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# CONSENT DECREES: APPLICABILITY AND THE POWERS OF COURTS TO INTERVENE

## INTRODUCTION

1. Consent Decrees are the decree passed by the Courts when the litigating parties amicably settle their disputes.

2. While there is no express mention or definition of a Consent Decree under the Code of Civil Procedure, 1908 the same arises out of a Compromise in a Suit as envisaged under Order XXIII of the Code.

3. Consent Decrees thought arising out of the settlement contract between the parties, still they are something more than a mere contract and has elements of both command and contract.

4. 'Lawful Compromise' on the basis of which the consent decrees are passed would be unlawful if the consideration or the object of the agreement is forbidden by law or is of such a nature that if permitted it would defeat the provision of any law, or is fraudulent or the court regards it as immoral or opposed to the public policy as provided by Section 23 of the Contract Act.

### Interpretation & Enforceability of Consent Decrees

5. Regardless of the definition provided in the Code, various courts across the country have not shied away from interpreting the definition of a Consent Decree.

6. A definition for the consent decree was interpreted as early as 1927 in the case of *Kumar Gangand Singh and Ors. vs Maharaja Sir Rameshwar Singh* [102 Ind. Cas. 449], wherein the Hon'ble Patna High Court held that, "It is not open to doubt that a consent decree does not stand on a higher footing than a contract between the parties, and that the Court has jurisdiction to set aside a consent decree upon any ground which would invalidate an agreement between the parties. The Indian Contract Act makes it essential that all contracting parties should be competent to contract and expressly provides that a person who by reason of infancy is incompetent to contract cannot make a contract within the meaning of this Act."

7. However, the Courts have dealt with the consent decree on case to case basis, rather than adopting a straight-jacket definition.

8. In "*Sailendra Narayan v. State of Orissa*" [AIR 1956 S.C. 345], the Hon'ble Supreme Court held that a judgment by consent or default is as effective an

estoppel between the parties as a judgment whereby the court exercises its mind in a contested case.

9. In "*Habib Mian v. M Ahmad*" [AIR 1969 All. 296], the Full Bench of the Hon'ble Allahabad High Court held that a compromise decree is founded upon the agreement on which it is based and it is a contract with the command of a Judge superadded to it.

10. Similar interpretation was rendered by the Hon'ble High Court of Andhra Pradesh in "*Indira Bai v. B A Patel*" [AIR 1974 A P. 303], wherein it was held that the consent decree is as binding upon the parties thereto as a decree passed by invitum and the consent decree has the binding force same as to the decree passed on adjudication.

11. For consent decrees to see the light of the day, it is imminent that the litigating parties should arrive at a mutual settlement and secondly, the mutual agreement, converted into a written document, is filed before the Court where the disputes between the parties are pending and subsequently disputes are withdrawn by the parties on the ground of mutual settlement.

12. Such consent decrees becomes enforceable when it is proved to the satisfaction of the Court that the pending disputes has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties. The Hon'ble Court thereafter proceeds to pass on the consent decrees based on the compromise/ settlement entered into between the parties.

13. Moreover, applying the same principles as found in the Indian Contract Act, the court have interpreted that the nature of the object of the consent decree should not be of such nature that it would defeat the purpose of the law. Furthermore, any Decree obtained by fraud, misrepresentation or which the court regards to be immoral or opposed to public policy as provided by Section 23 of the Indian Contract Act. [*Deepshree Singh v. Rishi Pratap Singh & Ors; 2021 SCC OnLine Del 2348*]

14. The decrees in accordance with the judgment of the Court as well as the decrees pursuant to the



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volition of the parties are assimilated in the definition of the decree under Sec 2(2) of the Code.

15. In *"New Miraj Cafe vs. Ramakaran"* [MANU/AP/0195/1986], it was observed that decree is the final culmination of the rights of the parties in a suit under section 2(2) of the Code and Order XXIII Rule 3 of the Code formulates the procedure of providing a legal seal to the compromise arrived at by the litigating parties by passing a decree in consonance with the terms of such compromise/ settlement and such decree is designated as compromise decree. Thus, for the purpose of enforceability and executability, all decrees including compromise decrees bear the same stamp of authority and incidents.

