

(2012) 11 AP CK 0028

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22717 of 2011

Chaluvadi Murali Krishna and Another

APPELLANT

Vs

District Legal Service Authority, Prakasam District, Ongole
and Others

RESPONDENT

Date of Decision : 15-11-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 37, 38, 39
Legal Services Authorities Act, 1987 — Section 19, 19(5), 19(5)(i), 19(5)(ii), 20
Penal Code, 1860 (IPC) — Section 323, 453, 506, 509
Specific Relief Act, 1963 — Section 34

Citation : AIR 2013 AP 41 : (2013) 1 ALD 320 : (2013) 2 ALT 10 : (2013) 2
ARBLR 401

Hon'ble Judges : V. Eswaraiah, J; Noushad Ali, J

Bench : Division Bench

Advocate : P.V. Krishnaiah and Sri Kotagiri Sreedhar, for the Appellant; T.
Sreedhar, Counsel for Respondent Nos. 2 to 14, for the Respondent

Final Decision : Dismissed

Judgement

Noushad Ali

1. Award passed by the District Legal Services Authority, Prakasam District, the 1st respondent herein, dated 18.05.2011 in PLC No. 657/2011 in Lok Adalat Case No. 870/2011, resolving the dispute based on the compromise arrived at between the petitioners and respondents 2 and 3 herein, is under challenge in this writ petition. Several cases are coming up before this Court invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India challenging the awards passed by Lok Adalats, though the awards are passed pursuant to the compromise between the parties. In most of the cases the parties are alleging that the awards were thrust on them against their willingness or that awards are obtained by the opposite parties by fraud and coercion. Allegations to the said effect are often made without there being any basis. The parties hardly realize that fraud and coercion are the elements which

shall have to be established on the basis of acceptable evidence adduced by the parties in a competent Court of law and the High Court while exercising its power of judicial review under Article 226 of the Constitution does not act as a trial Court or as an appellate Court and review the orders on the mere assertions of a party, however strong they are, and therefore cannot upset the Lok Adalat awards in a routine manner and frustrate the very purpose of the Legal Services Authorities Act. Therefore, we propose to broadly traverse the salient features of the Act and the limitation in maintaining a writ petition against an award of a Lok Adalat.

2. Lok Adalats are constituted as an impetus to the Constitutional Philosophy contained in the Directive Principles of State Policy. The Directive Principles in Part-IV of the Constitution of India contained in Articles 37 to 51-A are declared to be fundamental in the governance of the country and a duty is enjoined upon the State to ensure the operation of the legal system to promote justice on the basis of equal opportunity by providing free Legal Aid, by suitable legislation or schemes or in any other way to ensure that opportunities or securing justice are not denied to any citizen by reason of economic or other disabilities. It is on the touchstone of this principle of governance, Legal Services Authorities Act, 1987 has been enacted. Statutory Authorities are constituted under the Act at the National, State and District level so as to provide for the effective monitoring of Legal Aid Programmes and to supervise the effective implementation of the Legal Aid Schemes. The Statutory support to the Lok Adalats given under the Act would not only reduce the burden of arrears of work in regular Courts, but would also take justice to the doorsteps of the poor and the needy and make justice quicker and less expensive.

3. In order to sustain the credibility of the Authorities, highest Constitutional and Judicial Functionaries are entrusted with the functions under the Act. At the National level, Central Authority is constituted consisting of the Chief Justice of India as the Patron-in-Chief and a serving or retired Judge of the Supreme Court to be nominated by the President of India in consultation with the Chief Justice of India as the Executive Chairman, and other Members possessing the prescribed qualifications to be nominated by the Government of India in consultation with the Chief Justice of India. Similarly, a State Authority is constituted by the Chief Justice of the High Court as the Patron-in-Chief and a serving or retired Judge of the High Court to be nominated by the Governor in consultation with the Chief Justice of the High Court as the Executive Chairman, and other Members possessing the prescribed qualifications to be nominated by the State Government in consultation with the Chief Justice of the High Court. Similarly, a District Legal Services Authority is constituted at the District level with the District Judge as its Chairman and other Members with the prescribed qualifications to be nominated by the State Government in consultation with the Chief Justice of the High Court. Legal Services Committees are constituted at the Supreme Court level, High Court level, District level and Taluk level to perform the assigned functions. The composition of the Legal Services Authorities

consisting of the highest Constitutional and Judicial Functionaries is aimed at inducing confidence in the litigant public and to ensure their cooperation for the settlement of disputes without recourse to the expensive and time consuming litigation in the regular Courts. The Act does not compel an unwilling litigant to invoke the remedies under the Act.

