(8) For the reasons recorded above, I allow this appeal, set aside the judgment and decree of the learned Senior Subordinate Judge Exercising the enhanced appellate powers and restore those of the trial Court. In the circumstances of the case, I make no order as to costs.

N.K.S.

Before S. S. Sandhawalia, C.J. and D. S. Tewatia, J.

MANOHAR LAL AND ANOTHER,—*Petitioners.*

versus

SURJAN SINGH AND ANOTHER,—*Respondents.*

Civil Revision No. 1550 of 1982.

May 3, 1983.

Code of Civil Procedure (V of 1908)—Order 23 Rule 3—Defendant in a suit satisfying the claim of the plaintiff—No document in writing signed by the parties recording the satisfaction executed between the parties—Execution of such a document—Whether necessary—Order 23 Rule 3—Scope of—Words 'in writing and signed by the parties'—Whether applicable to the first part of the Rule only.

Held, that an analysis of Rule 3 of Order 23 of the Code of Civil Procedure, 1908 would disclose two distinct kinds fo classes of compromises in suits. These parts can and indeed must be read separately and disjunctively. The first part of the rule visualises a lawful agreement or compromise arrived at out of the Court by the parties. It is this kind of agreement or compromise which is required to be in writing and signed by the parties. It is to this class, namely out of Court agreement and compromises that the words "in writing and signed by the parties' expressly apply. On a plain and grammatical reading of Rule 3, the requirement of — "in writing and signed by the parties" therefore appends itself only to the lawful agreements or compromises arrived at by the parties out of the Court. On the other hand, all cases where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit is a distinct class by itself. It has been provided for separately from the class of lawful agreements and compromises by the parties by the dividing line of the word 'or' designedly used by the legislature. Distinct

terminology has been used separating lawful agreements or compromises from the satisfaction of the plaintiff by the defendant in respect of the whole or any part of the subject matter of the suit. The word 'satisfaction' has been employed in contra-distinction to 'adjustment' by agreement or compromise by the parties. The requirement of "in writing and signed by the parties" attaches only to agreements or compromises by them and does not apply to the altogether different situation of the defendant satisfying the plaintiff in the alternative in the second part of the body of Rule 3. Thus, the requirement of the document being in writing and signed by the parties is applicable only to an agreement or compromise for the adjustment of the suit under the first part of Rule 3 of Order 23. This requirement is not attracted to the satisfaction of the plaintiff by the defendant in respect of the whole or any part of the subject matter of the suit under the second part of the said Rule.

(Paras 9, 10 and 17).

Petition under section 115 *C.P.C. for revision of the order of Additional Senior Sub Judge, Ferozepore ordering that the defendants shall pay Rs.* 22,000 *to the plaintiff, the suit of the plaintiff may accordingly be decreed and rest if his claim may oe dismissed. The defendants shall deposit the money in Court on* 15*th June,* 1982. *In case he fails to deposit the money in the Court on* 15*th June,* 1982 *then he would be liable to pay Rs.* 40,000 *to the plaintiff.*

Ravinder Chopra, Advocate with Maluk Singh Thakur, Advocate, *for the petitioner.*

A. L. Behl, Advocate, *for the respondent.*

JUDGMENT

S. S. Sandhawalia, C.J.

1. The true import of Order 23 Rule 3, Civil Procedure Code, in the context of a satisfaction of the plaintiff by the defendant in respect of the whole or any part of the subject-matter of the suit rested on the statement of the respective counsel of the parties in Court, is the spinal question which necessitated this reference to the Division Bench.

2. The issue aforesaid arises out of a suit for specific performance. The case of the plaintiff respondent therein was that he had paid Rs. 40,000 by way of earnest money for the purchase of the property. When the suit had reachd the stage of arguments,

the learned counsel for the parties on March 27, 1982, made the following statement before the Court, which was duly recorded on the said date :—

"*Statement of counsel for the parties.*

The parties have compromised. The defendants shall pay Rs. 22,000 to the plaintiff. The suit for the plaintiff may accordingly be decreed and rest of his claim may be dismissed. The defendants shall deposit the money in Court on 15th June, 1982. In case he fails to deposit the money in the Court on 15th June, 1982, then he would be liable to pay Rs. 40,000 to the plaintiff.

