

AIR 2019 JHARKHAND 41
JHARKHAND HIGH COURT
AMITAV K. GUPTA , J.

Civil Revision No. 43 of 2016, D/- 9 - 8 - 2018

Rajendra Chaturvedi v. Geeta Ojha and others

**Civil P.C. (5 of 1908), O.23 R.3, S.47 -
Compromise decree - Executability - Parties
on mutual consent agreeing that compromise
decree would be executable - Terms and
conditions of compromise not given effect to
in letter and spirit - Execution petition filed by
aggrieved party with prayer that he be put in
khas possession of portion of property as per
terms of compromise - Is maintainable.**

**AIR 2006 SC 2628, Disting.
(Para9)**

Cases Referred	Chronological Paras
AIR 2013 SC 961 : 2013 AIR SCW 1340	3
AIR 2012 SC 1586 : 2013 (1) AJR 223	7
AIR 2006 SC 2628 : 2006 (3) AIR Jhar R 883 (Disting.)	2 , 3 , 4 , 5

**Shailendra Kr. Singh, for Petitioner; Ayush
Aditya and Munna Kumar, for Respondents.**

Judgement

1. ORDER :-This revision is directed against the order dated 03.08.2016 passed by Sub- Judge-VII, Ranchi, in Misc. Case No.121 of 2015 arising out of Execution Case No.4 of 2012, rejecting the application filed under Section 47 of the Code of Civil Procedure.

2. Learned counsel for the petitioner has submitted that it would be evident from the annexures (annexed in the present application)

that both the parties had entered into a compromise on the terms and conditions enumerated, therein and incorporated Clause D and E as under;

"D. That both the parties have duly come in possession of their respective schedule of land.

E. That now none of the parties have any claim or concern with respect to the schedule of land allotted to the other parties."

It is argued that plain reading of the aforesaid clauses leaves no room for doubt that both the parties came in possession of the portion of land mentioned in the schedule of the land consequently nothing remained to be done by the parties in satisfaction of the compromise decree, therefore, the levying of execution was not maintainable. To buttress his argument learned counsel has placed reliance on the decision rendered in the case of Pushpa Devi Bhagat v. Rajinder Singh and others; (2006) 5 SCC 566 : (AIR 2006 SC 2628) and canvassed that the Supreme Court in the aforementioned case has held that when there is satisfaction of the claim then the compromise decree cannot be enforced by levying of execution as there is no subsisting obligation to be performed by the parties in pursuance to the decree. It is contended that the court below has committed manifest error in not appreciating the fact that as per the terms and conditions the parties have admitted that they are in possession of the schedule land consequently no obligation was left to be performed by either of the parties.

It is contended that the executing court has exceeded its jurisdiction in going behind the decree which is not tenable in law in view of the obtaining facts of the case.

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3. Per contra, learned counsel, for the opposite party, has canvassed that the ratio of Pushpa

Devi Bhagat (AIR 2006 SC 2628) (supra) has been considered and discussed in the impugned order. That the order is in consonance with the settled proposition of law enunciated by the Supreme Court. It is argued that in the case of Mahalaxmi Co-operative Housing Society Limited and others v. Ashabhai Atmaram Patel and others (2013) 4 SCC 404 : (AIR 2013 SC 961), the Supreme Court, in para 40, has referred to the decision rendered in Pushpa Devi Bhagat (AIR 2006 SC 2628) (supra) and the provision of Rule 3, Order 23, have been analysed and exhaustively discussed. It has been observed that Order 23 Rule 3 contains two parts; the first part refers to the situation where an agreement or compromise is entered into in writing and signed by the parties and the court being satisfied that the said suit has been adjusted either wholly or in part on the terms and conditions of the agreement can pass a decree and such a decree is executable. That the second part contemplates that when the plaintiff apprises the court that the defendant has satisfied his claims with respect to the subject-matter of compromise and no obligation for performance survives by either of the parties, then the enforcement or levying of an execution is not maintainable.

It is contended that in the instant case it is admitted that both the parties had mutually consented and agreed to compromise the matter on the terms enumerated in clause D and E of the compromise petition. It is submitted that the recital of possession with respect to the petitioner was only symbolic, therefore, with an intent and object to ensure that the terms of compromise were acted upon and given effect to, both the parties had mutually agreed to incorporate Clause 4, in the compromise petition which reads as under;

"4. That thus in view of the compromise the suit may be decreed on its terms and accordingly the decree be pressed which shall be executable under the law."

4. It is argued that the incorporation of the said clause makes it abundantly clear that the compromise decree would be executable hence, the petitioner cannot resile from the terms of the said clause. It is canvassed that the principles laid down in the case of Pushpa Devi Bhagat (AIR 2006 SC 2628) (supra) does not support the contention of the petitioner, on the contrary, it lends impetus and credence to the proposition that the compromise decree was executable.

