

(2013) 02 AP CK 0069
In the Andhra Pradesh High Court
Case No : C.R.P. No. 4801 of 2011

Sri S.M. Anjineyulu

APPELLANT

Vs

Sri K. Satya Prakash and Another

RESPONDENT

Date of Decision : 19-02-2013

Acts Referred:

Legal Services Authorities Act, 1987 — Section 22C, 22D

Citation : (2013) 4 ALD 325 : (2013) 5 ALT 66

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Bethi Venkateshwarlu, for the Appellant;

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—Till the year 1980, the adjudicatory process in India has been purely conventional. The only alternative to adjudication through Courts was arbitration. In the year 1980, a Committee for Implementing Legal Aid Schemes was appointed and through the auspices of the same, an informal adjudication, by conducting what are known as Lok Adalats, was evolved. The Parliament enacted the Legal Services Authorities Act, 1987 (for short "the Act") with a view to provide statutory backing to the administration of justice through Lok Adalats. Further improvements thereto were made through Act 37/2002. One of the salient features was the addition of Chapter-VI-A, which provided for the mechanism of Pre-Litigation Conciliation and Settlement. Section 22-C of the Act confers right upon any party to a dispute, to make an application to the Permanent Lok Adalat for settlement, before the dispute is brought to any Court of law. The petitioner herein filed Pre-Litigation Case No. 40 of 2008 before the Lok Adalat Bench, City Civil Court Legal Services Authority, Hyderabad (for short "the Lok Adalat"), against respondents 1 and 2. It was pleaded that the respondents borrowed a sum of Rs. 16,90,000/- from him, by executing six promissory notes, with a promise to repay the same. It is stated that the respondents also executed a deed of mortgage, offering a residential house

bearing No. 8-241-A, of Ramachary Veedhi, Madanapally, as security for repayment, but they are still due a sum of Rs. 12,90,000/-, and prayed for a decree, for a sum of Rs. 21,68,800/-, inclusive of interest.

2. The Lok Adalat issued notice to the respondents and conciliation is said to have been undertaken by the Secretary of the Legal Services Authority. On the basis of an alleged compromise, said to have been arrived between the parties, an Award was passed on 26-04-2008. The terms of compromise, as incorporated in the award, are to the effect that the respondents have undertaken to pay the amount, covered by six promissory notes, within six months after the sale of the mortgaged property.

3. In addition to the amount of Rs. 21,68,800/-, they were to pay interest at 6% per annum on the principal amount of Rs. 12,90,000/-.

4. Stating that the respondents did not honour the award passed by the Lok Adalat, the petitioner filed an execution petition in the Court of II Additional District Judge, Madanapally, mentioning that the mortgaged property is situated within the jurisdiction of that Court. The E.P. was returned through order dated 21-10-2010, observing that as per Rule 18 of the A.P. State Legal Services Authority Rules, 1995 (for short "the Rules"), the awards passed by the Lok Adalats are executable by the Court of District Judge of the District, in which the Lok Adalat is held, and it was left open to the petitioner to present it before the proper forum. The petitioner challenges the said order.

5. Learned counsel for the petitioner submits that the view taken by the Court in which the E.P. is presented is not correct.

6. He contends that once a decree is passed by a Lok Adalat, it partakes the character of a decree passed by a regular Court of law and the E.P. ought to have been entertained.

7. This revision provides an instance of the fraud being played on the Courts, taking advantage of the facility, created under the Act. Unfortunately, such instances are occurring frequently. Persons, who are professional litigants, are taking recourse to the provisions of the Act, to get reliefs, which they are sure, of not getting before the Courts of law. A device of providing relief to parties, through an informal adjudication; is slowly turning out to be a tool in the hands of unscrupulous persons.

8. The case of the petitioner is that the respondents borrowed a sum of Rs. 16,90,000/- from him, but have paid only Rs. 4 lakhs.

9. For all practical purposes, the matter, which was otherwise to be adjudicated before a Court of law; is brought before the Permanent Lok Adalat. Filing of such a matter would preclude the parties from seeking adjudication before the Court, that has jurisdiction in the matter.

10. Section 22-C of the Act, which provides for the mechanism, reads, "Sec. 22-

C. Cognizance of cases by Permanent Lok Adalat.-

(1) Any party to a dispute may, before the dispute is brought before any court, make an application to the Permanent Lok Adalat for the settlement of dispute:

Provided that the Permanent Lok Adalat shall not have jurisdiction in respect of any matter relating to an offence not compoundable under any law:

Provided further that the Permanent Lok Adalat shall also not have jurisdiction in the matter where the value of the property in dispute exceeds ten lakh rupees:

Provided also that the Central Government, may, by notification, increase the limit of ten lakh rupees specified in the second proviso in consultation with the Central Authority.

(8) Where the parties fail to reach at an agreement under sub-section (7), the Permanent Lok Adalat shall, if the dispute does not relate to any offence, decide the dispute.

Sec. 22-D. Procedure of Permanent Lok Adalat.-

The Permanent Lok Adalat shall, while conducting conciliation proceedings or deciding a dispute on merit under this Act, be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice, and shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) and the Indian Evidence Act, 1872 (1 of 1872).

