

A VED PAL (D) THROUGH LRS & ORS.

v.

PREM DEVI (D) THROUGH LRS & ORS.

(Civil Appeal No. 8353 of 2014)

B AUGUST 10, 2018

[ABHAY MANOHAR SAPRE AND S. ABDUL NAZEER, JJ.]

C *Code of Civil Procedure, 1908 – O. XXIII, r.3-A and s.96(3) – High Court disposed of the second appeal in terms of the alleged compromise arrived at between the parties and decreed the suit – Review application filed by appellants, dismissed – Held: High Court did not examine the plea of the appellants properly keeping in view the facts alleged in the application and observed that the appellants are free to take recourse to other legal remedies – O. XXIII, r.3-A bars filing of the suit, while s.96(3) prohibits filing of any appeal, thus, legislative intent does not allow the parties to take recourse to these legal remedies to challenge the compromise once it is arrived at in the suit/appeal – Order passed in review petition set aside – Matter remanded to High Court for deciding the review application afresh.*

E **Partly allowing the appeal, the Court**

F **HELD: 1.1 The appellants are permitted to file an application before the High Court for amending their review petition, filed in disposed of second appeal, raising all their grievances against the manner in which the second appeal came to be disposed of in the light of alleged compromise, to enable the High Court to decide the review petition afresh. In this case, this course is followed keeping in view the bar contained in Order 23 Rule 3-A of the CPC for filing the suit in a case of this nature and also another bar created under Section 96 (3) of the CPC, which prohibits filing of any appeal, though in this case it does not apply because the dispute arose in second appeal filed under Section 100 of the CPC. The legislative intent does not allow the parties to take recourse to these legal remedies to challenge the compromise once it is arrived at in the suit/appeal. The only exception being if the challenge is founded on the ground of fraud**

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committed by the parties in obtaining any judicial orders, the suit, A
in appropriate case, may lie. [Paras 6-8] [1054-E-H; 1055-A]

1.2 In this case, the High Court did not examine the plea of the appellants properly keeping in view the facts alleged in the application and while negating the attack observed that the appellants are free to take recourse to any other legal remedies. B
Since the second appeal was disposed of affecting the rights of the parties in the light of compromise, the proper forum to re-examine the issue is the High Court, which disposed of the second appeal rather than any other forum to examine the issue at this stage. It is more so when the High Court did not go into the details in the proceedings filed by the appellants in its correct perspective. [Para 9] [1055-B-C] C

1.3 The impugned order passed in Review Petition is set aside and the High Court is requested to decide the matter afresh on merits in accordance with law. The appellants are at liberty to amend the review petition or/and file fresh application raising all legally permissible grounds to attack the order impugned therein. D
The respondents too are at liberty to raise objections in accordance with law. [Paras 11, 13] [1055-D-E, F-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8353 of 2014 E

From the Judgment and Order dated 26.09.2006 and 29.01.2007 of High Court of Punjab and Haryana at Chandigarh in RSA No. 4576 of 2003 and Review Application No. 75-C of 2006 respectively

Akshat Goel, Manoj Swarup, Vivek Sharma, Anshul Garg, Yash Pal Dhingra, Rajshekhar Rao, Abhinav Mukerji, Chaitanya Puri, Ms. Gauri Puri, Advs. for the appearing parties. F

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. This appeal is directed against the final judgment and order dated 26.09.2006 passed by the High Court of Punjab & Haryana at Chandigarh in R.S.A. No.4576 of 2003 whereby the High Court disposed of the second appeal in terms of the compromise arrived at between the parties and decreed the suit. G
Against the said order, the appellants herein filed Review Application

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A No.75-C of 2006 in R.S.A. No.4576 of 2003 which was dismissed by the High Court by order dated 29.01.2007.

2. Few facts need to be mentioned for the disposal of this appeal.

B 3. Respondent Nos.4 to 7 herein filed second appeal before the High Court challenging the judgment and decree dated 01.02.2003 passed by the First Appellate Court which arose out of judgment/decree dated 31.03.2001 passed by the Civil Judge (Junior Division) in a civil suit filed for a declaration and permanent injunction. The appellants herein were arrayed as respondent Nos.4 to 6 in the second appeal out of which this appeal arises.

C 4. The Single Judge of the High Court, however, by impugned order dated 26.09.2006 disposed of the second appeal in the light of compromise, which is said to have been arrived at between the parties. In other words, the second appeal was not decided on merits but disposed of in the light of compromise arrived at between the parties.

D 5. The appellants herein felt aggrieved by the disposal of the second appeal and filed review petition but it was dismissed which has given rise to filing of the present appeal by way of special leave against the order of disposing of the appeal and dismissing the review petition.

E 6. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal in part and set aside the order passed in the review petition and permit the appellants to file an application before the High Court for amending their review petition, filed in disposed of second appeal, raising all their grievances against the manner in which the second appeal came to be disposed of in the light of alleged compromise to enable the High Court to decide the review petition afresh.

F 7. In this case, we prefer to follow this course keeping in view the bar contained in Order 23 Rule 3-A of the Code of Civil Procedure, 1908 (for short 'the CPC') for filing the suit in a case of this nature and also another bar created under Section 96 (3) of the CPC, which prohibits filing of any appeal, though in this case it does not apply because the dispute arose in second appeal filed under Section 100 of the CPC.

G 8. The purpose in making reference to these two provisions is to show the legislative intent which does not allow the parties to take recourse to these legal remedies to challenge the compromise once it is arrived at

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in the suit/appeal. The only exception being if the challenge is founded on the ground of fraud committed by the parties in obtaining any judicial orders, the suit, in appropriate case, may lie. A

9. In this case, we find that the High Court did not examine the plea of the appellants properly keeping in view the facts alleged in the application and while negating the attack observed that the appellants are free to take recourse to any other legal remedies. Since the second appeal was disposed of affecting the rights of the parties in the light of compromise, the proper Forum to re-examine the issue, in our opinion, is the High Court, which disposed of the second appeal rather than any other Forum to examine the issue at this stage. It is more so when we find that the High Court did not go into the details in the proceedings filed by the appellants in its correct perspective. B C

10. It is for this reason, we decline to examine the several factual and legal issues urged by the parties in this appeal and leave these issues for the High Court to examine afresh on merits in accordance with law and dispose of the same. D

11. The appeal thus succeeds and is allowed in part. The impugned order dated 29.01.2007 passed in Review Petition is set aside and the High Court is requested to decide the matter afresh on merits in accordance with law without being influenced by any of our observations on merits which we have refrained from entering into them having formed an opinion to remand the case to the High Court for its disposal. E

12. Needless to observe, in case, the learned Judge, who disposed of the second appeal, is not available to decide the matter, as directed by this Court, the matter be placed before the appropriate Bench keeping in view the provisions of Order 47 Rules 1 and 5 of the CPC read with the High Court Rules governing disposal of the review cases. F

13. The appellants are at liberty to amend the review petition or/and file fresh application raising all legally permissible grounds to attack the order impugned therein. The respondents too are at liberty to raise objections in accordance with law. G