

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

**CR No.34/2024
CM No.7751/2024
Caveat No.3000/2024**

NAZIR AHMAD BHAT **... PETITIONER(S)**

Through: - Mr. Shuja-ul-Haq, Advocate.

Vs.

SEHRISH SHAFI & ANR. **...RESPONDENT(S)**

Through: - Mr. Sajad Ahmad Mir, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

**ORDER (ORAL)
06.12.2024**

1) The petitioner has challenged order dated 11.11.2024 passed by learned 4th Additional District Judge, Srinagar, whereby, in an application filed under Order 12 Rule 6 CPC filed by him, a direction has been issued to the petitioner to make payment of Rs.10.00 lacs to the respondents in terms of compromise deed dated 31.07.2024 and to pay a further amount of Rs.86,50,000/ to the respondents in terms of the said compromise.

2) It appears that the petitioner has filed a suit before the learned trial court seeking a perpetual injunction restraining the defendants (respondents herein) from causing any interference, annoyance and harassment to

him by making illegal demand for refund of part consideration.

3) As per case of the plaintiff before the trial court, he had executed an agreement to sell on 8th October, 2022, with defendant No.1, whereby he had agreed to sell immovable property situated at Rawalpura for a sale consideration of Rs.2.19 crores, out of which an amount of Rs.55.00 lacs was paid by defendant No.1 to the plaintiff at the time execution of the said agreement and that the remaining sale consideration of Rs.1.64 crores was promised to be paid by defendant No.1 upto 31st March, 2023. It was alleged that defendant No.1 has paid only Rs.94.00 lacs to the plaintiff and he has failed to pay the balance sale consideration. The agreement to sell is stated to have been novated by another agreement dated 5th May, 2023, whereby defendant No.1 undertook to pay the balance sale consideration of Rs.1.25 crores upto 15th May, 2023.

4) According to the plaintiff, defendant No.1 failed to make payment of balance consideration in pursuance of agreement dated 5th May, 2023, whereafter a fresh agreement was executed on 26th July, 2023, whereby defendant No.1 agreed to pay a penalty of Rs.10.00 lacs in addition to the balance consideration of Rs.1.25 crores. On

the basis of aforesaid averments, the plaintiff claimed that defendant No.1 has forfeited the amount which he has paid to him and is not entitled to seek refund of the same.

5) The defendants filed a joint written statement in which execution of the agreements between the parties has been admitted by them. However, it has been submitted that the plaintiff, after receiving payment of Rs.96.50 lacs, started making excuses and avoided the execution of sale deed in favour of defendant No.1. It has been averred in the written statement that defendant No.1 had availed loan facility to the tune of Rs.90.00 lacs from State Bank of India with a view to pay balance consideration to the plaintiff but he refused to receive the same, as a result of which, defendant No.1 has to pay a huge interest on the loan amount. The defendants have also submitted that an amount of Rs.15.00 lacs was also transferred to the account of the plaintiff but he refused to receive the same and when defendant No.1 requested the plaintiff to return the amount which he had received, he refused to do so.

6) Defendant No.1, after filing of written statement, filed a counter claim, in which he sought mandatory injunction against the plaintiff commanding him to execute the sale deed in respect of the suit property in his favour or, in the alternative, to pay an amount of Rs.96.50 lacs to him. A

further mandatory injunction commanding the plaintiff to hand over possession of the suit property to defendant No.1, was also sought.

7) It appears that on 07.05.2024, a composite order came to be passed by the learned trial court, whereby application of plaintiff for grant of interim relief and the application of defendant No.1 for grant of interim relief, were disposed of. Vide the said order, the following directions came to be passed:

- i) *The non-applicants/defendants are temporarily restrained not to use any pressure or force against the applicant/plaintiff for execution of any document or sale deed regarding the suit property. They will not interfere or harass the plaintiff in any way or through any person.*
- ii) *That the plaintiff/applicant is temporarily restrained not to alienate or create third party interest in the suit property till the conclusion of trial.*
- iii) *That the plaintiff/applicant shall deposit the received admitted amount to the tune of Rs.94 lacs before this court within 10 days from the date of order and Nazir of this court is directed to prepare the FDR regarding the said amount and place the P/S copy of the said FDR with the file.*

