

11th OCTOBER, 2021

UNDERSTANDING A CONSENT DECREE

INTRODUCTION

On the 17th of February, 2021, the division bench of the Hon'ble Supreme Court of India ("SC") in *Compack Enterprises India (P) Ltd. V Beant Singh*, 2021 SCC OnLine SC 97 ("**Compack**"), provided a very important clarification with respect to a consent decree. The SC observed that a consent decree doesn't always become an estoppel by judgment against the consenting parties and the same therefore can very well be challenged on the grounds of fraud, misrepresentation, mistake and also when there is/are any clerical or arithmetic error(s). As a matter of fact, the law surrounding 'consent decree' has always remained a bone of contention between and among the disputing and consenting parties – this fact is aggravated by the contradictory and ambiguous interpretation of the same by various courts. Even many High Courts have failed to provide any uniform clarity on the same. Therefore, the SC has time and again risen to the occasion and supplied necessary clarifications on the law relating to 'consent decree'. Therefore, in such a situation, where the development of laws (on consent decree) is more to be attributed to the court rather than the legislature, it becomes more pertinent to understand the same in light of Apex court's rulings.

UNDERSTANDING A CONSENT DECREE

➤ A decision of a civil suit culminates into a decree and the party in whose favour suit is decided, becomes the decree holder and the opposite party, against whom the suit is decided becomes the Judgment Debtor. Every judgement is followed by a decree, crystallising the rights of the parties to the lis, based on the reasoning given in the judgement.

➤ A civil suit can be decided on the basis of contest; can be compromised; and can also be decided based on admission. Order XII Rule 6 of the Code of Civil Procedure, 1908 ["CPC"] is relevant for the purpose which provides for 'Judgment on admission'. From the bare reading of Rule 6, it is clear that it is open to the Court to base a judgment on admission on the pleadings or otherwise. The said rule is enabling, discretionary and permissive, and is neither mandatory nor it is preemptory, since the word 'may' has been used. [*S.M. Asif v Virender Kumar Bajaj*, (2015) 9 SCC 287]

However, such discretion should always be based and guided by the principles of fairness and should not be arbitrary in nature.

➤ A judgement based on admission can be passed by the court at any point of time, as there may be instances where a judgement is passed on the basis of admission given by the defendant in the written statement itself, or in a statement made in the court, at a later stage.

➤ A judgement on admission is commonly called a **Consent Decree** because it is based on the consent/admission of the party to the *lis*. A consent decree is sometimes also termed as a compromise decree, though the line between the two is very thin and both have the same force and are as much valid as any other contested decree.

➤ Decrees may also arise out of 'Lawful Compromise' between the parties on the basis of which the decrees are passed. 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 read with 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.

➤ Consent decrees create estoppels by judgment against the parties - thereby putting an end to further litigation between the parties. The said decree not only saves the time of the court from lengthy litigation, but also helps to maintain harmony and peace between the parties.

DIFFERENCE BETWEEN CONSENT AND COMPROMISE DECREE

➤ A consent decree or a judgement on admission is passed under the Order XII Rule 6 and a compromise decree is passed under the Order XXIII Rule 3 of the CPC. The law does not recognise any distinction between a consent decree or a compromise decree and decree passed after contest, as regards its effectiveness or the force behind it.

➤ A consent decree or a decree on a consent on the one hand, and a decree after contest on the other, is that in the former case the suit is decided and a decree passed on the basis of a compromise or consent, and in the latter case it is passed after the court has, on the basis of the evidence, recorded its findings. In both the cases there is a formal adjudication by the court, conclusively determining the rights of



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determining the rights of the parties, in respect of the subject-matter in dispute. The decree in first situation is as effective as the decree in the second situation.

