

*IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRP No.123/2009 & CM No.12305/2009 (u/S 151 CPC for stay).

% Date of decision: 15th January, 2010

PREETINDER SINGH Petitioner Through: Ms. Geeta Luthra, Sr. Advocate.

Versus

GURSHARAN SINGH Respondent Through: Mr. O.P. Aggarwal, Advocate.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported Yes in the Digest?

RAJIV SAHAI ENDLAW, J.

1. This petition under Section 115 of the CPC has been preferred with respect to the order dated 2nd July, 2009 of the Addl. District Judge dismissing the application preferred by the petitioner herein for setting aside of a compromise decree dated 9th April, 2007. Notice of the petition was issued on the contention of the counsel for the petitioner that the Addl. District Judge could not have dismissed the application without granting an opportunity to the petitioner to lead his evidence. Subsequently, vide order dated 9th September, 2009 which continues to be in force, the execution of the compromise decree was stayed.

CRP No.123/2009 Page 1 of 17

2. The petitioner is the son of the respondent. The respondent instituted a suit against the petitioner averring that she was the sole and absolute owner and in possession of House No.B-1/3A, Rajouri Garden, New Delhi and had, because of relationship, allowed her son i.e. the petitioner to reside in a portion of the ground floor of the said house as a licensee; the respondent herself was also residing in the said house; that the petitioner had got married on 7th May, 2007 and thereafter the petitioner and his wife had started ill-treating the respondent; that in the circumstances, the respondent had terminated the license of the petitioner and called upon the petitioner to remove himself from the portion in his use/occupation but the petitioner had failed to do so. The respondent thus in the suit sought the relief of eviction and vacant possession of the portion of the house in occupation of the petitioner.

3. Summons of the suit were ordered to be issued to the petitioner. The parties along with their respective advocates appeared before the suit court and moved a joint application under Order 23 Rule 3 of the CPC. The petitioner admitted the ownership of the respondent of the property and agreed to vacate and handover vacant peaceful physical possession of the premises to the respondent within six months. The compromise application also contains an undertaking of the petitioner to vacate and handover possession of the premises to the respondent on or before 31st October, 2007. It was also provided that upon failure of the petitioner to so vacate the premises the respondent shall be entitled to execute the decree and the petitioner would then also be

liable for mesne profits/damages for use and occupation at the rate of Rs.5,000/- per month w.e.f. 8th February, 2007 and till the date of vacation of the premises; however if the petitioner was to vacate the premises as undertaken by him on or before 31st October, 2007 he was to be not liable for any damages/mesne profits.

4. The suit court being satisfied that the parties had by a lawful agreement settled the disputes subject matter of the suit, allowed the application under Order 23 Rule 3 of the CPC and decreed the suit in terms thereof.

5. The petitioner did not vacate the premises. The respondent mother applied for execution of the decree inter alia by issuance of warrants of possession. However it

CRP No.123/2009 Page 2 of 17 appears that while recording the compromise, the site plan of the premises with respect where to possession was decreed, was not exhibited. The executing court raised an objection in this regard. Thereupon, the respondent in December, 2007 made an application for exhibiting the site plan. Notice of the said application was issued to the petitioner for 11th January, 2008. The petitioner appeared before the executing court on 11th January, 2008 also and again gave a statement exhibiting the site plan.

