* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 11th August, 2021**

\+ **CS(OS) 610/2018**

SARABJIT SINGH CHADHA **.....Plaintiff**

Through None.

Versus

DINESH SEHGAL **..... Defendant**

Through Mr. Aditya Wadhwa and Mr. Siddharth Sunil, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

IA No.10043/2021 (of defendant u/Order XXIII Rule 3A of the Code of Civil Procedure, 1908 (CPC) & IA No.10044/2021 (of defendant for condonation of 299 days' delay in re-filing IA No.10043/2021).

1. The delay in re-filing IA No.10043/2021 is condoned and IA No.10043/2021 is taken up for hearing today itself.

2. IA No.10044/2021 is disposed of.

3. The defendant has filed IA No. 10043/2021, seeking setting aside of the consent decree dated 13th February, 2020 and consequently, restoration of the suit to its original position. In the alternative, liberty to make a prayer to the Executing Court, to arrive at a fair valuation of gold, is sought.

4. The application came up before the Roster Bench today morning, when the Roster Bench, on finding the decree to have been drawn up in pursuance to an order of the undersigned, directed the application to be put up before the undersigned at 1415 hours today itself and the application is

so listed.

5. I have heard the counsel for the defendant/applicant.

6. None appears for the plaintiff/non-applicant, though the counsel for the defendant/applicant on enquiry states that he had sent an advance copy.

7. The present suit was filed, seeking recovery of Rs.5,98,40,000/- along with interest @ 10% per annum from the defendant/applicant. It was *inter alia* the case of the plaintiff/non-applicant, (i) that the plaintiff was a proprietor of M/s Jagat Overseas, which was closed in the year 2014 and the balances of which proprietorship firm were transferred to the personal account of the plaintiff which included closing stock of raw gold and gold/diamond jewellery weighing around 39,307.551 grams; (ii) that the plaintiff had been carrying on the business of gold and diamond for a very long period of time; (iii) that the defendant was also in the business of selling, making and designing of the plain gold jewellery; (iv) that the son of the plaintiff and the son of the defendant were friends and had also carried on many businesses together; (v) that in first week of September 2017, the son of the defendant approached the son of the plaintiff and made a business proposal that the defendant would offer services of making gold jewellery at a reasonable/lesser price than what was the prevailing rate in the market; (vi) that upon the son of the plaintiff not responding to the said offer, the defendant himself approached the plaintiff and offered to make gold jewellery for less than the market price prevailing at the time; (vii) that it was agreed, that the plaintiff would provide raw gold to the defendant for the job of making jewellery and thereafter a majority portion of the jewellery would be given back to the plaintiff and some items will be kept

at the store of the defendant for display and sale and out of which the plaintiff would be entitled to a part of the profits and cost of his raw gold; (viii) that on 17th October, 2017, under cover of a voucher, the plaintiff handed over 20 Kg pure raw gold to the defendant, out of the stocks which the plaintiff had in his personal account after winding up of the business of M/s Jagat Overseas; (ix) that the said voucher was duly acknowledged by the defendant; (x) that the defendant also signed an order dated 17th October, 2017 bearing the complete list/description of the gold given by the plaintiff and the description of the jewellery to be made by the defendant; (xi) that the defendant also issued a receipt dated 17th October, 2017 whereby the defendant acknowledged receiving of 20 Kg of gold from the plaintiff; (xii) that the defendant also handed over a post dated cheque dated 17th January, 2018 to the plaintiff for an amount of Rs.6 crores, as a performance guarantee; (xiii) that the defendant failed to deliver the jewellery/articles to the plaintiff within the agreed time; (xiv) that the cheque of the defendant was also dishonoured; and, (xv) that on complaint of the plaintiff, FIR No.85/2018 was also registered against the defendant. Accordingly, the suit for recovery of Rs.5,98,40,000/- came to be filed by the plaintiff.

8. On 16th September, 2019, arguments on an application of the plaintiff/non-applicant, under Order XII Rule 6 of the CPC, for a decree forthwith in the suit, were commenced but hearing was adjourned on request of the counsel for the defendant/applicant and the matter posted on 17th September, 2019, directing the personal presence of the defendant/applicant.