4. u/s 19 of the Act, a Lok Adalat assumes jurisdiction in any case, whether pending or not before any Court for which the Lok Adalat is organized, except in a case or matter relating to a non-compoundable offence under any law. u/s 20, Cognizance of a case relating to a pending matter in a Court can be taken by the Lok Adalat in any case referred to it where one of the parties thereof makes an application to the Court for referring the case to the Lok Adalat for settlement or by the Court itself on its satisfaction as to the prima-facie chances of settlement or the appropriateness of the matter for being taken cognizance of by the Lok Adalat. Similarly anyone of the parties to a matter not falling within the jurisdiction of, and is not brought before any Court, may make an application to the Authority or Committee organizing the Lok Adalat and refer the same to the Lok Adalat for determination, in both situations, after giving a reasonable opportunity of being heard to the parties. u/s 21, an award so passed is final and binding on all the parties to the dispute and no appeal shall be to any Court against the award.

5. Lok Adalat Award is not a result of a contest on merits just as a regular suit by a court. On all force, the endeavour is only to see that the disputes are narrowed down and make the final settlement so that the parties are not again driven to further litigation. Though the award of a Lok Adalat is not a result of a contest on merit, it is equal and on par with a decree on compromise and will have the same binding effect and be conclusive. Just as a compromise decree cannot be challenged in a regular appeal, the award of the Lok Adalat, being akin to the same, cannot be challenged by any regular remedies available under law, including by invoking Article 226 of the constitution of India and challenging the correctness of the award on any ground P.T. Thomas Vs. Thomas Job,

6. Award of the Lok Adalat does not mean any independent verdict or opinion arrived at by any decision making process. The making of award is merely an administrative act of incorporating the terms of settlement or compromise agreed upon by the parties in the presence of Lok Adalat in the form of an executable order under the seal and signature of K.N. Govindan Kutty Menon Vs. C.D. Shaji,

7. Thus a party having settled the matter in Lok Adalat and obtained an Award on compromise is not entitled to resile from the same. The award attains finality as regards the dispute between the parties and binds them all. A judgment by consent or default is as effective an estoppel on the parties as a judgment whereby the Court exercises its mind on a contested case State of Punjab and Another Vs. Jalour Singh and Others,

8. From a combined reading of Sections 19, 20 and 21 of the Act, it is clear that an award made by a Lok Adalat on compromise is final and binding on the parties to the dispute and it is not permissible for the parties to resile from the compromise. Hence, award of the Lok Adalat cannot be challenged by invoking the remedy under Article 226 or 227 of the Constitution of India.

9. There may be exceptional cases where an award was passed by a Lok Adalat without jurisdiction or without a compromise between the parties. Similarly there may be cases wherein award may have been obtained by impersonation, fraud etc. In all such exceptional cases a writ under Article 226 or 227 may lie to the High Court, provided they are clinchingly unequivocally proved on the basis of material placed before the Court. There may be yet another situation where an award may have been obtained by connivance, defeating the rights of a third party, in such cases also a writ would lie, provided however, there is prima facie, evidence of collusion, fraud and misrepresentation. Even in such cases, if the question involves complicating issues requiring evidence, a writ cannot be an appropriate remedy. In all the aforesaid situations wherein allegations of fraud, misrepresentation, coercion etc. are made, remedy of such parties would be to initiate a separate suit within the period of limitation for declaration u/s 34 of the Specific Relief Act, 1963. (Batchu Subba Lakshmi and Others Vs. Sannidhi Srinivasulu and Others,

10. Coming to the instant cast, the Parties to the dispute are closely related. The petitioners are the husband and wife. Petitioner No. 2 is the eldest daughter of respondents 2 and 3 (parents-in-law of petitioner No. 1). Respondents 6 and 8 are two other daughters of respondents 2 and 3, who were given in marriage to respondents 5 and 7. Respondents 5 and 7 are own brothers.