6. It was thereafter that the petitioner filed the application in the suit court for setting aside of the aforesaid compromise decree. In the said application, it is mentioned that the petitioner had been residing in the house aforesaid along with his parents and sister; that the father of the petitioner/husband of the respondent died in a road accident on 10th March, 1999 when the petitioner was 23 years old and only a student; that the respondent mother took charge of the entire estate of the father; that the respondent mother always kept the petitioner under her thumb and got signed from the petitioner whatsoever document she required; that the respondent mother on 17th January, 2004 also got executed and registered a relinquishment deed from the petitioner and his sister with respect to the their share in the aforesaid house on the pretext of "consolidating the assets and getting the same to be under one head and also to save property tax/house tax" and at the assurance that for other purposes the property will remain a joint family property and the petitioner will get his due share therein and shall have right to live and occupy the property on a permanent basis; that the petitioner also got married to a girl identified by the respondent mother; however the respondent mother created a wedge between the petitioner and his wife leading to the petitioner's wife filing an FIR under Section 498A IPC and a petition under the Domestic Violence Act; that the petitioner continued to remain under the thumb of his mother; that in order to disturb the married life of the petitioner by not allowing the petitioner's wife to settle in the house, the respondent filed the suit aforesaid for possession and making full use of her undue influence over the petitioner did not allow the petitioner to contest the suit and in exercise of undue influence, made the petitioner to make a statement compromising the suit and admitting passing of a decree against the petitioner. It was however averred that the petitioner was surprised when the Bailiff came to execute the decree; it is alleged that the respondent

CRP No.123/2009 Page 3 of 17 had obtained the decree by concealing the facts narrated in the application and by exercising undue influence over the petitioner and by virtually obtaining the signatures of the petitioner on various documents; the relief of setting aside of the compromise decree was claimed in the application.

7. The respondent mother contested the application. Vide order impugned in this petition the application has been dismissed. Aggrieved therefrom the present petition has been preferred.

8. At the outset, it may be stated that the petition is not maintainable under Section 115 of the CPC, not satisfying the criteria laid down in Shiv Shakti Co-op. Housing Society Vs. Swaraj Developers AIR 2003 SC 2434. However, the same is treated and heard as a petition under Article 227 of the Constitution of India.

9. At the outset, it may be stated that neither a separate suit lies for setting aside of a compromise decree by virtue of Order 23 Rule 3A of the CPC nor is the same appealable by virtue of Section 96 (3) of the CPC. The Supreme Court in Pushpa Devi Bhagat Vs. Rajinder Singh (2006) 5 SCC 566 has held that the only remedy

available to a party to a consent decree to avoid the same is to approach the court which recorded the compromise and made a decree in terms thereof and establish that there was no compromise. It was further held that a consent decree is nothing but a contract between the parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made; if the court finds the agreement to be not valid, the compromise decree is to be set aside and the parties relegated to the same position as they were in immediately before the compromise and then the suit is to proceed forward.

10. As aforesaid, the only point urged before this court and on which notice of this petition was issued was that the application aforesaid of the petitioner could not have been dismissed without giving an opportunity to the petitioner to lead evidence. What falls for determination by this court is that whether on the pleas raised by the petitioner in the application, and in the facts and circumstances aforesaid it was necessary to frame the

CRP No.123/2009 Page 4 of 17 issues and put the parties to trial or the application could have been dismissed without trial.

11. The admitted facts are

a. That the petitioner nearly three years prior to the institution of the suit had vide registered relinquishment deed relinquished all his rights, title, interest and share in the property with respect whereto the suit was filed.

b. That on the basis of the registered sale deed in favour of the respondent and her husband with respect to the aforesaid property and the relinquishment deed executed by the petitioner and his sister with respect to their shares out of 50% share of their father in the said property, the respondent was the sole and absolute owner of the property. The petitioner on the date of institution of the suit had no right to the property. His only plea is that the relinquishment deed was executed for the reasons as noted above.

12. The compromise between the parties has to be seen in the light of the aforesaid state of affairs. Another important factor relevant in this regard is that at the time when the suit aforesaid was filed by the respondent mother, the petitioner had disputes with his wife also. The wife of the petitioner had in or about 2006 i.e. prior to the institution of the suit aforesaid filed a complaint against the petitioner under the provisions of the Domestic Violence Act. The said complaint was pending in the court of the Metropolitan Magistrate, New Delhi. The petitioner had filed a reply verified in July, 2008 i.e. after the recording of compromise in the suit aforesaid, through an advocate engaged by him in the aforesaid complaint case. In the said reply also the petitioner had pleaded that the house in which he was residing belonged to the respondent mother only and he had no right, title, share or interest therein. The petitioner in the said reply further disclosed the institution of the suit aforesaid by the respondent mother for his own eviction from the said house and the decree passed against him in the said suit; the petitioner before the Magistrate contended that he himself had no rights in the said house and from which he

