CIVIL MISCELLANEOUS

Before Prem Chand Pandit and H. R. Sodhi, JJ.

MAHANT KEWAL KRISHAN,—*Appellant.*

versus

MAHANT SHIV KUMAR, ETC.,—*Respondents.*

Civil Miscellaneous No. 317-C of 1968
in
Regular First Appeal No. 296 of 1967

March 25, 1969.

Code of Civil Procedure (V of 1908)—Sections 96(3), 151, 152 and Order 47, Rule 1—Consent decree—Appeal against—Whether competent—Such decree—Whether must ex-facie show that it is passed with consent—Remedy to avoid consent decree—Whether only by way of suit—Applications for review or for amendment of the decree—Whether lie.

Held, that section 96(3), of the Code of Civil Procedure says that no appeal shall lie from a decree passed by the Court with the consent of parties. The rule enunciated in this sub-section seems to have been based on the principle that a person, who gives his consent to a decree being passed against him, is later on estopped from challenging the same. Disputes between parties are either settled on the merits or on their consent. If the latter course is adopted then the parties are not allowed to challenge the decree passed with their consent. In order to attract the provisions of this sub-section, it is, however, necessary that the decree *ex-facie* must show that it was passed with the consent of both the parties to the suit. If that is not done, there is likelihood of a controversy arising before the appellate Court as to whether the decree passed by the Court below was with the consent of the parties or not, and for that purpose the appellate Court may have to either itself decide or ask the Court below to determine that matter after taking evidence. With a view to obviate this difficulty, it is, therefore, required that the decree under appeal itself must show that both the parties had agreed to it. (Para 9).

Held, that an aggrieved party against a consent decree is not without remedy. He can get rid of a consent decree on any of the grounds which renders an agreement ineffective, namely, fraud, mis-representation, coercion, undue influence etc., This can be done by bringing a regular suit where these matters would be thoroughly gone into after both the parties have led evidence thereon. The allegations made to raise issues which are entirely different from those in the main suit, and, being serious in nature, can be examined in a separate suit. (Para 9).

Held, that the aggrieved party to the consent decree cannot avail of the remedies of review or of amendment of decree to avoid the consent decree. There is no ground for him for filing a review application, as the case would not be covered by the provisions of Order 47, rule 1, Code of Civil Procedure. He cannot say

that he has discovered a new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed. He cannot also urge that there was some mistake or error apparent on the face of the record which calls for review of the decree. As regards the third ground mentioned in Order 47, rule 1 of the Code, namely, "for any other sufficient reason", this expression has to be interpreted as meaning a reason sufficient on grounds at least analogous to those specified immediately previously. This ground also would, therefore, be not available to the aggrieved party. The case is not covered by the provisions of section 152 of the Code as well because there is neither any clerical or arithmetical error nor any error arising from any accidental slip or omission in the decree. It will also not be proper to invoke the provisions of section 151 of the Code, because the party can adequately get his grievances redressed by instituting a separate suit.

(Para 11).

Application under Section 151, *Code of Civil Procedure praying that the question of maintainability of the appeal be decided first before either passing any order in the stay application* (*C.M.* 2576-C/67) *or before the printing or typing of the paper book.*

(*Original Case No.* 46 *of* 26*th April*, 1967, *decided by Shri Niranjan Singh, Sub-Judge*, 1*st Class, Batala on* 24*th October*, 1967).

H. S. GUJRAL, ADVOCATE, for the Appellant.

H. L. SARIN, SENIOR ADVOCATE AND A. L. BAHL, H. S. AWASTHY, ADVOCATES.

JUDGMENT

PANDIT, J.—Mahant Shiv Kumar brought a suit against Mahant Kewal Krishan and Mahant Ram Sarup for partition, of a house situate in Batala, District Gurdaspur. During the trial of the suit, a compromise was effcted between the parties on 24th of October, 1967. Mahant Shiv Kumar plaintiff and his counsel made a statement to the effect that the case had been compromised. The plaintiff agreed to pay Rs. 500 to Mahant Kewal Krishan by 3rd of November, 1967, a preliminary decree to that effect might be passed in his favour and the parties be ordered to bear their own costs. On that very date, the statement of Mahant Kewal Krishan and his counesl was also recorded. The defendant stated that he had heard the statement made by the plaintiff and a preliminary decree be made in accordance therewith. The Subordinate Judge, who was trying the case, then at that very time passed the following order:—

