

(2009) 12 KL CK 0013
In the High Court Of Kerala
Case No : Tr. P.C. No. 236 of 2009

Siji Antony

APPELLANT

Vs

Saji John

RESPONDENT

Date of Decision : 18-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24
Constitution of India, 1950 — Article 142
Divorce Act, 1869 — Section 18, 19
Hindu Marriage Act, 1955 — Section 13, 13B
Legal Services Authorities Act, 1987 — Section 19(5)

Citation : (2010) 2 DMC 372 : (2010) 1 KLT 387

Hon'ble Judges : S.S. Satheesachandran, J

Bench : Single Bench

Advocate : T.R. Ravi, for the Appellant; J. Omprakash, for the Respondent

Judgement

S.S. Satheesachandran, J.—The above petition is filed u/s 24 of the CPC for transfer of a matrimonial proceeding pending on the file of the Family Court, Alappuzha to the Family Court, Kozhikode. Petitioner is the wife, and respondent, the husband. On appearance of the respondent/husband, counsel on both sides submitting that there is a fair chance of settlement requested for reference of the petition to the Lok Adalat to thrash out a compromise. Conceding to the request the transfer petition was referred to the Lok Adalat.

2. The Lok Adalat organised by the Kerala High Court Legal Service Committee on such reference has passed an award declaring the marriage of the petitioner and the respondent as null and void. The award passed by the Lok Adalat reads thus:

When this matter came up before the Adalat the respondent-Saji John filed a petition u/s 18 of the Divorce Act praying that his marriage may be declared null and void on the ground that his consent was obtained by force of his family members. The respondent agrees that the petition may be allowed. Accordingly it

is declared that the marriage of the petitioner and respondent is null and void. Both parties agreed that O.P. No. 429/2009 before the Family Court, Alappuzha may be closed as settled. Parties also agreed that all the claims between the parties have been settled. Accordingly, the Tr.P.(C) is closed as settled. Issue copy of the Award to both parties.

3. On reference returned with the award, competency of the Lok Adalat organized under the Legal Service Authorities Act to declare a marriage null and void being doubted, I directed the counsel on both sides to enlighten this Court whether it is proper and legal to dispose the transfer petition accepting the settlement arrived by the parties with declaration passed under the award. Counsel on both sides frankly conceding that there is no binding decision on the question involved, have brought to my notice, the decision rendered by the Apex Court in *Rajesh Vs. State of Rajasthan and Another*, in which on the basis of the settlement arrived at by the parties at the Supreme Court Lok Adalat, to which a transfer petition relating to a criminal proceeding between the parties filed before the Apex Court was referred to, the Apex Court accepting the settlement had granted a decree of divorce. As the Apex Court has recognized the joint settlement arrived in the Lok Adalat on the reference made in the transfer petition, that too filed in respect of a criminal case involving spouses, learned Counsel on both sides submitted that the award passed in the present case by the Lok Adalat declaring the marriage between the parties as null and void on the basis of the settlement arrived by the spouses can be accepted and given effect to, and the transfer petition be closed accordingly. Some other decisions of this Court and also the Apex Court namely, *Vasudevan Vs. State of Kerala*, ; *Aboobacker Vs. District Collector*, *Rajesh Vs. State of Rajasthan and Another*, are also relied by the counsel on both sides to impress upon the sweeping authority of the Lok Adalat constituted under the Legal Service Authorities Act to contend that it is fully empowered to exercise all powers of the reference court in passing an award on the basis of the settlement arrived at by the parties.

4. Before examining the question posed for consideration the genesis of the transfer petition has to be looked into on the contextual facts involved. Respondent in the transfer petition (husband) was employed as a software engineer in U.S.A. He has now lost his job due to economic recession after the marriage with the petitioner. Marriage between the parties was solemnized on 29.12.2008 as per the Christian religious rites and ceremonies in a church. Wife had contacted epilepsy when she was an infant and ever since she was under treatment for that illness. Before marriage petitioner's illness was brought to the notice of the respondent and he was informed that the disease was not a problem as she is responding to the treatment. She has some problems on account of the disease only once in three months. After the return of the respondent from abroad, petitioner left his company and returned to her parental house. The reason attributed thereof by the respondent/husband is of her unwillingness to take up the responsibility of looking after and caring the father of the respondent who is suffering from Parkinson's disease. The respondent/

husband thereafter filed a petition for dissolution of the marriage before the Family Court, Alappuzha. Annexure 1 is the copy of that application. The present petition has been filed by the petitioner/wife to transfer that petition from the Family Court, Alappuzha to the Family Court, Kozhikode, in which on reference to Lok Adalat an award has been passed declaring the marriage between the parties as null and void on the basis of the settlement arrived by the parties,

5. After the reference was returned with award passed in the Lok Adalat I directed the parties to appear. On their appearance in the presence of their counsel they were asked about the settlement arrived at in the Adalat. Petitioner/wife, then, appeared with her mother. Spouses, it appeared, wanted cessation of their marital relationship accepting the award passed by the Lok Adalat.

