

Gujarat High Court

Gujarat Sidhee Cement Ltd vs Legal Heirs Of Lakha Bijal on 3 May, 2023

Bench: Sandeep N. Bhatt

C/SCA/1038/2023

JUDGMENT DATED: 03/05/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 1038 of 2023  
With  
R/SPECIAL CIVIL APPLICATION NO. 3229 of 2023  
With  
R/SPECIAL CIVIL APPLICATION NO. 3233 of 2023  
With  
R/SPECIAL CIVIL APPLICATION NO. 3231 of 2023  
With  
R/SPECIAL CIVIL APPLICATION NO. 3195 of 2023  
With  
R/SPECIAL CIVIL APPLICATION NO. 3228 of 2023  
With  
R/SPECIAL CIVIL APPLICATION NO. 3218 of 2023  
With  
R/SPECIAL CIVIL APPLICATION NO. 3210 of 2023  
With  
R/SPECIAL CIVIL APPLICATION NO. 3223 of 2023  
With  
R/SPECIAL CIVIL APPLICATION NO. 3215 of 2023  
With  
R/SPECIAL CIVIL APPLICATION NO. 3194 of 2023  
With  
R/SPECIAL CIVIL APPLICATION NO. 3230 of 2023  
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R/SPECIAL CIVIL APPLICATION NO. 3211 of 2023  
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R/SPECIAL CIVIL APPLICATION NO. 3204 of 2023  
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R/SPECIAL CIVIL APPLICATION NO. 3222 of 2023  
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R/SPECIAL CIVIL APPLICATION NO. 3236 of 2023  
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R/SPECIAL CIVIL APPLICATION NO. 3221 of 2023  
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R/SPECIAL CIVIL APPLICATION NO. 3212 of 2023  
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R/SPECIAL CIVIL APPLICATION NO. 3232 of 2023  
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R/SPECIAL CIVIL APPLICATION NO. 3226 of 2023  
With  
R/SPECIAL CIVIL APPLICATION NO. 3235 of 2023  
With  
R/SPECIAL CIVIL APPLICATION NO. 3227 of 2023

With

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R/SPECIAL CIVIL APPLICATION NO. 3207 of 2023  
With  
R/SPECIAL CIVIL APPLICATION NO. 3225 of 2023  
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R/SPECIAL CIVIL APPLICATION NO. 3224 of 2023  
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R/SPECIAL CIVIL APPLICATION NO. 3208 of 2023  
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R/SPECIAL CIVIL APPLICATION NO. 5879 of 2023  
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R/SPECIAL CIVIL APPLICATION NO. 5936 of 2023  
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R/SPECIAL CIVIL APPLICATION NO. 5988 of 2023  
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R/SPECIAL CIVIL APPLICATION NO. 5989 of 2023  
With  
R/SPECIAL CIVIL APPLICATION NO. 5991 of 2023

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With  
R/SPECIAL CIVIL APPLICATION NO. 5992 of 2023  
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R/SPECIAL CIVIL APPLICATION NO. 6020 of 2023  
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R/SPECIAL CIVIL APPLICATION NO. 6058 of 2023  
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R/SPECIAL CIVIL APPLICATION NO. 6059 of 2023

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FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE SANDEEP N. BHATT

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
  - 2 To be referred to the Reporter or not ?
  - 3 Whether their Lordships wish to see the fair copy of the judgment ?
  - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?

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GUJARAT SIDHEE CEMENT LTD.  
Versus  
LEGAL HEIRS OF LAKHA BIJAL

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Appearance:

MR MIHIR JOSHI, SENIOR ADVOCATE WITH MR NIKUNT K RAVAL(5558)  
for the Petitioner(s) No. 1,2

for the Respondent(s) No. 1,2  
DS AFF.NOT FILED (N) for the Respondent(s) No. 2.6,4,5  
MS SUMAN MOTLA, AGP for the Respondent(s) No. 3  
MR ASHISH M DAGLI(2203) for the Respondent(s) No.  
1.1,1.2,1.3,1.4,1.5,2.1,2.2,2.4,2.5,2.7  
NOTICE SERVED BY DS for the Respondent(s) No. 2.3  
=====

CORAM:HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 03/05/2023

ORAL JUDGMENT

1. Draft amendment dated 17.4.2023 is allowed.

The same shall be carried out forthwith. By way of these petitions, the petitioners seek to challenge the C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 impugned orders passed below application filed under Order 23 Rule 3 of the Code of Civil Procedure, 1908 ('CPC' for short) by the Principal Senior Civil Judge, Veraval in respective Land Reference Cases.

2. At the joint request of learned advocates for the parties, all these petitions are being disposed of finally by this common oral judgment, as identical question of law and facts are involved in all these petitions.

3. Rule. Respective learned advocates waive service of notice of rule in respective petitions.

4. For the sake of convenience, the facts of Special Civil Application No.1308 of 2023 are referred to, which are as under:

4.1 It is the case of the petitioner that the petitioner M/s Gujarat Sidhee Cement Limited had taken over management of the company run by the State Government, namely M/s Cement Corporation of Gujarat Limited somewhere in the year 1993-94 by entering into MOU with the State Government, and the company is in C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 the business of manufacturing cement and has taken over the plant run by the former Cement Corporation of Gujarat Limited.