CRP No.123/2009 Page 5 of 17 was under eviction. Thus, it transpires that the petitioner, just about six months prior to the filing of the application aforesaid for setting aside of the compromise decree, in a different legal proceeding admitted the correctness thereof. The petitioner before the Magistrate did not challenge the decree or aver that the same had been obtained by his mother exercising undue influence over him. On the contrary, the petitioner relied upon the said decree to defend the claim of his wife against him. What is also significant is that the petitioner in the said proceedings was represented through lawyers and it can safely be presumed that the petitioner was availing legal advice since the year 2006 since when the said complaint case was pending. The said fact also brings to the fore that the petitioner was already in legal proceedings with his wife since about one year prior to the institution of the suit by the respondent and thus it cannot be said that the petitioner was such a naive person on whom influence as alleged could be exercised by his mother.

13. The suit was decreed as compromised not merely on the application under Order 23 Rule 3 of the CPC but the petitioner had also appeared personally before the suit court and made a statement in support of the compromise application and signed the said statement. The compromise application was also supported by the affidavit of the petitioner and in which the petitioner had affirmed on oath the correctness of the statements in the compromise application. Further as aforesaid, the petitioner, even after execution of the compromise decree being filed, joined in exhibiting the site plan. The petitioner, though aware of the compromise decree did not raise any objections with respect thereto.

14. The senior counsel for the petitioner relies upon-

a. M.A. Abdul Malick Saheb Vs. T.P. Muhammad Yousuf Sahib AIR 1961 Mad 190. In this case, the plaintiff was a lad of about 18 years of age at the time of his father's death; the brother of his mother i.e. maternal uncle was instrumental in bringing about an amicable division of assets of his father between the two widows and their respective children; within a few months of the said settlement which itself happened within a year of the father's demise, the plaintiff had executed gift deeds of the estate which

CRP No.123/2009 Page 6 of 17 had fallen to his share in favour of his mother and the mother had sold the properties so received from the son to a stranger to the family. It was in the said facts that reliance was placed on Allcard v. Skinner (1887) 36 Ch D 145 inter alia to the effect that where the court is satisfied that the gift was the result of influence expressly used by the donee for the purpose and where shortly before the execution of the gift the relations between the donor and the donee have been such as to raise a presumption that the donee had influence over the donor, the court has the power to set aside even a voluntarily gift. It was further held that if a gift is made to a parent or a guardian soon after the donor attains 21 years, the presumption is that influence of the parent or guardian is still dominant and the parental influence has been held to exist in the case of sons of 25 & 23 who resided with and were maintained by the father; the influence is deemed to exist until the child becomes emancipated;

b. Afsar Shaikh Vs. Soleman Bibi AIR 1976 SC 163 holding that the question whether a person is in fact in a position to dominate the Will of another and procure a certain deed by undue influence, is a question of fact. In the said judgment it was also held that merely showing that the plaintiff relied upon the defendant for advice was not sufficient to constitute undue influence. It was also held that separate pleadings about undue influence are necessary general allegations that the plaintiff is a simple old man and reposed confidence in the defendant cannot spell out undue influence. Reliance in this regard was placed on Order 6 Rules 2&4 of the CPC;

c. Subhas Chandra Das Mushib Vs. Ganga Prosad Das Mushib AIR 1967 SC 878 laying down that a court considering a case of undue influence must consider the relation between the donor and the donee and the question whether the donee was in a position to dominate the Will of the donor and whether the donee has used that position to obtain an unfair