> "In view of the terms of the compromise set out in the statements of the parties, recorded today, the plaintiff is granted a preliminary decree on the basis of compromise for the

partition of the suit property according to the shares specified in the plaint on payment of a sum of Rs. 500 to Kewal Krishan defendant on or before 3rd November, 1967. In case, the plaintiff does not pay the stipulated amount to Kewal Krishan defendant or deposits the same in the court for payment by the due date, the suit of the plaintiff shall stand dismissed."

The above order was followed by a preliminary decree. Against this decree, Mahant Kewal Krishan has filed the present appeal in this Court.

(2) On 28th of November, 1967, the following order was passed on this appeal:—

"Notice. D. B. Print record. Stay the passing of the final decree *ad interim*. Notice as to this also for a very early date."

(3) On 5th of February, 1968, an application (Civil Miscellaneous No. 317/C of 1968) under Section 151 of the Code of Civil Procedure was filed on behalf of Mahant Shiv Kumar respondent alleging that the appellant who had got only about 1/9th share in the property in dispute, had filed the appeal against the consent decree dated the 24th of October, 1967, mainly with the object of prolonging the proceedings pending in the trial Court for the passing of the final decree, so that he might retain his possession over a much larger portion of the house in dispute than the one that fell to his share. The appeal was liable to be dismissed on the sole ground that it was not competent in view of the provisions of section 96(3) of the Code of Civil Procedure It was prayed that the question of the maintainability of the appeal be decided in the first instance before the printing of the record of the case.

(4) Notice of this application was given to the counsel for the appellant and this matter has now been placed before us.

(5) Learned counsel for Mahant Shiv Kumar respondent has relied on the provisions of section 96(3) of the Code of Civil Procedure which lay down that no appeal shall lie from a decree passed by the Court with the consent of parties. From the statements made by the respondent Mahant Shiv Kumar and the appellant Mahant Kewal Krishan and the order passed by the Court below, it is apparent that the matter had been compromised between them and on the basis of

the same, a preliminary decree was passed by the trial Judge. According to section 96(3) of the Code of Civil Procedure, no appeal would lie against a decree passed by the Court with the consent of parties.

(6) Learned counsel for the appellant, on the other hand, raised two submissions before us. In the first place, he contended that according to the statements made by the parties, it appeared that the plaintiff wanted a decree for an *injunction* to be passed in his favour, while the Court below granted a *preliminary decree* for the partition of the house in dispute, Consequently, according to the learned counsel, the decree and the judgment of the Court below were not in accordance with the statements of the parties as recorded.

(7) There is no substance in this submission. Learned counsel is not quite correct when he says that the plaintiff mentioned in his statement that a decree for injunction might be passed in his favour. He desired that a preliminary decree be made in his favour. Naturally, when a co-owner files a suit for partition of some joint property, he would like a preliminary decree to be passed and not a decree for an injunction. This is precisely what happened in the instant case. The plaintiff prayed that a preliminary decree be made in his favour on the basis of the compromise arrived at between the parties. After recording their statements, the said prayer was granted by the Court below.

(8) It was then submitted that the appellant never agreed to enter into any compromise with Mahant Shiv Kumar. The Court below, without obtaining the free consent of the appellant, proceeded to dispose of the suit by forcing the appellant to sign the proceedings, which he was not willing to do. He never consented to the passing of the decree on payment of Rs. 500 only to him, when he was claiming that he had spent Rs. 6,000 on the house in question.

