HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil First Appeal No. 15/2009

Krishan Kumar Agrawal Son Of Late Chaudhary Kailash Chand, Resident Of Mittal Colony, Bari Road, Dholpur District Dholpur (Raj.).

----Appellant

Versus

1. Mohan Lal Agarwak Son Of Late Chaudhary Kailash Chand, Resident Of Mittal Colony, Bari Road, Dholpur District Dholpur (Raj.).
2. Ramesh Chand Son Of Late Chaudhary Kailash Chand, Resident Of Mittal Colony, Bari Road, Dholpur District Dholpur (Raj.).
3. Sh. Mahaveer Rastogi Adopted Son Of Sh. Biharilal Rastogi, Resident Of Rastogi Gali, Kothi Dholpur, District Dholpur (Raj.) (Since Deceased).

3/1. Vimla Rastogi W/o Mahaveer Rastogi, Resident Of Rastogi Gali, Kothi Dholpur, District Dholpur (Rajasthan).

3/2. Ritesh Rastogi @ Sonu S/o Mahaveer Rastogi, Resident Of Rastogi Gali, Kothi Dholpur, District Dholpur (Rajasthan).

3/3. Shailu Rastogi, D/o Mahaveer Rastogi, Resident Of Rastogi Gali, Kothi Dholpur, District Dholpur (Rajasthan).

3/4. Rozi Rstogi D/o Mahaveer Rastogi, Resident Of Rastogi Gali, Kothi Dholpur, District Dholpur (Rajasthan).

3/5. Ruby D/o Mahaveer Rastogi, Resident Of Rastogi Gali, Kothi Dholpur, District Dholpur (Rajasthan).

4. Aditya Sharma (Minor) Son Of Shri Sudhir Sharma, Resident Of Gurudwara Dholpur, Through His Father And Natural Guardian Sh. Sudhir Sharma Son Of Sh Shivnarayan Sharma Resident Of Gurudwara, Kothi Dholpur (Raj.).

----Respondents

For Appellant(s)	:	Mr. R.K. Agarwal, senior advocate with Mr. Sachin Kumar and Mr. Adhiraj Modi
For Respondent(s)	:	Mr. Prakash Chandra Jain with Ms. Mamta Mr. R.R. Baisla

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HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

<u>Order</u>

22/03/2024

1. By this order we are disposing of joint application for settlement dated 06.01.2015 in pursuant to direction dated 31.01.2019 in civil appeal No. 1335/2019 (arising out of SLP (Civil) No. 28396/2018) passed by Hon'ble Supreme Court.

2. Application No. 22625/2015 was preferred under Order XXIII Rule 3 CPC for attestation of the compromise and passing order in view of compromise dated 06.01.2015, whereas, application No. 23116/2015 was filed under Section 151 CPC by the appellant for dismissing the compromise between the parties. A co-ordinate Bench of this court on 29.10.2015 has directed hearing of these two applications along with appeal. In view of order dated 31.01.2019 by Hon'ble Supreme Court we are disposing of these two applications.

3. Instant S.B. Civil Appeal is preferred aggrieved from judgment and decree dated 12.12.2008 in civil suit No. 14/2007 passed by learned Additional District Judge (Fast Track) No.1, Dholpur whereby suit for partition filed by appellant plaintiff was dismissed.

4. Learned counsel for respondent relying upon judgment in case of **Ghulam Nabi and Ors. Vs. State of Jammu and Kashmir and Ors. (2013) 3 SCC 353** submitted that plaintiff has filed a civil suit on wrong and false facts which was rightly dismissed by the trial court but to resolve the dispute this Hon'ble Court has referred the matter to the mediation centre and after lots of efforts the parties have settled their dispute and reduced the agreement in writing. The compromise was sent with report of **"successful mediation"** to this court. Pursuant to compromise between the parties the income tax dues were paid by respondents Mohan Lal and Ramesh Chand and to realise the amount paid by them, it was agreed to dispose of the property, and same was sold but appellant has not executed any document in favour of subsequent purchaser, who already advanced money.