CRP No.123/2009 Page 7 of 17 advantage over the donor; if the transactions appear to be unconscionable then the burden of proving that the contract was not induced by undue influence is to lie upon the person who was in a position to dominate the Will of the other. It was however further held that before a court is called upon to examine whether undue influence was exercised or not, it must scrutinize the pleadings to find out that such a case has been made out and that full particulars of undue influence have been given as in the case of fraud. It was further held that a vague or general plea can never serve this purpose. The party must plead the precise nature of the influence exercised, the manner of use of influence and the unfair advantage obtained by the other. On facts in this case, it was held that a gift deed by a grandfather of a portion of his properties in favour of his only grandson a few years before his death was on the face of it not an unconscionable transaction;

d. Ladli Prasad Jaiswal Vs. Karnal Distillery Co. Ltd. AIR 1963 SC 1279. In this case the suit was for declaration of certain resolutions of the directors of a company as void and illegal on the ground of undue

influence having been exercised on some of the directors. It was held whether a particular transaction was vitiated on the ground of undue influence is primarily a decision of fact. It was further held that the object of Order 6 Rule 4 of the CPC is to bring parties to a trial by concentrating their attention on the matter in dispute so as to narrow the controversy to a precise issue and to give notice to the parties of the nature of testimony required on either side in support of their respective cases; a vague or general plea can never serve this purpose. The court in the facts of that case did not find a case of undue influence;

e. Munna Kumari Vs. Umrao Devi AIR 2006 Raj 152. This judgment merely relies on Subhas Chandra Das Mushib (supra);

CRP No.123/2009 Page 8 of 17 f. Chidambaram Pillai Vs. Muthammal MANU/TN/0412/1992. The Learned Single Judge in this case relied on the passage in Mst. Kharbuja Kuer Vs. Jangbahadur Rai MANU/SC/0392/1962 holding that general rules of law protect persons whose disabilities make them dependent upon or subject to the influence of others even though nothing in the nature of deception or coercion may have occurred - this is part of the law relating to personal capacity to make binding transfers or settlements of property of any kind. Emphasis was also laid on the transaction being

unconscionable;

g. Karuppayee Ammal Vs. Karuppiyah Pillai MANU/TN/0309/1986 where undue influence was equated to moral coercion as distinguished from physical coercion;

h. Rajamani Ammal Vs. Bhoorasami Padayachi MANU/TN/0681/1972 in which case there was a pecuniary transaction between a child and a parent just after the child attained the age of 21 years and it was held that the presumption is that an undue influence has been exercised to procure that liability on the part of the child.

15. There can be no doubt that whether undue influence has been exercised or not is a question of fact. However, the question which falls for consideration is whether, whenever a plea of undue influence is taken, the court is required to set down the matter for trial and which can lead to considerable delays or the court has a discretion to, on the basis of the pleas and circumstances, consider whether trial is necessary or not.

16. In the present case the undue influence is stated to have been exercised in the matter of a compromise application filed and the compromise got recorded before the court. The said situation cannot be equated to the execution of a deed or any other act with respect where to a suit is filed on the ground of the same having been done under undue influence. The court is not bound to, whenever a compromise application is filed before it to allow the same or to decree the suit in terms thereof. The court is to satisfy

CRP No.123/2009 Page 9 of 17 itself that the compromise was lawful. The satisfaction of the court as to the compromise being lawful includes a satisfaction that the compromise is not a result of undue influence, fraud, coercion etc. The Explanation added in the CPC amendment of 1976 clarifies that a compromise which is void or voidable under the Contract Act shall not be deemed to be lawful within the meaning of Order 23 Rule 3. The suit court in the present case while accepting the compromise and passing a decree in terms of the compromise, is deemed /presumed to have satisfied itself that the compromise was not a result of undue influence. Thus the onus on a party applying for setting aside of a compromise decree on the ground of undue influence is much more than the onus on a party approaching the court with a suit for setting aside of a deed or other act as having been procured by undue influence. The agreement/compromise in the case of a compromise decree has the imprimatur of a court. The Supreme Court in Rama Narang Vs. Ramesh Narang AIR 2006 SC 1883 has held that such compromise becomes an order of the court and where-against proceedings for contempt also lie.