(9) Section 96(3) of the Code of Civil Procedure says that no appeal shall lie from a decree passed by the Court with the consent of parties. The rule enunciated in this sub-section seems to have been based on the principle that a person, who gives his consent to a decree being passed against thim, is later on estopped from challenging the same. Disputes between parties are either settled on the merits or on their consent, if the latter course is adopted then the parties are not allowed to challenge the decrees passed with their consent. In order to attract the provisions of this sub-section, it is, however, necessary that the decree *ex facie* must show that it was

passed with the consent of both the parties to the suit. If that is not done, there is likelihood of a controversy arising before the appellate Court as to whether the decree passed by the Court below was with the consent of the parties or not, and for that purpose the appellate Court may have to either itself decide or ask the Court below to determine that matter after taking evidence. With a view to obviate this difficulty, it is, therefore, required that the decree under appeal itself must show that both the parties had agreed to it. In a case like the present, when one of the parties to the litigation asserts before the appellate Court that his consent to the decree under appeal was not free, and it was obtained under coercion and he was not a willing party to the adjustment of the suit, the appellate Court obviously cannot decide the dispute raised by him on the material before it. For the disposal of that allegation, the appellate Court may have to permit the appellant to lead evidence in support thereof, and, similarly, the respondent will also then have to be given an opportunity to rebute the evidence so produced. Such a procedure, in my opinion, will not be covered by Order 41 rule 27 of the Code of Civil Procedure, which is the only provision under which additional evidence is produced before the appellate Court. In order to meet such a situation, the Legislature had, therefore, provided that no appeal would lie from a decree pased by the Court with the consent of parties. The however, does not mean that the aggrieved party is left without a remedy. He can get rid of a consent decree on any of the grounds which renders an agreement ineffective, namely, fraud, mis-representation, coercion, undue influence etc. This, in my opinion, can be done by bringing a regular suit where these matters would be thoroughly gone into after both the parties have led evidence thereon. The allegations made to raise issues which are entirely different from those in the main suit, and, being serious in nature, can be examined in a separate suit.

(10) I am aware of the fact that certain authorities (see in this connection *Aushootosh Chandra and another* v. *Tara Prasanna Roy* (1), *Rakhal Moni Dassi* v. *Adwyta Prosad Roy* (2), *Madhusudan Chakravarti and others* v. *Pro-forma* (3), *Fatmabai* v. *Sonbai and others* (4), and *Onkar Bhagwan* v. *Gamna Lakhaji & Co.* (5), have also laid down that, apart from a separate suit, the aggrieved party can

(1) I.L.R. (1884) 10 Cal. 612.
(2) I.L.R. 30 Cal. 613.
(3) A.I.R. 1926 Cal. 512.
(4) I.L.R. (1912) 36 Bom. 77.
(5) A.I.R. 1933 Bom. 205.

also file a review application or an application under sections 151 or 152 of the Code of Civil Procedure for the purpose before the Court that passed the decree.

(11) In my opinion, the appellant cannot avail of those provisions. There is no ground for him for filing a review application, as the case would not be covered by the provisions of Order 47 rule 1, Code of Civil Procedure. He cannot say that he has discovered a new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed. He cannot also urge that there was some mistake or error apparent on the face of the record which calls for review of the decree. As regards the third ground mentioned in order 47 rule 1 C.P.C. namely, "for any other sufficient reason", it has been held by the Privy Council in *Chajju Ram* v. *Neki* (6), that this expression should be interpreted as meaning a reason sufficient on grounds at least analogous to those specified immediately previously. This ground also would, therefore, be not available to the aggrieved party. The case is not covered by the provisions of section 152 of the Code of Civil Procedure as well, because there was neither any clerical or arithmetical error nor any error arising from any accidental slip or omission in the decree. It would also not be proper to invoke the provisions of section 151 C.P.C., because the appellant could adequately get his grievances redressed by instituting a separate suit.

(12) Coming to the decided cases on this subject, it is pointless to make a reference to a large number of them. I shall refer to a few.