He further submitted that pursuant to compromise the respondents have performed their obligations but due to inaction by appellant and challenge to the compromise, same could not be effected in full. He further submitted that the respondents had already paid all dues of income tax and others, of M/s Kailash Chand Agarwal but the appellant backed out from the compromise after knowledge of the fact that all dues of income tax were cleared by respondents. He further submitted that under Order XXIII Rule 3 CPC, once the parties have entered into compromise and same is duly recorded in pursuance to consent of the parties then the same is required to be accepted by the Court. He also submitted that on the last occasion, without considering the compromise the appeal was disposed of by a Co-ordinate Bench of this Court but without any decision on the compromise, which led to Hon'ble Supreme Court to remand the matter to this Hon'ble Court. At last, he submitted that all essential ingredients for a valid compromise are satisfied so as to record satisfaction by this court to attest and verify the compromise and accordingly, dispose of the appeal on the basis of compromise.

5. Aforesaid contentions were opposed by learned senior advocate for appellant on the ground that after death of father of appellant and respondent Nos. 1 and 2, a suit for partition was filed by the appellant claiming 1/3rd share in the suit property. The suit was wrongly dismissed by the trial court. He further submitted that though the matter was referred to Mediation at the time when there were dues against the firm of their father but this demand was challenged before this Hon'ble court by way of D.B. Income Tax Appeal No. 75/2006. He further submitted that

subsequent to said compromise, the income tax appeal was allowed on 17.01.2017 and the tax demand was set aside, thus, need to sell the property was extinguished during pendency of instant appeal. He further submitted that the compromise between the parties was already revoked by the plaintiff appellant and moreover the circumstances were also changed during pendency of this appeal, therefore without taking recourse to changed circumstances, the court cannot attest the compromise. He further submitted that this court has not passed any order on compromise dated 06.01.2015 and now there is no need to act upon compromise as pressed by respondent Nos. 1 and 2. He further submitted that refund amount received from income tax department is also deposited in joint account and there is no need to sell the property. He further submitted that the fact of challenge of tax demand was not considered when compromise dated 06.01.2015 was recorded. At last, he submitted that unless the court is satisfied that parties have voluntarily consented then only the court can record satisfaction and pass decree not otherwise. He further referred the case of **Shipping Corporation of India Ltd. Vs. Mochado Brothers and Ors. AIR 2004 SC 2093** in support of his contention that subsequent events are required to be considered by the Court before adjudication. He also referred to the judgment in case of **Pushpa Devi Bhagat Vs. Rajinder Singh and Ors. (2006) 5 SCC 566** in support of his contention that after setting aside the demand by the division bench of this Court, necessity to sell the property was over.

6. Heard learned counsel for respondents (defendant Nos.1 and 2) and learned senior counsel for appellant (plaintiff). Perused the

record along with judgments as referred by learned counsels for both the parties.

The factual matrix of the matter:

7. Instant S.B. Civil Appeal is preferred aggrieved from judgment and decree dated 12.12.2008 in civil suit No. 14/2007 passed by learned Additional District Judge (Fast Track) No.1, Dholpur whereby suit for partition filed by appellant plaintiff was dismissed.

8. During pendency of the instant appeal, the matter was referred to the Mediation Centre for exploring the possibility of settlement pursuant to order dated 07.02.2014 by a Co-ordinate Bench of this court. During Mediation proceedings, a compromise was entered and executed between the parties on 06.01.2015 and with successful report of mediator the matter was returned back to this court.

9. Thereafter on multiple occasions, the time was sought by learned counsels for parties, due to non-action in terms of compromise by opposite party. Thereafter on 29.10.2015 the court has directed hearing of application Nos. 22624/2015 (filed for early hearing and vacation of stay order), 22625/2015 (filed by respondent No.1 and 2 under Order XXIII Rule 3 CPC for attestation of compromise) and 23116/2015 (filed by appellant under Section 151 CPC for rejecting compromise) along with appeal.

10. After listing on multiple occasions ultimately on 21.07.2016, a Co-ordinate Bench of this court directed that parties are required to be heard on point whether a decree can be drawn on the basis of compromise entered before the mediator. Thereafter

on 16.09.2016 the matter was again referred to Mediation centre with respect to recording of consent of respondent Nos. 3 and 4 and same was recorded on 25.10.2016. Even, after several adjournments the compromise dated 06.01.2015 could not be attested and same remained pending till the matter was heard on merits by a Co-ordinate Bench.

11. On 02.07.2018, the appeal was disposed of on merits and as a result, appeal was allowed and matter was remanded back to the trial court for deciding the matter afresh after giving an opportunity to both sides to adduce additional evidence on the issues resettled by this court in judgment dated 02.07.2018.

