IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.311 OF 2022

Surekha Tanaji Naik,
Age 37 years, Occu – Household,
R/o Rendal, Tal. Hatkangale,
Dist. Kolhapur. … Applicant

versus

1. Tajani Balaso Naik,
Age 41 years, Occu – Agriculture,
R/o Tendal, Tal. Hatkangale,
Dist. Kolhapur.

2. Malutai Balaso Naik,
Age 70 years, Occu – Agriculture,
R/o as above.

3. Balaso Mahadeo Naik,
Age 75 years, Occu – Agriculture.
R/o as above. … Respondents

Mr. Akshay Kulkarni, for Applicant.
Mr. S.S.Jagtap, for Respondents.

CORAM: N.J.JAMADAR, J.

RESERVED ON : 29 JANUARY 2025
PRONOUNCED ON : 22 APRIL 2025

JUDGMENT :

1. This Revision is directed against an order dated 15 March 2022 passed by the learned Civil Judge, Sr. Division, Jaysingpur, on an application (Exh.10) for rejection of the Misc. Civil Application No.87 of 2021 (main application) under the provisions of Order VII Rule 11(d) of the Code of Civil

Procedure, 1908, on the premise that the main application was barred by law.

2. The background facts leading to the Revision Application can be summarized as under :

2.1 The marriage of the applicant was solemnized with Respondent No.1 on 10 June 2007. Respondent Nos.2 and 3 are the parents of Respondent No.1.

2.2 In the wake of the marital discord, the Respondents allegedly harassed and ill-treated the applicant. Respondent No.1 allegedly contracted marriage with another woman during the subsistence of the marital bond between the applicant and Respondent No.1.

2.3 The applicant approached the Protection Officer appointed under the provisions of Protection of Women from Domestic Violence Act, 2005 (DV Act, 2005). The Protection Officer forwarded the complaint to the Judicial Magistrate, First Class, Jaysingpur, and, thereupon, Criminal Misc. Application No.15 of 2019 came to be registered under the provisions of DV Act, 2005.

2.4 In the meanwhile, the Applicant and Respondents explored the possibility of an amicable resolution of the dispute. On 29 June 2019, the Applicant and Respondent Nos.1 and 3 filed a joint pursis to place the said DV proceedings before the Lok Adalat. On 13 July 2019, before the National Lok Adalat, the Applicant and Respondent Nos.1 to 3 appeared and filed a Compromise Pursis (Exh. C). Lok Adalat Panel recorded the settlement in

terms of the Compromise Pursis and the proceedings under DV Act i.e. PWDV Application No.15 of 2019, came to be disposed in accordance with the Compromise Memo (Exh. 9 therein).

2.5 Under the terms of the compromise, the Respondents agreed, inter alia, to give the residential house situated in Gat No.991 at Mauje Rendal to the applicant for her independent residence permanently, and that the Respondent Nos.1 to 3 and the woman, with whom Respondent No.1 had allegedly contracted second marriage, were to reside in a shed abutting the house which was given to the applicant.

2.6 Respondent Nos.1 to 3 preferred main application purportedly under Order XXIII Rule 3 and Section 151 of the Code, before the Court of Civil Judge, Sr. Division, the Presiding Officer of which was the head of the Lok Adalat Panel contending, inter alia, that the consent order passed in PWDVA No.15 of 2019 was obtained by fraud, the applicant had obtained signatures of the Respondents on the Compromise pursis (Exh.8 therein) by practicing fraud and misrepresentation, the Respondent Nos.1 to 3 were not present before the National Lok Adalat when the Compromise Memo was accepted by the Lok Adalat and the Compromise Memo was otherwise illegal and void on account of the fact that the agricultural land bearing Gat No.991 and the residential house therein, was the joint family property of Respondent No.3 and there was no partition by metes and bounds amongst Respondent Nos.1

to 3 and the daughter of Respondent No.3. The other co-sharers had an undivided interest in the said property, and, therefore, it could not have been allotted to the applicant.

2.7 On 22 October 2021, the learned Civil Judge, Sr. Dvn., Jaysingpur, directed that the main application be registered as Misc. Civil Application, keeping open the issue of maintainability of the application.

2.8 The applicant appeared and filed an application (Exh.10) for rejection of the main application contending, inter alia, that once the matter is settled before, and award is passed by, the Lok Adalat, such an award can be challenged only by way of Writ Petition before the High Court and the award of the Lok Adalat cannot be assailed before the Civil Court.

2.9 The Respondents resisted the application asserting that the application was maintainable under the provisions of Order XXIII Rule 3 of the Code; under which the question of legality and validity of the settlement or compromise arrived at between the parties was required to be determined by the Court which had accepted the Compromise Memo.