4.2 The respondent State Government, vide Section 4 of the Land Acquisition Act, 1894 ('the Act' hereinafter), had initiated the acquisition proceedings of the land of the ownership of respondent nos.1 and 2 for the purpose of mining of such land for limestone. Section 6 notification was issued on 10.5.1984 and an award under Section 11 of the Act was passed. That, being aggrieved and dissatisfied by such amount of compensation, the respondent nos. 1 and 2 had preferred reference under Section 18 of the Act by way of which the enhancement of compensation was sought.

4.3 It is averred that in the said proceedings, the petitioner was not joined as party respondent and the petitioner was not aware of such Section 18 proceedings and therefore, on coming to know about

the same, the petitioner preferred application to be joined as party respondent to such proceedings, which was allowed. It is averred that, in the interregnum, the petitioner and the C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 respondent nos.1 and 2 had entered into a compromise by way of which the amount was paid as enhanced compensation on ex-gratia basis to late respondent nos.1 and 2 and the petitioner was, under a bonafide impression that the respondent nos.1 and 2 would withdraw the proceedings for enhanced compensation, particularly, in view of what was stated during the oral examination given in consolidated proceedings on behalf of some of the applicants who has preferred Section 18 applications.

4.4 It is further averred that the respondent nos.1 and 2's heirs did not show any inclination for withdrawal of the proceedings and therefore, the petitioner preferred application under Order 23 Rule 3 of the CPC, which was objected by respondent no.1. It is in such proceedings the order impugned is passed rejecting the applications holding that the document concerned would be a subject matter of evidence and therefore the proceedings would have to be completed. Hence, these petitions are filed.

5. Heard learned senior advocate Mr.Mihir Joshi C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 assisted by learned advocate Mr.Nikunt Raval for the petitioners, learned advocate Mr.Dagli for the respondents in some of the petitions and learned AGP Ms.Suman Motla for the respondent-state authorities.

6. Learned senior advocate Mr.Joshi has submitted that the trial Court has committed gross error in passing such order by misreading the provisions of Order 23 Rule 3 of CPC and more particularly, the proviso of the Order 23 Rule 3. He has submitted that the original claimants/land losers preferred appeals under Section 18 of the Land Acquisition Act without joining the present petitioner as party-defendant. In those proceedings, the petitioners have filed application to join as party respondents being directly affected by the outcome of such proceedings and such applications were granted after considering the objections of the claimants, by order of the District Court passed between time period of 2012 and 2018 in respective petitions. He has submitted that though the earlier petitioner company was known as M/s Cement Corporation of Gujarat Limited (CCGL for short) and situated at Sutrapada, District Gir Somnath for the purpose of mining limestone. The C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 notification under Sections 4 and 6 of the Act were issued dated 30.9.1982 as well as 10.5.1984 and thereafter the present respondents have entered into agreement with the present petitioner by taking some amount towards compensation which is towards full and final amount of compensation and with specific averment in the agreement that the present respective respondents in the respective petitions have received full amount of compensation. He has further submitted that therefore the application under Order 23 Rule 3 of CPC was filed before the concerned Court which was rejected by the impugned order.

6.1 He has submitted that during the cross-

examination of the witness- one of the respondent, the respondent has specifically admitted that he has received the amount and the same is the case with that of the other respondents in the respective petitions and therefore he has submitted that when the petitioner has presented

application, it was incumbent upon the learned trial Court to reach to a conclusion qua satisfaction of the claim of the claimants. That is well settled in view of the various judgments of Hon'ble Apex Court and also C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 the provisions of Order 23 Rule 3 of CPC itself. He has further submitted that the learned trial Court has rejected the application without arriving to any decision about the factum of settlement and the deferment would defeat the purpose of the provision and further cause grave, severe and irreparable loss to the petitioner. The respondents also seek to defend the claim factually by pointing out that the right of the petitioner in the proceedings is limited on account of operation of Section 50 of the Acquisition Act and further that varying sums of money are paid for either. Therefore, he has in substance raised the point by drawing my attention towards the impugned order passed by the learned trial Court that the learned trial Court has materially erred in deferring the decision upon the application under Order 23 Rule 3 of CPC by stating that the same is an issue for final consideration and not leading any evidence on the application itself, since in terms of the aforementioned provision, assuming while denying that no compromise was reached, it was incumbent upon the learned Court below to reach a conclusion qua satisfaction of the claim of the claimants.

C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 6.2 He has further submitted that the learned trial Court has erred in considering the evidence of the heirs of the original land losers in the examination led during the trial, as cause for deferring the decision upon the application. He has further submitted that the learned trial Court has not been pleased to consider that at the relevant point of time, land losers had accepted the additional compensation as full and final compensation, and in some of the cases, employment as well, against the loss of the land. Such evidence produced by the petitioner was not considered at all, for the purposes of deciding the application, which would also tantamount to material error.

6.3 He has further submitted that the submission of the respondent that the petitioners rights are limited in such proceedings is contrary to both, Section 53 of the Act as well as the judgments of the Hon'ble Apex Court which has specifically held that the petitioner, being directly affected by the outcome of the proceedings is eo nomine necessitated in such proceedings, and further by holding that the rights of the petitioners would extend to not only participating in such proceedings, but also by C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 leading evidence and by filing necessary applications and pleadings. He has further submitted that the judgments relied on upon by learned advocate for the respondent which is rendered in the Land Reference Case no.1433 and allied matters is on separate footing since there was no compromise in such proceedings, which are also under challenge and the Court has stayed the execution of the same.