12. Aggrieved from aforesaid, SLP No. 28396/2018 was filed by respondents and same was allowed as civil appeal No. 1335/2019 on 31.01.2019 wherein following order was passed by Hon'ble Supreme Court:

> *The grievance is that in terms of the proviso to order XXIII Rule 3 of the Code of Civil Procedure, 1908 (CPC), the court was obliged to examine all aspects of the matter arising from the application for recording settlement, including the grievance of the appellant that the appellant has already acted upon the settlement terms substantially and, after such gap of time, if the respondent was allowed to resile from the settlement then it would cause serious prejudice to the appellant. Indeed, the fact that the respondent has already availed of the benefits under the settlement has been seriously disputed by the respondent. Even this is a matter which ought to be examined by the High court in the first place, keeping in mind the observation made in the order dated 11th January, 2016 passed by this court in SLP (C) No. 30 of 2016, which reads thus:*

"It is submitted by Learned counsel for the petitioners that the disputes between the parties have been settled and the appeal was only to be disposed of in terms of the compromise dated 06.01.2015 before the Mediation Centre. However, the High court has not passed the order in that regard.

We request the High Court to hear concerned parties and dispose of the appeal within a month from the date of production of copy of this order before the Registrar of High court.

The special leave petition stands disposed of.

Pending application(s) if any, shall stand disposed of."

(Emphasis supplied)

In addition, the appellant has placed reliance upon he judgment of this court in the case of Devi Prasad & ors. Vs., Vishwanath Prasad & ors. (C.A. 4777/2008) dated 20th July, 2009 (Annexure P16).

We are in agreement with the grievance made by the appellant that the High Court has failed to examine all aspects of the matter concerning the compromise/settlement, as was required to be inquired into as per the proviso to Order XXIII Rule 3 of the CPC. In other words, the High Court must answer all issues/contentions raised by both sides in reference to the stated application for recording settlement; as per law.

As a result, we set aside the impugned judgment and order and relegate the parties before the High Court for reconsideration of the joint application for settlement dated 6th January, 2015 (Annexure P10) on its own merits in the first place, in accordance with law.

We request the High Court to dispose of the said application expeditiously, preferably within six months from the date of receipt of a copy of this order.

All contentions available to both the parties are left open to be considered by the High Court on their own merits in accordance with law.

FACTS RELATING TO COMPROMISE:

13. Aforesaid factual matrix indicated that the written compromise was signed on 06.01.2015 by appellant Krishan Kumar Agrawal, his son and respondents Mohan Lal and Ramesh Chand. Thereafter the said compromise was acknowledged by respondent Nos. 3 and 4 on 25.10.2016. According to aforesaid proceedings, the compromise was entered between the appellant and respondent Nos.1 and 2 after reference to the Mediation centre under Section 89 CPC and the Mediation was successful between the parties. The compromise was also accepted by respondent Nos. 3 and 4 though no relief was sought against respondent Nos. 3 and 4.

14. Normally when the matter is referred to Mediation for exploring the chances of settlement and compromise is recorded between the parties and same is received with report and from the mediation centre that parties have compromised the matter and recorded statement. On the basis of aforesaid normally the matter is disposed of. Herein after report dated 08.01.2015 the parties have sought time for compliance in terms of compromise. Perusal of record indicated that till disposal on 02.07.2018 the matter was listed before several benches on multiple occasions but this compromise was neither attested nor rejected.

15. A perusal of record indicated that the court has not recorded any satisfaction on compromise dated 06.01.2015 though no specific order was passed till date by any of the Bench expressing any concern about the terms of compromise therefore we are considering this issue in light of order of Hon'ble Supreme Court.

DISCUSSIONS:

16. We are only expressing our opinion on issue of the compromise and also on application relating to attestation of compromise and rejection of compromise.

17. Hon'ble Supreme Court while referring Order XXIII Rule 3 CPC directed this court to answer all issues or contentions raised by both sides in reference to applications. Hon'ble Supreme Court has also referred the judgment in case of **Devi Prasad Vs. Vishwanath Prasad (D) through LRs (Civil Appeal No. 4777/2009, arising out of SLP (Civil) No. 2832/2008)**, filed by appellants therein.

18. In case of **Devi Prasad Vs. Vishwanath Prasad (D) through LRs (supra)** while referring to the provision of Order XXIII Rule 3 CPC Hon'ble Supreme Court directed the trial court to inquire into allegation of forged signature of first respondent as it was on the part of the concerned Court to inquire into and pass order in terms of provision under Order XXIII Rule 3 CPC, on said comrpomise.