➤ A compromise decree passed under the provisions of Order 23 Rule 3 can only be challenged before the same court i.e. the court which passed the decree, or in appeal under the provisions of Order 23 Rule 3A, but a judgement on admission, as under Order 12 Rule 6, popularly called a consent decree, can be challenged by the person so affected, even in a separate civil suit on the basis of fraud etc., but not on the ground that facts pleaded in the previous suit culminating in the impugned consent decree were erroneous and incorrect. The said questions stand determined and concluded by the consent decree, and cannot be re adjudicated, and would be barred by principle of *res judicata* in the subsequent suit.

WHEN CAN A CONSENT DECREE BE INTERFERED WITH?

➤ In *Gurdev Kaur and others v Mehar Singh and others*, 1989 PLJ 182, it was held that the grounds on which the compromise decree can be set aside are the same on which a contract can be set aside, namely fraud, misrepresentation, coercion or unsound mind. The said position of law was again reiterated in *Bhoop Singh v Ram Singh Major and others*, 1995(3) RRR 541 (SC).

➤ Any interference in a consent decree by way of modification, substitution or modulation of the terms can only be done with the consent of the consenting parties. {refer *Gupta Steel Industries v Jolly Steel Industries Pvt. Ltd.*, (1996) 11 SCC 678; *Suvaran Rajarambandekar v Narayan R. Bandekar*, (1996) 10 SCC 255 }

➤ However, in *Compack* case it was held that a consent decree would not serve as an estoppel when:

➤ However, in *Compack* case it was held that a consent decree would not serve as an estoppel when:

- the compromise is vitiated by fraud, misrepresentation, or mistake.
- the decree suffers from clerical or arithmetical errors.

➤ Apart from above grounds, the registration of the consent decree also has been made a ground to challenge the same, but time and again the same has been negated, and discouraged by the courts, if the person in whose favour the decree was passed, had a pre-existing right in the property that is subject matter of the decree. {refer *Gurcharan Singh v Angrez Kaur*, 2020(2) RCR (Civil) 696; and *Mohammade Yusuf v Rajkumar*, 2020(2) RCR (CIVIL) 23 }

CONCLUSION

The underlying object of the consent decree is to enable a party to obtain speedy judgment on admission, in respect of admitted claims, although disposal of disputed claims in a suit are pending. A decree can be passed only to the extent of admitted claims, for which admissions are clear, unequivocal and unambiguous. There is no specific form of admission required for a Court to pass a decree. It may be contained in pleadings or otherwise. It may be in writing or may even be oral, but once recognised and affirmed by the court in the shape of a decree, the same is as effective and has the same force as any other decree obtained after a contest. However, despite having a binding effect and application of principle of estoppel as against the parties to the litigation in consent decrees, they are challenged as easily as they are consented to.

2021 SCC OnLine SC 97
In the Supreme Court of India
(BEFORE MOHAN M. SHANTANAGOUDAR AND VINEET SARAN, JJ.)

Compack Enterprises India (P) Ltd. ... Petitioner;

Versus

Beant Singh ... Respondent.

Special Leave Petition (Civil) Nos. 2224-2225 of 2021 (Arising out of SLP(C) Diary

No. 38441 of 2019)

Decided on February 17, 2021

The Judgment of the Court was delivered by

MOHAN M. SHANTANAGOUDAR, J.:— These petitions arise out of judgments of the High Court of Delhi (hereinafter ‘High Court’) dated 14.02.2019 and 25.07.2019. By the first impugned judgment dated 14.02.2019, the High Court disposed of the regular first appeal RFA No. 253/2018 filed by the Petitioner against judgment and order of the Ld. Additional District Judge, Rohini (‘Trial Court’) dated 23.09.2017 in Suit No. 58395/2016 filed by the Respondent. Whereas by the second impugned judgment dated 25.7.2019, the High Court disposed of Review Petition No. 177/2019 filed by the Petitioner against the judgment in RFA No. 253/2018.

I. Background Facts

2. These cases concern a suit for possession and mesne profits filed by the Respondent/plaintiff against the Petitioner/defendant, with respect to the ground floor of the property bearing No. B-60, Ground Floor, G.T. Karnal Road, Industrial Area, Delhi-110033, ad-measuring 608 sq. yards (or, 5,472 sq. ft.) (hereinafter ‘suitproperty’).

