(2009) 12 AP CK 0036

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10318 of 2009

Batchu Subba Lakshmi and Others — APPELLANT

Vs

Sannidhi Srinivasulu and Others — RESPONDENT

Date of Decision : 08-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 97, Order 21 Rule 99, 151
Constitution of India, 1950 — Article 226, 226(1), 227
Legal Services Authorities Act, 1987 — Section 19, 20, 20(3), 20(5), 21(1)
Specific Relief Act, 1963 — Section 34

Citation : (2010) 1 ALT 483

Hon'ble Judges : V.V.S. Rao, J;B.N. Rao Nalla, J

Bench : Division Bench

Advocate : P. Veera Reddy, for the Appellant; T. Niranjan Reddy, for Respondents 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—Lok Adalat, Nandyal, Kurnool District, passed order/award dated 07.2.2004 in the matter of O.S. No. 1 of 2004 in terms of the compromise and settlement among respondents 1, 2 and 4, who at the relevant time, are partners of third respondent firm. The petitioners who are not parties either to the suit or to the award passed by Lok Adalat filed instant writ petition after lapse of about five years challenging the same. This Court initially granted interim orders staying execution proceedings and when respondents 1 and 2 moved application to vacate interim orders, with the consent of rival parties, the matter is heard and is being disposed of finally.

Petitioners'' case

2. The case of petitioners as alleged in the affidavit accompanying writ petition is as follows. Third respondent firm was constituted on 29.6.1997 with respondents 1, 2 and 4 as its partners. The said partnership was reconstituted with effect from 01.4.2003 when respondents 1 and 2 withdrew from the firm and

petitioners were taken as partners with fourth respondent as Managing Partner. The firm obtained lease of a vacant site situated at street No. 21, on a monthly rent of Rs. 6,760/- for the purpose of stockyard. The said site belongs to first respondent and his brothers. On 03.5.2008 respondents 1 and 2 produced proceedings in E.P. No. 1 of 2008 of the Court of III Additional District Judge, Nandyal, seeking delivery of possession of said site. On enquiries, petitioners came to know that Lok Adalat passed award on 07.2.2004, that without authority fourth respondent entered into compromise agreeing to vacate the stockyard by 31.3.2008 and Lok Adalat award is for dissolution of firm and rendition of accounts. Petitioners then filed an application being E.A. No. 25 of 2008 under Order XXI Rules 97 and 99 and Section 151 of Code of Civil Procedure, 1908 (CPC), for setting aside the award of Lok Adalat in O.S. No. 1 of 2004. The Court of Additional District Judge dismissed the application on 30.4.2009 holding that such an application is not maintainable and that petitioners have to challenge the award by filing writ petition. Therefore the writ petition is filed seeking a writ of Mandamus declaring the award dated 07.2.2004 passed by the Lok Adalat, Nandyal, as unjustified, contrary to law and unconstitutional and consequently to set aside the same.

Respondents'' case

3. The case of respondents 1 and 2 is as follows. When the award passed by Legal Services Committee under Legal Services Authorities Act, 1987 (the Act, for brevity) is final and binding, the same cannot be challenged by third parties by way of writ petition. The petitioners 1 to 3 and fourth respondent are living under one roof and they are acting in concert to deny the benefit of award to respondents 1 and 2. Petitioners suppressed material facts and made misleading statements and therefore they are not entitled for discretionary relief under Article 226 of Constitution of India.

4. First petitioner is step mother of fourth respondent and second petitioner is his wife and third petitioner is grandfather of fourth respondent. Second respondent is wife of first respondent and first petitioner is also sister of first respondent. Thus petitioners and fourth respondent are closely related, third respondent was constituted on 29.6.1997 with respondents 1, 2 and 4 as partners for the purpose of doing business in iron and hardware. The first respondent and his two brothers, Venkata Seshaiah and Bala Subrahmanyam, are owners of stockyard land, which was leased out to third respondent. When fourth respondent failed to show the accounts properly, respondents 1 and 2 filed O.S. No. 1 of 2004 for dissolution of firm. Fourth respondent then agreed for amicable settlement. The matter was referred to Lok Adalat, Nandyal, on 07.2.2004. Respondents 1 and 2 agreeing to retire from the firm signed Form V under Andhra Pradesh Partnership (Registration of Firms) Rules, 1951, and on the same day, the compromise decree was passed by the Lok Adalat. Under the compromise, fourth respondent was permitted to continue business of third respondent in the vacant site till 31.3.2008.