(13) First of all, there is the decision of the Privy Council in *Zahirul-Said Alvi* v. *Lachhmi Narayan,* (7), where in the case of a consent decree, it refused to entertain an appeal or to consider the sufficiency or otherwise of the consent, as, according to it, the decree could only be set aside by substantive proceedings appropriate to that particular remedy. It may be mentioned that when this very case came before the Privy Council in the first instance and that also is reported in *Zahirul-Said Alvi* v. *Lachhmi Narayan* (8), it was urged before it that there had in fact been no consent to the decree, and, consequently, their Lordships of the Privy Council called for a report from the Court of the Judicial Commissioner of the Central Provinces, being the Court which pronounced the decree

(6) A.I.R. 1922 P.C. 112.
(7) A.I.R. 1932 P.C. 251.
(8) A.I.R. 1931 P.C. 107.

in question, asking it to inform them whether or not the decree was in fact made by consent. Subsequently, when the requisite report was sent to the Privy Council to the effect that the decree appealed from was made with the consent of the parties, the appeal was held to be incompetent.

(14) Learned counsel for the appellant submitted that since it was argued before the Privy Council that consent, as a matter of fact, had not been given, the Privy Council thereupon remitted the case to the Court below to verify that fact and then send its report. His argument was that in the instant case also, the appellant was contending that he had not given his free consent to the compromise in question and he was forced to do so by the Court below. For determining that matter, this Court should send the case back to the trial Court for giving a finding on this question, as was done by the Privy Council. In this connection, it could be pertinent to mention that the Privy Council had to call for a report from the Judicial Commissioner, because the decree in that case did not make reference to any consent of the parties. An application also was made before the Privy Council, supported by an affidavit, that there had in fact been no consent to the judgment under appeal. Afer referring to the judgment in some detail, their Lordships observed:—

> "Under ordinary circumstances, their Lordships would not hesitate to take the statements contained in this judgment as correct, and would refuse summarily such an application as is now made to them. But the circumstances in the present case are peculiar."

After making reference to certain proceedings, they further observed—

> "The record discloses nothing except the judgment set out above of 21st October. A formal decree of the same date was drawn up in the ordinary course which recites only the hearing of 5th October, *makes no reference at all to the 13th or to any consent of parties,* but proceeds to set aside the decree of the lower Court and in lieu thereof passes a decree in conformity with the effective terms of the judgment."

Then again, they observed—

> "Under these circumstances, which their Lordships have characterised not without reason as peculiar, it is impossible for them to accept without further question the

affirmation by the judgment of the Judicial Commissioners that the decree they were about to pass was a decree by consent of parties. If it was so in fact, it clearly could not be challenged by way of appeal, and the certificate should have been refused."

Later on, in this very judgment, it was held:

"Their Lordships feel no doubt that where a decree, or any part of a decree, is passed by consent of parties, *it should always so appear on the face of the decree when drawn up.*"

(15) In the instant case, however, the decree itself shows that it had been passed on the basis of a compromise, which was effective between the parties. That being so, according to the Privy Council decision, quoted above, no appeal is competent against such a decree. If the appellant says that his consent had been obtained by coercion and it was not a free consent, then the only remedy available to him is to get this decree set aside by means of a regular suit.

(16) Then there is the decision of Rankin, C.J., and Ghose, J., in *J. C. Galstaun* v. *Pramatha Nath Roy and others* (9). There, it was held—

"Now, it appears to me that if a party desires to have a consent decree amended or vacated upon the ground that it was fraudulently procured, his proper course and indeed his only course, is to proceed by separate suit for the purpose. The matter is certainly grave enough to deserve a separate suit. The questions which have to be decided are entirely different from those at issue in the original suit. The relief sought is a very well recognised from of relief appropriate to a suit. In English practice it is old law that a fresh action is necessary to set aside a consent decree upon the ground of fraud and that such relief is not properly sought in an action of review. It appears to me that section 152 of the Code which is confined to clerical or arithmetical mistakes and to an accidental slip or omission, is based upon this general principle, and that

(9) A.I.R. 1929 Cal. 470.

section 151 is in no way intended as a violation of that principle. If the relief can be properly obtained in a separate suit, it does not appear that there is any justification for invoking section 151 at all."

