

Understanding Consent Decrees and Ways to Recall It

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ABSTRACT

This paper explores the concept of consent decrees in the Indian legal system, particularly under the Code of Civil Procedure, 1908 (CPC). A consent decree is a judicial decree based on a lawful compromise between parties and carries the same force as a contested decree. While not explicitly defined in the CPC, it is governed by Order XXIII Rule 3, and its validity depends on the legality of the underlying agreement. The study examines the enforceability, legal implications, and finality of consent decrees, highlighting their role in promoting efficient dispute resolution and judicial economy. It further delves into exceptions under which such decrees may be contested—namely, fraud, misrepresentation, coercion, mistake, or lack of genuine consent. Section 96(3) of the CPC restricts appeals against consent decrees, but courts have allowed recall or modification through applications under Order XXIII Rule 3A and Section 151 when consent is vitiated. Additionally, the paper emphasizes that separate suits challenging consent decrees are not maintainable, as affirmed by the Supreme Court. Through judicial analysis and case law, this study underscores the delicate balance courts must maintain between respecting the finality of compromise and ensuring justice by preventing misuse through fraudulent means. Recommendations for improved procedural safeguards are also offered.

Keywords: Consent Decree, Compromise Decree, CPC, Fraud, Misrepresentation.

INTRODUCTION

Consent Decrees are the decree passed by the Courts when the litigating parties amicably settle their disputes. While there is no express mention or definition of a Consent Decree under the Code of Civil Procedure, 1908 ("CPC") the same arises out of a Compromise in a Suit as envisaged under Order XXIII of the Code. 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. '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

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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.

Civil suits can be resolved through full litigation, compromise, or admission. In the context of admissions, Order XII Rule 6 of the CPC, is crucial since it provides for judgments based on admissions made by parties either in their pleadings or elsewhere. Because this rule is discretionary, judges are free to choose whether to provide a decision based on admissions while adhering to the non-arbitrary and fairness standards.

A judgment based on admission, commonly referred to as a consent decree, can be passed at any stage of the trial. Such judgments may arise from admissions made by the defendant in their written statement or statements made in court at a later stage. This is why a consent decree is also sometimes termed a compromise decree, although the distinction between the two is subtle. Both types of decrees carry the same legal force and validity as any other contested decree.

RESEARCH QUESTION

- What are the different reasons for contesting a consent decree, and how can consent decrees under Order XXIII Rule 3 of the CPC enhance the effectiveness and finality of dispute settlement in the Indian legal system?
- What exceptions are permitted by Indian law for contesting consent decrees, and how is appeal against them restricted by Section 96(3) of the CPC?
- Are separate lawsuits contesting consent decrees viable in the Indian legal system, and how does one go about recalling and interfering with their execution?

RESEARCH ANALYSIS

When parties reach a lawful compromise, the resulting decree is passed in accordance with Order XXIII Rule 3 of the CPC, which outlines the procedure for formalizing such compromises. This rule ensures that the terms of the compromise are legally recognized and sealed by the court, culminating in a compromise decree. An example of this can be seen in the case *New Miraj Cafe vs. Ramakaran*²³⁶, where the court underscored the finality of compromise decrees in establishing the rights of the parties involved.

²³⁶ *New Miraj Cafe v. Ramakaran*, MANU/AP/0195/1986.

Consent decrees play a crucial role in creating estoppel by judgment, which prevents further litigation on the same issue between the parties, thus providing a definitive end to the dispute. This not only conserves judicial resources by avoiding prolonged litigation but also promotes harmony and peace between the parties, as they have mutually agreed upon the resolution. In summary, consent decrees are valuable judicial tools that facilitate efficient dispute resolution and uphold the rights and agreements of the litigants involved.

WHEN CAN A CONSENT DECREE BE INTERFERED WITH?

In *Gurdev Kaur and others v. Mehar Singh and others*²³⁷, 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*.²³⁸

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 (*Gupta Steel Industries v. Jolly Steel Industries Pvt. Ltd*²³⁹; *Suvaran Rajarambandekar v. Narayan R. Bandekar*²⁴⁰).