6. The vital question of considerable importance emerging for consideration in the present case is the jurisdiction and authority of the Lok Adalat to grant a decree of divorce or declaration that a marriage is null and void in a matrimonial proceeding, which is presented before it on reference from court or otherwise at the volition of the parties. A Lok Adalat organized under the Legal Service Authorities Act, undoubtedly, has only jurisdiction to pass an award on the basis of the compromise or settlement between the parties to a dispute. It cannot make an independent decision or adjudicate any dispute in the proceedings which come up for consideration before it other than passing an award on the basis of the compromise or settlement between the parties. Of course, the Adalat can persuade the parties to reach a reasonable compromise or settlement informing and, perhaps, educating them on the legal principles applicable to the dispute and also, how a resolution by way of settlement rather than adjudication in a long drawn out litigation is more beneficial and advantageous to the parties. Clause (5) of Section 19 of the Legal Service Authorities Act, 1987 deals with jurisdiction of the Lok Adalat organized under the above Act in determining and arriving a settlement. That clause reads thus:

19. Organisation of Lok Adalats:

(1) xxxxxxxx

(2) xxxxxxxx

(3) xxxxxxxx

(4) xxxxxxxx

(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 organised:

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.

True, specific ouster of jurisdiction has been made only in respect of any matter relating to an offence which is not compoundable under any law. But, that does not mean that a Lok Adalat has jurisdiction to determine and arrive at a compromise or settlement overlooking the statutory prescriptions interdicting the parties as well as the dispute resolution mechanism or authority, whether it be the court, Tribunal or any other forum, in the resolution of the dispute emerging for adjudication. Adjudication of matrimonial disputes of spouses as to the validity of their marriage, severing of such. relationship, restitution of conjugal relationship etc., are governed by personal marriage laws applicable to the parties or under the Special Marriage Act in case the spouses have their marital relationship on the basis of the marriage registered under that Act. Now that the Family Courts have been established that court alone has exclusive jurisdiction to entertain and adjudicate matrimonial proceedings between the spouses over the dispute emerging from their marital relationship. The marriage of the parties in the present case was in accordance with the Christian rites and ceremonies in a church is not disputed. Though the name of the statute or provision of law under which divorce is sought for, nor particulars of the personal law applicable to the parties, is spelt out in Annexure 1 petition filed by the respondent for divorce, it can be safely concluded that the parties are governed by the provisions of the Indian Divorce Act. When that be so, the Family Court before which a petition is filed by the respondent for the dissolution of the marriage of the parties, who are governed by the provisions of the Indian Divorce Act, has jurisdiction to grant a decree declaring their marriage a nullity, which was so ordered by the Lok Adalat on the basis of compromise, only on satisfaction of one or other grounds envisaged u/s 19 of the Indian Divorce Act. Section 19 of the Indian Divorce Act reads thus:

19. Grounds of decree.- Such decree may be made on any of the following grounds:

- 1) that the respondent was impotent at the time of the marriage and at the time of institution of the suit;
- 2) that the parties are within the prohibited degree of consanguinity (whether natural or legal) or affinity;
- 3) that either party was a lunatic or idiot at the time of the marriage;
- 4) that the former husband or wife of either party was living at the time of the marriage,

and the marriage with such former husband or wife was then in force. Nothing in this section shall affect the (jurisdiction of the District Court) to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud.

So much so, in the present case on a petition filed by the husband for dissolution

of the marriage, as evidenced by Annexure A1, the Family Court could not have granted a decree declaring the marriage of the parties as null and void, even on the consent of the parties for passing such a decree. On reference made in a transfer petition filed by one of the parties seeking transfer of the case pending on the file of one Family Court to another, to examine the chances of settlement and compromise between the parties, it is apparent that the Lok Adalat cannot exercise jurisdiction overlooking the statutory interdiction covered by the Indian Divorce Act.

7. Even if the parties seek for a decree of nullity of marriage on whatsoever ground canvassed and even assuming that they may be entitled to seek such a relief by appropriate proceedings before a competent court, in view of the statutory interdiction referred to, I find that the award passed by the Lok Adalat granting a declaration that the marriage between the parties to the present proceedings is a nullity cannot be given effect to by this Court. However, as the jurisdiction of the Lok Adalat to pass a decree of divorce or declare a marriage as nullity has not been considered so far by a binding decision by this Court, I find that question require to be considered by the Division Bench and so much so, acceptance of the award passed in the present case by the Lok Adalat has to be left open subject to the decision to be rendered, on a reference of the case, by a Division Bench of this Court.