16. Pertinent to mention here that the routes of culmination in the decree are different between a normal decree and compromise decree but both carry same force of enforceability, since, decree is pursuant to the verdict of the umpire in an adversary system whereas compromise decree is the by-product of the trimming and adjustment of the rival projections and postures by the parties themselves and the consensus of agreement arrived at by the parties, which is given a judicial recognition and ratification. Therefore, both the decrees stand on the same footing in the eye of law as one is a follow up of the verdict as a result of controversies and the other is the creature of the agreement between the parties.

#### **Appeal against Consent Decrees**

17. Section 96(3) of the Code, statutorily bars appeal from the decree passed by Court by consent of the parties.

18. In *"Kishun alias Ram Kishun (dead) through L.Rs. v. Behar (dead)"* [(2005) 6 SCC 300] a three-Judge Bench of the Hon'ble Supreme Court was dealing the maintainability of appeal against consent decree in the backdrop of Section 96 (3) of the Code. In the said case, one of the facets that arose for consideration was whether the High Court was justified in holding that the appeal preferred against the decree under Section 96 (3) was maintainable. After detailed discussion the Hon'ble Supreme Court held that "....."

*When on a dispute in that behalf being raised, an enquiry is made (now it has to be done in view of the proviso to Order 23 Rule 3 of the Code added by Act 104 of 1976) and the suit is decreed on the basis of a compromise based on that enquiry, it could not be held to be a decree passed on consent within the meaning of Section 96 (3) of the Code. Section 96 (3) contemplates non-appeal-ability of a decree passed by the court with the consent of parties. Obviously, when one of the parties sets up a compromise and the other disputes it and the court is forced to adjudicate on whether there was a compromise or not and to pass a decree, it could not be understood as a decree passed by the court with the consent of the parties....."*

19. Notably, only when the acceptance of the compromise receives the imprimatur of the court and it becomes a decree or the court proceeds to pass a decree on merits rejecting the compromise set up, it becomes appealable, unless of course, the appeal is barred by Section 96 (3) of the Code.

20. In *"H.S. Goutham v. Rama Murthy"* [2021 SCC OnLine SC 87], the Hon'ble Supreme Court, elaborately dealing with the provisions of the Code, held that Section 96(3) of the Code categorically envisaged that no appeal shall lie from a consent decree. However, Order XXIII Rule 3A also bars filing of suit to set aside consent decree obtained by unlawful means. Thus, an appeal shall lie against Consent decree obtained by unlawful means.

21. The Hon'ble Supreme Court in *Banwari Lal v. Chando Devi* [AIR 1993 SC 1139] had held that a Consent Decree is open to an appeal on the grounds that the same was obtained by unlawful means and that the compromise should not have been recorded. Moreover, the appeal against a consent decree is barred under section 96(3) only when the facts or circumstances of the consent decree are not in question.

#### **Conclusion**

22. In *"Gupta Steel Industries v. Jolly Steel Industries Pvt. Ltd"* [(1996) 11 SCC 678]; *"Survarn Rajaram Bandekar v. Narayan R. Bandekar"* [(1996) 10 SCC 255] and in numerous judicial precedents, it has been consistently held that the Court would be slow to unilaterally interfere in, modify, substitute or modulate the terms of a consent decree, unless it is done with the revised consent of all the parties thereto.

23. Compromise in a suit and the subsequent passing of a Consent Decree often serves as a great tool for quick and speedy disposal of cases before the courts with adequate safeguards for decrees obtained by fraud, misrepresentation, etc.

24. In fact with several amendments and interpretations by the Courts, the opportunities and occasions on which Consent Decree can be misused has also been significantly curbed.

25. Furthermore, the scope for appeals and further litigation in a case is also severely reduced in a case involving compromise/Consent Decree between the parties, which have provide a breather for litigating parties which seeks to end the disputes once and for all.

26. To conclude, it can safely be inferred that the powers of courts to intervene in the execution of a Consent Decree is limited and can be utilized only when the consent decrees are obtained on the grounds of fraud, misrepresentation etc.