2.10 The learned Civil Judge was persuaded to reject the application holding, inter alia, that since Respondent Nos.1 to 3 had filed Misc. Civil Application and not a suit, the bar against challenging the award passed by the Lok Adalat by way of a suit was not attracted and the Civil Court was competent to examine the legality and validity of the Compromise Memo

under the provisions of Order XXIII Rule 3 of the Code. Since the legality and validity can only be determined after a full fledged inquiry, the application for rejection of the main application was not tenable.

2.11 Being aggrieved, the applicant has invoked the revisional jurisdiction.

3. I have heard Mr. Kulkarni, learned Counsel for the Applicant, and Mr. Jagtap, learned Counsel for Respondent Nos.1 to 3, at some length.

4. Mr. Kulkarni, learned Counsel for the applicant, would urge that the learned Civil Judge transgressed the jurisdiction in entertaining the application to set aside the award passed by the Lok Adalat, despite having noted the decision of the Supreme Court in the case of Bhargavi Constructions and Anr. V/s. Kothakapu Muthyam Reddy and Ors.[1]. The view of the learned Civil Judge that though the suit to set aside an award passed by the Lok Adalat would have been certainly barred, yet the Misc. Civil Application can be lawfully entertained, is untenable.

5. Mr. Kulkarni further urged that the endeavour of the learned Civil Judge to draw support and sustenance to the exercise of jurisdiction from the provisions contained in Order XXIII Rule 3 was also legally unsustainable as the said provision does not override the three-Judge Bench decision of the Supreme Court in the case of State of Punjab V/s. Jalour Singh[2], being the law declared by the Supreme Court and binding on all the Courts and

1 (2018) 13 SCC 480
2 (2008) 2 SCC 660

authorities under the provisions of Article 141 of the Constitution of India. It was, thus, not open for the learned Civil Judge to entertain the main application.

6. In opposition to this, Mr. Jagtap, learned Counsel for the Respondents, supported the impugned order. It was submitted that it was the bounden duty of the Lok Adalat to examine the legality and validity of the purported Compromise Memo, allegedly executed between the applicant and Respondents, before the Lok Adalat gave its imprimatur. The Explanation to Rule 3 Order XXIII explicitly provides that an agreement or compromise which is void or voidable under the Indian Contract Act, 1872 shall not be deemed to be lawful within the meaning of the said rule. In the case at hand, ex-facie, the property which came to be allegedly exclusively allotted to the applicant did not belong to Respondent No.1. Since it is a joint family property, all the co-sharers have an undivided interest therein. National Lok Adalat did not delve into this aspect of the matter.

7. Moreover, Respondent Nos.1 to 3 have made specific allegations of fraud, and that they were not present before the Lok Adalat when the Compromise Memo was accepted and the DV proceedings No.15 of 2019 came to be disposed in accordance with the Compromise Memo. These allegations warrant investigation into facts and determination on merits. Therefore, learned Civil Judge committed no error in rejecting the application

for the rejection of the main application.

8. To begin with, it is necessary to note that the issue about the tenability of the application for rejection of the main application was raised on the ground that the provisions contained in Order VII Rule 11 do not apply to such miscellaneous proceedings. Moreover, the underlying proceeding i.e. PWDVA No.15 of 2019, was not instituted before a Civil Court. Therefore, the application for rejection of the main application itself was not tenable.

9. In the backdrop of the view, which this Court is persuaded to take, it may not be necessary to delve deep into this aspect of the matter. Suffice to note that the Respondents approached the Civil Court to set aside the award passed by the Lok Adalat on the premise that the Presiding Officer of the Court of Civil Judge, Sr. Division, was the head of the Panel of the Lok Adalat, and, thus, the said Court had jurisdictional competence to entertain, try and decide the application under Order XXIII Rule 3 of the Code. Once the Respondents resorted to the provisions contained in Order XXIII Rule 3 of the Code, it was not open for the Respondents to urge that the provisions contained in the Code were not attracted to the main application. In view of the provisions contained in Section 141 of the Code the procedure provided therein in regard to suits shall be followed as far as it can be made applicable in all proceedings in a court of civil jurisdiction.

10. Moreover, in the backdrop of the legal position which emerges, the

issue of the procedure adopted for the trial of the underlying proceeding (which was eventually settled before the Lok Adalaat), is relegated to a secondary position. The primary question that wrenches to the fore is, is it permissible to attack the award passed by the Lok Adalat either before the same Court or before the Appellate Court ?.

11. A reference to the relevant provisions of the Legal Services Authorities Act, 1987, may be apposite. Under clause (d) of Section 2, 'Lok Adalat' means Lok Adalat organized Under Chapter VI of the said Act, which contains a fasciculus of the provisions. Under sub-Section (5) of Section 19, 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.