Later on, in this very judgment, it was observed—

"Now, I desire to say that in my opinion, it is not competent under Order 47 to obtain a review of a consent decree on the ground that the consent decree was obtained by fraud. It appears to me that before such a doctrine can be taken as authorised by the Code, it is very necessary to lay one's finger upon some enactment which is clearly intended to make so large and inconvenient an exception to the general principles which govern this matter. Rule 1, Order 47, after speaking of a case where a party has discovered new and important matter which was not within his knowledge or could not be produced by him at the time when the decree was passed and of mistake or error apparent on the face of the record, introduces the words "or for any other sufficient reason." In *Chajju Ram* v. *Neki* (6), the Judicial Committee had occasion to point out that these words were not unlimited and must be taken to point to a reason which is sufficient on grounds at least analogous to those mentioned in the rule. It appears to me that if mistake or error is *prima facie* intended to be beyond the scope of the rule unless the mistake or error be apparent on the face of the record, it is curious to say the least of it, that a party should employ this procedure for the purpose of making out a contentious case of fraud."

(17) In *U Po Htu and another* v. *Ma Than Yin* (10), it was held that a review of a consent decree on the ground that it was obtained by fraud, or by mistake, cannot be had, and the consent decree can be set aside only by means of a separate suit.

(18) Learned counsel for the appellant, in the first instance, referred to a Bench decision of this Court in *Amarnath Radha Ram and others* v. *Smt. Malan w/o L. Ram Chand* (11). In that case, a suit was compromised in the trial Court. At first, two counsel representing

(10) A.I.R. 1936 Rangoon 389.

(11) A.I.R. 1954 Pb. 259.

all the defendants made a statement and then, in the presence of the plaintiff, her counsel stated that he was in agreement with the statements of the two counsel for the defendants and prayed that orders might be passed accordingly. The plaintiff's thumb impression as well as the signature of her counsel were obtained on the statement. As one of the defendants was a minor, the sanction of the Court was obtained to the compromise as being in the interests of the minor. The Court then passed an order giving effect to the compromise based on the statements of the parties. Thereafter, the plaintiff filed an appeal under Order 43 rule 1(m) of the Code of Civil Procedure in this Court, against the order recording the compromise saying **inter alia** that she had been tricked into the compromise, the terms of which had not been explained to her. This appeal came up for hearing before a Single Judge of this Court and one of the objections raised was that no appeal lay against the order of the lower Court. This objection was repelled by the learned Single Judge and against that decision, a Letters Patent Appeal was filed, which was being disposed of by the Division Bench in question. While accepting the appeal and holding that the learned Single Judge was in error in overruling that objection, Falshaw, J., with whom G. D. Khosla, J., concurred, observed :

> "Apart from any authorities it seems to me to be clearly implied by the provisions of Order 43, rule 1(m) which gives the right of appeal against an order under rule 3 of Order 23 recording or refusing to record an agreement, compromise or satisfaction, that an appealable order under Order 23, rule 3, must be done in which there has been a contest between the parties in the trial Court regarding whether the parties had settled their differences, and if a compromise has been recorded without any such contest, the proper remedy of the aggrieved party is to approach the Court and allege, as for instance in the present case, that the compromise was consented to because its terms had not been properly explained or understood, and if the Court then refuses to take any action and maintains its order recording the compromise it seems to me that the only remedy to the party concerned is to challenge the compromise by means of a separate suit."

It is pertinent to mention that this was not a case of an appeal against a consent decree under section 96(3) of the Code of Civil

Procedure. It was an appeal under Order 43 rule 1(m) of the Code against an order recording a compromise under rule 3 of Order 23 of the Code of Civil Procedure. Order 43 rule 1(m) specifically says that an appeal would lie from an order under rule 3 of Order 23, recording or refusing to record an agreement, compromise or satisfaction. On the other hand, section 96(3) of the Code clearly bars an appeal against a consent decree.

(19) During the course of this judgment, Falshaw, J., observed that, in any case, he preferred the reasoning of Murphy and Nanavatti JJ., in *Onkar Bhagwan* v. *Gamna Lakhaji and Co.* (5), to that of Wadsworth J., in *Ramanarayana Rao* v. *Ramkrishna Rao* (12), Falshaw, J. had also given the following observations of the Bombay Division Bench :—

> "No appeal lay against an order recording a compromise where there was no contest at the time between the parties regarding the recording of the compromise, the proper remedy of the aggrieved party being either to appeal against the decree passed on the compromise or to reopen the matter in the trial Court either by way of review or otherwise."