9. On 17th September, 2019, the defendant/applicant appeared before this Court and his statement on oath was recorded. The defendant/applicant admitted his signatures on the documents of the plaintiff/non-applicant but stated that he had taken a loan of Rs.5 crores from the plaintiff/non-applicant and that he was paying interest @ 1.5% per month thereon to the plaintiff/non-applicant. It was further stated that the entire transaction was in cash and the defendant/applicant, though was an income tax assessee, had not reflected the transaction including payment of interest thereon in his books of account. On 17th September, 2017, on request of the counsel for the defendant/applicant, the matter was again adjourned. Thereafter, on several dates, the counsels took adjournments to settle the matter. Ultimately, on 13th February, 2020, the following order was passed:

> *"1. The plaintiff and the defendant in this suit for recovery of money, since after 16th September, 2019 when arguments were partly heard and since 17th September, 2019, when the statement on oath of the defendant was recorded, have been seeking time to settle the matter.*
>
> *2. The counsel for the plaintiff and the counsel for the defendant today state that a settlement has been arrived at and the counsel for the defendant states that the defendant is also personally present in the Court.*
>
> *3. It has been agreed that the defendant, in full and final settlement of the claim of the plaintiff, shall deliver to the plaintiff 15 Kg of 24 carat gold metal, in 10 quarterly instalments of equal quantity, with the first instalment being delivered on or before 30th June, 2020.*
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> *4. I have enquired from the counsels, the form of the decree sought and the consequence of the default, if any by the defendant in delivery of any of the instalments of gold metal.*
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> *5. The counsels state that if there is any default, the plaintiff shall be entitled to recover from the defendant the*

value as on that date of the balance gold due, with the entire remaining quantity of gold being valued on the date of default and a decree for recovery of the said money shall be executed against the defendant, with interest thereon from the date of default and till date of recovery @ 10% per annum.

6. A decree is accordingly passed, in favour of the plaintiff and against the defendant, (i) of delivery by the defendant to the plaintiff of 15 Kg of 24 carat gold in 10 quarterly instalments commencing from 30th June, 2020 and the next instalment being due on 30th September, 2020 and executable in the event of default as a money decree for the value as on the date of default, of the entire remaining gold together with interest @ 10% per annum from the date of default till the date of realisation.

7. The plaintiff through counsel also undertakes that the plaintiff will not precipitate action in FIR No.0085/2018 of Economic Offence Wing, Delhi Police and the complaint under Section 138 of the Negotiable Instruments Act, 1881 against the defendant and shall, after delivery of three instalments of gold, take steps for having the said FIR as well as the complaint under Section 138 of the Negotiable Instruments Act quashed/withdrawn.

8. The parties are left to bear their own costs.

Decree sheet be drawn up."

and decree sheet drawn up.

10. The defendant/applicant has now filed this application, being IA No.10043/2021, pleading (a) that a compromise decree is nothing but an agreement between the parties and its validity needs to be tested as per the principles governing the validity of an agreement, as enshrined in the Indian Contract Act, 1872 (hereinafter referred to as "Contract Act"); (b) that the compromise arrived at between the parties and in terms whereof decree sheet was drawn up, was void, being in contravention to Section 29 and

Section 56 of the Contract Act; (c) that alternatively, it was voidable on account of contravention of Section 19 read with Sections 15 and 16 of the Contract Act; (d) that the plaintiff/non-applicant, besides filing the suit aforesaid, had also lodged an FIR under Section 406 and Section 420 of the Indian Penal Code, 1860 against the defendant/applicant; (e) that the defendant/applicant was fearful of his safety and security; (f) that the compromise agreement has become impossible to perform on account of reasons which the defendant/applicant could not prevent and has therefore become void; (g) that impracticability in performing a contract on account of an untoward event or change of circumstance which totally upsets the very foundation upon which the parties rest their bargain, render a contract void under Section 56 of the Contract Act; (h) that though the defendant/applicant had taken a cash loan from the plaintiff/non-applicant but was unable to return the same and owing to multiplicity of actions initiated by the plaintiff/non-applicant against the defendant/applicant, was fearing his safety and entered into the compromise aforesaid with the plaintiff/non-applicant; (i) that on 11th March, 2020, novel Coronavirus 2019 was declared as a pandemic; (j) that on 24th March, 2020, the Central Government announced a nationwide lockdown, which remained in effect till 15th May, 2020; (k) that the defendant/applicant, who is a garment retailer, had to shut operations and could open his outlet only on 1st June, 2020; (l) that owing to the pandemic, the sales of the defendant/applicant have drastically fallen; (m) that these changes in circumstances totally upset the very foundation upon which the parties had rested their bargain; (n) that the price of gold, which on 13th February, 2020 was Rs.4,076 per gram, by 1st July, 2020 rose by 30% to Rs.5,243.67 per gram; (o) that the parties had

not contemplated such increase in prices; (p) that the contract between the parties in pursuance to which the decree is drawn, is void for uncertainly, as the parties failed to identify the mode and manner which was to be used to value the gold; and, (q) that the plaintiff/non-applicant, taking an arbitrary valuation of gold of Rs.5,243.67 per gram, was now seeking to quantify the value of 15 Kg of gold at Rs.7,86,55,050/-.