6.4 In support of the contentions, learned senior advocate Mr.Joshi has relied on the following judgments:

(1) Pushpa Devi Bhagat (Dead) Through Lt.Sadhna Rai (Smt) V/s Rajinder Singh and Others, reported in (2006)5 SCC 566, more particularly, paragraphs 16 to 19, which read as under:

"16. Section 96 provides for appeals from original decrees. Sub- section (3) of section 96, however, provided that no appeal shall lie from a decree passed by the court with the consent of the parties.

We may notice here that Order 43, Rule 1 (m) of CPC had earlier provided for an appeal against the order under Rule 3 Order 23 recording or refusing to record an agreement, compromise or satisfaction. But clause (m) of Rule 1, Order 43 C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 was omitted by Act 104 of 1976 with effect from 1.2.1977. Simultaneously, a proviso was added to Rule 3, Order 23 with effect from 1.2.1977. We extract below the relevant portion of the said proviso :

"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...."

Rule 3A was also added in Order 23 with effect from 1-2-1977 barring any suit to set aside a decree on the ground that the compromise on which the decree is based was not lawful.

17. The position that emerges from the amended provisions of Order 23, can be summed up thus :

(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in section 96(3) CPC.

(ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of clause (m) Rule 1, Order 43.

(iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3A.

(iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 of Order 23.

Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. 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 contract between 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. The second defendant, who challenged the consent compromise decree was fully aware of this position as she filed an application for setting aside the consent decree on 21-8-2001 by alleging that there was no valid compromise in accordance with law. Significantly, none of the other defendants challenged the consent decree. For reasons best known to herself, the second defendant within a few days thereafter (that is on 27-8-2001) filed an appeal and chose not to pursue the application filed before the court which passed the consent decree. Such an appeal by the second defendant was not maintainable, having regard to the express bar contained in Section 96(3) of the Code.

Re: Point (ii)

18. Order XXIII deals with withdrawal and adjustment of suits. Rule 3 relates to compromise of suits, relevant portion of which is extracted below :

"3. Compromise of suit. 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 C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject- matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit."

The said Rule consists of two parts. The first part provides that 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, the court shall order such agreement or compromise to be recorded and shall pass a decree in accordance therewith. The second part provides that where a defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the court shall order such satisfaction to be recorded and shall pass a decree in accordance therewith. The Rule also makes it clear that the compromise or agreement may relate to issues or disputes which are not the subject-matter of the suit and that such compromise or agreement may be entered not only among the parties to the suit, but others also, but the decree to be passed shall be confined 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. We are not, however, concerned with this aspect of the Rule in this appeal.

19. What is the difference between the first part and the second C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 part of Rule 3 ? The first part refers to situations where an agreement or compromise is entered into in writing and signed by the parties. The said agreement or compromise is placed before the court. When the court is satisfied that the suit has been adjusted either wholly or in part by such agreement or compromise in writing and signed by the parties and that it is lawful, a decree follows in terms of what is agreed between the parties. The agreement/compromise spells out the agreed terms by which the claim is admitted or adjusted by mutual concessions or promises, so that the parties thereto can be held to their promise/ s in future and performance can be enforced by the execution of the decree to be passed in terms of it. On the other hand, the second part refers to cases where the defendant has satisfied the plaintiff about the claim. This may be by satisfying the plaintiff that his claim cannot be or need not be met or performed. It can also be by discharging or performing the required obligation. Where the defendant so 'satisfies' the plaintiff in respect of the subject-matter of the suit, nothing further remains to be done or enforced and there is no question of any 'enforcement' or 'execution' of the decree to be passed in terms of it. Let us illustrate with reference to a money-suit filed for recovery of say a sum of Rupees one lakh. Parties may enter into a lawful agreement or compromise in writing and signed by them, agreeing that the defendant will pay the sum of Rupees one lakh within a specified period or specified manner or may agree that only a sum of Rs.75,000 shall be paid by the defendant in full and final settlement of the claim. Such

agreement or compromise will fall C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 under the first Part and if defendant does not fulfill the promise, the plaintiff can enforce it by levying execution. On the other hand, the parties may submit to the court that defendant has already paid a sum of Rupees one lakh or Rs.75,000/- in full and final satisfaction or that the suit claim has been fully settled by the defendant out of court (either by mentioning the amount paid or not mentioning it) or that plaintiff will not press the claim. Here the obligation is already performed by the defendant or plaintiff agrees that he will not enforce performance and nothing remains to be performed by the defendant. As the order that follows merely records the extinguishment or satisfaction of the claim or non- existence of the claim, it is not capable of being 'enforced' by levy of execution, as there is no obligation to be performed by the defendant in pursuance of the decree. Such 'satisfaction' need not be expressed by an agreement or compromise in writing and signed by the parties. It can be by a unilateral submission by the plaintiff or his counsel. Such satisfaction will fall under the second part. Of course even when there is such satisfaction of the claim or subject matter of the suit by defendant and the matter falls under the second part, nothing prevents the parties from reducing such satisfaction of the claim/subject matter, into writing and signing the same. The difference between the two parts is this :Where the matter falls under the second part, what is reported is a completed action or settlement out of court putting an end to the dispute, and the resultant decree recording the satisfaction, is not capable of being enforced by levying execution. Where the matter falls under the C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 first part, there is a promise or promises agreed to be performed or executed, and that can be enforced by levying execution. While agreements or compromises falling under the first part, can only be by an instrument or other form of writing signed by the parties, there is no such requirement in regard to settlements or satisfaction falling under the second part. Where the matter falls under second part, it is sufficient if the plaintiff or plaintiff's counsel appears before the court and informs the court that the subject matter of the suit has already been settled or satisfied."

