

Special Legal Issues Seminar

CPC Order XXIII Rule 3 - Different Types of Compromises in Different Types of IP Lawsuits

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Relevant Provisions of the Code of Civil Procedure, 1908

❖ Order XXIII Rule 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 to 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:]*

[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.]...”
[Emphasis supplied]

[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.]

Relevant Provisions of the Code of Civil Procedure, 1908 (Contd.)

❖ Order XXIII Rule 3A - Bar to suit

“No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.” [Emphasis supplied]

❖ Order XXIII Rule 3B - No agreement or compromise to be entered in a representative suit without leave of Court

“(1) No agreement or compromise in a representative suit shall be entered into without the leave of the Court expressly recorded in the proceedings; and any such agreement or compromise entered into without the leave of the Court so recorded shall be void.”

“(2) Before granting such leave, the Court shall give notice in such manner as it may think fit to such person as may appear to it to be interested in the suit...” [Emphasis supplied]

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Relevant Judicial Decisions

❖ *Pulavarthi Venkata Subba Rao v. Valluri Jagannadha Rao* [AIR 1967 SC 591]

Question: Can a compromise decree operate as res judicata?

- “... *The compromise decree was not a decision by the Court. It was the acceptance by the Court of something to which the parties had agreed. It has been said that a compromise decree merely sets the seal of the court on the agreement of the parties. The court did not decide anything. Nor can it be said that a decision of the court was implicit in it. Only a decision by the court could be res judicata.*” [Emphasis supplied]

❖ *Katikara Chintamani Dora v. Gautreddi Annamanaidu* [AIR 1974 SC 1069]

Question: Is a compromise decree appealable?

- “...*Order 23, Rule 3, Code of Civil Procedure...gives a mandate to the court to record it and pass a decree, in terms of such compromise or adjustment in so far as it relates to the suit. If the compromise agreement was lawful...it was so-the decree to the extent it was a consent decree, was not appealable, because of the express bar in s. 96(3) of the Code...*” [Emphasis supplied]

Relevant Judicial Decisions (Contd.)

❖ *Gurpreet Singh v. Chatur Bhuj Goel* [1988 SCR (2) 401]

Question: Whether a Compromise not reduced in writing and signed by the parties can be given effect to?

- “Under r. 3 as it now stands, when a claim in suit has been adjusted wholly or in part by any lawful agreement or compromise, **the compromise must be in writing and signed by the parties and there must be a completed agreement between them.** To constitute an adjustment, the agreement or compromise must itself be capable of being embodied in a decree. When the parties enter into a compromise during the hearing of a suit or appeal, there is **no reason why the requirement that the compromise should be reduced in writing in the form of an instrument signed by the parties should be dispensed with.** The **Court must therefore insist upon the parties to reduce the terms into writing...**” [Emphasis supplied]

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Relevant Judicial Decisions (Contd.)

❖ *Banwari Lal v. Chando Devi & Anr.* [(1993) 1 SCC 581]

- “11. ...Court recorded the alleged agreement and compromise in a casual manner. It need not be impressed that **Rule 3 of Order 23 does not require just a seal of approval from the Court to an alleged agreement or compromise said to have been entered into between the parties. The statute requires the Courts to be first satisfied that the agreement or compromise which has been entered into between the parties is lawful, before accepting the same. Court is expected to apply its judicial mind while examining the terms of the settlement before the Suit is disposed of in terms of the agreement arrived at between the parties. It need not be pointed out that once such a petition of compromise is accepted, it becomes the order of the Court and acquires the sanctity of a judicial order.**” [Emphasis supplied]
- 6 • “13. the Court before which a petition of compromise is filed and which has recorded such compromise, has to decide the question whether an adjustment or satisfaction had been arrived at on basis of any lawful agreement...**If the agreement or the compromise itself is fraudulent then it shall be deemed to be void within the meaning of the explanation to the proviso to Rule 3 and as such not lawful...**” [Emphasis supplied]

Relevant IP Judicial Decisions

❖ *Saregama India Limited v. Indian Singers Rights Association* [2017 IXAD (Delhi) 667]

Question: Is the court under an obligation to determine whether a compromise is lawful or not? Which court is to decide this question?

- “...Order XXIII Rule 3 requires (i) proof to the satisfaction of the Court and (ii) that the agreement or compromise is lawful...If dispute is raised as to the adjustment or satisfaction, the proviso **mandates** the Court to decide the said question.”
- “A reading of Order XXIII Rule 3A in conjunction with Order XXIII Rule 3 shows that the Court before whom a compromise or an agreement is propounded is to satisfy itself that the agreement or compromise is lawful. It is **that Court alone** which has to undertake the exercise so as to ascertain whether the compromise or agreement is lawful or not and the said exercise has to be undertaken prior to recording the same and passing a decree in accordance therewith...Even if a person not a party to the compromise were to contend that the compromise was not lawful, it would be obliged to approach the same Court, which has recorded the compromise or settlement and passed a decree based thereon...”
[Emphasis supplied]

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Relevant IP Judicial Decisions (Contd.)

- “The learned Single Judge was accordingly *obliged to examine the said issue raised by the appellants that the settlement was collusive and not lawful, prior to accepting the said compromise and passing a decree based thereon...*” [Emphasis supplied]

❖ *Triloki Nath Singh v. Anirudh Singh (D) Thr. Lrs.* [AIR 2020 SC 2111]

Question: Does Rule 3A apply to strangers?

- “...creation of further litigation should never be the basis of a compromise between the parties. **Rule 3A** of Order 23 CPC put a specific bar that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. The scheme of Order 23 Rule 3 CPC is to avoid multiplicity of litigation and permit parties to amicably come to a settlement which is lawful, is in writing and a voluntary act on the part of the parties. **The Court can be instrumental in having an agreed compromise effected and finality attached to the same. The Court should never be party to imposition of a compromise upon an unwilling party, still open to be questioned on an application under the proviso to Rule 3 of Order 23 CPC before the Court.**” [Emphasis supplied]

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Relevant IP Judicial Decisions (Contd.)

❖ *Harjeet Singh and Ors. v. The State NCT of Delhi and Ors.* [MANU/DE/2267/2016]

Question: Is a compromise permissible in a criminal IP case?

- “...the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceedings or continuation of criminal proceedings would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and **if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceedings...**”
- “...Non-compoundable offences are basically an obstruction in entering into compromise...**offences under Sections 103/104 of Trademark Act and Section 63 of Copyright Act are non- compoundable offences, therefore, there should be no impediment in quashing the FIR under these sections, if the Court is otherwise satisfied that the facts and circumstances of the case so warrant...**” [Emphasis supplied]

Relevant IP Judicial Decisions (Contd.)

❖ *Microsoft Corporation v. Ashok Azad* [MANU/DE/1082/2004]

Question: Can an action for contempt lie in a compromise decree?

- “... *In the absence of any indication that the party making the promise intended to do so qua the court, the ordinary inference arising from the use of any word in a document executed between two parties is that the promise is made to the other party... mere user of the word "undertake" does not mean a promise to a court. It merely means a solemn promise to some one and where the word appears in an agreement between A and B, it appears to me that if A undertakes, he obviously undertakes to B, and not to a court.* “[Emphasis supplied]
- “... *where the undertaking is not to the court but to a party to the proceedings no action for contempt can lie. Its immaterial whether such an undertaking to the opposite party is a part of the decree or otherwise... weapon of contempt cannot be used for purposes of executing a decree or implementing an order for which the law provides appropriate proceedings.*” [Emphasis supplied]

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THANK YOU!

Questions?

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