11. According to the material averments in the affidavit filed in support of the writ petition, the firm, viz., M/s. Sri Balaji Electricals and Sanitary ware belonged to respondents 2 and 3. Petitioner No. 1 took up the management of the firm allegedly when the business was in doldrums on the proposal of the 2nd respondent from June/July 2009. The 5th respondent was assisting in the business in the first instance, later respondents 2 and 3 apportioned 25% share in the business in the name of petitioner No. 1 and 20% share in the name of 2nd petitioner. Similarly, respondents 5 and 6 were also given a share in the same proportion and the remaining share of 10% was retained by respondents 2 and 3. Accordingly a partnership deed was registered in the office of the Registrar of Firms vide registration No. 22/2009 dated 5.07.2010. Thus the 1st petitioner and respondent No. 5 became the managing partners and respondents 2, 3, 5 and 6 became the partners of the firm.

12. The further writ averments are that misunderstandings arose between the parties after the marriage of the youngest daughter i.e., the 8th respondent herein, with respondent No. 7. With a view to gain control over the business of the firm, respondents 5 and 7, who are brothers, started creating an impression that petitioner No. 1 was not running the business to its potentiality with a mala

fide intention to gain control over the business firm. In these circumstances, respondents 2, 5, 6 and 8 colluded with other family members and started making baseless allegations to the effect that petitioner No. 1 was harassing the 2nd petitioner and demanding more money. Respondent No. 2 started asserting that the entire business belonged to him and he and the 5th respondent started collecting the dues payable by the creditors of the firm for their personal use, and making petitioner No. 1 alone responsible for the liabilities of the firm. As a consequence, the business responsibility was fully on the shoulders of petitioner No. 1 and unable to answer the creditors, he closed the shop on 11.05.2011 and 12.05.2011. At that stage, respondents 2 and 3 approached the Additional S.P., Ongole on 11.05.2011 and made a complaint as if the 1st petitioner has assaulted them and harassing the 2nd petitioner demanding additional dowry and that he was taking steps to stop the marriage of their youngest daughter-8th respondent herein and trespassed into their house. On the basis of the said complaint a crime was registered by the 15th respondent in Crime No. 98/2011 dated 11.05.2011 for the offences under Sections 453, 323, 506 and 509 of I.P.C., in the I Town P.S. Ongole.

13. Allegedly on 16.05.2011 a home guard, viz., Babu Rao came to the business premises and broke open the shop and trespassed into the business premises. On being informed by the 2nd petitioner, the 16th respondent, who is a constable arrived at the scene, but he too threatened the family members. The 4th respondent herein, who is the father of the 2nd respondent herein also arrived at the scene and yielded threats to his family members and manhandled his own grand-daughter, i.e., petitioner No. 2 herein.

14. It is further alleged that on the basis of the police complaint given by respondents 2 and 3, the 15th respondent, viz., S.I. of Police, started interfering in the matter, allegedly after receiving a huge bribe, and pressurized him to return the business to respondents 2 and 3. The 1st petitioner therefore was advised by the 2nd petitioner to obey the directions of the 2nd respondent and the advise given by the police, particularly, the 15th respondent herein. Hence out of fear and intimidation and the threat of the 2nd respondent through police, the 1st petitioner obliged the directions and approached an advocate, and got a letter addressed to the District Legal Services Authority, the 1st respondent herein to the effect that he and his wife are willing to retire from the partnership and accordingly requested to pass an award. A letter was filed on 17.05.2011. Respondents 2 and 3 visited the Lok Adalat Court on 18.05.2011 and an award was passed on the same day. Respondents 2 and 3 filed another petition in another Court of Lok Adalat and got closed the criminal case F.I.R. No. 98 of 2011, which was filed against him.

15. Counter affidavit is filed by respondent No. 2, on his own behalf and on behalf of respondent Nos. 3 to 14, denying the aforesaid allegations. It is stated that the petitioners and respondent Nos. 2 and 3 volunteered for a settlement before the Lok Adalat and the Lok Adalat passed the award strictly in accordance