17. My research shows that this court has in Uma Devi Yadav Vs. Lt. Col. Gaj Singh Yadav AIR 2000 Delhi 424 (DB) dismissed such an application without any trial on not finding any case of fraud or undue influence

to have been made out. I must, however, admit that there is no discussion in the judgment on the requirement of the matter being put to trial. The reason is not far to fathom; if it is to be held that in all cases where a compromise decree is challenged on the ground of fraud or undue influence and the said challenge is to be put to trial, it will take away the sanctity of the compromise recorded before this court. In each case, an unscrupulous litigant would be entitled to after entering into the compromise, delay the efficacious execution of such compromise decree merely by alleging fraud/undue influence. It is common knowledge that owing to the burden of work in the courts, if a trial is to be ordered, the same may take several months/years. A party/plaintiff who may have agreed to take something less by way of compromise than his claim before the court for the sake of at least obtaining the lesser relief immediately would thus be deprived of the benefit of the said lesser relief also. It is further the practical experience that no amount of costs can

CRP No.123/2009 Page 10 of 17 compensate the damage which would be suffered by the compromising party if such were to be the law.

18. The Supreme Court recently in *Sardar Estate Vs. Atma Ram Properties Pvt. Ltd.* 2009 (6) SCC 609 has held that frivolous objections filed in an execution case and which are found to be an abuse of the process of the court and a flagrant violation of the decree have to be rejected. It was further held that the practice which has become widespread of starting a second round of litigation cannot be approved of, otherwise no judgment will ever attain finality. In *Gangadeep Pratisthan Pvt. Ltd. Vs. Mechano* AIR 2005 SC 1985 also the single judge of the High Court had rejected the application for setting aside consent decree alleging consent to have been obtained under duress and coercion. No opportunity for leading evidence was given in that case also. The Supreme Court, not finding any material to have been placed before the courts to show such coercion did not interfere with the order.

19. In the facts of the present case, it will be seen that the respondent had instituted the suit as the sole and absolute owner of the house and of which possession was claimed from the petitioner. The title of the respondent as sole and absolute owner on the basis of sale deed in favour of herself and her husband and on the basis of the registered relinquishment deeds by the petitioner and his sister of the share inherited by them on the demise of their father in favour of the respondent is not disputed. In fact, till the filing of the application challenging the compromise decree, no challenge had been made to the registered relinquishment deed executed as far back as in January, 2004 though during the hearing it was informed that a suit has now been filed. That suit will be decided on its own merits and is not before this court. The suit court was thus on the basis of the sale deed and the relinquishment deeds before it satisfied of the title of the respondent to the property and of her entitlement to maintain a suit for possession of the property and in the absence of the petitioner claiming any title to the property or to occupy the property, the suit of the respondent was in any case entitled to succeed. The occupation of the petitioner of the property as a son of the respondent was also not out of the ordinary. The suit court was thus perfectly justified in finding the compromise in which the petitioner

CRP No.123/2009 Page 11 of 17 sought time to vacate the premises and agreed to pay mesne profits and the respondent having agreed to waive the mesne profits if the petitioner vacates the premises on the date undertaken to be lawful and in decreeing the suit. Since the petitioner himself appeared before the court and got recorded his statement in support of the compromise, there could be no question of compromise being not through the volition of the petitioner.

20. The court below is perfectly right in observing that it is not the plea of the petitioner that the suit had been filed by the respondent mother in collusion with him. His only plea is of undue influence. Such undue influence is not found. There are virtually no pleas whatsoever as required by Order 6 rule 4 of the CPC of undue influence in the matter of compromise. I have combed the application filed by the petitioner before the trial court for setting aside of the compromise minutely. All that has been said therein is that the respondent in order to disturb the married life of the petitioner by not allowing the petitioner's wife to settle down in the house filed the suit for possession and making full use of her undue influence over the petitioner did not allow

the petitioner to contest that suit and in exercise of undue influence made the petitioner to make a statement compromising the suit and admitting the passing of the decree. In para 22 of the application it is generally stated that the respondent had been exercising undue influence upon the petitioner and had been fraudulently obtaining the signatures of the petitioner on various documents and thus by playing a fraud upon the court the decree was obtained. The same, in my view, does not constitute the material placed within the meaning of Order 6 Rule 4 of the CPC of undue influence. It cannot be lost sight of that the petitioner at the time of the compromise aforesaid was married and 26/27 years of age; he was carrying on a vocation/business. He was, at the relevant time, already facing a FIR lodged by his wife against him and a proceeding instituted by his wife against him under the Domestic Violence Act and had engaged and was in consultation with advocates. The petitioner in the reply filed by him in the domestic violence proceedings referred to and relied upon the suit filed by the respondent against him and the decree for possession which had been passed against him. It is not the case that the said reply was also under the influence of the respondent. It was filed through a different advocate. On enquiry, it is informed that the petitioner is well educated and is a graduate in pharmacy and a