5. In view of the close relationship of fourth respondent with first respondent and his brothers, first respondent was permitted to carry on the business till 31.3.2008 in the same stockyard on condition that the same should be handed over after expiry of the time. In the mean time, petitioners entered as partners of third respondent whose business is flourishing. As their business grew in stockyard, they hatched a plan to dishonour the award and when possession was to be taken, writ petition was filed making false and frivolous allegations. The date 01.4.2003 was entered on stamp papers purchased in the name of the firm in 2001. Fourth respondent made alterations in Form V saying that dissolution is with effect from 31.3.2003 and till the date of passing of the award, respondents 1 and 2 are continuing business and at no point of time, petitioners were concerned with the business of third respondent firm. Petitioners having availed remedy by filing E.A. No. 25 of 2008 cannot question the Lok Adalat award by filing writ petition. The answering respondents obtained certificate from the District Registrar on 08.6.2009 according to which third respondent is not registered from 01.1.2003 to 30.4.2004. To the same effect Assistant Commercial Tax Officer also issued certificate stating that answering respondents continued as partners from 01.4.2003 to 31.3.2004. Answering respondents are not parties to partnership agreement dated 01.4.2003. The petitioners have no locus standi to question the Lok Adalat award or arrangement made for vacating the premises. Petitioners never produced the documents, which are produced before this Court.

6. Learned Counsel for petitioners and learned Counsel for respondents reiterated their clients'' position and also referred decided cases. In the background of the case, counter case and rival submissions, the only point that falls for consideration is whether the impugned award of Lok Adalat dated 07.2.2004 in O.S. No. 1 of 2004 is vitiated by any illegality, fraud or impropriety.

Whether writ petition lies

7. u/s 21(1) of the Act an award of Lok Adalat shall be deemed to be decree of a Civil Court and u/s 21(2) of the Act every award made by Lok Adalat shall be final and binding on all the parties. No appeal shall lie to any Court against the award, and therefore, ordinarily a writ petition challenging award is also barred. But there may be situations where there being no compromise or settlement as envisaged u/s 20(3) and (5) of the Act, Lok Adalat may have passed an award. In other words, what would be the position if Lok Adalat passes an order even without parties arriving at a compromise or settlement among themselves. In such a situation, it cannot be said that there is an award of Lok Adalat, which can be enforced by a Civil Court as a decree. There may be yet another situation where in the absence of the parties to the lis or in the absence of one of the parties to the lis, award of Lok Adalat may have been obtained by impersonation, misrepresentation or fraud. Even in such cases, there being no valid award, Section 21(1) of the Act is not attracted. Having regard to the language of Article 226(1) of Constitution of India, which empowers the High Court of a State to

issue writs, orders or directions against any public authority or against authorities discharging public functions, the High Court can entertain a writ petition against an award of Lok Adalat. The phrase "for any other purpose" appearing in Article 226(1) of Constitution, in our opinion, is broad enough to take within its purview the situations where a statute contains "no Certiorari clause". It is well settled that "no Certiorari clause" in a statute does not bar the Constitutional Court from entertaining a petition for redressal of grievance and issue an appropriate order ex debito justitiae. Therefore, in either of the situations or any such other situations, a writ petition would lie.

Who can file writ petition challenging the Lok Adalat Award

8. The parties to the compromise or settlement, which is the basis for award of Lok Adalat, no doubt entitled to challenge the award on any of the grounds referred to herein above grounds. Ordinarily, a third party cannot challenge the award in a writ petition even if such award causes prejudice. The remedy of such party would be to institute a separate suit or proceeding for necessary redressal and seek appropriate decree of declaration by filing a suit within the period of limitation prescribed under law. u/s 34 of the Specific Relief Act, 1963, any person entitled to legal character or any right as to any property, may file a suit for declaration. Under this provision, any person can even institute a suit for declaration that the decree passed by Civil Court in an earlier suit is not binding on him. When a civil Court can even declare that an earlier decree of the Court is not binding on the party before it, we do not see any objection for a third party to institute a suit in a civil Court seeking a declaration that the award of Lok Adalat is not binding on him/her subject to the law of limitation. We however hasten to add that there may be extraordinary cases where a third party is meted with injustice at the behest of two or more conniving and colluding parties, who may have obtained an award of Lok Adalat by fraud or misrepresentation only to defeat the rights of such third party. In such cases within a reasonable period such third party may maintain a writ petition. But in such cases, there should be prima facie evidence of fraud or misrepresentation or collusion in obtaining the award of Lok Adalat. Even if such allegations are made and the question involves complicated questions of fact requiring voluminous evidence, third party should be left to seek remedy in a civil Court rather than preferring extraordinary remedy under Article 226 of Constitution.