(20) On the strength of the remarks of Falshaw J. learned counsel for the appellant submitted that the Division Bench of this Court was of the view that an appeal was competent against a degree passed on the basis of a compromise even when there was no contest at the time between the parties regarding the recording of the compromise.

(21) In the first place, the aforesaid Division Bench was not dealing with a case of an appeal against a decree based on the consent of the parties under section 96(3) of the Code of Civil Procedure. Secondly, the Division Bench of the Bombay High Court, the reasoning of which was preferred by Falshaw, J., to that of the learned Single Judge, of the Madras High Court, had not held that an appeal was competent against a decree passed in terms of the compromise where there had been no contest in the Court below regarding the recording of the compromise. They had, as a matter of fact, followed an earlier decision of the Division Bench of that Court in appeal No. 34 of 1923 decided on 29th July, 1925, by Macleod, C.J., and

(12) A.I.R. 1936 Mad. 385.

Madgavkar, J. With regard to that earlier decision, Murphy, J., observed—

> "The ratio decidendi of that case, which binds us, is that where there has been no contest in the Court below, but an application for compromise has been put in and recorded and a decree passed in its terms, no appeal lies, either against the decree itself, an appeal therefrom being barred under section 96(3), or against the order under Order 43, rule 1 (m), since there are no materials for an adjudication. What the learned Chief Justice meant was that before there can be an appeal under Order 43, rule 1(m), there must have been some contest in the original Court, a contest which might be brought about, conceivably by one party alleging that there was a compromise and the other not, or, where the circumstances are similar to those in the present case, where one of the parties is disowning the authority of his agent or pleaded to compromise for him, either by an application for a review, or under section 151, Civil Procedure Code, which would open the whole matter and allow an adjudication from which an appeal might lie. A direct appeal was not possible on the facts in that case, and in the present one as there was and is no material before the Court on which a decision can be come to. The ruling is of a Division Bench and binds us."

(22) So it would be seen that the earlier Division Bench had clearly laid down that an appeal against such a decree was barred under section 96(3), Code of Civil Procedure. It is true that during the course of the judgment, Murphy, J., did observe that the proper course in a case where the order for making a decree was passed practically simultaneously with the one recording the compromise, and where the compromise was challenged on the ground that none had really been arrived at, would be to challenge the decree, either by an appeal or by an application for review, or one under section 151, Code of Civil Procedure in the original Court, when the matter could be gone into on the merits. But the learned Judge had also observed that it was not necessary to decide that point, because that appeal was concluded by the previous decision of the Division Bench of that Court. Following that ruling, they had held that no appeal was competent against the order recording the compromise.

(23) Counsel then relied on a decision of A. N. Grover, J., in *Mohinder Singh* v. *Smt. Rajinder Kaur* (13). In that case, the

(13) 1966 Cur. Law Journal 91.

learned Judge merely followed the Division Bench authority in *Amarnath Radha Ram's case*, (11) by which he was bound.

(24) Reference was then made by the learned counsel to a Bench decision of the Allahabad High Court in *Jagdish Narain* v. *Rasul Ahmad and others* (14), where it was held—

> "When the consent upon the basis of which a decree has been passed by the Court is itself challenged in the Court of appeal, it cannot be taken for granted that the decree was a consent decree. A consent decree must mean a decree validly consented to either by the party himself or by his duly authorised agent. If the question raised is that the agent who consented to the decree was not duly authorised, the question has to be decided and it cannot be prejudged by holding that because on the face of it there was a consent decree, no appeal lies to the appellate Court."

(25) In this case, the counsel had entered into a compromise without any authority from his client and it was held that such a compromise was unlawful. The High Court of Allahabad has held in some cases that an appeal lies against a consent decree when the compromise on which it is based, is attacked as unlawful, as for example, when a compromise is entered into on behalf of a minor without leave of the Court under Order 32 rule 7 of the Code of Civil Procedure or without sanction of the Central Board, which is required under section 51 of the U. P. Muslim Waqf Act, 1936, or when a compromise is entered into by a counsel without authority. If the learned Judges in Jagdish Narain's (14) case intended to hold that an appeal lay against a consent decree on the ground that the consent of the aggrieved party was obtained by fraud or coercion, then I am, I say so with great respect not inclined to agree with their view.