CRP No.123/2009 Page 12 of 17 MBA; though, the senior counsel for the petitioner sought to explain away the qualification of the petitioner as a MBA by contending that his qualification was not from a prestigious institute. It is not as if the house with respect whereto the relinquishment deed was executed by the petitioner in favour of his mother (respondent herein) belonged only to the father of the petitioner. The sale deed thereof is in favour of the respondent as well as her husband. The respondent mother is stated to have had a career in teaching in a government school and retired as a Principal of the school. It is thus also not as if she had no source of income and the investments in the house were of her husband only. The parties are well educated and not found to be such who could be under the influence of each other. Further, not only did the petitioner execute and register the relinquishment deed of the share inherited by him in the house from his father in favour of his mother but also affirmed the said relinquishment deed. The father of the petitioner was stated to be carrying on business. The vocation of the petitioner has not been disclosed. It is presumed that he was/is also carrying on business. In the circumstances, there can be no case of the petitioner being under the undue influence of his mother. There is no pleading as to when/how the undue influence ceased. It is also on record that the father of the petitioner also had a share in another property along with his brothers and sisters. Pursuant to the demise of the father of the petitioner, the other brothers and sisters of the father of the petitioner as well as the sister of the petitioner and the respondent relinquished their rights in the said property in favour of the petitioner herein making the petitioner the absolute owner of the said property. Similarly, the father of the petitioner also owned shop No.CW-569, Sanjay Gandhi Nagar along with his brother. The said brother as well as the respondent and her daughter also executed relinquishment deeds with respect to their share in the said shop to make the petitioner the absolute owner of the property. The said transactions are not disputed. Thus, it appears that the relinquishment by the petitioner of his share in the house in question was not the sole transaction but contemporaneous to other documents making the petitioner the sole owner of other properties. Of course, the petitioner now avers that the other two properties of which he had become the owner were got sold by the respondent from him and the sale consideration appropriated by the respondent. However that investigation is

CRP No.123/2009 Page 13 of 17 not to be gone into in these proceedings. All that can be said is that the relinquishment by the petitioner of his share in the suit property in favour of the respondent appears to have been a part of other transactions regarding the other properties which had been inherited by the petitioner his sister and the respondent from their common predecessor. If the averments of the petitioner are to be believed, the respondent would have got all the three properties transferred/relinquished in her name only rather than having only the suit property in her name and having the other two properties transferred to the name of the petitioner. It also appears from the pleadings that the sister of the petitioner who is married did not get any of the properties. The properties thus appear to have been distributed between the petitioner and the respondent only. Thus on the pleadings no case of any undue influence in the matter of execution of the relinquishment deed also is made out.

21. The application preferred by the petitioner for setting aside of the compromise decree also does not comply with the provisions of Order 6 Rule 4 of the CPC. No pleading of undue influence to be put to trial is made out. There is only a vague plea of the respondent having filed the suit to disturb the married life of the petitioner and having exercised her undue influence over the petitioner in not allowing the petitioner to contest the suit and in making him to give a statement compromising suit. What one wonders is as to what could have been the defence of the petitioner to the suit. In the face of the sale deed and relinquishment deed (supra) in favour of the respondent, the petitioner virtually had no case. Nothing wrong can thus be found in the petitioner only seeking time of six months to vacate the premises. The making of the said statement by the petitioner was in consonance with the execution of the relinquishment deed three years prior thereto by the petitioner. Before a court can be called upon to examine or investigate whether undue influence was exercised, it must scrutinize the pleadings to find out that such a case had been made out and full particulars of undue influence have been given.