(2) Mahalaxmi Cooperative Housing Society Limited And Others V/s Ashabhai Atmaram Patel (Dead) Through Lrs.

And Others, reported in (2013)4 SCC 404, more particularly, paragraphs no. 38, 40, 41,42 and 43, which read as under:

"38. We may now examine whether the impugned order would fall under Rule 3 of Order XXIII or Rule 1 of Order XXIII of the CPC, the said provisions are given below for easy reference: ORDER XXIII. WITHDRAWAL AND ADJUSTMENT OF SUITS

1. Withdrawal of suit or abandonment of part of claim(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim: Provided that where the plaintiff is a minor or other person to whom the provisions contained in Rules 1 to 14 of C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court. (2) An application for leave under the proviso to sub-Rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the

minor or such other person.

(3) Where the Court is satisfied,-

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject- matter of such suit or such part of the claim.

(4) Where the plaintiff-

(a) abandons any suit or part of claim under sub-Rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-Rule (3), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorize the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs.

C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 (3) Compromise of suit.- Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the suit.

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment. Explanation:- An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule."

40. Rule 3 of Order XXIII, on the other hand, speaks of compromise of suit. Rule 3 of Order XXIII refers to distinct classes of compromise in suits. The first part refers to lawful agreement or compromise arrived at by the parties out of court, which is under 1976 amendment of the CPC required to be in writing and signed by the parties. The second part of Rule deals with the cases where the defendant satisfies the plaintiff in respect of whole or a part of the suit claim which is different C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 from first part of Rule 3. The expression 'agreement' or 'compromise' refer to first part and not the second part of Rule 3. The

second part gives emphasis to the expression 'satisfaction'. In *Pushpa Devi v. Rajinder Singh*, (2006) 5 SCC 566 : (AIR 2006 SC 2628), this court has recognized that the distinction deals with the distinction between the first part and the second part.

19. "What is the difference between the first part and second part of Rule 3? The first part refers to situations where an agreement or compromise is entered into in writing and signed by the parties. The said agreement or compromise is placed before the court. When the court is satisfied that the suit has been adjusted either wholly or in part by such agreement, or compromise in writing and signed by the parties and that it is lawful, a decree follows in terms of what is agreed between the parties. The agreement/compromise spells out the agreed terms by which the claim is admitted or adjusted by mutual concessions or promises, so that the parties thereto can be held to their promise(s) in future and performance can be enforced by the execution of the decree to be passed in terms of it. On the other hand, the second part refers to cases where the defendant has satisfied the plaintiff about the claim. This may be by satisfying the plaintiff that his claim cannot be or need not be met or performed. It can also be by discharging or performing the required obligation. Where the defendant so 'satisfied' the plaintiff in respect of the subject-matter of the suit, nothing further remains to be done or enforced and there is no question of any 'enforcement' or 'execution' of the decree to be passed in terms of it."

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41. Further, it is relevant to note the word 'satisfaction' has been used in contradistinction to the word 'adjustment' by agreement or compromise by the parties. The requirement of 'in writing and signed by the parties' does not apply to the second part where the defendant satisfies the plaintiff in respect of whole or part of the subject-matter of the suit. The requirement 'in writing and signed by the parties' does not apply to that part of Rule 3 where the defendant satisfies the plaintiff.

42. The proviso to Rule 3 as inserted by the Amendment Act, 1976 enjoins the court to decide the question where one party alleges that the matter is adjusted by an agreement or compromise but the other party denies the allegation. The court is, therefore, called upon to decide the lis one way or the other. The proviso expressly and specifically states that the court shall not grant such adjournment for deciding the question unless it thinks fit to grant such adjournment by recording reasons.

43. So far as the present case is concerned, *pursis* falls under Order XXIII, Rule 3 since the defendant has satisfied the plaintiffs in respect of whole of the subject-matter of the suit. Since objections were raised by plaintiff No.3 and defendant No. 3, those objections had to be dealt with by the court in accordance with Order XXIII, Rule 3. The proviso to Order XXIII, Rule 3 cast an obligation on the court to decide that question at the C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 earliest, without giving undue adjournments. Objections raised by plaintiff No. 3 and defendant No. 3 were examined by the court and rejected, in our view, rightly. Cogent reasons have been stated by the court while rejecting their objections and accepting the *pursis*."

(3) *NTPC Ltd. V/s State of Bihar and Others*, reported in 2004(12) SCC 96, more particularly, paragraphs nos.6 and 10:

"6. The question which arises for consideration is whether the appellants have a right to be impleaded in all references. This question is no longer res integra. The law is settled by a Constitution Bench of this Court in the case of U.P.Awas Evam Vikas Parishad v. Gyan Devi. In that case, after considering various provisions of the Land Acquisition Act, it has been held that the body on whose behalf the land is acquired is not just a necessary party but is also a proper party before the Reference Court. It has been held that not giving them notice before the Reference Court. It has been held that not giving them notice either at the stage of fixing compensation by the Collector or by the Reference Court affects their rights. It has been held that they must be impleaded as a party in the reference proceedings.