What are grounds of challenge

9. Insofar as legal position that the Lok Adalat cannot pass award unless and until there is a compromise and settlement u/s 20(3) and (5) of the Act between the parties, is well settled. In State of Punjab and Others Vs. Shri Ganpat Raj, , respondent moved Punjab and Haryana High Court by filing writ petition seeking writ of Mandamus to the State to pay interest at 18% per annum on the delayed payment of pension arrears and other retiral benefits. The case was sent to Lok Adalat, which passed award without any settlement or compromise between the pensioner and the State. The writ petition filed by the State was dismissed as

misconceived. In the Supreme Court, it was submitted that the matter could not have been disposed of by Lok Adalat in view of the specific provisions contained in Section 20 of the Act. While allowing the appeal, the matter was remitted to High Court for de novo consideration. The purport of Section 20(3) and (5) of the Act is explained by Supreme Court in the following words.

The specific language used in Sub-section (3) of Section 20 makes it clear that the Lok Adalat can dispose of a matter by way of a compromise or settlement between the parties. Two crucial terms in Sub-sections (3) and (5) of Section 20 are "compromise" and "settlement". The former expression means settlement of differences by mutual concessions. It is an agreement reached by adjustment of conflicting or opposing claims by reciprocal modification of demands. As per Tertnes de la Ley, "compromise is a mutual promise of two or more parties that are at controversy". As per Bouvier it is "an agreement between two or more persons, who, to avoid a law suit, amicably settle their differences, on such terms as they can agree upon". The word "compromise" implies some element of accommodation on each side. It is not apt to describe total surrender. (See NFU Development Trust Ltd., Re (2) (1973) 1 All ER 135 : (1972) 1 WLR 1548 (Ch D)). A compromise is always bilateral and means mutual adjustment. "Settlement" is termination of legal proceedings by mutual consent.

10. In Union of India (UOI) and Another Vs. Satyanarayana Construction Company, , the wife and son of Amarjit Kaur, who died in a motor accident, filed petition before the Motor Accidents Claims Tribunal (MACT) claiming Rs. 5,00,000/- as compensation. An award was passed by MACT on 01.12.1998 for Rs. 1,44,000/-. The claimants filed appeal before High Court, which was referred to High Court Lok Adalat for settlement. On 03.8.2001, Lok Adalat passed an order awarding Rs. 1,70,200/- observing that if the parties have any objection to the order proposed, they may move the High Court for disposal of appeal on merits. Aggrieved by the same, Punjab Roadways filed application before the High Court to set aside the Lok Adalat award. A learned Single Judge rejected the same placing reliance on earlier judgment of another learned Single Judge wherein it had been held that an order passed by Lok Adalat can be challenged by filing a petition under Article 227 of Constitution of India. Therefore, another petition was moved under Article 227 of Constitution challenging the order of Lok Adalat. The same was rejected by learned Single Judge on the ground that such a petition is not maintainable under Article 227 of Constitution. The Supreme Court while reversing the award and remanding the matter to High Court laid down as under.

It is true that where an award is made by the Lok Adalat in terms of a settlement arrived at between the parties (which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court, and no appeal lies against it to any court. If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and/or Article 227 of the Constitution, that too on very limited grounds. But where no compromise or settlement is signed by the parties and the order of the Lok Adalat does not refer to any settlement, but directs the respondent to either make payment if it agrees to the order, or approach the High Court for disposal of appeal on merits, if it does not agree, is not an award of the Lok Adalat. The question of challenging such an order in a petition under Article 227 does not arise. As already noticed, in such a situation, the High Court ought to have heard and disposed of the appeal on merits.

11. Dealing with the provisions of the Act especially Sections 19 and 20, their Lordships observed as under.

It is evident from the said provisions that the Lok Adalats have no adjudicatory or judicial functions. Their functions relate purely to conciliation. A Lok Adalat determines a reference on the basis of a compromise or settlement between the parties at its instance, and puts its seal of confirmation by making an award in terms of the compromise or settlement. When the Lok Adalat is not able to arrive at a settlement or compromise, no award is made and the case record is returned to the court from which the reference was received, for disposal in accordance with law. No Lok Adalat has the power to "hear" parties to adjudicate cases as a court does. It discusses the subject-matter with the parties and persuades them to arrive at a just settlement. In their conciliatory role, the Lok Adalats are guided by the principles of justice, equity and fair play. When the LSA Act refers to "determination" by the Lok Adalat and "award" by the Lok Adalat, the said Act does not contemplate nor require an adjudicatory judicial determination, but a non-adjudicatory determination based on a compromise or settlement, arrived at by the parties, with guidance and assistance from the Lok Adalat. The "award" of the Lok Adalat does not mean any independent verdict or opinion arrived at by any decision making process. The making of the award is merely an administrative act of incorporating the terms of settlement or compromise agreed by parties in the presence of the Lok Adalat, in the form of an executable order under the signature and seal of the Lok Adalat.