with law. The award is binding on the parties and the petitioners, who voluntarily invoked the jurisdiction of the authority, cannot be allowed to circumvent the same on the basis of false allegations. Petitioner No. 1 is unusually ambitious and a greedy person and succeeded in extracting money in the name of partnership and not satisfied with the same, he has challenged the award unscrupulously for more wrongful gain. The allegations made by the petitioners are false and the allegations, if entertained, would nullify the sanctity of the Lok Adalat. It is stated that the writ petition is filed only to settle personal scores against respondent Nos. 2 to 8 and to harass all the family members. Respondent Nos. 4 to 8 are impleaded unnecessarily though no relief is sought against them. Similarly, respondent No. 9, who is an employee of the firm, respondent Nos. 10 to 12 are having mere acquaintance and respondent Nos. 13 and 14, who are the relatives of respondent Nos. 2 and 3, are impleaded without any purpose. Petitioner No. 2 was made to suffer in the hands of petitioner No. 1 and demanded a share in the properties of respondent Nos. 2 and 3 threatening the future of petitioner No. 2 and after the marriage of respondent No. 6 with respondent No. 5, which was to the dislike of petitioner No. 1, he stepped up his torture against respondent Nos. 2 and 3 and unable to bear the same, respondent Nos. 2 and 3 had to retire from the business and parted with a bigger share to them. Petitioner No. 1 was against the marriage of respondent No. 8 with respondent No. 7. He was enraged after the marriage of respondent No. 8 with respondent No. 7. Unable to bear the harassment of petitioner No. 1, respondent Nos. 2 and 3 gave complaint to the Assistant Superintendent of Police on 9.5.2011 in inevitable circumstances. Though F.I.R. No. 98/2011 was registered, the police gently handled the case as it involved the future of petitioner No. 2. Some relatives and family friends counseled petitioner No. 1 and he thereupon demanded Rs. 35,00,000/- on the pretext that he wanted to settle his own business. Respondent Nos. 2 and 3 were constrained to agree the proposal to avoid complications and controversies. Pursuant thereto, he approached the Lok Adalat and the award was passed after brief negotiations and discussions. The business of the firm emanated out of the hard work and pain of respondent Nos. 2 and 4 for over 30 years and it had to be parted to petitioner No. 1 in tragic circumstances.

16. Sri Kotagiri Sreedhar, learned counsel for the petitioners urged two grounds in assailing the award. Firstly, he would contend that the Legal Services Authority is not competent to deal with a pre-litigation case. According to the learned counsel the Legal Services Authority has no power to entertain an application for settlement of dispute, unless the case has been referred by a Court.

17. Sri T. Sreedhar, learned counsel appearing for respondent Nos. 2 to 14 would refute the said contentions and urge that a pre-litigation case is perfectly maintainable.

18. In order to decide the said contention, it is useful to refer to the provisions of Sections 19 and 20 of the Legal Services Authorities Act, 1987, to the extent

relevant, which read as follows:

19. Organisation of Lok Adalats :--

(1) to (4)....

(5) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of-

(i) any case pending before; or

(ii) any matter which is falling within the jurisdiction of, and is not brought before, any court for which the Lok Adalat is organized:

Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.]

20. Cognizance of cases by Lok Adalats:--(1) Where in any case referred to in clause (i) of sub-section (5) of section 19-

(i) (a) the parties thereof agree; or

(b) one of the parties thereof makes an application to the court, for referring the case to the Lok Adalat for settlement and if such court is prima-facie satisfied that there are chances of such settlement; or

(ii) the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat, the court shall refer the case to the Lok Adalat:

Provided that no case shall be referred to the Lok Adalat under sub-clause (b) of clause (i) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties.

(2) Notwithstanding anything contained in any other law for the time being in force, the Authority or Committee organizing the Lok Adalat under sub-section (1) of section 19 may, on receipt of an application from any one of the parties to any matter referred to in clause (ii) of sub-section (5) of section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination:

Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.

(3) Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

19. A reading of Section 19(5) makes it clear that a Lok Adalat is competent to deal with the dispute in two situations (i) any case pending before any Court; and (ii) any matter, which is falling within the jurisdiction of a Court and is not brought before it. These two situations are different, one relates to a case

pending before a Court; and the other where there is no case pending in any Court. In both the situations, Lok Adalat has jurisdiction to determine the dispute; and arrive at a settlement.

20. Similarly, Section 20 of the Act provides that Lok Adalat can take cognizance of a case in two different situations, in one situation it can take cognizance of any case referred to u/s 19(5)(i) of the Act and in relation to a pending matter on an application made by one of the parties to the dispute; and the other, the Lok Adalat can entertain an application from one of the parties to a dispute referred to in Section 19(5)(ii) of the Act.

