

(2022) 09 BOM CK 0006

In the Bombay High Court

Case No : Criminal Writ Petition No.355 Of 2022

Satish

APPELLANT

Vs

Manisha Satish Yadav And Others

RESPONDENT

Date of Decision : 06-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 141, 226, 227
Legal Services Authority Act, 1987 — Section 21(2)

Citation : (2022) 09 BOM CK 0006

Hon'ble Judges : Shrikant D. Kulkarni, J

Bench : Single Bench

Advocate : Shaikh Ashraf Patel, Amol T. Jagtap

Final Decision : Dismissed

Judgement

Shrikant D. Kulkarni, J

1. Rule. Rule made returnable forthwith. Heard finally with consent of both the sides at admission stage.

2. This writ petition takes an exception to the order passed by the Panel of Lok Adalat in P.W.D.V.A. (Cri.M.A.) No. 62/2018 dated 08.12.2018.

3. It is necessary to have a aerial survey on few facts which are important to decide the fate of this petition.

(a) Respondent No.1 herein/Manisha has filed an application against the present petitioner before the learned Judicial Magistrate First Class at AUSA under the provisions of the Protection of Woman From Domestic Violence Act, 2005 (hereinafter referred to as "the D.V. Act" for the sake of convenience). Respondent No. 2/Arya (daughter) was also party to the said proceedings. In the said proceedings, respondent No. 1 herein/Manisha claimed that she is legally wedded wife of the petitioner and respondent No. 2/Arya is born out of wedlock with petitioner. The said proceedings under D.V. Act was amicably settled

between the parties on 08.12.2018. Accordingly, the terms of compromise were reduced into writing (Exh. B page 18). The matter was placed before the Panel of Lok Adalat on 08.12.2018. The Head of the Panel recorded the compromise since found to be voluntary and lawful. In view of the compromise arrived between the parties, the proceedings of P.W.D.V.A. (Criminal M.A. No. 62/2018) came to be disposed of vide order dated 08.12.2018.

(b) The said compromise was challenged by one Kamini (another wife of petitioner) by filing civil suit before the Civil Judge, Junior Division at Ausa and sought temporary injunction to restrain the Chief Officer, Nagar Parishad, Tuljapur from paying maintenance to present respondent No.1/Manisha as per compromise terms dated 08.12.2018. That application for temporary injunction came to be rejected at the hands of the Civil Judge, Junior Division, Ausa. There is no record as to further development between the parties after rejection of temporary injunction application by the Civil Judge, Ausa.

(c) The petitioner aggrieved by the order passed by the Head of the Penal of Lok Adalat dated 08.12.2018, has filed this writ petition.

4. Heard Mr Sk. Asref Patel, learned counsel for the petitioner and Mr Amol Jagtap, learned counsel for the respondents.

5. Mr Patel, learned counsel for the petitioner vehemently submitted that the order of Lok Adalat only can be challenged by way of writ petition, and there is no other legal remedy in view of bar under section 21 (2) of the Legal Services Authority Act, 1987. He submitted that the fraud has been played on the panel of Lok Adalat and terms of settlement are the result of fraud. As such, it is necessary to quash and set aside the order passed by the Panel of Lok Adalat in the D.V. Act proceedings and have a fresh decision on its own merits.

6. Mr Patel, learned counsel for the petitioner has placed his reliance in case of Bhargavi Constructions and Anr. Vs. Kothakapu Muthyam Reddy and Others and others reported in (2018) 13 SCC 480 and Indra Sarma Vs. V.K.V. Sarma (2013) 15 SCC 755.

7. By taking help of above said citations, Mr Patel, forcefully submitted that the relationship between the petitioner and respondent No. 1 is seriously disputed. Respondent No.1 is not legally wedded wife of the petitioner. Respondent No. 2 is born out of illicit relations between the petitioner and respondent No.1. Respondents are not entitled to get any maintenance and a fraud has been played upon the panel of Lok Adalat while accepting the terms of the compromise. He, therefore, urged to allow this petition and quash the order passed by the Head of Panel of Lok Adalat dated 08.12.2018.

8. Per contra, Mr Amol Jagtap, learned counsel for the respondents strenuously argued that the order passed by the Panel of Lok Adalat can be challenged by invoking writ jurisdiction only under limited grounds like fraud. He submitted that simply making allegations of fraud are not sufficient. There must be some proof

of playing fraud on the Panel of Lok Adalat while passing the order of compromise. He submitted that there is no iota of evidence to show that a fraud has been played on the Panel of Lok Adalat. He submitted that the petitioner is serving as a teacher in a school run by the Tuljapur Municipal Council. He is well educated. The compromise arrived between the parties is signed by the respective parties and counter-signed by their advocates by going through the same carefully. There is no merit in the petition. The petition is liable to be dismissed.

9. Mr Jagtap, learned counsel for the respondents has also placed his reliance in case of K. Shrinivasappa and others Vs M. Mallamma and others reported in AIR 2022 SC 2381.