8) The aforesaid order came to be challenged by the plaintiff/petitioner herein by way of an appeal bearing FAO No.15/2024 before this court. During pendency of the said appeal, the matter was referred to mediation and a mutual agreement came to be executed between the parties before the learned Mediator on 31.07.2024. As per the terms of the said agreement, the plaintiff had agreed to pay an amount

of Rs.96.50 lacs to defendant No.1 within a period of six months and out of the said amount, Rs.10.00 lacs were to be paid by the plaintiff to defendant No.1 within a period of twenty-five days from the date of signing of the said agreement. It was also agreed that the plaintiff would be free to sell the suit property to any third person in any manner and that defendant No.2 would not interfere in the same. It was further agreed that the parties shall put an end to all the litigations between them.

9) It seems that in the meanwhile, the plaintiff filed an application under Order 12 Rule 6 of CPC admitting the counter claim filed by defendant No.1 before the trial court. Thereafter this Court, in terms of order dated 04.11.2024, dismissed the appeal (FAO No.15/2024) as withdrawn on the submission of learned counsel for the appellant that he is under instructions to withdraw the appeal.

10) After the withdrawal of the appeal by the plaintiff, his application under Order 12 Rule 6 of CPC came up for consideration before the learned trial court. The said application has been dismissed by the trial court in terms of the impugned order. While dismissing the said application, the trial court observed that the parties should adhere to the terms of the agreement arrived at by them on 31.07.2024. Accordingly, the plaintiff has been directed to

pay an amount of Rs. 10.00 lacs to defendant No.1 within one week and the balance amount as per the terms of the agreement dated 31.07.2024.

11) The petitioner has challenged the impugned order on the ground that the same has not been passed by the learned trial court in accordance with law. It has been submitted that it was not open to the trial court to proceed to execute agreement dated 31.07.2024 as the said agreement did not have the seal of approval from the Court.

12) Issue notice to the respondents. Mr. Sajad Ahamd Mir, Advocate, who is on caveat, accepts notice on behalf of the respondents. Caveat shall stand discharged.

13) Heard and considered.

14) The basic issue, which is required to be considered, is as to whether agreement dated 31.07.2024 executed by the parties before the Mediator during pendency of the appeal is enforceable at law and whether it was open to the learned trial court to execute the said agreement when no decree was passed by this Court or by the learned trial court in terms of agreement dated 31.07.2024?

15) The answer to both the aforesaid issues is in 'negative'. As already stated, agreement dated 31.07.2024

was executed by the parties during the mediation proceedings when the matter was referred to mediation by this Court during pendency of the appeal filed by the petitioner against an interim order passed by the trial court. It is pertinent to mention here that after the submission of report of the Mediator before this Court, the appeal came to be dismissed as withdrawn. The appeal has not been disposed of by this Court in terms of the compromise arrived at between the parties before the Mediator.

16) A settlement arrived at between the parties before the Mediator becomes a decree of the Court enforceable at law only if the same has the seal of approval of the Court and a decree is passed in terms of the said settlement. In this regard, it would be profitable to refer to the relevant provisions of the Jammu and Kashmir Mediation and Conciliation Rules, 2019. Rule 24 of the said Rules, which deals with settlement agreement, reads as under:

24. SETTLEMENT AGREEMENT.

- i) Where an agreement is reached between the parties in regard to all the issues either in the suit or proceedings or some of the issues or otherwise between the parties, the same shall be reduced to writing, executed and signed by the parties or their constituted attorney. If any counsel has represented the parties, the Mediator may obtain his signature also on the settlement agreement.
- ii) The agreement of the parties so signed and attested shall be submitted to the Mediator who shall forward the same to the court in which the suit is pending.

iii) Where no agreement is arrived at between the parties or where the Mediator/Co-mediator/Co-conciliator is of the view that no settlement is possible he shall report the same to the said court in writing.