19. Order XXIII Rule 3 CPC is reproduced as under:

> *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*

satisfied the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise satisfaction to be recorded, and shall pass a decree is 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 not adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment."

20. In case of **Ghulam Nabi and Ors. Vs. State of Jammu and Kashmir and Ors. (supra)** Hon'ble Supreme Court while referring to Section 89 CPC and Order XXIII Rule 3 CPC observed that nobody has claimed that settlement was the outcome of any fraud or unlawful act and same having been signed and acted upon, thus, cannot be withdrawn unilaterally by any of the party. Therefore the settlement was lawful and within scope of Order XXIII Rule 3 CPC.

21. In case of **Pushpa Devi Bhagat Vs. Rajinder Singh and Ors. (supra)** while considering Order XXIII Rule 3 CPC, Hon'ble Supreme Court analysed and observed that there are two parts, first pertains to adjustment to suit in whole or in part whereas second pertains to satisfaction of the suit, in whole or in part. Further on basis of facts, it was held that where matters falls under second part, on the basis of completed action or settlement

out of court putting an end to the dispute and resultant in decree, recording the satisfaction is not capable of being enforced by levying execution, even though the consent decree can be upheld.

22. A perusal of entire circumstances available on record clearly indicated that the compromise dated 06.01.2015 was signed by all the parties present in person before the Mediation centre run by the Rajasthan High Court Mediation Committee under the aegis of the Rajasthan State Legal Services Authority. As regard to compromise dated 06.01.2015 is concerned, no party has raised any ground of fraud, misrepresentation or any other falsity. The fact of the matter is that the parties were in litigation before the trial court and during the pendency of appeal, and they have entered into compromise, which was reduced in writing on 06.01.2015. Thus, from the conduct of the parties, the act of execution of compromise on 06.01.2015 appears to be in accordance with law.

23. The normal practice which we have referred to hereinabove indicated that when the matter was first listed after receipt of report from Mediation centre, a decree was normally passed on the basis of compromise. Herein the circumstances indicated that for one or the other reason, the attestation and formal order was kept pending at the instance of parties. Ultimately a Co-ordinate Bench has directed for disposal of applications along with appeal, and this appeal was disposed of on 02.07.2018.

24. First time, when an application for rejecting the compromise was filed by the appellant on 21.09.2015 then he levelled certain allegations on respondent Nos. 1 and 2, though he acknowledged the compromise. In this application while raising the doubt on

intentions of respondent Nos.1 and 2, the appellant has craved for rejection of compromise, though on 15.09.2015 an application was already filed by respondent Nos. 1 and 2 for disposal of appeal in view of compromise dated 06.01.2015, between the parties. Aforesaid circumstances clearly indicated that appellant plaintiff had moved an application for rejection, only after application of respondent No.1 and 2.

25. After remand by Hon'ble Supreme Court, an additional affidavit was also filed by appellant along with 23 documents. In this additional affidavit copy of previous compromise dated 22.01.2013 (Annexures A2 and A3) were also annexed. Further copies of demand notice, criminal complaint and order of tax recovery were also enclosed. Further, a copy of judgment dated 17.01.2017 in D.B. Income Tax Appeal No. 75/2006 is also enclosed. Further copies of 5 legal notices were also placed on record. We have considered all these documents as annexed with this additional affidavit considering the fact that we are only concerned with the compromise.

26. In case of **Pushpa Devi Bhagat Vs. Rajinder Singh and Ors. (supra)** Hon'ble Supreme Court has observed that the agreement or compromise requires to be signed by the parties or their counsel. Herein also the agreement dated 06.01.2015 was signed by plaintiff appellant, his son and respondent/defendant Nos. 1 and 2 personally in presence of their counsels. Further learned Mediator was also witness to the mediation process. Unfortunately, due to long time in attestation the appellant plaintiff has filed application for rejection of compromise.

27. The terms of compromise clearly indicated that for making payment in view of tax demand against firm M/s Kailash Chandra Agrawal, the suit property was required to be sold. Due to non-attestation of this compromise dated 06.01.2015, the proposed sale of the suit property was not effected. During pendency of this compromise, DB Income Tax Appeal No. 75/2006 was decided on 17.01.2017 by the Division Bench of this court and as a result of order dated 17.01.2017, tax demand was set aside. Thus the need to sell the property was over and there was no need to disposed of the property to pay dues to income tax.