RO & AC (Sd.) . . . .,

Addl. Senior Sub-Judge,
Ferozepore."

In accordance with the aforesaid statement, the court on that date in the presence of the counsel for the parties, recorded the undermentioned order :—

"Present : Councel for the parties.

The present suit was filed by the plaintiff against the defendants for specific performance. The case was fixed for evidence of the defendants when on 27th March, 1982, the parties effected a compromise. In view of the compromise between the parties the suit is decreed to the effect that the defendants shall pay Rs. 22,000 to the plaintiff. The said amount shall be deposited in the court on or before 15th June, 1982. In case they fail to deposit the said amount by the said date the plaintiff would be entitled to Rs. 40,000. Parties are left to bear their own costs of the suit in view of compromise. Decree-sheet be drawn accordingly. File be consigned to the record room.

Dated (Sd.) . . . .

27th March, 1982. Addl. Senior Sub-Judge,
Ferozepore.

3. The present civil revision has been preferred by the defendant-petitioners. The primary ground taken on their behalf is that the compromise had not been recorded in writing nor signed by the parties or their counsel. At the motion stage, reliance was placed on *Dalip Singh and another* v. *Raj Mall and others,* (1), and my learned brother Tewatia, J. expressing some doubt about the correctness of the view, admitted the case for a hearing by the Division Bench. That is how the matter is before us.

4. Inevitably, the controversy herein must turn on the specific language of Order 23, Rule 3 of the Code of Civil Procedure, 1908 (hereinafter called 'the Code'). However, before adverting thereto in some detail, I must notice that it is somewhat surprising that despite the fact that this provision has been on the statute book for wellnigh eight decades or more, yet a true analysis of its two distinct parts does not seem to have been made precedentially or in any case learned counsel for the parties were unable to bring it to our notice. Since the matter has not been examined from an angle from which I propose to view the same, it seems not only apt but necessary to first highlight the larger context of the legislative history of this provision.

5. It seems unnecessary to delve back into the corresponding provisions of the earlier Code of Civil Procedure, 1883 and it suffices our purpose to notice the provisions as originally enacted in the Code of Civil Procedure, 1908. What, however, calls for pointed notice is the amendment made in this provision also by the Civil Procedure Code (Amendment) Act, 1976. Thereby, specifically the words "in writing and signed by the parties" were inserted in the opening part of this Rule and a change was also effected in the closing part thereof. Apparently, as a necessary consequence of these changes, a proviso was added to the Rule along with an explanation thereto. A new Rule 3-A was inserted following the same which in terms bars any fresh suit to set aside the decree on the ground that the compromise on which such decree was passed was not lawful. Further Rule 3-B was also added to the statute to provide that no agreement or compromise be entered in a representative suit without leave of the Court.

6. Now the intrinsic and apparent need for the aforesaid changes wrought in the law appears in the following terms in the

(1) 1981 P.L.J. 298.

relevant notes on clauses appended to Bill No. 27 of 1974 which was ultimately enacted as the Code of Civil Procedure (Amendment) Act, 1976 :—

Clause 77

"*Sub-clause* (*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.

The words "lawful agreement or compromise" in rule 3 have given rise to a conflict in the matter of interpretation. One view is that agreements which are voidable under section 19A of the Contract Act are not excluded. While this stand has been 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 also been added to clarify that no adjournment should ordinarily be granted where a decision is necessary as to whether an adjournment 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 a decree which refers the terms of a compromise in respect of matters beyond the scope of the suit is executable or whether the matters outside the suit can be enforced only by a separate suit. The amendment seeks to clarify the position.

Sub-clause (*iv*).—In a recent Mysore case, it was held that where a compromise decree passed by a Court of competent jurisdiction contains a term which is opposed to law or public policy, but the decree has not been set aside in proper proceedings, the decree operates as *resjudicata*. The Madras and Patna High Courts have, however, taken different view. New rule 3A seeks to resolve the conflict between the decisions of the different High Courts.

It is felt that in a representative suit, leave of the Court should be obtained before a compromise is recorded and

before such leave is given, notice to the interested parties should be given. New rule 38 seeks to achieve this object."