10. We are unable to accept this submission. As set out hereinabove, the law has been settled by the Constitution Bench judgment of this Court. In cases relied upon by Mr Sanyal, the C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 application of the acquiring body was to be impleaded in the appeals which were pending before the High Court. It was in those circumstances that the matters were referred back to the High Court. Otherwise, as set out in the other two cases as mentioned above, it becomes absolutely unavoidable that the cases be referred back to the Reference Court. The right which the acquiring body has is not just a right to lead evidence before the Reference Court. The acquiring body also has a right to support the award which has been made by the Land Acquisition Officer. This can be done by cross-examining witnesses led by the claimants. Non-impleadment of the body on which behalf acquisition has taken place, defeats this right."

(4) Vidarbha Irrigation Development Corporation V/s Santosh Janba warghane and another, reported in 2019(12) SCC 650

7. Per Contra, learned advocate Mr.Dagli has strongly objected these petitions and submitted that the present petitions of the petitioners are not maintainable in the eye of law as in land acquisition proceedings, provisions of CPC cannot be applicable in stricto sensu.

He has further submitted by drawing my attention to the facts of the case that the proceedings which are pending before the trial Court are pursuant to land C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 reference cases, by which the respondents are praying for enhancement of amount of award in each reference case and they pertain to acquisition of four different villages, for which notification under sections 4 and 6 of the Act were issued on 10.5.1984 and notification under Section 11 was issued on 9.1.1985. The application for impleadment of party was filed by the present petitioner under the provisions of Order 1 Rule 10 of CPC in the year 2018 and that application was granted, thereafter, the application under Order 23 Rule 3 of CPC was given in the year 2018, which was rejected by the learned trial Court by giving cogent and convincing reasons and submitted that the provisions of Order 23 Rule 3 of CPC does not apply to the agreement for compromise which is void or voidable under the provisions of Indian Contract Act.

7.1 He has further submitted that as the said land reference cases are tried by the civil Courts where just, reasonable and fair compensation is to be determined by the competent Court on the basis of the evidence adduced on record about the acquisition of land of the petitioner. The claim of compensation would be C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 determined on the

basis of evidence adduced by the parties before the Court. The lands are acquired by the state government and the present petitioner is acquiring body for whom the land is acquired by the state government and the liability to satisfy the award is also on the state government and therefore the present petitioner cannot have any locus to appear, plead or adduce the evidence before the court for determination of the amount of claim of compensation. He has heavily relied on the provisions of Section 50 Sub-section (2) of the Act which reads as under:

"50(2) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation:

Provided that no such local authority or Company shall be entitled to demand a reference under section 18."

Thereafter, he has pointed out that the issues are already recasted and framed at the instance of the newly added party i.e. the present petitioner in the land reference cases where the Court has also framed the issues which covers the grievance made by the present C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 petitioner about the satisfaction of the claim or settlement but it cannot be decided in isolation and such issue about the satisfaction of the claim or the settlement can be decided only after leading the evidence. He has further submitted that while determining the amount of compensation under Section 18 of the Act, the provisions under CPC would not be applicable as for determination of claim of compensation for acquisition of land, no provisions under CPC are strictly applicable. He has also submitted that the principles about the acquiescence by estoppel, waiver is not tenable as the reference is of the year 1986 and party has filed application after 37 years from the filing of reference and after 13 years from the date of filing of the application for joining parties and therefore he has submitted that the principles of acquiescence by estoppel, waiver application filed by the present petitioner in the trial court is also not tenable. He has relied on Sections 51 and 52 of the Act and also to the provisions Section 18 of the Act.

Sections 18, 51 and 52 of the Act read as under:

C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 "18. Reference to Court. - (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested. (2) The application shall state the grounds on which objection to the award is taken: Provided that every such application shall be made- (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award; (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

51. Exemption from stamp duty and fees. - No award or agreement made under this Act shall be chargeable with stamp duty, and no person claiming under any such award or agreement shall be

liable to pay any fee for a copy of the same. [51A. Acceptance of certified copy as evidence. - In any proceeding under this Act, a certified copy of a document registered under the Regulation Act, 1908 (16 of 1908), including a copy given under section 57 of that Act, may be accepted as evidence of the transaction recorded in such document].

52. Notice in case of suits for anything done in pursuance of Act.

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- No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends."

In support of his submissions, learned advocate Mr.Dagli relied on the following decisions:

(1) M.P.State Co.-Op.O.G.Federation V/s State, reported in 1987 AIR (MP) 174.

(2) In the case of Victoria Xavier V/s G.C.D.A., reported in 1993 AIR (Ker) 95 (3) In the case of Gautamlal Naranlal V/s Additional Special Land Acquisition Officer, reported in 1970 AIR (Guj) 81, more particularly, paragraph 12, which reads as under:

16. We do, however, feel that the words "appear and adduce evidence, if any," in any such proceeding even though for a limited purpose viz., in regard to the question of compensation, should be given an effective meaning and that it cannot be allowed to remain or leave it as an illusory right to any such local authority or the company as the case may be, by saying that it has merely a right to watch C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 or assist the Collector in the proceeding. The learned Advocate General urged that the words "appear and adduce evidence" have to be given full meaning so such so that the expression "adduce evidence" would be included within the meaning of the term "pleading" as used in the provisions of the Civil Procedure Code. As to the expression "appear", it was pointed out that in respect of Local Authority there was no question of any physical appearance of any such Board and that appearance was to be by some authorized person on its behalf. Now it cannot adduce evidence, without appearing, and therefore, as provided therein such a Local Authority becomes entitled to appear through its representative and that the appearance is obviously intended for the purpose of meeting the case in regard to compensation for the land acquired, to be determined in the case. Thus it can appear even through an advocate or any authorized agent for the purpose of adducing evidence. This right of adducing evidence may well be treated as a part of pleading as pointed out by a reference to the observation made in a decision in the case of Aswin Shambhuprasad Patel v. National Reyon Corporation Ltd., 57 Bom LR 209 = (AIR 1955 Bom 262). Those observations are:- "The contention put forward by Mr. Bengeri before me is that "pleading" is included in the expression "appearance, application or act in or to any Court". In my opinion it is clear that "pleading" would not be included

in any of these expression. The right of audience in Court, the right to C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 address the Court, the right to examine and cross-examine witnesses, are all parts of pleading with which Order III does not deal at all."