28. Considering the aforesaid, fact is quite clear that appellant plaintiff while moving an application for rejection of compromise had not only affirmed the compromise dated 06.01.2015 but also he made certain allegations against respondent Nos. 1 and 2. A Co-ordinate Bench of this Court had already ruled that the issues are required to be reframed and after the opportunity of leading evidence to both the parties, the civil suit is required to be decided afresh, thus the issue of attestation of compromise remained pending and now after nine years, according to appellant circumstances were changed, therefore attestation of compromise will create more problems.

29. Learned senior advocate for appellant while referring the judgment in case of **Shipping Corporation of India Ltd. Vs. Mochado Brothers and Ors. (supra)** has submitted that due to change in circumstances, the need to disposed of the suit property got extinguished therefore this court cannot pass an order for sell of the property and further division of sale proceeds collected from sale of the suit property. A perusal of compromise dated

06.01.2015 clearly indicated that respondent Nos.1 and 2 owned the responsibility for making payments relating to dues of income tax and others. A fact was also mentioned that the amount of income tax due was already deposited. According to compormise, the suit property mentioned in para No.1 will be sold to recover the amount paid for tax demand and other dues. A bare reading of Para Nos. 1 to 9 of the compromise clearly indicated that the parties had not mentioned about the pendency of D.B. Income Tax Appeal No. 75/2006 and also the contingency in case D.B. Income Tax Appeal No. 75/2006 is allowed.

30. In case of **Shipping Corporation of India Ltd. Vs. Mochado Brothers and Ors. (supra)** while considering the judgment in case of **Patterson Vs. Alabama 294 US 600** by the Supreme Court of United States wherein it is laid down that the court has power not only correct errors in judgment in review but to make such deposition of the case as the justice requires and in determining what justice does require, the court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered.

31. While relying upon judgment in case of **J.M. Biswas Vs. N.K. Bhattacharjee (2002) 4 SCC 68,** wherein Hon'ble Supreme Court held that the dispute raised in the case has lost its relevance due to discharge of time and subsequent events, which have taken place during pendency of the litigation. In the circumstances continuing like flogging the dead horse such litigation irrespective of the result neither benefit the parties in litigation nor will serve the interest of the union.

32. In case of **Sneh Gupta Vs, Devi Sarup (2009) 6 SCC 194** and **Amteshwar Anand Vs. Virender Mohan Singh (2006) 1 SCC 148** Hon'ble Supreme Court observed that before attesting any compromise to be binding the Court has to satisfy that it was signed by either the parties or by their counsel or both and fall under Order XXIII Rule 3 CPC and application upon the court is to satisfy itself that the settlement agreement is lawful and reduced in writing.

33. In case of **Naresh Kumar Vs. Ashok Arora Gosain 2017 SCC Online Del 11032 and Chandra Gupt Vs. Bharat Gupt and Anr. CS (OS) 272/2018,** the Delhi High Court has held that if the settlement is arrived before the mediator, one cannot back out and if such attempt is permitted, it would negate the purpose of Section 89 of CPC, inserted by the Parliament by way of amendment to CPC. If the court were to entertain pleas to back out the settlement between the parties, arrived at before the Mediation cell, the sanctity and purpose of amicable settlemenmt would stand eroded. Thus the amicable resolution of dispute after settlement is within public policy of India.

34. In case of **Kedar Nath Agrawal (dead) and Anr. vs, Dhanraji Devi (Dead) by LRs and Anr. (2004) SCC 8 76,** Hon'ble Supreme Court has considered the fact that rights of the parties should be determined on the basis of date of institution of suit or proceedings and the in action should be challenged at all stages of cause of action that existed at the commencement of the suit but it does not mean that events happening after institution of suit or proceedings cannot be considered at all. It is power and

duty of the court to consider changed circumstances. Hon'ble Supreme Court held that:

> *"In our opinion, by not taking into account the subsequent event, the High Court has committed an error of law and also an error of jurisdiction. In our judgment, the law is well settled on the point, and it is this: The basic rule is that the rights of the parties should be determined on the basis of the date of institution of the suit or proceeding and the suit/action should be tried at all stages on the cause of action as it existed at the commencement of the suit/action. This, however, does not mean that events happening after institution of a suit/proceeding, cannot be considered at all. It is the power and duty of the court to consider changed circumstances. A court of law may take into account subsequent events inter alia in the following circumstances:*
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> *(i) The relief claimed originally has by reason of subsequent change of circumstances become inappropriate; or*
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> *(ii) It is necessary to take notice of subsequent events in order to shorten litigation; or*
>
> *(iii) It is necessary to do so in order to do complete justice between the parties.*
>
> *[Re: Shikharchand Jain vs Digamber Jain Praband Karini Sabha & Ors, (1974) 1 SCC 675 : (1974) 3 SCR 101] SCC p. 681, para 10*
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> *In Lekh Raj vs Muni Lal & Others, (2001) 2 SCC 762 : AIR 2001 SC 996, this Court indicated that the law on the subject is well settled. The court should not shut its door in noticing subsequent events. All laws and*