11. The question, as to when the dispute can be said to have arisen; is too difficult to be defined. If a given set of facts constitutes a cause of action to file a suit, the question, as to whether a pre-litigation case can be entertained by the Lok Adalat; is left open. There is nothing, which disables a person from filing a pre-litigation case, instead of a suit. In such an event, he will have the advantage of seeking adjudication without payment of the Court fee. Sub-section (8) of Section 22-C of the Act confers power upon the Lok Adalat to decide the dispute, even if the parties fail to reach at an agreement. The only difference is that Section 22-D excludes the provisions of the C.P.C., in such adjudication. In fact, it would be a total negation of the concept of adjudication, that is adopted for the country. That, however, is a different aspect.

12. When the facts pleaded by the petitioner fit into an ordinary suit, for recovery of money, it is not known as to what basis it is treated as a pre-litigation case. The record does not disclose that the respondents have submitted any written-statement, or representation. The Secretary of the City Civil Court Legal Services Authority, Hyderabad, is said to have brought about a compromise. If the respondents were so virtuous and good enough to pay the amount, it is not known as to why they needed any decree or award. No document was marked, much less any witness was examined.

13. The actual mischief, which the petitioner and the respondents wanted to play, is evident from Clause (1) of the award. It reads:

The respondents represent that they are liable to pay the loan amounts mentioned at S.Nos. 1 to 6 and they are liable to pay Rs. 21,68,800/- to the petitioner under the promissory notes dt. 03.04.2005, 17.05.2005, 28.06.2005, 10.07.2005, 20.08.2005 and they will pay the said amount to the petitioner and also the loan amount under the mortgage deed along with agreed interest within six months after sale of the mortgaged house i.e. D.No. 8-241-A, situated at Court Ramachary Veedhi, Madanapally, Chittoor District.

14. A specific reference is made to a mortgage. In the body of the award, it was mentioned that an item of property in Door No. 8-241-A, Ramachary Veedhi, Madanapally, purchased under a document No. 8650/2006 of Sub-Registrar, Madanapally was mortgaged by the 1st respondent, under a document.

15. No particulars of the date of mortgage were mentioned. Clause (1) of the award provides for payment of the agreed amount within six months, after the sale of the mortgaged house.

16. The Permanent Lok Adalat is headed by an Officer of the rank of District Judge. The sale of any item of a mortgaged property can take place only through a preliminary decree, passed under Order XXXIV C.P.C., followed by a final decree. The curious part of the matter is that in the E.P., it was mentioned that respondents have 2/3rd share in the mortgaged property. It is not known as to how such a mortgage was effected at all. That would have been possible, if only the mortgage deed was made part of the record, and it was proved as required under law. Further, when the property is situated in Madanapally, and respondents 1 and 2 are residents of that place, one cannot understand as to on what basis the petitioner had initiated proceedings before the Permanent Lok Adalat at Hyderabad. The effort of the parties was only to get a decree at Hyderabad; make the Court at Madanapally to sell the property not owned by them, and appropriate the proceedings. There is a clear collusion between the petitioner, on the one hand, and respondents 2 and 3, on the other hand, to defraud the absolute, or joint owners of the property, in D.No. 8-241-A, of Ramachary Veedhi, Madanapally.

17. Assuming that there is no illegality in the award passed by the Lok Adalat, the petitioner could have enforced the same through execution in any Court at Hyderabad. Rule 18 of the Rules read,

Rule 18. Execution of awards passed by the Lok Adalats in respect of pending cases and prelitigation cases:-The awards passed by the Lok Adalats in respect of pending cases shall be executable by the Courts in which those matters were pending prior to the passing by the Lok Adalats.

Provided that the awards passed by the Lok Adalats in respect of the matters at prelitigative stage shall be executable through the Court of District Judges of the District in which the Lok Adalats is held.

(i) Necessary certificate for refund of Court Fee will be issued by the Court which

referred the case to the Lok Adalats to the person who is entitled for which refund of Court Fee.

(ii) On production of such certificate, the District Collector or the competent Revenue Authority shall refund the amount of Court Fee in the manner provided in the Andhra Pradesh Court Fees and Suits Valuation Act, 1956.

18. There is no facility of obtaining any precept of a decree passed by the Lok Adalat. This is particularly so, when Section 22-D of the Act has completely excluded the provisions of C.P.C. Knowing fully well that the award passed in a pre-litigating stage can be executed only through a Court of District Judge of the concerned District, the petitioner presented the E.P., before a Court at Madanapally. The whole exercise is fraudulent. If one looks into the provision, carefully, it suggests that pre-litigation cases can be instituted only before a Lok Adalat, within whose jurisdiction, the property to be sold, is situated.

19. The C.R.P. is accordingly dismissed. The Member Secretary, A.P. State Legal Services Authority, Hyderabad, shall require all the Secretaries of the concerned District Legal Services Authorities and the Permanent Lok Adalats to ensure that the mechanism of Lok Adalats is not utilized as a device, to commit fraud on others. This Court also warns that any such instances, on the part of the concerned judicial officers, handing such organizations, will be taken serious note of. There shall be no order as to costs.