While therefore the expression "appear" may not include a claim for pleading, the "right to adduce evidence, if any," would certainly be included in the term "pleading" and therefore such a right would include a right to examine and cross-examine witnesses. In our view, the expression "adduce" used therein appears to have wider meaning and not merely confined to leading its own evidence. Thus a right of appearance is for the purpose of adducing evidence, and that evidence must necessarily include a right to bring before the Court every type of relevant evidence, inclusive of bringing on record the same through cross-examination of the claimant's witnesses in the case. In Prem's Judicial Dictionary at page 79, the term "adduce" has been explained as meaning "to bring forward proofs or evidence in support of some statement or proposition already made." The right to given evidence is in relation to an inquiry for determining compensation, and any evidence led by the Board would be of hardly any effective use unless it is also allowed to challenge the evidence led by the claimant by being allowed to cross-examine his witnesses in the case. It can then meet the evidence of the claimant, both oral or documentary, and unless that right is included in any such right of merely examining or leading evidence by Local Authority, it would not be enough or proper. That right, in our opinion, is C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 impliedly there once it is given a right to appear and adduce evidence. It would include demolition of evidence led by the claimant and that can be done also in cross- examination. Not to give such a meaning to those words, would make the right if not entirely illusory or ineffective, highly unsatisfactory so much so that it may not be as effective a right given to it for the purpose intended thereby. That appears to be the only way of making those expressions effective in meaning intended to be given by Section 50(2) of the Act. But that right cannot further stand enlarged to an extent as to be styled as a party to the proceeding so as to have full rights of a party in any such legal proceeding. It is difficult to say that for that purpose it can be called a party as understood in law and all that therefore, we may say is that while it is entitled to be on record and for the purpose mentioned in Section 50(2), it has a right to appear and adduce evidence, if any, as explained above. It gets no other right under Section 50(2) of the Act. It was urged by Mr. Desai, the learned Government Pleader appearing for the State, that with the direction to issue notice to the acquiring body, it has to be taken that it was a notice issued for appearing in the matter for all purposes as would be issued to the claimant and the Collector under Section 20 of the Act. Besides, it was said that the Legislature added or amended those words in Section 50(2) as it related to the Local Authority or Company referred to in Section 50 of the Act and that C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 otherwise it would have been required to add words to that effect both in Section 9 and Section 20 of the Act the former touching the proceedings before the Land Acquisition Officer and the latter before the Court. Now it is true that the Courts below have taken the view that Section 20 would have been so amended, but that does not determine the question. The provisions of the Act have to be read as a whole and it would not make any difference, if any such provision were clear enough to give the indication that it was to be a notice as contemplated in Section 20 viz., as if to a party to the proceeding. But proviso to Section 50 does not give him a right to demand a reference. As already pointed out hereinabove, the Local Authority or the Company contemplated in Section 50(1) of the Act, does not become a party

against whom an award could be passed, or even given it a right of appeal under the Act. Besides, it is allowed to appear only for a limited purpose of adducing evidence and that too for only the determination of the amount of compensation to be passed for the land acquired by the Government for it.

8. Heard learned advocates for the parties, perused the material placed on record and the impugned orders.

Order 23 Rule 3 of CPC reads as under:

C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 "3. Compromise of suit - 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 in accordance therewith so far as it relates to the parties to the suit, whether or not the subject- matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit;

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but 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. Explanation - An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule;"

9. From the material produced on record, it is clear that the petitioner was permitted to be added as a party in the proceedings before the learned trial Court at the instance of the petitioner and the issues were also recasted and reframed at the instance of the petitioner.

Admittedly, the proceedings are of the year 1986, the application for joining party was given in the year 2003 C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 and in December, 2022, this application under Order 23 Rule 3 of CPC is filed i.e. after about 37 years from the filing of reference and 13 years from the date of filing application for joining party, that too, when the proceedings before the learned trial Court are on the verge of completion of the trial and the trial court is about to conclude the same, as recording of evidence of the parties is going on. At this stage, it will be fruitful to refer to the decision of the Hon'ble Apex Court in the case of Sukhbiri Devi and Others V/s Union of India and others, reported in 2022 SCC Online SC 1322, wherein it is held in paragraph 16 as under:

" 16. Now, we will consider the first question: 'whether the issue of limitation can be determined as a preliminary issue under Order XIV, Rule 2, CPC'. It is no longer res integra. In the decision in Mongin Realty and Build Well Private Limited v. Manik Sethi 7 , even while holding that the course of action followed by the learned Trial Judge of directing the parties to address arguments on the issue of limitation as irregular since it being a case where adduction of evidence was required, a

two-Judge Bench of this Court referred to a three-Judge Bench decision of this Court in Nusli Neville Wadia v. Ivory Properties 8 observing that the issue therein was whether the issue of limitation could be determined as a preliminary issue under Order XIV, Rule 2, CPC. After taking note of the fact that going by the decision in Nusli Neville Wadia's case<sup>8</sup>, in a case where question of limitation could be decided based on admitted facts it could be decided as a preliminary issue under Order XIV, Rule 2(2)(b), CPC., the two-Judge Bench held that in the case before their Lordships the question of limitation could not have been decided as a preliminary issue under Order XIV, Rule 2 of CPC as determination of the issue of limitation in that case was not a pure question of law. In the said contextual situation it is worthy and appropriate C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 to refer to paragraphs 51, in so far as it is relevant, and 52 of the decision in Nusli Neville<sup>8</sup> Wadia's case and they read thus:-

