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## **KERALA HIGH COURT ON BINDING NATURE OF COMPROMISE DECREES**

### **A. Introduction:**

The Kerala High Court (“HC”) laid down in the *Ashiya Ummal* case<sup>1</sup> on January 3, 2024 that a person who did not sign a compromise/settlement which led to passing of a compromise decree, but subsequently acted upon the same, could not thereafter avoid the decree merely on the ground that they had not put their signature on it.

### **B. Brief facts:**

1. SN Sathy (“Sathy”), the plaintiff in the original suit had instituted a suit for recovery and possession. During pendency of the suit, a compromise/settlement was entered into, on the basis of which a compromise decree was passed by the trial court in Punalur.
2. Ashiya Ummal (“Ashiya”), the 1<sup>st</sup> defendant in the original suit, appealed the compromise on the ground that she had not signed the compromise, and was accordingly, not bound by the same.
3. Sathy’s counsel submitted that:
  - a. In the compromise entered into between the parties, the signatories are Sathy, the husband of Ashiya (5<sup>th</sup> defendant), the advocates for Sathy and for all defendants.
  - b. Even though Ashiya did not directly sign the compromise, she acted upon the same and received benefit out of it.
  - c. Therefore, she accepted the compromise, and cannot succeed in opposing the binding nature of the compromise.

### **C. HC’s Judgement & Analysis:**

HC observed:

1. Regarding the validity of the compromise, relying on the *Prashanta Kumar Saboo*<sup>2</sup> judgement, that: *“the law is clear that when the compromise is not signed by a party and signed by the concerned lawyer alone, without any express authority or without special vakalatnama executed in favour of the Advocate to sign in the compromise, the compromise signed by the Advocate for and on behalf of his client is unlawful. But the legality of such a compromise to be addressed by scanning the consent of the party from the attending circumstances, including the subsequent conduct of the party.”*<sup>3</sup>
2. Regarding the appeal on challenge against the compromise decree, that as per relevant provisions in the Code of Civil Procedure, 1908 (“CPC”)<sup>4</sup> *“it shall be open to the appellant to contest the decree on the ground that whether the compromise should, or should not, have been recorded.”*<sup>5</sup>

<sup>1</sup> *Ashiya Ummal v. S.N. Sathy & Ors.*, 2024 LiveLaw (Ker) 15 and available [here](#).

<sup>2</sup> *Prasanta Kumar Saboo v. Charulata Sabu* 2023 (2) KLT 625 (SC).

<sup>3</sup> Paragraph 10 of the Judgement.

<sup>4</sup> Order XLIII Rule 1A (2) of CPC.

<sup>5</sup> Paragraph 11 and 12 of the Judgement.

3. Regarding the question on whether a party, who did not sign a compromise which led to passing of a compromise decree, and acts upon the same subsequently, can they avoid the compromise decree thereafter merely on the ground that they did not put his signature in the compromise, it held that: *“there is no dispute and that Ashiya is not a signatory in the compromise and on her behalf her lawyer signed. At the same time, the husband of the Ashiya (5th defendant) also signed in the compromise, and when the lawyer on behalf of the client signs a compromise without express authority to do so, the same is unlawful. But the position would become different when the authority of the lawyer to sign the compromise for and on behalf of their client to be inferred or established by the subsequent conduct of the client acting upon the compromise where the parties did not sign.”*<sup>6</sup>
4. That on examination of the affidavit submitted by Ashiya, it was clear that she agreed and consented to the compromise and subsequently acted upon the same even though she did not sign the compromise.<sup>7</sup>
5. That *“a person, who enjoys the benefit of a compromise, he did not sign, after filing an affidavit acting upon the same and obtained the money in terms of the compromise, cannot deviate from the said compromise on the ground that he or she did not sign the same after acting upon the same. Therefore, it has to be held that even though the Ashiya did not sign the compromise, she had given consent to his lawyer to effectuate the compromise and she acted upon the same. Therefore, the appellant herein who had given consent and acted upon the compromise cannot withdraw the consent thereafter and accordingly, it is held that the compromise shall bind.”*<sup>8</sup>

Hence, it dismissed the appeal.

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<sup>6</sup> Paragraph 23 of the Judgement.

<sup>7</sup> Paragraph 25 of the Judgement.

<sup>8</sup> Paragraph 26 of the Judgement.