

Supreme Court of India

G Pattanaik, M J Rao.

Ramasrey v. Dy. Director Consolidation

23 March, 1998

Fraud - Compromise - Compromise was entered into between the parties by the lawyer without any authority from the appellants and the appellants did not execute any vakalatnama in favour of the said advocate - Appellants did not sign the compromise - Writ petition was disposed of on the basis of the compromise - Compromise was entered into by the advocate without any authority - Order of the High Court disposing of the writ petition as well as on the application for review cannot be sustained - Plea that conduct of the respondents who were the petitioners before the High Court in the writ petition disentitles them to invoke the discretionary jurisdiction of the Court under Article 226 and, therefore, the writ petition should be dismissed by this Court and the matter may not be remitted to the High Court for re disposal on merits - Though there is sufficient force in the aforesaid contention, we think it appropriate for the High Court to deal with this question and pass ; appropriate orders thereon.

JUDGMENT

1. Delay condoned.

2. Leave granted.

3. The order of the High Court disposing of the writ petition on the basis of a compromise is the subject-matter of challenge in this appeal. It was averred in this Court that the compromise was entered into between the parties by the lawyer Shri Kailash Nath Srivastava without any authority from the appellants and the appellants did not execute any vakalatnama in favour of the said advocate. In view of the allegations made, this Court by order dated 15-4-1996 directed the District Judge, Fatzabad to hold an enquiry and submit a report as to whether the appellants did authorise Shri Kailash Nath Srivastava to enter into the compromise and whether the appellants were put on notice of the compromise by the Advocate Shri Srivastava. Pursuant to the aforesaid order, the learned District Judge gave opportunity to the parties and on the basis of the materials on record came to the conclusion that the appellants did not authorise Shri Srivastava to enter into the compromise on their behalf in the writ petition. He also further found that the appellants did not sign the compromise dated 3-4-1991 and did not execute vakalatnama in favour of Shri Srivastava so as to authorise him to verify the contents of the compromise. Since the writ petition was disposed of on the basis of the compromise and in view of the finding of the District Judge that the compromise was entered into by the advocate without any authority the impugned order of the High Court disposing of the writ petition as well as the order passed on the application for review cannot be sustained, and we accordingly set aside the same. Mr Sunil Jain, learned counsel for the appellants, contended that the

conduct of the respondents who were the petitioners before the High Court in the writ petition disentitles them to invoke the discretionary jurisdiction of the Court under Article 226 and, therefore, the writ petition should be dismissed by this Court and the matter may not be remitted to the High Court for re disposal on merits. Though there is sufficient force in the aforesaid contention, we think it appropriate for the High Court to deal with this question and pass ; appropriate orders thereon. Accordingly, this appeal is allowed and Writ Petition No. 514 of 1984 is remitted to the High Court for re disposal in accordance with law by giving opportunity of hearing to the parties concerned. So far as the role played by the Advocate Shri Kailash Nath Srivastava is concerned it will be open for the appellants to approach the Bar Council for any appropriate action. In view of the conduct of the respondents as found from the report of the District Judge, this is a fit case where the appellants should be entitled to cost and we accordingly allow the appeal with the cost of Rs 5000.

Equivalent citations: AIR 1999 SC 1474, 1998 (3) CTC 177, JT 1998 (9) SC 392, 2003 (1) SCALE 387, (1998) 6 SCC 480