"51.[...] As per Order 14 Rule 1, issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. The issues are framed on the material proposition, denied by another party. There are issues of facts and issues of law. In case specific facts are admitted, and is the question of law arises which is dependent upon the outcome of admitted facts, it is open to the court to pronounce the judgment based on admitted facts and the preliminary question of law under the provisions of Order 14 Rule 2. In Order 14 Rule 2(1), the court may decide the case on a preliminary issue. It has to pronounce the judgment on all issues. Order 14 Rule 2(2) makes a departure and the court may decide the question of law as to jurisdiction of the court or a bar created to the suit by any law for the time being in force, such as under the Limitation Act.

52. [...] In a case, question of limitation can be decided based on admitted facts, it can be decided as a preliminary issue under Order 14 Rule 2(2)(b). Once facts are disputed about limitation, the determination of the question of limitation also cannot be made under Order 14 Rule 2(2) as a preliminary issue or any other such issue of law which requires examination of the disputed facts. In case of dispute as to facts, is necessary to be determined to give a finding on a question of law. Such question cannot be decided as a preliminary issue. In a case, the question of jurisdiction also depends upon the proof of facts which are disputed and the question of law is dependent upon the outcome of the investigation of the facts, such question of law cannot be decided as a preliminary issue, is settled proposition of law either before the amendment of CPC and post amendment in the year 1976." (Emphasis added)"

10. In view of the observations made in above mentioned judgment where the matter is pertaining to framing of preliminary issue, and considering the provisions of Order 23 Rule 3 of CPC which also contemplates inquiry with regards to settlement or adjustment of claim. It is also relevant to note that the C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 learned trial Court has already recasted the issue on the basis of written statement filed by the present petitioner, and thereafter suit proceedings are also proceeded further and presently at the stage of recording of evidence. It is also relevant to note that written statement is filed long ago and recasted issue is also framed, thereafter, the process of recording evidence of claimant as well as state government is also concluded and thus, application under Order 23 Rule 3 of CPC is filed fag end of trial.

Moreover, the provisions of the Land Acquisition Act are beneficial piece of legislation. The provisions of Sections 15, 18, 23 and 24 are relevant which read as under: "15. Matters to be considered and neglected. - In determining the amount of compensation, the collector shall be guided by the provisions contained in section 23 and 24. [15A Power to call for records, etc. - The appropriate Government may at any time before the award is made by the Collector under section 11 call for any record of any proceedings (whether by way of inquiry or otherwise) for the purpose of satisfying itself as to the legality or propriety of any findings or order passed or as to the regularity of such proceedings and may pass such order or issue such direction in relation thereto as it may think fit: Provided that the appropriate Government shall not pass or issue any order or direction prejudicial to any person without affording such person a reasonable opportunity of being heard.] C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023

18. Reference to Court. - (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested. (2) The application shall state the grounds on which objection to the award is taken: Provided that every such application shall be made- (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award; (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

23. Matters to be considered on determining compensation. - (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration first, the market-value of the land at the date of the publication of the [notification under section 4, sub-section (1)]; secondly, the damage sustained by the person interested, by reason of the taking of any standing crops trees which may be on the land at the time of the Collector's taking possession thereof; thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of serving such land from his other land; fourthly, the damage (if any) C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings; fifthly, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change, and sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land. [(1A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. Explanation. - In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were

held up on account of any stay or injunction by the order of any Court shall be excluded.] (2) In addition to the market value of the land as above provided, the Court shall in every case award a sum of [thirty per centum] on such market value, in consideration of the compulsory nature of the acquisition.

24. Matters to be neglected in determining compensation. - But the Court shall not take into consideration - first, the degree of C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 urgency which has led to the acquisition; secondly, any disinclination of the person interested to part with the land acquired; thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit; fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put; fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired; sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put; seventhly, any outlay or improvements on, or disposal of the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the [notification under section 4, sub-section (1); [or] [eighthly, any increase to the value of the land on account of its being put to any use, which is forbidden by law or opposed to public policy.]

11. Further, even it is assumed that the agreement which is relied by the present petitioner-

company is lawful one, then also it is required to be decided by leading cogent and convincing evidence before the trial court after full-fledged trial and since the petitioner is now impleaded as party, he can certainly point out all these aspects to the trial Court during the C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 course of trial but not by way of this application under Order 23 Rule 3 of CPC when there is a specific issue framed by the learned trial Court while recasting the issue vide order dated 30.8.2018 passed below Exh.20 under the LRC no.433 of 1999 to 450 of 1999 as under :

"Whether the opponent no.4 proves that the applicants have been appropriately compensated and therefore, the applicants are not entitled to get any further compensation?" Therefore, the present petitioner who is opponent no.4 in the proceedings before the learned trial Court and when the Court has already recasted the issues long ago and , there is no question to grant the application filed under the provisions of Order 23 Rule 3 of the CPC at the belated stage.