7. Having noticed the underlying intent of the amendments brought in Rule 3, one may juxtapose the amended and unamended provisions for facility of reference. In view of what follows, the main provision of Rule 3 is being shown in its apparent two distinct parts :—

Old Code	*New Code*
Rule 3. 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, 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 suit.	Rule 3. 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

Old Code	*New Code*
	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).
	S. 3-*A.*—No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.
	S. 3-*B.*—No agreement or compromise to be entered in a representative suit without leave of Court. * * * * *

Before proceeding further it must be noticed that within this jurisdiction two provisos to Rule 3 have been added by way of amendment in Punjab and Haryana. However, it seems unnecessary to quote or advert to them because they seem to be intended primarily to hit at the evil of unnecessary adjournments in the context of rival assertions that the matter has been compromised by agreement and do not in any way, affect the substative construction of the statute.

8. It is common ground that some of the amendments wrought by in Rule 3 stem from the sad experience in civil litigation where setting up of oral agreements or compromises was not adhered to and was made the stepping stone for further litigation. To nip this evil in the bud and to prevent later contentious litigation with regard to the contents of the agreement or compromise, the legislature have now provided that such agreements or compromises should both be in writing and signed by the parties. This was done to avoid the nebulousness of oral agreements or compromises. As an added measure it was provided that where one of the parties denied such

a compromise or adjustment, the Court was obliged to decide the question forthwith unless for reasons to be recorded, it thought it necessary to adjourn the matter. The decree which was passed in accordance with the agreement or compromise of the party was sought to be given some degree of finality by barring a later suit to set it aside on the ground that the compromise or agreement was not a lawful one by virtue of the added Rule 3-A.

9. Now against the aforesaid backdrop, an analysis of Rule 3 would disclose two distinct kinds of classes of compromises in suits. This has been highlighted by already splitting the rule into its two distinct parts while quoting it above. These parts can and indeed must be read separately and disjunctively. The first part of the rule visualises a lawful agreement or compromise arrived at out of the Court by the Parties. It is this kind of agreement or compromise which the amendment of 1976 now in terms provides to be in writing and signed by the parties. It is to this class, namely out of Court agreements and compromises that the words "in writing and signed by the parties" expressly apply. Indeed they immediately follow the words "any lawful agreement or compromise" and the legislature by way of amendment inserted the provision with regard to same being in writing and signed by the parties designedly at the point in the body of the then existing Rule 3. On a plain and grammatical reading of Rule 3, the requirement of—"in writing and signed by the parties" therefore appends itself only to the lawful agreements or compromises arrived at by the parties out of the Court. This appears to be otherwise sound in principle. A stricter method of proof regarding agreements or compromises arrived at out of the Court was spelt out in order to remedy the evil of nebulous oral agreements or compromises being set up by the parties, from which they could resile, and cantankerous litigants could thereby prolong the already tardy process of a civil suit. As already noticed, it was to correct the abuse of setting up of an oral agreement or compromise outside the Court and the attempts to prolong the matters by leading evidence thereof that the legislature mandated that such agreements or compromises must not only be written but equally that these must be signed by the parties. This seems to be plain, on the legislative background, on principle, as also on the existing language of Rule 3.

10. On the other hand all cases where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit is a distinct class by itself. It has been provided

for separately from the class of lawful agreements and compromises by the parties by the dividing line of the word 'or' designedly used by the legislature. Distinct terminology has been used separating lawful agreements or compromises from the satisfaction of the plaintiff by the defendant in respect of the whole or any part of the subject matter of the suit. The word 'satisfaction' has been employed in contra-distinction to "adjustment" by agreement or compromise by the parties. The requirement of "in writing and signed by the parties" attaches only to agreements or compromises by them, and does not apply to the altogether different situation of the defendant satisfying the plaintiff in the alternative in the second part of the body of Rule 3.

11. From the aforesaid analysis it would emerge that the legislature has treated the two situations namely, the adjustment of the suit by agreement or compromise on one hand and the satisfaction of the plaintiff by the defendant in respect of the subject matter of the suit on the other. In the body of Rule 3 itself such 'agreement', 'compromise' or 'satisfaction' are themselves distinctly referred to. This distinction is further buttressed by the proviso to the Rule. This again draws the line of distinction between 'adjustment' or 'satisfaction' whichever the case may be, where it has been alleged by one party and denied by the other. Herein also, the earlier division of the adjustment of the suit as against satisfaction of the plaintiff in the body of the Rule is being adhered to.

