Before K. Kannan, J.

BIKRAM SINGH—*Petitioner*

versus

BHUPINDER SINGH AND ANOTHER—*Respondents*

CR No. 5116 of 2012

September 3, 2012

Code of Civil Procedure, 1908 - O. 12 & 23, Rl. 3 & 6 - Distinction between - Written compromise signed by the parties and a judgment on admission - Judgment delivered making reference to the statement of the party as the basis for passing the judgment -Procedure impugned on the ground that the Court did not undertake the procedure mandated by Order 23, Rule 3 and without a written compromise signed by the parties, it could not have passed the decree - Held, the judgment on admission does not need to go through a rigmarole that Order 23 Rule 3 have - If the Court had recorded a statement of a party and proceeds to render a judgment on the basis of such a statement, he cannot be permitted to resile from such a statement - Courts are not without power to act on such concession of a party and allow for decisions to be made on the basis of such concession or admission - In these days of high pendency, it is endeavour of every Court to see that lasting or enduring resolution of dispute is brought through a settlement.

Held, that the whole approach of the petitioner stands on an erroneous premise that the decree has been passed in terms of a compromise. If a compromise is brought between the parties in writing and put before the Court, the Court would pass a decree in terms of the compromise and make the compromise as a part in the decree. If the compromise memo filed in Court and supported by one party is denied by the other, the procedure under Order 23 Rule 3 mandates that the Court shall, without adjourning the case, decide on the validity of the compromise and if it finds the compromise to be duly made to pass a decree in terms thereof. A procedure under Order 23 Rule 3 stipulates for recording of a compromise which has to be in writing is different from a situation where a party gives

a concession that he does not want to contest further. The Courts are not without power to act on such concession of a party and allow for decisions to be made on the basis of which concession or admission. The judgment on admission does not need to go through a rigmarole that Order 23 Rule 3 have. Here the judgment is on what the party admits to a Presiding Officer in Court. There ought to be a greater degree of credibility for an act of a Judge in the course of his proceedings.

(Para 4)

Further held, that in my view, if the Court had recorded a statement of a party and proceeds to render a judgment of the basis of such a statement, he cannot be permitted to resile from such a statement. The Court which has passed the order impugned has referred to how after the first plaintiff's witnesses were examined and after the defendant side began, the Court itself endeavored to secure a meaningful adjustment of right of parties. It allowed for counsel to negotiate between themselves. There is a reference about mutual persuasion of one to another for endeavouring to secure settlement. In these days of high pendency, it is endeavour of every Court to see that lasting or enduring resolution of dispute is brought through a settlement. If the Court had allowed for an active participation to see that a compromise is brought between the parties, it was perfectly legitimate for a Court to do and if a Judge records in his order that a party had given a statement before him that he had agreed to a particular course and as the counsel appearing for the party also attested such a statement, it will become a farce of trial, if we must start suspecting that a Judge has done a job without understanding what he has done and the counsel has cheated his own client. We will have to draw the line somewhere to bring faith to the conduct of judicial Officers and the counsel representing a party. In this case what the petitioner attempts to do is to say that the counsel misled him, the Judge did worse. Neither of the contentions shall be permitted to be made before this Court.

(Para 4)

Sukhdeep Parmar, Advocate, *for the petitioner.*

K. KANNAN, J. (ORAL)

(1) The revision is against the order rejecting a petition filed under Section 151 CPC for setting aside the order passed by the Court recording a statement of the first defendant who is the petitioner before the Court that

he was willing to pay to the plaintiff Rs. 7,15,000/-, failing which, the plaintiff would be entitled to secure a decree for specific performance as sought for. After the Court obtained a statement, it proceeded to deliver a judgment on 05.08.2010 making reference to a statement of the party as the basis for passing the judgment in the manner he did. The petition has been filed under Section 151 CPC subsequently contending that his counsel had colluded with the other side and that he being illiterate did not know the effect of the statement that he had made in Court. The Court itself did not undertake the procedure as mandated under Order 23 Rule 3 CPC and without a written compromise signed by the parties, it could not have passed the decree. The decree could not also exist without the terms of the settlement being put in writing and placed before the Court.