12. There cannot be any dispute regarding binding effect of the law laid down by the Hon'ble Apex Court in the judgments cited by learned senior advocate Mr.Joshi for the petitioners, in the cases of Mahalaxmi Cooperative Housing Society Limited and Others (supra) and in the case of Pushpa Devi Bhagat (Dead) Through L.R.Sadhna Rai (SMT), however, those cases are not squarely applicable to the facts of this case, where C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 specific issue has already been framed in the present case and considering peculiar circumstances of the present case, as proceedings before the trial Court is at fag end and therefore, the controversy may be decided by the learned trial Court by considering the rival submissions at the time of final arguments in accordance with law.

13. It also transpires that the petitioner has filed detailed written statement in the matter though the petitioner is acquiring body and has limited role to play in land reference case. The agreements which are signed on the papers and executed outside the Court and not part of the record of the Court at the relevant point of time, but relied upon by the present petitioner after appearing in the matter by way of defence and aspects of this defence may be considered at the time of final hearing by the trial Court as the issue is already framed to that effect by the trial Court as mentioned hereinabove and in view of Section 23 of the Indian Contract Act, considering such agreement between lion and lamb, the ground of 'against public policy' is available with the claimants as taken by respondent in C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 the present petition.

14. Further, considering the argument made by the learned advocate Mr.Dagli regarding the limited application of the CPC in the proceedings under the Land Acquisition Act as it cannot be applied in stricto sensu and when the proceedings are of the land reference and that too, on the verge of the final decision sounds very attractive but proceedings of reference cases are largely governed by provisions of the CPC.

15. Regarding aspect of any valid settlement is arrived between the parties or not, while deciding the issues framed and considering the final amount of compensation, the learned trial Court may take into consideration this aspect.

16. Moreover, this Court has very limited jurisdiction under Article 227 of the Constitution of India in view of the judgments in the cases of Garment Craft V/s Prakash Chand Goel reported in (2022) 4 SCC 181, more particularly, paragraph nos.15 to 17 therein, where it was held that High Courts while exercising powers under C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 Article 227 does not act as appellate authority and cannot reappreciate evidence and the jurisdiction exercised under Article 227 is in nature of correctional jurisdiction to set aside grave dereliction of duty or flagrant abuse of process of law and High Court cannot substitute its own view on merits. It is held in paragraph nos.15 to 17 as under:

"15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

16. Explaining the scope of jurisdiction under Article 227, this Court in *Estralla Rubber v. Dass Estate (P) Ltd.* has observed:-

"6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."

17. The factum that the counsel for the appellant had applied for the certified copy would show that the counsel for the appellant was aware that the ex-parte decree had been passed on the account of failure to lead defence evidence. This would not, however, be a good ground and reason to set aside and substitute the opinion formed by the trial court that the appellant being incarcerated was unable to lead evidence and another chance should be given to the appellant to lead defence evidence. The discretion exercised by the trial court in granting relief, did not suffer from an error apparent on the face of the record or was not a finding so perverse that it was unsupported by evidence to justify it. There could be some justification for the respondent to argue that the appellant was possibly aware of the ex-parte decree and therefore the submission that the appellant came to know of the ex-parte decree only on release from jail on 6th May 2017 is incorrect, but this would not affect the factually correct explanation of the appellant that he was incarcerated and could not attend the civil suit proceedings from 6th October 2015 to 6th May 2017. If it was felt that the application for setting aside the exparte decree was filed belatedly, the court could have given an opportunity to the appellant to file an application for condonation of delay and costs could have been imposed. The facts as known, equally apply as grounds for condonation of delay. It is always important to take a holistic and overall view and not get influenced by aspects which can be explained. Thus, the reasoned C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 decision of the trial court on elaborate consideration of the relevant facts did not warrant interference in exercise of the supervisory jurisdiction under Article 227 of the Constitution."

17. Further, in the case of *M/s Puri Investments V/s M/s Young Friends and Co & Ors.* Reported in 2022 Law Suit (SC) 306, it is held that supervisory jurisdiction can be exercised if finding of fact

would be perverse (1) erroneous on account of non-consideration of material evidence; (2) conclusion contrary to evidence; (3) based on inferences impermissible in law and reappraisal of evidence is not permissible.

18. In view of the above discussion, I do not find any infirmity or perversity or gross error committed by the learned trial Court so as to interfere with the same by exercising powers under Article 227 of the Constitution of India and therefore, these petitions are required to be dismissed.

19. Accordingly, the petitions are dismissed. Rule is discharged. Interim relief, if any, granted earlier stands vacated. However, considering that the land reference cases are pending since 1999, the learned trial Court is C/SCA/1038/2023 JUDGMENT DATED: 03/05/2023 directed to decide the same after giving opportunity of final hearing to the parties as provisions of the Land Acquisition Act is benevolent legislation and the present respondents who are original land owners are praying for the adequate amount of compensation since last 24 years by way of Land Reference Case. Accordingly, the learned trial Court shall expedite the proceedings as expeditiously as possible and dispose of the same, preferably on or before 31.1.2024, in accordance with law.

(SANDEEP N. BHATT,J) SRILATHA After the order is dictated, learned advocate for the petitioners prays to this Court to extend the interim arrangement granted earlier (permitted to apply for adjournment) for some time. The request is not required to be accepted as this Court has directed the trial Court to decide reference cases of year 1999 as expeditiously as possible and hence rejected.

(SANDEEP N. BHATT,J) SRILATHA