3. The Respondent, Beant Singh, is the owner of the suit property. He, through M/s. Channa Auto Agencies (P) Ltd. (of which he is a Director), executed a license agreement dated 1.11.2000 in respect of a portion of the suit property in favour of M/s. Compack Enterprises (the Petitioner's predecessor), for a period of 30 months in consideration for a monthly license fee of Rs. 28,000/- (hereinafter, ‘2000 Agreement’). On 1.04.2003, Compack Enterprises merged with Compack Enterprises India (P) Ltd. (i.e., the Petitioner herein), and the 2000 Agreement continued with mutual consent of parties. The license arrangement was renewed on 1.07.2003 for another 30 months, with a 10% increase in monthly license fee to Rs. 30,800/- (hereinafter, ‘2003 Agreement’). The 2003 Agreement was renewed for the last time effective from 1.04.2006 and expiring on 30.09.2008, with a further 10% increase in monthly license fee to Rs. 33,900/- (hereinafter, ‘2006 Agreement’).

4. However, even after the expiry of the 2006 Agreement on 30.9.2008, and non-renewal of the same, the Petitioner continued to occupy the suit property. Consequently, the Respondent brought O.S. No. 58395/2016 against the Petitioner on 13.02.2009 for recovering possession of the entire suit property and mesne profits thereon from 1.10.2008 till the vacation of the suit property.

Petitioner/Defendant's Arguments in Original Suit No. 58395/2016

5. **On the question of vacating possession**, the Petitioner admitted to having been in possession of only a portion of the suit property measuring 2,200 sq. ft., averring that it was only this portion, not the entire suit property admeasuring 5,427 sq. ft., that was licensed to them by the Respondent.

6. Petitioner further contended that its continued possession of this portion of the suit property was lawful, since the Respondent had concealed the material fact of having entered into an agreement dated 11.6.2008 to sell the suit property to one Mr. Ajay Gosain for a sum of Rs. 4 crores, of which the Respondent had already received a sum of Rs. 65 lakhs. The suit property was agreed to be sold to, and was thus in lawful possession of, Mr. Gosain before the expiry of the 2006 Agreement on 30.09.2008. Mr. Gosain is the husband of one of the Petitioner's Directors, and also the brother of another Director.

7. On the question of mesne profits, Petitioner contended that it had been in possession of only 2,200 sq. ft. of the suit property and had been paying license fee for it till July, 2015 as per the interim order passed by the Trial Court; and that they vacated the premises in July, 2015 and handed over possession to Mr. Gosain, to whom the Respondent had allegedly transferred possession of the suit property pursuant to the agreement to sell. Thus, the Petitioner claims that it is not liable to pay any further sum to the Respondent.

Trial Court's Judgment dated 23.09.2017

8. On the question of vacating possession, the Trial Court held that the issue had already been decided by the High Court in C.M.(M) No. 193/2013 by judgment dated 12.11.2014, and could not be re-opened.

9. The Respondent had earlier filed an application before the Trial Court under Order XII, Rule 6, of the Code of Civil Procedure, 1908 (hereinafter, ‘CPC’), praying for a judgment on admission decreeing the suit for possession in favour of the Respondent. Upon the Trial Court's dismissal of this application, the Respondent approached the High Court under Article 227 of the Constitution in C.M.(M) No. 193/2013 praying for the aforesaid relief. Therein, the High Court by its judgment dated 12.11.2014 reversed the Trial Court's dismissal, and held that the admissions made by the parties justify decreeing the Respondent's suit for possession. It had thus directed that the possession of the entire suit property measuring 5,472 sq. ft. be handed over to the Respondent by the Petitioner.

10. On the question of mesne profits, the Trial Court noted that it is an admitted fact between the parties that the possession of the suit property has still not been handed over to the Respondent despite the High Court's order dated 12.11.2014.