However, in some 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 (*Gurcharan Singh v. Angrez Kaur*).²⁴¹

APPEAL AGAINST CONSENT DECREES

Section 96(3) of the Code of Civil Procedure explicitly bars appeals against decrees passed by the court with the consent of the parties. In the case of *Kishun alias Ram Kishun (dead)*

²³⁷ *Gurdev Kaur and Others v. Mehar Singh and Others*, AIR 1989 P&H 324.

²³⁸ *Bhoop Singh v. Ram Singh Major and others*, 3 RRR 541 (SC).

²³⁹ *Gupta Steel Industries v. Jolly Steel Industries Pvt. Ltd*, (1996) 11 SCC 678.

²⁴⁰ *Suvaran Rajarambandekar v. Narayan R. Bandekar*, (1996) 10 SCC 255.

²⁴¹ *Gurcharan Singh v. Angrez Kaur*, 2020(2) RCR (Civil) 696.

through *L.Rs. v. Behar (dead)*,²⁴² the Supreme Court addressed the maintainability of appeals against consent decrees in light of Section 96(3). The Court clarified that when a compromise is disputed by one party and the court must adjudicate whether a compromise exists before passing a decree, such a decree is not considered a decree by consent under Section 96(3). Only decrees genuinely based on mutual consent are non-appealable.

For a decree to be non-appealable under Section 96(3), the compromise must be unambiguously accepted by the court and formalized into a decree. If the court rejects the compromise and proceeds to pass a decree on merits, this decree becomes appealable, barring exceptions under Section 96(3). The Supreme Court in *H.S. Goutham v. Rama Murthy*²⁴³ emphasized that Section 96(3) prevents appeals from consent decrees but also highlighted that Order XXIII Rule 3A bars suits to set aside consent decrees obtained unlawfully. Therefore, appeals against consent decrees obtained by unlawful means are permissible.

The Supreme Court in *Banwari Lal v. Chando Devi*²⁴⁴ further elaborated that a consent decree can be appealed on the grounds of unlawful procurement, such as fraud or misrepresentation. However, the appeal is barred under Section 96(3) if the circumstances or facts of the consent decree are not in question. This distinction ensures that while genuine consent decrees remain final, those obtained through wrongful means can still be challenged, preserving the integrity of judicial proceedings and the fairness of the legal process.

RECALL OF CONSENT DECREE

A consent decree can be recalled if it is found to be fraudulent or collusive. An application for the recall can be filed in the court that granted the decree, under Order XXIII Rule 3 read with Section 151 of the CPC. The Court in exercise of its inherent power may rectify the consent decree to ensure that it is free from clerical or arithmetical errors so as to bring it in conformity with the terms of the compromise. Undoubtedly, the Court can entertain an Application under Section 151 of the CPC for alterations/modification of the consent decree if the same is vitiated by fraud, misrepresentation, or misunderstanding but, a consent decree cannot be modified/ altered unless the mistake is a patent or obvious mistake.²⁴⁵

²⁴² *Kishun alias Ram Kishun (dead) through L.Rs. v. Behar (dead)*, (2005) 6 SCC 300.

²⁴³ *H.S. Goutham v. Rama Murthy* 2021 SCC Online SC 87.

²⁴⁴ *Banwari Lal v. Chando Devi* AIR 1993 SC 1139.

²⁴⁵ *Ajanta LLP v. Casio Keisanki Kabushiki Kaisha d/b/a Casio Computer Co. Ltd.*, 2022 SCC Online SC 148.

PROCEDURE TO RECALL OF CONSENT DECREE

In the case of *Sree Surya Developers and Promoters Vs. N. Sailesh Prasad and Ors*²⁴⁶, the Supreme Court outlined the procedure for recalling a consent decree. The Court stated that if a party is aggrieved by a consent decree, they must file an appropriate application before the court that issued the decree. This application should be made under Order XXIII Rule 3A of the CPC.

According to the Court, the application to set aside the compromise decree must be decided and disposed of in accordance with the law. This involves a thorough examination by the concerned court of all defenses and contentions related to the validity of the compromise decree. The court will review the application on its own merits and in accordance with legal principles to determine whether the decree should be set aside. This ensures that all aspects of the case are considered, and the rights and objections of the parties are duly addressed.