21. Therefore, the aforesaid provisions i.e., Sections 19(5)(ii) and 20(2) of the Act unambiguously confer jurisdiction on a Lok Adalat even without reference of the dispute by a Court.

22. Secondly, learned counsel for the petitioners would contend that the award was obtained under threat and coercion and the same is not based on the willingness of the petitioners.

23. Averments of the petitioners are elaborately stated in the preceding paras. On the basis of the said averments, the petitioners allege that the award of the Lok Adalat was obtained under threat and intimidation and the award was not based on their willingness. The petitioners seek to contend that an inference should be drawn in this regard from the circumstances of the case. According to the petitioners the events, viz., lodging of complaint with the police, registration of crime on 11.05.2011, visiting of home guard Babu Rao by trespassing into the business premises on 16.05.2011 and the threats yielded by the 15th respondent on the same day, and petition filed by respondents 2 and 3 before the Lok Adalat on 18.05.2011 and closure of criminal case on the same day, i.e., on 18.05.2011, are sufficient to infer that the Lok Adalat award was passed under threat and intimidation. Therefore according to the petitioners the said award should be set aside.

24. We gave an earnest consideration to the said contention in the light of the material and reject the same as unfounded.

25. Firstly, it is to be noted that the allegations made by the petitioners in this regard are categorically denied by the respondents. There cannot be any dispute that coercion and fraud are facts which lie in the factual arena and the same shall have to be established on the basis of evidence. A mere ipse dixit statement alleging coercion or fraud, however strong it is, cannot find acceptance by a Court of Law, because assertions themselves do not constitute evidence. Further, a fact asserted by a party and denied by its opponent becomes a disputed question of fact and, therefore, the burden lies on the party to prove the said fact, which it has asserted as true.

26. In the instant case, the petitioners have not filed any material to support the allegation and infuse confidence of the Court.

27. On the other hand, it is not possible to give any credence to the allegation. If really threat was yielded by respondent No. 15 or by any other police official, petitioner No. 1 would not have maintained silence. Admittedly, he himself got prepared the application through an Advocate for filing before the Lok Adalat. Both the petitioners were present before the Lok Adalat and affixed their signatures. The Lok Adalat was presided over by an Additional District Judge and 2 other Advocates. The petitioners would not have lost the opportunity to complain about the alleged coercion and refused to affix their signatures. Furthermore, the award was passed on 18.5.2011 and it is difficult to believe that the petitioners would have kept quiet without making any complaint immediately thereafter. Further, if really the respondents were bent upon exerting coercion on the petitioners, there is no reason why they could have withdrawn the criminal complaint against petitioner No. 1. We have, therefore, no hesitation to reject the contention on behalf of the petitioners that the award was obtained under coercion.

28. Therefore, the case on hand does not fall under the category of exceptional cases to maintain a writ petition under Article 226 or 227 of the Constitution of India. No material is placed by the petitioners even to show a prima facie case of threat and coercion. We are convinced that during the course of hearing the petitioners have invoked the writ remedy knowing fully well that it is not possible to prove the allegations in a suit.

29. We are inclined to believe that petitioner No. 1 is a greedy person, who wants to thrive at the cost of his father-in-law, the 2nd petitioner herein. He could succeed in gaining control over the business of his father-in-law and became the Managing Partner without investing a rupee of his own. There is no difficulty in inferring that he felt threatened after the entry of respondents 5 and 7, who are his co-brothers, into the business and exerted pressure for a bounty and the same has resulted in the controversy. We have no reason to believe that the petitioner No. 1, who is a highly educated person, would have succumbed to coercion. It is not known as to why he has impleaded respondents 4, 9, 10, 11, 12, 13 and 14, who are in no way connected with the dispute, against whom no relief is claimed in the writ petition. Apparently the petitioner has filed this writ petition with a mala fide intention to harass them. We are therefore convinced that it is a fit case to award Rs. 10,000/- exemplary costs.

30. For the foregoing reasons, the writ petition is dismissed with exemplary costs of Rs. 10,000/- (Rupees ten thousand only). The petitioners shall pay the costs to the credit of the A.P. Legal Services Authority, Hyderabad, within a period of three weeks from today. In view of disposal of writ petition, W.P.M.P. Nos. 27771, 27772, 27773, 27774 of 2011 are dismissed as unnecessary.