(emphasis supplied)

12. From the above judgments, it may be taken as well settled that the award of Lok Adalat is administrative act of incorporating the terms of compromise or settlement agreed by the parties in the presence of Lok Adalat and Lok Adalat does not sit in adjudication of the dispute. When an award is passed in terms of the settlement arrived between the parties, which is duly signed by the parties annexed to the award of Lok Adalat, it becomes binding on the parties to the settlement and becomes executable as if it is a decree of Civil Court. No appeal would lie against the award of Lok Adalat and if any party wants to challenge such an award, it can be by way of petition under Article 226 or 227 of Constitution. If there is no compromise or settlement between the parties before the Lok Adalat, it cannot pass any award nor such award can bind the parties. The challenge to the award of Lok Adalat under Article 226 of Constitution can be

entertained on very limited grounds raised only by parties to the settlement/ compromise before Lok Adalat and not by anybody else.

Findings and reasons therefor

13. Reverting to the facts of this case, there is no dispute that respondents 1, 2 and 4 are partners in 3rd respondent firm. There is also no dispute that respondents 1 and 2 filed O.S. No. 1 of 2004 against third respondent and its Managing Partner, the fourth respondent, for dissolution of firm and rendition of accounts. On 07.2.2004, plaintiffs and defendants therein signed memorandum of compromise and settlement whereunder they agreed to withdraw from the firm and fourth respondent was permitted to continue the business till 31.3.2008, failing which it shall be open to first respondent to execute the decree and recover possession of vacant site used as stockyard for the business of third respondent. The award passed by Lok Adalat on 07.2.2004 was signed by respondents 1 and 2. Fourth respondent signed on his behalf and also on behalf of third respondent firm. Either on the date of award of Lok Adalat or during pendency of suit before District Court, Nandyal, allegation of reconstitution of third respondent firm with petitioners and fourth respondent as new partners was not revealed. There is also no dispute nor it can be denied that partnership deed dated 01.4.2003 was executed by petitioners and fourth respondent on the stamp papers which had been produced (sic. purchased) by third respondent firm on 27.3.2001 long prior to disputes arose among respondents 1 to 4. This creates any amount of doubt on the case put up by petitioners. This doubt becomes strong when we realised that the petitioners 1 to 3 are stepmother, wife and grandfather respectively of fourth respondent and they are all living under the same roof. The allegation made by respondents 1 and 2 in their counter affidavit remains uncontroverted. These lend support to the submissions made on behalf of respondents 1 and 2 and we do not see strong reasons to discredit those submissions.

14. Learned Counsel for respondents 1 and 2 submits that Form V was interpolated by fourth respondent by inserting that the firm has been dissolved with effect from 31.3.2003. According to them, the date has been interpolated. When the said Form V was signed on 07.2.2004 by respondents 1 and 2, it is quite improbable that they would have agreed for dissolution of third respondent with effect from 31.3.2003 or they would have agreed for reconstitution of firm with petitioners as new partners. Respondents obtained certificate from the District Registrar, Kurnool, on 08.6.2009 as well as from Assistant Commercial Tax Officer, Nandyal, on 17.7.2008. Both these documents show that third respondent continued its business as firm from 01.4.2003 to 31.3.2004 with respondents 1, 2 and 4 as partners and names of petitioners are not found. Furthermore, as rightly pointed out by learned Counsel for respondents 1 and 2, his clients are not parties to the partnership dated 01.4.2003. When the firm is reconstituted with effect from 01.4.2003 duly dissolving partnership firm under deed dated 29.6.1997 and the said factum is found mentioned in Form V as

alleged by petitioners, it is highly improbable that respondents 1 and 2 would not have been signatories to the partnership deed on 01.4.2003 set up by petitioners. These facts not only improbablise the case of petitioners but falsifying their case. We are convinced after considering the totality of circumstances and facts of the case that on 07.2.2004, respondents 1 and 2 and fourth respondent continued to be partners of third respondent firm and all of them agreed for the compromise/settlement based on which Lok Adalat passed, award on 07.2.2004. Fourth respondent under the award of Lok Adalat was permitted to continue business upto 31.3.2004 and hand over possession of the land used as stockyard. When he failed to do so, respondents 1 and 2 instituted E.A. No. 25 of 2008 (sic. E.P. No. 1 of 2008) for delivery of possession. The fourth respondent herein was very much party to E.A. (sic. EP) Curiously fourth respondent either on his behalf or on behalf of third respondent firm did not file counter opposing petitioners'' application (sic. the said EP). When the E.A. (No.25 of 2008 filed by petitioners) was dismissed by the Court below, present writ petition is filed on 18.5.2009. In effect, petitioners seek to challenge the award passed half-a-decade ago. If such writ petitions are entertained at the instance of persons like the petitioners, the very spirit of the Act and opportunity to settle disputes before Lok Adalat would be defeated. The writ petition is misconceived.

15. For the above reasons, the writ petition is dismissed with costs.