8. The decision relied by the counsel on both sides referred to above except the case *Rajesh Vs. State of Rajasthan and Another*, has no application to the facts involved in the present case and the question posed for consideration. The decision of the Apex Court in *Rajesh's* case, it is seen, also does not in any way assist the parties in sustaining their case for acceptance of the award passed by Lok Adalat declaring their marriage as a nullity. In the above referred case, it is seen, on reference of the transfer petition relating to a criminal case between the parties to the Supreme Court Lok Adalat, the parties arrived at a settlement. The terms of settlement arrived by the parties are narrated in the decision which indicate that no award was passed by the Lok Adalat on the terms of the agreement and it was placed before the court for consideration. Accepting the terms of settlement arrived at in the Lok Adalat, the Apex Court disposed the transfer petition ordering that the terms of the settlement shall form part of the records. So much so, it is evident that the Supreme Court Lok Adalat did not pass any award on the terms of the settlement, but, it was the court (Supreme Court) which had referred the matter to the Adalat passed the orders accepting the settlement and disposed the transfer petition. The plenary powers of the Apex Court under Article 142 of the Constitution of India enables the Apex Court in the exercise of its jurisdiction to pass such a decree or order as is necessary for doing complete justice in any matter pending before it. That power to pass any decree or order to do complete justice in a case is conferred only on the Apex Court by the Constitution. Exercising of such power by the Apex Court to do complete justice between the parties as empowered under Article 142 of the Constitution of India in respect of any matter or proceedings pending before it, in

the exercise of its jurisdiction, cannot be called in aid as conferring authority on this Court also to pass orders in the present petition for accepting the award rendered by the Lok Adalat on the basis of the compromise between the parties. The award so passed by the Lok Adalat, it is seen, is against the statutory interdiction which forbids even the court having jurisdiction to entertain the matrimonial dispute between the parties to grant a decree of nullity of marriage on consent of parties without satisfaction of the grounds stipulated for such decree. In that context, it may be profitable to take note of the decision rendered by the Apex Court in *Anil Kumar Jain v. Maya Jain* CDJ 2009 SC 1909 : 2009 AIR SCW 5899 wherein the authority of the civil courts and even High Courts to pass orders before the lapse of the period prescribed u/s 13B of the Hindu Marriage Act in granting a decree of divorce on mutual consent of the parties was considered. After a survey of the decisions rendered by the Apex Court earlier on that question it has been held thus:

Neither the civil courts nor even the High Courts can, therefore, pass orders before the periods prescribed under the relevant provisions of the Act or on grounds not provided for in Section 13 and 13B of the Hindu Marriage Act, 1955.

The law laid down by the Apex Court as above also indicates that a declaration of nullity even if it is sought for by the parties cannot be granted on consent by the parties, but, only on satisfaction of one or other grounds envisaged under the statute. In the present case no such ground covered by Section 19 of the Indian Divorce Act has been made out nor any relief thereof canvassed in Annexure A1 petition.

9. The Apex Court in *State of Punjab and Another Vs. Jalour Singh and Others*, taking strong exception to the adjudicatory role taken over by the Lok Adalat in conducting proceedings as if such Adalats are courts has observed thus:

The Lok Adalats should resist their temptation to play the part of Judges and constantly strive to function as conciliators. The endeavour and effort of the Lok Adalats should be to guide and persuade the parties, with reference to principles of justice, equity and fair play to compromise and settle the dispute by explaining the pros and cons, strengths and weaknesses, advantages and disadvantages of their respective claims.

Members of the Lok Adalat have been cautioned not to conduct Adalats like courts by hearing parties and imposing their views as to what is just and equitable and then to proceed passing orders on merits. Settlement on consent of the parties cannot override statutory interdictions in passing of an award by the Lok Adalats on such compromise. Exclusive jurisdiction in the matter of matrimonial disputes of spouses is conferred on the Family Courts established under the Family Courts Act and the resolution of such dispute is covered by the procedural safeguards mandating conciliation before adjudication and then also strict compliance of personal laws applicable to the parties in rendering a decision. A Family Court on a joint settlement of the parties alone, without

examining the existence of one or grounds mandated by the statute under the personal law applicable to the parties and being satisfied of such ground, cannot declare the marriage of the parties as null and void. So much so, the declaration of the marriage as null and void by the Lok Adalat on the basis of the joint statement of the parties, that alone on a reference from a proceeding, that too relating to a petition for transfer cannot be accepted as it is contrary to law and beyond the power and jurisdiction of the Lok Adalat.

9. In view of the facts and circumstances presented in the case, wherein the Lok Adalat has passed an award on reference from court declaring a marriage as a nullity on the basis of the compromise of the parties a binding decision by a larger Bench of this Court as to competency of the Lok Adalat organised under the Legal Service Authorities Act in the matter of granting a decree of divorce, restitution of conjugal rights, declaration of the marriage as nullity, etc., on the basis of the consent of the parties and settlement arrived in the Lok Adalat is found imperative a reference for consideration of such question has become essential.

The Registry is directed to place the matter before the Honourable Chief Justice with request to make a reference to a Division Bench to consider the above question.