11. The only argument of the counsel for the defendant/applicant is, that the compromise between the parties, which was essentially a contract, has become void under Section 56 of the Contract Act.

12. I have enquired from the counsel for the defendant/applicant, whether a contract/compromise between the parties to a lis, even after the Court putting its imprimatur thereon and the same becoming a decree, remains voidable under Section 56 of the Contract Act.

13. The counsel for the defendant/applicant states that though he is not aware of any direct judgment on this aspect but in ***Pushpa Devi Bhagat Vs. Rajinder Singh*** (2006) 5 SCC 566, it has been held that "a consent decree is nothing but contract between parties superimposed with the seal of approval of the court".

14. A word here or there in a judgment cannot be picked up to draw inferences therefrom. A judgment of the Court is in the context of the facts for disposal before the Court and the words thereof are not to be treated as a precedent *de hors* the facts. Supreme Court, in ***Pushpa Devi Bhagat*** supra was concerned with the question, whether the compromise resulting in a consent decree in that case, was not a valid compromise under Order XXIII Rule 3 of the CPC. It was in the said context that it was held, (I) that the

only remedy available to a party to a consent decree, to avoid such consent decree, is to approach the Court which recorded the compromise and made a decree in terms thereof and establish that there was no compromise; (II) that in that event, the Court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not – this is so because a consent decree is nothing but a contract between parties superimposed with the seal of approval of the Court; (III) that the validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made; and, (IV) that the defendant in that case, who was seeking setting aside of the consent decree by alleging that there was no compromise, was fully aware of the position thereof.

15. It would thus be seen that what was observed in ***Pushpa Devi Bhagat*** supra was in the context of making of the contract. The said judgment cannot be read as a precedent for the validity and executability of a consent decree being also governed by the Contract Act.

16. Order XXIII Rule 3 of the CPC does not mandate the Court to pass a decree and dispose of the suit in terms of any compromise between the parties. The Court is mandated to pass a decree only if finds the contract to be "lawful". It is not the plea of the defendant/applicant that the contract in the present case was not lawful. The plea is, of the contract, after the making thereof, having been frustrated.

17. *De hors* the merits of the plea of frustration, I am unable to agree that a compromise decree can be said to have been frustrated. CPC being the codified law qua proceedings in a suit and in execution of decrees passed in

such suit, is a self-contained code and does not provide for a lawful consent decree being frustrated. Thus, the very premise on which the application has been filed i.e. of a compromise decree, having its genesis in a contract, which is found to be lawful by the Court, can be frustrated owing to subsequent events, falls and has no legs to stand on.

18. In ***Shankar Sitaram Sontakke Vs. Balkrishna Sitaram Sontakke*** AIR 1954 SC 352, though earlier a family comprising of six brothers was living and messing together and the income of the family used to be kept with one brother, but subsequently the situation changed and each of the brother began to appropriate the proceeds of the various businesses carried on by them separately, to themselves; in a suit for partition of all joint properties including all the businesses, a compromise was arrived at declaring that the various accounts of businesses had been correctly maintained till a certain date and providing for appointment of arbitrators for examining accounts for the subsequent period and of division of all the joint assets equally between the six brothers. However one of the brothers filed another suit seeking accounts of a business being carried on by two other brothers, claiming that the comprise in the earlier suit was made in a hurry and that the parties had omitted to provide in the compromise about the future conduct of the said business carried on by other two brothers and claiming the said business to have remained joint between the parties. Supreme Court held, (i) that the compromise arrived at in the earlier suit, closed once and for all, the controversy about taking any account of the joint family businesses including the business of which account was sought; (ii) that the second suit was barred by principles of *res judicata* and the brother who had brought the second suit was barred from re-agitating the