Instead, the Petitioner claimed to have handed over possession to Mr. Gosain in July, 2015. The following further observations of the Trial Court are relevant for our purposes:

a. What is the area of the suit property for which Petitioner is liable?

11. The High Court's order dated 12.11.2014 had settled the dispute qua the area that was in possession of the Petitioner, decreeing the Respondent's suit for possession for the entire suit property area of 5,472 sq. ft (and not only the 2,200 sq. ft. portion claimed to be possessed by the Petitioner). The view taken by the aforesaid order has attained finality as far back as on 12.11.2014 and is binding.

b. What is the quantum of compensation payable?

12. For the period between 1.10.2008 to 27.04.2009, the Respondent is entitled to license fee @ Rs. 37,290/- p.m., i.e., the license fee agreed upon in the 2006 Agreement (Rs. 33,900/-) with a hike of 10%. For the period of unlawful possession between 28.04.2009 till vacation of possession, Petitioner shall pay mesne profits @ Rs. 60,000/- p.m. with 10% increase on the 1 April of each alternate year, till the suit property is handed over to Respondent.

13. Aggrieved by the decision on mesne profits, both the Petitioner and Respondent filed cross-appeals before the High Court against the judgment of the Trial Court dated 23.09.2017, seeking, respectively, reduction and enhancement in the quantum of mesne profits.

First Impugned Judgment of the High Court dated 14.02.2019 in the above cross-appeals

14. The High Court passed a consent decree, directing that the Petitioner shall pay to the Respondent, by way of mesne profits, an enhanced sum of Rs. 1,00,000/- p.m., with a 10% increase "after every 12 months, i.e. from 1.10.2009, 1.10.2011 etc. etc." w.e.f.1.10.2008 (i.e., the date on which the 2006 Agreement expired) till the date the Petitioner hands over actual possession of the suitproperty measuring 5,472 sq. ft. to the Respondent.

15. Aggrieved that the terms of the consent decree were recorded incorrectly in the aforesaid order, the Petitioner filed Review Petition No. 177/2019, which was dismissed by the High Court.

Second Impugned Judgment of the High Court in the above review petition dated 25.07.2019

16. The Petitioner contended in its review petition that the High Court in the first appeal had erred in recording the terms of the consent decree agreed to by the Petitioner. First, the judgment records that the mesne profits be increased by 10% every 12 months, instead of recording a 10% increase every 24 months. Second, the judgment erroneously records that the Petitioner will hand over possession of the entire suit property measuring 5,472 sq. ft., when the documents on record would show that the Petitioner was only ever in possession of 2,200 sq. ft.

17. The High Court, rejecting the Petitioner's contentions, held that there was no error apparent on the face of the record to justify its review jurisdiction, and that the Petitioner was dishonestly trying to wriggle out of the consent decree by attempting to overreach the Court. The review petition was dismissed with exemplary costs of Rs. 1,00,000/- payable by the Petitioner to the Respondent.

II. Submissions made by the Petitioner in the present SLP

18. Shri Mukul Rohatgi, learned senior counsel for the Petitioner, contends that the High Court ought to have, while recording the terms of the consent decree, recorded a 10% increase in mesne profits every 24 months, instead of 12 months. As per him, this typographical error is borne out by the fact that a 10% increase every 24 months closely mirrors the terms of the license agreements where the license fee was increased by 10% every 30 months. The reference to a 10% increase "after every 12 months, i.e. from 1.10.2009, 1.10.2011 etc. etc." in the first impugned judgment of the High Court dated 14.02.2019 (supra) also corroborates this.

19. The learned senior counsel for the Petitioner has also contended that the first impugned judgment dated 14.02.2019 erred in recording that the Petitioner has consented to handing over possession of the entire suit property area of 5,472 sq.ft.,

when the Petitioner has consistently maintained that only 2,200 sq.ft. was licensed to him and in his possession. Both these submissions are vehemently opposed by Shri Basava Prabhu S. Patil, learned senior counsel for respondent.