(2) On dealing with the petition, the Court held that the statement of the petitioner had been recorded by the Court, which bore thumb impression of the party as well as the signatures of the counsel. The Court held that it would be impossible to accept a plea that he had not known what the Court was recording as his statement and dismissed the petition.

(3) The learned counsel appearing on behalf of the petitioner contends that in terms of the judgment of the Supreme Court in ***Gurpreet Singh*** versus ***Chatur Bhuj Goel (1)*** to constitute an adjustment, the agreement or compromise must itself be capable of being embodied in the decree and when the parties entered into a compromise during the hearing of the suit, there was no reason why the requirement of the compromise to be reduced in writing in the form of an instrument signed by the parties should be dispensed with. The Supreme Court held that a Court would, therefore, insist the parties to reduce the terms into writing and in the absence of such agreement in writing there shall be no lawful compromise. A decision of this Court in ***Shri Santan Dharam Sabha*** versus ***Basant Lal Gulati and others (2)*** was also cited to contend that the compromise must be in writing and the statements of parties and their counsel recorded would not be sufficient in compliance of the Order 23 Rule 3. The case was holding so

(1) (1988) 1 SCC 270
(2) (1991)1 RRR 153

by referring a judgment of the Supreme Court in **Gurpreet Singh v. Chatur Bhuj Goel** referred to above.

(4) The whole approach of the petitioner stands on an erroneous premise that the decree has been passed in terms of a compromise. If a compromise is brought between the parties in writing and put before the Court, the Court would pass a decree in terms of the compromise and make the compromise as a part in the decree. If the compromise memo filed in Court and supported by one party is denied by the other, the procedure under Order 23 Rule 3 mandates that the Court shall, without adjourning the case, decide on the validity of the compromise and if it finds the compromise to be duly made to pass a decree in terms thereof. A procedure under Order 23 Rule 3 stipulates for recording of a compromise which has to be in writing is different from a situation where a party gives a concession that he does not want to contest further. The Courts are not without power to act on such concession of a party and allow for decisions to be made on the basis of which concession or admission. The judgment on admission does not need to go through a rigmarole that Order 23 Rule 3 have. Here the judgment is on what the party admits to a Presiding Officer in Court. There ought to be a greater degree of credibility for an act of a Judge in the course of his proceedings. The Order 12 refers to the relevant provision for admissions. The power of the Court to pass judgment on an admission is provided under Rule 6:

> **"6. Judgment on admissions.** -(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.
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> (2) Whenever a judgment is pronounced under sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date of which the said judgment was pronounced."

The judgment that the Court could pass on an admission made by party, whether orally or in writing. This could again be done as the language of Section reads at any stage of the suit either on the application of a party or of its own motion and without waiting for the determination of dispute between the parties. In this case, therefore, when the Court was recording a statement of the defendant that he would be willing to pay Rs. 7,15,000- to the plaintiff to stave off his claim for specific performance and if the amount was not paid in a particular time, the suit could be decreed was completely a different situation than what situation Order 23 Rule 3 CPC deals with and in respect of which the above decisions have come about. In my view, if the Court had recorded a statement of a party and proceeds to render a judgment of the basis of such a statement, he cannot be permitted to resile from such a statement. The Court which has passed the order impugned has referred to how after the first plaintiff's witnesses were examined and after the defendant side began, the Court itself endeavored to secure a meaningful adjustment of right of parties. It allowed for counsel to negotiate between themselves. There is a reference about mutual persuasion of one to another for endeavouring to secure settlement. In these days of high pendency, it is endeavour of every Court to see that lasting or enduring resolution of dispute is brought through a settlement. If the Court had allowed for an active participation to see that a compromise is brought between the parties, it was perfectly legitimate for a Court to do and if a Judge records in his order that a party had given a statement before him that he had agreed to a particular course and as the counsel appearing for the party also attested such a statement, it will become a farce of trial, if we must start suspecting that a Judge has done a job without understanding what he has done and the counsel has cheated his own client. We will have to draw the line somewhere to bring faith to the conduct of judicial Officers and the counsel representing a party. In this case what the petitioner attempts to do is to say that the counsel misled him, the Judge did worse. Neither of the contentions shall be permitted to be made before this Court. The petition challenging the order ought to fail and, the petition, accordingly, dismissed.

V. Suri