of oral agreements or compromises to delay the progress of the suit.
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> The words 'lawful agreement or compromise' in rule 3 have given rise to a conflict in the matter of interpreta-
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> tion. One view is that agreements which are voidable under s. 19A of the Contract Act are not excluded. While this stand is taken by the High Courts of Allahabad, Calcutta. Madras and Kerala, a contrary view has been expressed by the High Courts of Bombay and Nagpur. An Explanation has, therefore, been added to the rule to clarify

> the position. A proviso has been added to clarify that no adjournment should ordinarily be granted where a decision is necessary as to whether an adjustment or satisfaction has or has not been arrived at In view of the words 'so far as it relates to the suit' in rule 3, a question arises whether decree which refers to the terms of a compromise in respect of matters beyond the scope of the suit is executable or whether the terms of the decree relating to the matters outside the suit can be enforced only by a separate suit. The amendment seeks to clarify the position."

The provision contained in order XXIII, r. 3 of the Code, as amended, provides:

> "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."

According to the grammatical construction, the word 'or' makes the two conditions disjunctive. At first blush, the argument of the learned counsel appears to be plausible but that is of no avail. In our opinion, the present case clearly falls within the first part and not the second. We find no justification to confine the applicability of the first part of order XXIII, r. 3 of the Code to a compromise effected out of Court. Under the rule prior to the amendment, the agreement com promising the suit could be written or oral and necessarily the Court had to enquire whether or not such compromise had been effected. It was open to the Court to decide the matter by taking evidence in the usual way or upon affidavits. The whole object of the amendment by adding the words 'in writing and signed by the parties' is to prevent false and frivolous pleas that a suit had been adjusted wholly or in part by any lawful agreement or compromise, with a view to protract or delay the proceedings in the suit.

Under r. 3 as it now stands, when a claim in suit has been adjusted wholly or in part by any lawful agreement or compromise, the compromise must be in writing and signed by the parties and there must be a completed agreement between them. To constitute an adjustment, the agreement or compromise must itself be capable of being embodied in a decree. When the parties enter into a compromise during the hearing of a suit or appeal, there is no reason why the requirement that the compromise should be reduced in writing in the form of an instrument signed by the parties should be dispensed with. The Court must therefore insist upon the parties to reduce the terms into writing.

In our considered opinion, the view to the contrary expressed by the High Court in Manohar Lal & Anr. v. Surjan Singh & Anr., [1983] Punj. LJ 402 that the first part relates to a lawful agreement or compromise arrived at by the parties out of Court, does not seem to be correct. Sandhawalia, CJ speaking for himself and Tewatia, J. observes that the word 'or' makes the two parts disjunctive and they visualise two distinct and separate classes of compromise. According to the learned Judges, the first part relates to a lawful agreement or compromise arrived at by the parties out of Court, while the second is applicable where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit. Such a restricted construction is not warranted by the language used in r. 3. The word 'satisfies' denotes satisfaction of the claim of the plaintiff wholly or in part, and for this there need not be an agreement in writing signed by the parties. It is open to the defendant to prove such satisfaction by the production of a receipt or payment through bank or otherwise. The satisfaction of the claim could also be established by tendering of evidence. It is for the Court to decide the question upon taking evidence or by affidavits as to whether there has in fact been such satisfaction of the claim and pass a decree in accordance with order XXIII, r. 3 of the Code.

In any event, the present case clearly does not come within the ambit of the second part of order XXIII, r. 3 of the Code. Under the terms of the proposed compromise, the appellant was required to pay Rs.2,25,000 by a bank draft on March 17, 1987, but the fact remains that the respondent before the due date resiled from the proposed compromise saying that it was detrimental to his interest. That being so, the appellant could only fall back on the first part. But in the absence of an agreement in writing, the learned Judges had no other alternative but to direct that the appeal be listed for hearing on merits.

In the result, the appeal must fail and is dismissed. The High Court is directed to hear and decide the appeal on merits. There shall be no order as to costs.

N.P.V. Appeal dismissed.