RECALL AND INTERVENTION IN THE EXECUTION OF CONSENT DECREES

If an execution case has been filed in relation to a consent decree, the decree can still be recalled under certain circumstances. The courts have limited powers to intervene in the execution of a consent decree, primarily when the decree has been obtained through fraud, misrepresentation, or other unlawful means. This principle was affirmed in *Ajanta LLP Vs. Casio Keisanki*²⁴⁷, where the court highlighted that intervention is permissible in cases where the consent decree was secured improperly.

In *Indian Bank v. Satyam Fibres (India) Pvt. Ltd*²⁴⁸, the Supreme Court further elucidated that fraud undermines the integrity and regularity of judicial proceedings, constituting an abuse of the court's process. Consequently, courts possess inherent power to set aside orders obtained by fraudulent means. This inherent power allows the court to recall its order if it was misled by a party or if a mistake by the court prejudices a party. Thus, even if an execution case is pending, a consent decree can be recalled if it is proven that the decree was

²⁴⁶ *Sree Surya Developers and Promoters Vs. N. Sailesh Prasad and Ors*, 2022 SCC Online SC 165.

²⁴⁷ *Ajanta LLP Vs. Casio Keisanki*, [2022] SC 4.

²⁴⁸ *Indian Bank v. Satyam Fibres (India) Pvt. Ltd*, (1996) INSC 861.

obtained through fraudulent or deceptive practices. The aggrieved party must file an application under Order XXIII Rule 3A of the CPC to set aside the compromise decree, and the concerned court will review and decide the application based on its merits and in accordance with the law.

MAINTAINABILITY OF SEPARATE SUIT CHALLENGING CONSENT DECREE

The Supreme Court of India in the case of *Sree Surya Developers and Promoters vs N. Sailesh Prasad* has indeed held that a separate suit challenging a consent decree is not maintainable. The proper course for a party challenging the validity of a consent decree is to approach the same court that recorded the compromise. In this case, the defendant filed an application under Order VII Rule 11 of the CPC for the rejection of the plaint, arguing that a suit to set aside a consent decree would be barred under Order XXIII Rule 3A of the CPC. The Trial Court accepted this argument and rejected the plaint. However, on appeal, the High Court quashed the Trial Court's order and remanded the matter for reconsideration, noting that the provisions of Order XXXII Rules 1 to 7 CPC, which could impact the validity of the Compromise Decree, had not been considered. This decision underscores that the appropriate remedy for challenging a consent decree is to move the same court that issued the decree rather than filing a separate suit.

SUGGESTIONS

To ensure the fair and efficient use of consent decrees, it is crucial that courts thoroughly examine the terms of the compromise for any signs of fraud, misrepresentation, or coercion before formalizing them. Parties should be clearly informed about their rights and the implications of the decree to avoid future disputes. Additionally, the legal framework should allow for easy rectification of clerical errors and provide a straightforward process for parties to challenge decrees obtained through unlawful means. Encouraging transparency and providing clear guidelines for setting aside compromised decrees can help maintain the integrity and effectiveness of this dispute resolution tool.

CONCLUSION

The underlying object of a consent decree is to allow a party to quickly obtain judgment on admitted claims while any disputed claims in the suit are still pending. A decree can only be

issued for claims that are clearly, unequivocally, and unambiguously admitted. There is no specific form required for these admissions; they can be in pleadings or otherwise, in writing or even oral. Once the court recognizes and affirms these admissions in the form of a decree, the decree holds the same force as any other decree obtained after a contest.

Despite the binding effect and the application of the principle of estoppel against the parties in consent decrees, these decrees can be as easily challenged as they are consented to. In cases like *Gupta Steel Industries v. Jolly Steel Industries Pvt. Ltd* and *Survarn Rajaram Bandekar v. Narayan R. Bandekar*. It has been consistently held that courts would be slow to interfere, modify, substitute, or modulate the terms of a consent decree without the revised consent of all parties involved. Amendments and judicial interpretations have significantly reduced the opportunities for misuse of consent decrees. Furthermore, the scope for appeals and further litigation is also reduced in cases involving compromise/consent decrees, providing relief for litigating parties seeking to end disputes conclusively.