12. Reference may also be made to the 'Explanation' to Rule 3. This in terms deals with regard to agreements or compromises which may be void or voidable under the Indian Contract Act. Obviously, this Explanation would have no reference to the 'satisfaction' of the plaintiff in the second part of the Rule and is applicable only to the first part pertaining to the agreements or compromises.

13. The view that the mandate of being written and signed by the parties would become applicable only to agreements or compromises is buttressed by an earlier amendment of this Rule by the Allahabad High Court. This is in the following terms:—

"In Rule 3 of Order XXIII C.P.C.

"(i) Between the words, 'or compromise' and 'or where', insert the words 'in writing duly signed by the parties,'

and between the words 'subject-matter of the suit', and the words, 'the Court', insert the words' and obtains an instrument in writing duly signed by the plaintiff."

14. From the above, it would be clear that where it was intended that the 'satisfaction' of the plaintiff should also be in writing, then it had to be so provided expressly by requiring that an instrument in writing duly signed by the plaintiff should be obtained. This amendment was introduced with effect from 31st of August, 1974. It is sound canon of construction that the legislature is aware of the existing law and the changes made therein from time to time. Parliament must, therefore, be presumed to have knowledge of the said amendment. Yet when it made the necessary insertion in Rule 3 by the 1976 Amendment Act, the requirement of writing and signed by the parties with regard to agreements and compromises alone was prescribed, and obtaining any instrument in writing duly signed by the plaintiff with regard to his satisfaction in the second part of the Rule was not mandated. This is equally a pointer to the effect that such satisfaction is not as a matter of law required to be either in writing or signed by the plaintiff or the defendants.

15. One may now advert to precedents on the point. Before the learned Single Judge of the Andhra Pradesh High Court in *Kesarla Raghuram* vs. *Dr. Narasipalle Vasundara,* (2), a compromise memo. signed only by the advocates but not the parties themselves as well was the subject-matter of consideration. The matter was apparently examined in the light of the first part of Rule 3 and it was held that because the compromise was not in strict compliance with the first part of Rule 3 the same could not be acted upon. This case is thus distinguishable because issue of the satisfaction of the plaintiff with regard to the whole or any part of the subject-matter of the suit was not even remotely raised or adjudicated upon. In *Sri Sri Iswar Gopal Jew and others* vs. *Bhagwandas,* (3), a consent decree was set aside on a variety of grounds including the one that it was passed due to the mistake or misapprehension of the Advocate-on-Record and that it was hit by the Explanation to Rule 3 and further that the alleged agreement or compromise was unlawful. Plainly the case was distinguishable

(2) AIR 1983 A.P. 32.
(3) AIR 1982 Cal. 12.

and is of no aid to either of the parties because this specific issue of whether the first part of Rule 3 would be applicable or the second was neither raised nor decided.

16. Within this jurisdiction, on behalf of the petitioners, primary reliance has been placed on *Dalip Singh and another* vs. *Raj Mall and others,* (4). However, a close analysis of the judgment would disclose that it is plainly distinguishable and of no aid to the petitioners. Therein at the appellate stage, the matter was sought to be compromised on the basis of an agreement arrived at betwixt the parties. However, the statement of only the defendant was recorded and the plaintiff was not at all examined. It has been mentioned that a statement of the counsel for the parties was recorded without specifying the contents thereof. The learned Single Judge considered the case to be clearly one under the first part of Rule 3 as being an adjustment of the suit on the basis of an agreement or compromise. The second part of Rule 3 pertaining to the satisfaction of the plaintiff by the defendant with regard to the subject-matter of the suit was neither considered nor pronounced upon.

17. In the light of the aforesaid discussion I would conclude that the requirement of the document being in writing and signed by the parties is applicable only to an agreement or compromise for the adjustment of the suit under the first part of Rule 3 of order 23. This requirement is not attracted to the satisfaction of the plaintiff by the defendant in respect of the whole or any part of the subject-matter of the suit under the second part of the said Rule.