procedures including functioning of courts are all in aid to confer justice who knock its door. The court should interpret the law not in derogation of justice but in its aid. Bringing on record subsequent event, which is relevant, should, therefore, be permitted to be brought on record to render justice to a party. But the court in doing so should be cautious not to permit it in a routine manner. It should refuse the prayer where party is doing so to delay the proceedings and to harass the other party or doing so for any other ulterior motive. The court should also examine whether the alleged subsequent event has any material bearing on issues involved or would materially affect the result of the suit."

35. Further in case of **Nidhi Vs. Ram Kripal Sharma (Dead) Through LRs (2017) SCC 5 640** Hon'ble Supreme Court held that the court should take note of subsequent events but also has to consider the hardship while taking into account the subsequent development. The relevant para is reproduced as under:

"Though the court has the power to take note of the subsequent events, court has to consider the effect of subsequent development on the bona fide need of the landlord. For the purpose of coming to the conclusion on bona fide need of the landlord, comparative hardship to the parties will have to be taken into consideration. As discussed above, in the present case, the appellant got married during the pendency of the appeal and settled with her husband; still her requirement to accommodate her parents and grandparents continued. Appellant has

established her bona fide requirement for accommodating her parents and grandparents in the suit premises merely because the appellant got married amidst the proceedings does not extinguish her claim for the relief of possession of the suit premises. In our view, the subsequent event, namely, marriage of appellant does not extinguish her requirement considering the comparative hardship, it is to be pointed out that the respondents have another business of sweet shop and thus, is not going to suffer if ordered to vacate the suit premises as they can shift the place of business to some other place without suffering any loss of occupation, whereas the parents of the appellant would be subjected to hardship as she has no other premises to accommodate her grandparents as well as her parents. While taking note of the subsequent events, the High Court has not considered the comparative hardship to the appellant and erred in declining the relief to the appellant."

36. Having considered the entirety of facts, circumstances and law as mentioned hereinabove the fact is quite clear that the time consumed in attestation of compromise has frustrated the very object of the compromise in the matter. During this period certain circumstances brought on record, indicated that the very purpose of selling the property to raise funds for making payment to income tax or other departments for outstanding dues was extinguished. In compromise dated 06.01.2015 nowhere it was provided that in case of setting aside of demand, whether the sale

proceed would be divided or still the property is required to be divided, instead of sell.

37. Hon'ble Supreme Court in several judgments as mentioned hereinabove has categorically held that the subsequent events are required to be taken care of while considering the relief. Essentially the purpose was to cut short the litigation but herein the circumstances are such that the process of compromise, already consumed almost 9 years after being recorded in writing, therefore, very difficult for the Court to attest compromise dated 06.01.2015 and bound the parties with the terms of the compromise.

38. The very purpose of Order XXIII Rule 3 CPC and Section 89 CPC is that it affords an opportunity for amicable settlement of dispute between the parties. The amicable settlement further promotes resolution of dispute between the parties but herein despite the admission of appellant in additional affidavit, he backed out from the compromise dated 06.01.2015. Further, he attached two more agreements Annexures A2 and A3 executed on 22.01.2013 between the same parties but litigation cannot be resolved on the basis of retracted compromise. Therefore the compromise dated 06.01.2015 can only be attested unless the parties agreed before this Court therefore I am of considered view that in view of provision under Order XXIII Rule 3 CPC after taking into consideration the changed circumstances the compromise cannot be attested and this appeal cannot be disposed of on the basis of compromise between the parties.

39. In view of aforesaid, now compromise cannot be attested and verified on the basis of terms and conditions, contained in the

compromise and this court cannot alter the terms of compromise recorded on 06.01.2015.

40. Thus, the appeal cannot be disposed of on the basis of compromise between the parties. The application Nos. 22625/2015 and 23116/2015, are hereby disposed of, in view of aforesaid discussions. The prayer to attest compromise, is disallowed.

41. List the matter for final hearing on 24.04.2024 at 11.00 A.M.

(ASHOK KUMAR JAIN),J

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