10. I have considered the submissions of learned counsel for both the sides. Perused the citations relied upon by both the learned counsel in support of their submissions.

11. In case of Indra Sarma (supra), the Hon'ble Supreme Court has defined about live-in-relationship distinguishable from one that could qualify as a relationship in the nature of marriage coupled with the provisions of the D.V. Act and the burden of proof regarding relationship.

12. In Bhargavi Constructions and Anr. (supra), the Hon'ble Supreme Court has held that award of Lok Adalat can be challenged only by filing the writ petition under Article 226 and or 227 of the Constitution of India and that too on very limited grounds. The civil suit is not maintainable, by following the earlier decision in State of Punjab Vs. Jalour Singh reported in (2008) 2 SCC 660, where it is held as under :-

"...The law laid down by the Supreme Court in Jalour Singh case is binding on all the courts in the country by virtue of mandate of Article 141 of the Constitution of India. The Supreme Court therein, in no uncertain terms, has laid down that challenge to the award of Lok Adalat can be done only by filing a writ petition under Article 226 and/or Article 227 of the Constitution of India in the High Court and that too on very limited grounds. In the light of clear pronouncement of the law by the Supreme Court, the only remedy available to the aggrieved person (respondents herein/plaintiffs) was to file a writ petition under Article 226 and/or Article 227 of the Constitution of India in the High Court for challenging the award dated 22-08-2007 passed by the Lok Adalat. It was then for the writ court to decide as to whether any ground was made out by the writ petitioners for quashing the award and, if so, whether those grounds were sufficient for its quashing..."

13. There is recent decision of the Hon'ble Supreme Court referred by Mr Amol Jagtap, learned counsel for the respondents in case of K. Shrinivasappa and others (supra) wherein the Hon'ble Supreme Court has held that the award passed by the Lok Adalat can be challenged before the writ court by invoking Article 226 and or 227 of the Constitution, however, on limited grounds like

fraud. It is further held that where an allegation of fraud is made against a party to an agreement, the said allegation would have to be proved strictly, in order to avoid the agreement on the ground that fraud was practiced on a party in order to induce such party to enter into agreement. Similarly, the terms of a compromise decree, cannot be avoided, unless the allegation of fraud has been proved. In the absence of any conclusive proof as to fraud on the part of the objectors, the compromise decree cannot be set aside.

14. Now, coming to factual scenario of the case in hand, following order was passed by the Head of the Panel of Lok Adalat, Ausa (Panel No.2).

The parties are present along with their learned counsel. The parties admitted the contents of this compromise pursis in toto along with their respective signatures/thumb impressions as the case may be. The compromise is voluntary and lawful one. Hence, see order below Exh.01.

15. On that basis, following order came to be passed whereby the proceedings under D.V. Act came to be disposed of.

1. In view of compromise pursis (Exh.12) matter is disposed off.

2. No order as to costs.

16. The copy of terms of the compromise arrived between the parties are also placed on record at Exh. B (Page 18).

17. On going through the copy of terms of settlement between the parties, it is evident that both parties have put their signatures after having gone through the terms of the settlement. It is not enough. The learned counsel appearing for the respective parties have also put their signatures on the terms of the compromise. The terms of compromise/settlement was placed before the Head of the Panel. The Head of the Panel, who is a Judicial Officer after recording presence of both the sides, and their advocates and after verifying the contents of the compromise as voluntary and lawful one and also confirming that the said compromise are signed by the respective parties, accepted the same. On that basis, the proceedings under D.V. Act came to be disposed of vide order dated 08.12.2018.

18. In the above scenario, I do not find any merit in the submissions of Mr Patel, learned counsel for the petitioner that the fraud has been played on the parties while accepting the compromise by the Head of the Panel. The petitioner is serving as a teacher in Nagar Parishad School, Tuljapur. He is well educated. He is not an illiterate person. After going through the contents of the terms of the compromise, he has put the signature. He has appeared before the Head of the Panel and accepted the contents of the compromise as well as his signature and it was accepted by the Head of the Panel being voluntary and lawful one. Now, it is an attempt made by the petitioner to give go-bye to the compromise. It is second attempt. One attempt was made by filing civil suit by pushing forward another wife of the petitioner Kamini, but it went fruitless.

19. The order of Lok Adalat came to be passed long back on 08.12.2018. If the petitioner was really aggrieved by such terms of the compromise, he could have approached this Court by filing writ petition immediately. He has challenged the order of Lok Adalat after more than three years. It shows that petition lacks bona fide. There is no prima facie evidence to throw light on the so-called fraud allegedly played on the Panel of Lok Adalat while accepting the terms of the compromise.

20. It is one more attempt made by the petitioner to avoid terms of compromise arrived between the parties under the guise of fraud without any iota of material.

21. Having regard to the above reasons, and discussion, there is no merit in the petition.

ORDER

(i) The Criminal Writ Petition stands dismissed.

(ii) Rule discharged.

(iii) No order as to costs.