18. Now once it is so, all that remains is to determine whether the present case would fall within the first or the second part of Rule 3. A plain assessment of what transpired on 27th March, 1982 in Court with the background of the suit would leave no manner of doubt that herein the case fell squarely in the second part pertaining to the satisfaction of the plaintiff by the defendant with regard to the subject-matter of the suit. As already noticed, the plaintiff's suit was for specific performance alleging that he had paid Rs. 40,000 by way of earnest money to the defendant. The matter had reached the stage of arguments when the impugned order was passed on March 27, 1982. It is manifest that the parties did not set up any separate agreement or compromise out of Court for the adjustment of the suit even remotely. The defendant herein satisfied the plaintiff by undertaking to pay Rs. 22,000 to him and suffering a decree to this effect whilst the rest of the claim was to

(4) 1981 P.L.J. 298.

be dismissed. He further undertook to deposit the said amount in Court by the 15th of June, 1982, failing which he admitted a further liability to pay Rs. 40,000 to the plaintiff. The counsel for the defendant and the plaintiff had first got recorded their distinct statements to the said effect. It would thus be obvious that in these terms the defendant had at least satisfied the plaintiff in respect of the part of the subject-matter of the suit and the rest of his claim was to be dismissed. The Court, therefore, recorded this satisfaction by way of the statements of the counsel for the parties. first on the 27th of March, 1982. In essence this was a recording of the satisfaction of the plaintiff by the defendant in part as provided in the second limb of Order 23 Rule 3. Herein the mere use of the words 'agreement or compromise' by the counsel for the parties or in the recording thereof cannot possibly be conclusive. The real nature of the transaction has to be viewed because it is well-settled that the courts of law do not go by the mere form but the real substance of the matter. Indeed as was pointed out earlier, the distinction between the two parts of Order 23 rule 3 betwixt an adjustment of a suit by compromise or agreement and the satisfaction of the plaintiff by the defendant is somewhat thin and has not been precedentially drawn sharply. This aspect and analysis is being highlighted in this judgment. That being so, the Court herein under Rule 3 was required to pass a decree in accordance with the satisfaction and consequently the later impugned order of the trial Court directing the decree-sheet to be drawn accordingly was passed and the parties were left to bear their own costs. The present case being squarely within the ambit of the second part of rule 3 thus did not require a written document to be signed by the parties themselves before it could be acted upon. The contention of the learned counsel for the petitioners that the decree of the trial Court is illegal on this ground alone has, therefore, to be rejected.

19. Repelled on the main point, learned counsel for the petitioners had then raised some tenuous ancillary submission. It was sought to be argued that the satisfaction had not been recorded with absolute formality in so far as the statement of each of the learned counsel was not individually recorded and that of the parties present were also not so done. I am unable to sustain this objection. Rule 3 does not prescribe any formal mode of recording such satisfaction. Indeed it was held in *Mt. Shah Jahan Begam* v. *Ghulam Rabani*, (5), that even an omission to record such satisfaction or agreement or compromise does not affect the merits of the case

(5) AIR 1935 All. 738.

and is curable under section 99, C.P.C. A Division Bench in *Laraiti Devi* v. *Sia Ram,* (5*A*) has also observed that Order 28 Rule 3 only required that agreement, compromise or satisfaction should be recorded, but it did not lay down how it was to be recorded and where it was directed that compromise should form part of the decree, it was held to be sufficient compliance with rule 3.

20. Lastly, counsel for the petitioners attempted to assail the record of the Court in a vain attempt to contend that the statements attributed to counsel were not in fact or truly made. This stance has only to be noticed and rejected in view of the recent reiteration of the rule by their Lordships in *State of Maharashtra* v. *Ramdas Shrinivas Nayak and another,* (6), in the following terms :—

> "The principle is well-settled that statements of fact as to what transpired at the hearing recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error (per Lord Buokmaster in *Madhusudan* v. *Chandrabati,* (7). That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there".

In view of the aforesaid authoritative enunciation, the tenuous contention in this context necessarily fails.

21. The primary and the ancillary contentions raised on behalf of the petitioners having been found without merit, this revision petition is hereby dismissed. However, in view of the intricacy of the question involved, we would leave the parties to bear their own costs.

D. S. Tewatia, J.—I agree.

N.K.S.

(5A) AIR 1957 All 820.
(6) AIR 1982 S.C. 1249.
(7) AIR 1917 P.C. 30.