III. This Court's Analysis

20. Before advertng to the specific contentions raised by the learned senior counsel for the Petitioner, it may be useful to briefly summarise the law governing consent decrees that shall inform our conclusions on the present matter. It is well-settled that consent decrees are intended to create estoppels by judgment against the parties, thereby putting an end to further litigation between the parties. Resultantly, this Court has held that it 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. (*Gupta Steel Industries v. Jolly Steel Industries Pvt. Ltd.*, (1996) 11 SCC 678; *Suvaran Rajaram Bandekar v. Narayan R. Bandekar*, (1996) 10 SCC 255).

21. However, this formulation is far from absolute and does not apply as a blanket rule in all cases. This Court, in *Byram Pestonji Gariwala v. Union Bank of India*, (1992) 1 SCC 31, has held that a consent decree would not serve as an estoppel, where the compromise was vitiated by fraud, misrepresentation, or mistake. Further, this Court in the exercise of its inherent powers may also unilaterally rectify a consent decree suffering from clerical or arithmetical errors, so as to make it conform with the terms of the compromise.

22. The present Petitions thus must be answered in light of the above-stated position of law. It is relevant at this juncture to note that the first impugned judgment of the High Court dated 14.2.2019 recorded the terms of the compromise that the Petitioner had agreed to; and that the same Court has subsequently upheld the validity of that consent decree in the second impugned judgment dated 25.07.2019. Thus, keeping in line with this Court's jurisprudence, we would be cautious in exercising our inherent power to interfere in this consent decree, except where there is any exceptional or glaring error apparent on the face of the record. We now refer to and answer the specific contentions raised by the parties.

On the question of area of possession:

23. Having undertaken a close perusal of the License Agreements executed between the Petitioner and Respondent, we reject learned senior counsel Mr. Rohatgi's contention that the Petitioner was only in possession of and licensee to a 2,200 sq.ft. portion of the suit property. It is evident that, unlike the 2000 Agreement and 2003 Agreement, the 2006 Agreement, which is the relevant agreement for the present purposes, pertains to the entire suit property, and does not delimit the licensed area to a 2,200 sq. ft. portion. Thus, the 2006 Agreement effective from 1.04.2006 to 30.09.2008, licensed the total area of 5,472 sq. ft. to Petitioner. Hence, the material on record discloses that the Petitioner is presently in illegal possession of the entire suit property admeasuring 5,472 sq. ft.

24. Further, this question has already been settled by the High Court judgment dated 12.11.2014 (supra) in the earlier litigation between the parties, decreeing the Respondent's suit for possession for the entire area of 5,472 sq. ft (and not only the 2,200 sq. ft. portion claimed to be possessed by the Petitioner). In that order, the High Court had taken note of an admitted document on the record wherein the Petitioner was stated to be in possession of the entire suit property. The Petitioner's challenge to this judgment dated 12.11.2014 before the Supreme Court has been dismissed in SLP(C) No. 7531/2015, and R.P.(C) No. 1494/2015 in SLP(C) No. 7531/2015, by orders dated 16.03.2015 and 15.07.2015 respectively. Thus, this view has attained finality, and the Petitioner's efforts to re-agitate this question in the present proceedings is a waste of this Court's time and an abuse of the process of law. In any case, since the Petitioner claims no right or interest in the remaining 3,272 sq. ft. of the suit property, there is no prejudice caused to the Petitioner by the order to vacate the entire suit property since he is not the owner of property to that extent also.

25. It is further an admitted position, as recorded by the Trial Court, that the Petitioner has not handed over possession to the Respondent - having claimed to have handed over possession to Mr. Gosain instead in July, 2015. This is despite the High Court's judgment dated 12.11.2014 decreeing the suit for possession in favour of the Respondent. Mr. Gosain's right in the suit property is a question pending in separate specific performance proceedings filed by him. Thus, at this stage, the Respondent is entitled to get possession of the suit property, pending adjudication of Mr. Gosain's claims. This view attained finality as far back as on 12.11.2014, and it is high time that the Petitioner stops making efforts to circumvent delivering possession of the suit property to the Respondent.

