

(2001) 08 BOM CK 0010
In the Bombay High Court
Case No : Appeal from Order No. 504 of 2001

Pushpa Suresh Bhutada and Another	APPELLANT
Vs	
Subhash Bansilal Maheshwari and Others	RESPONDENT

Date of Decision : 27-08-2001

Acts Referred:

Legal Services Authorities Act, 1987 — Section 19(5), 20

Citation : AIR 2002 Bom 126 : (2001) 4 ALLMR 600 : (2002) 1 BomCR 152

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : S.J. Raikar, for the Appellant; G.S. Godbole, Advocate, for the Respondent

Judgement

A.M. Khanwilkar, J.—In this proceedings the dispute is essentially between the sisters on one side and the brothers and mother on other-for declaration and for recovery of money and partition of family properties. In this view of the matter, the parties were told to explore the possibility of settlement, for which reason the matter was adjourned in the past. However, it appears that the parties are under some misconception and are unwilling to have a meaningful dialogue with positive attitude of settlement, nor the Advocates representing them have succeeded in persuading their respective clients in this behalf or to impress upon them the exigency for an amicable resolution of their dispute, which process would obviate avoidable delay and more particularly heavy litigation expenses. From the submission made across the Bar it is evident that the respondents-original defendants have taken a stand that they are not interested in settling the matter with the appellants. This submission is obviously made on the basis of instructions of respondent No. 2 who is personally present in Court.

2. On the last occasion, the learned Counsel appearing for the parties were told that, even if the parties were unable to amicably resolve the dispute, this Court would refer the matter to the Lok Adalat so that an independent Forum which is manned by experienced men (including retired Judges of the High Court) would

make an attempt to persuade the parties, nay educate them to accept some workable arrangement which would be in the interest of all concerned including expeditious disposal of their dispute at lesser costs. To this suggestion, Mr. Godbole appearing for the respondents submits that, unless there is a possibility of settlement the Court cannot refer the matter to the Lok Adalat nor the Lok Adalat can take cognizance of the case in view of the language of section 20 of the Act. It has therefore become imperative to answer this objection. Relevant extract of section 20 of the Legal Services Authorities Act, 1987 (hereinafter referred to as the said Act for the sake of brevity) as amended by Act 59 of 94 reads thus:

"20. Cognisance of cases by Lok Adalat:

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 if 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-section (b) of Clause (i) or Clause (ii) by such Court except after giving a reasonable opportunity of being heard to the parties."

3. Since section 20(1) makes reference to section 19(5)(i) of the Act it would be apposite to advert to the provision as well, which reads thus:

"19. Organisation of Lok Adalats.---(1) Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluka Legal Services Committee may organise Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit. (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

any Court for which the Lok Adalat is organized ;

....."

4. On plain language of section 20 it is seen that, the Court before whom the case is instituted and pending, shall refer the case to the Lok Adalat for settlement, if the parties thereto agree to opt for redressal of the dispute before

that forum. But when only one of the party to the dispute makes an application to the Court for reference of the case to the Lok Adalat for settlement, even in such a situation the Court shall refer the dispute to the Lok Adalat for settlement, but in this case the additional requirement is that the Court should be prima facie satisfied that there are chances of such settlement. Whereas, the third situation perceived by Clause (ii) of sub-section (1) of section 20 enables the Court to refer the case to the Lok Adalat on its own if it is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat. In the third category, whether the parties to the dispute, either singularly or jointly, agree for reference does not arise, but the quintessence for invoking this provision is that the Court must be satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat and nothing more. However, in view of the proviso to sub-section (1), before making reference, the Court shall give reasonable opportunity of being heard to the parties. A fortiori, it will be preposterous to hold as contemplated that the Court has no authority to refer a case on its own even though it is satisfied that the case is an appropriate one for reference to the Lok Adalat for settlement. To my mind, it is wholly unnecessary for the Court to investigate whether there are chances of settlement. The purpose of such reference is to explore the possibility of conciliation with the mediation of an independent agency which has the expertise in that behalf and statutory backing for its decision. The purpose of relegating the parties first to the Lok Adalat is obviously for conciliation. In matters like the present one, it is the bounden duty of the Court to first explore the possibility of settlement. Such approach alone would serve the legislative intent of creating Lok Adalats and of providing them statutory backing for its decision. Any other view would not only frustrate the legislative intent but also result in affecting the authority of the Courts to the extent it enables the Court to require the parties to submit to the jurisdiction of Lok Adalat in cases where the Court is satisfied that that case is an appropriate case to be referred to the Lok Adalat.

5. In the present case, no doubt, the parties, for the reasons which are not disclosed before this Court, have expressed inability of an amicable settlement,--- but it appears that the appellants are willing to settle the matter. To my mind, the respondents will have to be persuaded to accept the ground reality by educating them about the possible outcome of the matter that would obtain even if the matter proceeds for trial. All this can be done by the Lok Adalat, if the matter is referred to that forum.

6. As observed earlier, the present dispute is essentially between sisters and brother and mother-in such cases the approach of the Court should be to first persuade the parties to arrive at some amicable arrangement and if it is not possible to persuade the parties to accept some arrangement only then the question of requiring the parties to undergo the rigmarole of a trial would become necessary. Those view is fortified by the mandate of Order XXXIIA of CPC which has been introduced by the Amendment Act 104 of 1976. Rule 1 thereof provides for different categories of disputes in which the Court is duty

bound to make effort for settlement. No doubt the present appeal is directed against an interlocutory order and the substantive dispute is pending before the trial Court, none the less this Court would be entitled to refer the entire matter for settlement to the Lok Adalat. The provisions of the Act as well as CPC would permit such an approach. Unquestionably, the substantive dispute is one which can be ascribed to Clause (f) and in any case (g) of sub-rule (2) of Order XXXIIA.

7. Mr. Godbole for the respondent submits that this matter would not qualify the definition of family as mentioned in Rule 6 of Order XXXIIA. To my mind, Rule 6 does not require that only when the dispute is between husband and wife that the Court should adopt an approach of conciliation between the parties, but it can also be done even in respect of disputes between brothers and sisters or as in the present case between sisters on one hand and brother and mother on the other side. It is not possible to limit the scope and purport of Order XXXIIA, for that would be a pedantic approach in the matter. In any case, it is not necessary for me to examine as to whether the present parties would qualify the definition of family provided for in Rule 6. I have only referred to Order XXXIIA to indicate that when the dispute is essentially between family members such a dispute would qualify the requirement of an appropriate case to be taken cognizance of by the Lok Adalat, for the purpose of Clause (ii) of sub-section (1) of section 20 of the Legal Service Authorities Act, 1987. Understood thus, I have no hesitation in over ruling the objection taken by the respondents for reference to be made to Lok Adalat. On the other hand, as referred to earlier, in my view, this is eminently fit case which deserves to be referred to Lok Adalat. In the circumstances, registry of this Court is directed to refer this case to Lok Adalat. Parties to be notified about the date on which the matter will be placed before the Lok Adalat and for completion of such formalities as would be required under the extant provisions.