5. In reply learned counsel on behalf of petitioner, has referred to the observation of the Supreme Court made in para 4 in the case of Pushpa Devi Bhagat (AIR 2006 SC 2628, para 15) (supra) extracted as under:-

"20. In a suit against the tenant for possession, if the settlement is that the tenant will vacate the premises within a specified time, it means that the possession could be recovered in execution of such decree in the event of the defendant failing to vacate the premises within the time agreed. Therefore, such settlement would fall under the first part. On the other hand, if both parties or the plaintiff submit to the court that the tenant has already vacated the premises and thus the claim for possession has been satisfied or if the plaintiff submits that he will not press the prayer for delivery of possession, the suit will be disposed of recording the same, under the second part. In such an event, there will be disposal of the suit, but no "executable" decree."

Learned counsel has strenuously argued and reiterated that in view of the aforesaid settled legal position and the terms incorporated in Clause D and E it is evident that both the parties were put in possession of the respective portion of the schedule land, therefore as no other obligation was to be performed by either of the parties consequently enforcement of the decree by levying the execution was in the teeth of the settled legal position.

6. Heard. On plain reading of the provisions of Order 23, Rule 3, it is explicit that the provision is in two parts. This has been succinctly and eloquently analysed and discussed by the Supreme Court in the aforesaid decisions cited and relied on by both the parties. The first part applies where the parties to the suit enter into a lawful compromise to which they are signatory stating that they have settled their differences. However, if the compromise is not acted upon then the compromise decree becomes executable to enforce the terms and condition of the

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compromise. The second part, however, shall apply in a case where the claim of the plaintiff stands satisfied and no further step or action is required to be taken by the parties in terms of the compromise. At this stage, it is pertinent to reiterate the settled principles that a compromise decree, it is trite, remains valid unless it is set aside. It would be binding on the parties. Although, the principles of *res judicata stricto sensu* would not apply, the principles of estoppel would. As is evident in the instant case, a compromise decree was passed and it is well-settled that the validity of a compromise decree flows from the consent of the parties, therefore, the effect of the compromise decree and the terms and conditions agreed to and incorporated by the parties cannot be ignored by the parties.

7. The underlying principle and the essence of compromise has been enunciated in the case of *Bimal Kumar v. Shakuntala Debi* (2012) 3 SCC 548 : (AIR 2012 SC 1586, para 24), wherein it has been observed by the Supreme Court at para 27, as under:-

"27. It is to be borne in mind that the term "compromise" essentially means settlement of differences by mutual consent. In such process, the adversarial claims come to rest. The cavil between the parties is given a decent burial. A

compromise which is arrived at by the parties puts an end to the litigative battle. Sometimes the parties 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, the conciliatory process commences and eventually, by consensus and concurrence, rights get concretised. A reciprocal settlement with a clear mind is regarded as noble. It signifies magnificent and majestic facets of the human mind. The exalted state of affairs brings in quintessence of sublime solemnity and social stability."

8. Therefore, in view of the enunciated settled principle of compromise, it is undisputed that the effect of the compromise on the executability of the decree depends upon the intention of the parties. In fact it is a mixed question of law and fact. This has to be determined on interpretation of the decree and the compromise in the light of the facts and circumstances of each case. If on such determination it is gathered that the intention of the parties is to keep the decree alive and to give effect to it in the manner agreed upon between the parties in the compromise, the decree will be given effect to accordingly. Admittedly in any execution proceedings objection to executability of a decree is taken under Section 47, CPC on the ground that by virtue of a compromise, the decree got extinguished and became inexecutable and the germane question that should be asked is whether the compromise was recorded by the court of competent jurisdiction.

9. In the backdrop of the settled proposition and the materials on record the contention of learned counsel for the petitioner that the decree was not executable is not sustainable for the simple reason that indisputably both the parties on mutual consent had agreed that the compromise decree would be executable and it was with such intent and object that clause 4 was categorically inserted as one of the terms and

conditions in the compromise decree. Since the terms and conditions of the compromise were not given effect to in letter and spirit, therefore, the opposite party levied the execution case in the court below with a prayer that he be put in 'Khas' possession of the portion of the scheduled land/property as per terms of the compromise. Evidently such an occasion arose due to non-implementation of the terms and conditions of compromise compelling the opposite party to take recourse of law for execution of the decree by the court of law with the prayer to put him in Khas (physical) possession of the schedule land. In this context it is evident to state that if the petitioner's contention is accepted that the opposite party/plaintiff is in 'Khas' possession of the portion of the schedule land in accordance with terms of the compromise, then there is no justification or plausible explanation forthcoming on petitioner's part regarding the cause of objection or resistance offered by him for levying of execution for satisfying terms and conditions of the compromise. In the emergent facts, the inference can be drawn to the said compromise was never acted upon and only

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remained on paper and the possession of the opposite party was merely symbolic.

10. For the foregoing reasons and discussions made, hereinabove, the decisions relied upon by the learned counsel for the petitioner is of no help to the petitioner on the contrary it buttresses the contention of the opposite party. In fact it fortifies the settled proposition that the compromise decree is enforceable by levying of execution as contemplated in first part of Order 23, Rule 3 of Civil Procedure Code, a fortiori the impugned order does not suffer from any illegality or impropriety, meriting any interference by this Court.

11. In the result, the revision stands dismissed.