26. Thus, the High Court was correct in upholding the terms of the consent decree directing Petitioner to hand over possession of the entire suit property of 5,472 sq. ft. to the Respondent, and we see no reason to interfere with this part of the consent decree.

On the question of mesne profits:

27. As referred to supra, Shri Mukul Rohatgi, learned senior counsel for the Petitioner has contended that the High Court ought to have, while recording the terms of the consent decree, recorded a 10% increase in mesne profits every alternate year, instead of every year.

28. On the contrary, Shri Basava Prabhu S. Patil, learned senior counsel for the Respondent wants us to construe the observations of the late learned Single Judge appearing in para 1 of the first impugned judgment dated 14.02.2019 to mean that the mesne profits payable are to be increased by 10% every year.

29. The learned Single Judge, in noting that "this figure of mesne profits of Rs. 1 lakh will be increased by 10% after every 12 months, i.e. from 1.10.2009, 1.10.2011 etc. etc." (emphasis supplied), has confused not only himself, but also the parties to the litigation. There is an inconsistency in so far there is a gap of every alternate year, i.e. from 2009 to 2011, in the example used by the learned Single Judge even though the decree notes an increase of 10% in mesne profits after every 12 months. The aforementioned inconsistency in the underlined extract of the consent decree is an error apparent on the face of the record. Hence we find that this is a fit case to exercise inherent the jurisdiction to correct the terms of the consent decree, to bring it in conformity with the intended compromise.

30. At this stage, it is relevant to note that even the judgment dated 23.09.2017 and the final decree dated 15.11.2017 passed by the Trial Court also awards a 10% increase only on each alternative year, i.e. 01.04.2011, 01.04.2013, 01.04.2015 and so on. Further, the original terms of the license agreement between the parties also incorporated a 10% increase in license fee once every 30 months/2.5 years. Thus, the learned Single Judge's order dated 14.02.2019 has given rise to a lot of confusion. Given this background, and looking at the preponderance of probabilities, we are inclined to give benefit of doubt to the Petitioner. Therefore, we hold that the intention of the compromise between the parties was that there should be a 10% increase in mesne profits every alternate year. The recording of a 10% increase after every 12 months in the consent decree was an inadvertent error, which we have now rectified.

31. To this limited extent, the second impugned judgment dated 25.07.2019 is overturned, and the consent decree recorded by the learned Single Judge's judgment dated 14.02.2019 stands modified.

III. Final Conclusions

32. At this stage, this Bench would like to register its displeasure at the Petitioner's repeated and persistent efforts to re-agitate the question of delivery of possession to the Respondent, in an attempt to circumvent complying with the view taken by the High Court in the judgment dated 12.11.2014, which has now attained finality. Despite the clear direction in that judgment to vacate possession in favour of the Respondent, pending any adjudication on the separate proceedings for possession and specific enforcement initiated by Mr. Gosain, the Petitioner handed over possession to Mr. Gosain in July, 2015. Possession has to this date not been handed over to the Respondent, who has been dragged to the court time and again due to the Petitioner's conduct. This is an instance of blatant disregard for the Court's orders, and an abuse of judicial process.

33. Hence the present petitions are disposed of, with direction to the Petitioner to take steps for handing over possession of the suit property measuring 5,472 sq. ft. to the Respondent within eight weeks from today, without fail. Further, the Registry is directed to expeditiously release the arrears of mesne profits, if any, already deposited by the Petitioner before this Court to the Respondent. The Petitioner is further directed to pay to the Respondent all arrears as directed in order dated 14.2.2019, with the limited modification that the mesne profits are to be treated as increasing by 10% every alternate year, from 2009 till the date of handover of possession.

34. The Petitioner is additionally directed to pay costs of Rs. 1 lakh to the Respondent as stated in the impugned order dated 25.7.2019.

35. The Special Leave Petitions stand disposed of accordingly.

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