question; (iii) a consent is as binding upon the parties thereto as a decree passed invitum; and, (iv) the compromise having been found not to be vitiated by fraud, misrepresentation, misunderstanding or mistake, the decree passed thereon had the binding force of *res judicata*. A Division Bench of the High Court of Calcutta, in ***Rani Pravabati Roy Vs. Saileshnath Roy*** AIR 1978 Cal 147, was concerned with the plea that one of the properties subject matter of the settlement/compromise decree being no longer available as the same vested in the State and no income or benefit had been obtained from the said property, whether the execution of the compromise decree was not maintainable and whether there had been a frustration of contract subject matter of the consent decree. It was held that the doctrine of frustration of contract does not apply to a consent decree and that a decree remains binding on the parties till set aside. It was further held that once a Court puts its seal of approval of the comprise arrived at between the parties, it ceases to be a contract simplicitor and becomes binding upon the parties to it. Reliance was placed on ***Shankar Sitaram Sontakke*** supra.

19. I respectfully concur with the view aforesaid of the Calcutta High Court. A compromise, even if a contract, once has the imprimatur of the Court, is a decree of the Court and to be enforced as a decree and not as a contract. In ***Tomorrow Land Technologies Exports Limited Vs. HUDCO*** MANU/DE/3271/2018, I was concerned with an application for recall of a consent order pleading subsequent events. Relying upon ***Shankar Sitaram Sontakke*** supra, it was held that once the compromise had been arrived at between the parties, the parties could not be permitted to re-open the same; that in passing the decree by consent, the Court adds its mandate to the

consent; that by passing a decree in terms of a consent order, the Court authorises and approves the course of action consented to and that the consent decrees are also executable. It was further held, that once a decree is passed by the Court, the Court become *functus offcio* to modify the decree.

20. I thus hold that a consent decree cannot be frustrated under Section 56 of the Contract Act and the edifice on which this application is filed, falls.

21. Vide Section 56 of the Contract Act, a contract to do an act which, after the contract is made, becomes impossible, becomes void when the act becomes impossible or unlawful. It is neither the case of the defendant/applicant in the application that compliance of the decree by the defendant/applicant has become impossible or unlawful. The only thing which is pleaded is the economic constraints of the defendant/applicant, owing whereto the defendant/applicant is unable to comply with the decree and/or owing whereto the value under the decree has multiplied.

22. Gold has not only been a standard of measure of inflation but also the measure by which the worth in the world of countries is assessed/computed. The worth of the countries is measured by their gold reserves and it is not as if the phenomenal rise in the value of gold as pleaded, has taken place now for the first time. Gold has been appreciating for a number of years, since much before the date of the decree. It thus cannot be said that there has been unforeseen increase in the value of the gold. Merely because the defendant/applicant may be unable to comply with the decree, also does not fall in the category of "impossibility' envisioned under Section 56 of the

Contract Act.

23. Thus, neither is any foundation laid in law for the ground on which the decree is sought to be voided nor that ground is even otherwise made out.

24. It cannot be lost sight of that the claim of the plaintiff/non-applicant and admitted by the defendant/applicant, was of the monies for recovery of which the suit was filed, being due from the defendant/applicant to the plaintiff/non-applicant towards the value of the gold handed over by the plaintiff/non-applicant to the defendant/applicant for job work. There was thus nothing unusual in the parties, in the compromise agreeing to the defendant/applicant returning the agreed quantity of gold to the plaintiff/non-applicant. As a reading of the order dated 13th February, 2020 shows, the parties before the Court had only sought recording of the compromise arrived at between them, of delivery by the defendant/applicant to the plaintiff/non-applicant of 15 Kg of 24 carat gold, in ten quarterly instalments of equal quantity, with the first instalment being delivered on or before 30th June, 2020. It was only on the asking of the Court that it was agreed that in the event of any default, the plaintiff/non-applicant shall be entitled to recover from the defendant/applicant, the value of the gold/balance gold as on that date.

25. I have enquired from the counsel for the defendant/applicant that even if there was any unforeseen increase in value of gold, why the defendant/applicant did not tender/deposit the money value of gold prior to such increase, in full and final satisfaction of the decree. The same would have stopped the clock from running and save the defendant/applicant from

further increase in prices of gold.

26. No answer is forthcoming.

27. It is thus quite evident that the Court had passed the decree in terms of the compromise, after being fully satisfied of the lawfulness of the compromise arrived at between the parties.

28. The application is thoroughly misconceived and is dismissed.

RAJIV SAHAI ENDLAW, J.

AUGUST 11, 2021
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