17) Another provision which is relevant to the context is

Rule 25. The same reads as under:

25. COURT TO FIX A DATE FOR RECORDING SETTLEMENT AND PASSING ORDER/DECREE IN CIVIL CASES.

1) On receipt of any settlement in a pending case if the Court is satisfied that the parties have settled their dispute(s), it shall pass appropriate decree/order in accordance with terms thereof.

2) If the settlement disposes of only certain issues arising in the suit or proceeding, on the basis of which any order or decree is passed as stated in Clause (a), the Court shall proceed further to decide the remaining issues.

18) From a conjoint reading of the afore-quoted Rules, it is clear that when an agreement is reached between the parties with regard to subject matter of a suit or other proceedings, the same has to be reduced into writing, executed and signed by the parties or their constituted attorney, whereafter the same has to be submitted to the Mediator, who has to forward the same to the Court before whom the suit or proceeding is pending. The Court, upon receipt of any settlement, if satisfied that the parties have settled their disputes, has to pass an appropriate decree/order in accordance with the terms thereof.

19) In the present case, despite a settlement having been arrived at by the parties before the Mediator, the Appellate Court has not passed any order or decree in terms of the

said settlement. Thus, the settlement between the parties has not matured into an order or decree of the Court.

20) Rule 3 of Order 23 of the CPC, which governs the subject relating to compromise of suits, provides that when 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, the Court has to pass an order that such agreement, compromise or satisfaction is to be recorded, whereafter a decree in accordance therewith has to follow.

21) In the present case, no such procedure has been undertaken either by this Court at the time of dismissing the appeal as withdrawn or by the trial court before directing the execution of settlement dated 31.07.2024. Thus, order or decree in terms of the settlement has not been passed by any court in the instant case. The settlement, as such, could not have been put to execution.

22) In view of the forgoing reasons, the learned trial court, while directing execution of agreement dated 31.07.2024, has committed a grave illegality and has exercised the jurisdiction not vested with it. It is only an Executing Court that can execute the terms of compromise, that too after the compromise has matured into a decree or order of the court. The impugned order passed by the learned trial court is,

therefore, not sustainable in law and deserves to be set aside.

23) Before parting, this Court would like to make certain observations as regards the valuation of the suit/counter claim and payment of court fee thereon. It appears that while entertaining the plaint as well as the counter claim, the learned trial court has ignored the provisions of the Suits Valuation Act and Court Fee Act, particularly the provisions contained in Section 8 of the Suits Valuation Act and Section 7 of the Court Fee Act. In the plaint, the plaintiff is seeking perpetual injunction restraining the defendants from claiming refund, which according to the plaintiff is Rs.90.00 lacs but he has valued the suit for the purposes of jurisdiction at Rs.50,100/. It is for the trial court to consider whether the plaintiff could have valued the suit at Rs.50,100/. The trial court has also to consider whether or not *ad valorem* court fee was payable by the plaintiff on the valuation of the suit and also as to what should have been the proper valuation of the suit in the instant case so as to ensure that payment of proper court fee is not evaded.

24) Similarly, in the counter claim filed by defendant No.1, he has valued the claim at Rs.50,100/ and in the relief clause, he is seeking mandatory injunction, which is in the

nature of specific performance of agreement to sell in respect of a property which has been valued at Rs.2.19 crores and in the alternative, he is seeking recovery of an amount of Rs.96.50 lacs from the plaintiff. Whether defendant No.1 could have valued the counter claim in the manner in which he has done and whether he was obliged to pay *ad valorem* court fee on the value of the suit property, are the issues which are to be considered by the trial court before proceeding further in the matter.

25) With the foregoing observations, the petition is allowed and the impugned order passed by the learned trial court is set aside.

26) A copy of this order be sent to the learned trial court for information.

(Sanjay Dhar)
Judge

Srinagar
06.12.2024
"Bhat Altaf-Secy"

Whether the order is reportable: Yes