(26) Counsel then relied on a Full Bench decision of the Oudh Chief Court in *Mohammad Raza* v. *Ram Saroop and others* (15). One of the two questions referred to the Full Bench for decision in that case was—

> "Is it open to a party to a suit to appeal from the decree passed in the suit on the basis of a compromise purporting to

(14) A.I.R. 1952 All. 29.

(15) A.I.R. 1929 Oudh. 385.

be on his behalf when the person verifying or admitting the said compromise had no authority to enter into it on his behalf?"

(27) Stuart, C.J., with whom Raza, J., concurred, answered that question in the affirmative, but, I say so with respect, without giving any reason therefor. Wazir Hasan, J., however, observed as under:—

"On the first of these questions the argument of the learned counsel for the applicant is that having regard to the provisions of sub-section (3), section 96, Civil Procedure, Code, an appeal from the decree passed in this case being a decree with the consent of the parties was excluded by those provisions. The argument in answer is that having regard to the facts which exist behind the decree and the circumstances in which it came to be passed the decree in question in this case must be treated as a decree not passed with the consent of the parties. Speaking for myself I am inclined to accept the argument advanced on behalf of the applicant. It is admitted that the decree on the face of it is a decree passed with the consent of the parties. It is true that if we are to enter into the merits of the circumstances in which the decree in question came to be passed it might be found that the decree is a nullity; but I should think that the proper procedure for discovering the nullity or otherwise will be to initiate proceedings under section 151 or by way of review of judgment. But if the decree *ex facie* is a consent decree it seems to me that an appeal is barred. It appears to me to be wholly immaterial as to whether the decree can be shown by proof of circumstances aliunde to be not a consent decree. But when it is shown, it is only then that it would cease to be a decree without consent. The present proceedings are clearly intended to bring about the last mentioned result. The proceedings may fail or may succeed. If they succeed the decree will only then cease to be a consent decree.

In the present case, however, it is not necessary for me to commit myself definitely to the view stated above. I will assume in answering the first question that an appeal could be preferred and would, therefore, answer that question in the affirmative."

(28) It would, therefore, be seen that Wazir Hassan, J., was of the view that if the decree *ex facie* was a consent decree, an appeal against it was barred. The other two Judges did not give any reasons for their decision.

(29) In view of what I have said above, I would hold that the decree passed by the Court below in the instant case, being based on a compromise arrived at with the consent of the parties, is not appealable under section 96(3) of the Code of Civil Procedure. The appeal filed by Mahant Kewal Krishan was, therefore, not competent. The same is, accordingly, dismissed on that ground. The parties are, however, left to bear their own costs.

H. R. SODHI, J.—I agree.

K.S.K.

FULL BENCH

Before Prem Chand Pandit, S. S. Sandhawalia and Bhopinder Singh Dhillon, JJ.

PREM NATH BHALLA,—*Petitioner.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ No. 3395 of 1968

August 18, 1870.

Punjab Municipal (Executive Officer) Act (II of 1931)—Sections 3(1), 3(4) and 3(7)—Executive Officer of a Municipal Committee appointed under sections 3(1) or 3(4) for a fixed period—State Government—Whether can remove such officer before the expiry of the period without complying with rules of natural justice—Such rules—Whether implied in section 7(1).

Held, that sub-section (7), of section 3, of Punjab Municipal (Executive Officer), Act, 1931 governs the appointments made both under sub-section (1) and (4), of section 3 of the Act. An Executive Officer appointed under any of these sub-sections can be removed *at any time* by the Government. His is not a tenure job. When an Executive Officer accepts the appointment, he is supposed to know that even though the Municipal Committee is appointing him for a fixed period, yet the Government is entitled to remove him *at any time* even after 15 days of his appointment. Under these circumstances, he cannot complain that he has a right to the post for the full period. If he knows that his services can be dispensed with *at any time*, then he cannot have any grievance if action is taken against