22. Though the court below has in the order impugned in this petition noted that it is not the case of the petitioner that the compromise decree was an act of collusion between the petitioner and the respondent with a view to throw out the rights/relief sought by the

CRP No.123/2009 Page 14 of 17 wife of the petitioner in her petition under Section 12 of the Domestic Violence Act, 2005, from a perusal of the reply filed by the petitioner before the Magistrate; it is apparent that the petitioner was fully conscious of the result of his actions of suffering the compromise decree aforesaid. Merely because the petitioner now appears to have patched up with his wife would not entitle the petitioner to blow hot and cold. Even if it is to be believed that the petitioner consented to the decree against him with a view to use the same as a defence in the domestic violence proceedings, the petitioner having taken advantage of the said decree by using it as a defence in another legal proceedings is now not entitled to make a mockery of the process of the court and to turn around and have the said decree set aside. The Supreme Court in Gangadeep Pratisthan Pvt. Ltd. (supra) has held that where the defendant by his actions, in that case of encashment of cheques received by way of compromise, held himself bound by the compromise, his consent cannot be said to be vitiated by duress and coercion.

22. The counsel for the respondent relies upon

a. Union Bank of India Vs. Byram Pestonji Gariwala AIR 1991 Bombay 185 laying down that the only remedy against a compromise decree is by way of appeal; but in view of the provisions of Section 96 (3) of the CPC which appear not to have been noticed in the said judgment and the judgment of the Supreme Court in Pushpa Devi Bhagat (supra) the same is not good law;

b. Suleman Noormohamed Vs. Umarbhai Janubhai AIR 1978 SC 952 laying down that when the court passes a compromise decree it is implicit that the court shall satisfy that the compromise was lawful and it will be presumed to be so unless the contrary is shown;

CRP No.123/2009 Page 15 of 17 c. Anant Mahadeo Gadbole Vs. Achut Ganesh Godbole AIR 1981 Bombay

357. However, not found relevant to the matter in controversy.

d. Novartis AG Vs. Wander Pvt. Ltd. AIR 2005 Delhi 154. However, not found relevant to the matter in controversy.

24. On the basis of the pleadings and the material aforesaid before this court, no case for setting aside of the compromise decree or for putting the petitioner's pleas to trial is made out. The trial court is found to have exercised its jurisdiction in accordance with law and in any case no case of interference under Article 227 of the Constitution of India is made out.

25. The senior counsel for the petitioner has contended that speed should not be at the cost of procedure. She has also laid emphasis on the counsel who appeared for the petitioner at the time of recording of the compromise being a junior/associate of the counsel appearing for the respondent. However, in my view, the same would not make any difference. I also enquired from the senior counsel for the petitioner as to what evidence, if an opportunity were to be given would be led by the petitioner. The answer is that relatives will be examined to depose that the petitioner did whatever is mother respondent wanted him to do. The said evidence even if any would not dent the compromise decree. The compromise decree, as is now clear, was because the petitioner had no defence to the suit, having executed the relinquishment deed of his share in the property long prior to the institution of the suit. The petitioner was, therefore, well guided to instead of contest the suit seek time to vacate the premises. It is not the case that any new fact has come to the notice of the petitioner and/or which was not known to him earlier.

26. I may observe that even otherwise the court is to order a trial only when disputed questions of facts necessary for adjudication are found to arise. A litigation which in the opinion of the court is doomed to fail would not further be allowed to be used as a device to harass a litigant; the provisions of the CPC are to be interpreted in such a manner so as to save expenses, achieve expedition and avoid the courts resources being used up on

CRP No.123/2009 Page 16 of 17 cases which will serve no useful purpose, as held in Liverpool & London SP & I Association Ltd. Vs. M.V. Sea Success I 2004 (9) SCC 512.

27. Accordingly, there is no merit in the petition. The petition, therefore, fails. The interim order earlier made is vacated. The petitioner to also pay costs of Rs.20,000/- of these proceedings to the respondent.

RAJIV SAHAI ENDLAW

(JUDGE)

15th January, 2010

PP

CRP No.123/2009 Page 17 of 17