12. The relevant part of Section 20 under the caption 'Cognizance of cases by Lok Adalats' reads as under :

> "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."

13. Then comes, Section 21, which provides for the Award of the Lok Adalat. Under sub-Section (1) of Section 21, every award of the Lok Adalat shall be deemed to be a decree of a Civil Court or, as the case may be, an order of any other Court. Sub-section (2) of Section 21, in terms, declares that every award made by the Lok Adalat shall be final and binding on all the parties to the dispute and no appeal shall lie to any Court against the award.

14. In the case at hand, it appears that the Lok Adalat took cognizance of the matter under Section 20(1)(i)(a) as the parties had filed a joint pursis (Exhibit 8) in PWDVA No.15 of 2019. It is imperative to note that in the main application, an endeavour was made on behalf of the Respondents to contend that the applicant had obtained signatures of the Respondents on the documents, including a joint compromise pursis to place the matter before the Lok Adalat. Execution of the joint pursis (Exhibit 8), as such, has not been put in contest. Respondent Nos.1 to 3 also endeavoured to impress upon the Court that they were not present when the Compromise Memo (Exh. 9) in

PWDVA No.15 of 2019 was taken up by the Lok Adalat. Thus, a fraud was played on the Court.

15. Prima facie, I am afraid to accede to the aforesaid submissions on behalf of Respondent Nos.1 to 3. The Head of the Panel had passed an order on the joint Pursis (Exh. 8) to the effect that, both the parties were present before the Panel of National Lok Adalat; the contents of the Compromise Memo (Exh. 9) were read over to both the parties; the parties accepted the contents thereof as true and correct and also admitted their signatures on the Compromise Memo (Exh.9); and the Compromise Memo (Exh.9) was also signed by the respective Advocates. Thus, the compromise Memo (Exh. 9) was accepted and the Presiding Officer passed an order on the application PWDVA No.15 of 2019 again recording the aforesaid facts.

16. From the perusal of the material on record, it becomes evident that, initially Lok Adalat took cognizance of the matter in conformity with the provisions of the Act, 1987 and followed the process of verification of the settlement arrived at between the parties and after recording satisfaction that the Compromise Memo (Exh.9) was arrived at by the parties out of their own volition, accepted the same and PWDVA No.15 of 2019 came to be disposed in accordance with the Compromise Memo (Exh.9). Prima facie, neither any jurisdictional error nor defect in procedure is evident from the proceedings of the Lok Adalat.

17. The thrust of the submission on behalf of Respondent Nos.1 to 3 was that the award of the Lok Adalat was obtained by practicing fraud and by setting up fictitious persons. The learned Civil Judge was of the view that the legality and validity of the Compromise Memo could be examined by the Civil Court in the wake of the aforesaid allegations. Whether the said approach of the learned Civil Judge is justifiable ?

18. The controversy is no longer *res-integra*. A three judge Bench of the Supreme Court in the case of State of Punjab V/s. Jalour Singh (supra), enunciated that, once the Award is passed by the Lok Adalat in terms of the settlement arrived at between the parties, it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil Court, and no appeal lies against it to any Court and if any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and/or Article 227 of the Constitution, that too on very limited grounds. The Observations of the Supreme Court in paragraph No.12 read as under :

> "12. It is true that where an award is made by the Lok Adalat in terms of a settlement arrived at between the parties (which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil Court, and no appeal lies against it to any Court. If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and/or Article

> 227 of the Constitution, that too on very limited grounds. But where no compromise or settlement is signed by the parties and the order of the Lok Adalat does not refer to any settlement, but directs the Respondent to either make payment if it agrees to the order, or approach the High Court for disposal of appeal on merits, if it does not agree, its not an award of the Lok Adalat. The question of challenging such an order in a petition under Article 227 does not arise. As already noticed, in such a situation, the High Court ought to have heard and disposed of the appeal on merits." (emphasis supplied)

19. In the case of Bhargavi Constructions and Anr. (supra), on which reliance was placed by Mr. Kulkarni, the Plaintiffs therein had instituted a suit for declaration that the award passed by the Lok Adalat was obtained by the Defendants therein by fraud and *misrepresentation, and, hence, the award be declared illegal, null and void and not binding on the Plaintiffs.* The trial Court had rejected the plaint by invoking the powers under clause (d) of Rule 11 of Order VII of the Code as the challenge before the Civil Court to the award of the Lok Adalat was barred in view of the judgment of the Supreme Court in the case of State of Punjab Vs. Jalour Singh (supra). The High Court set aside the order of rejection of the plaint on the premise that since the suit was founded on the allegations of misrepresentation and fraud, it is capable of being tried on its merits by the Civil Court.

20. The Supreme Court held that the High Court was not right in by-passing the law laid down by the Supreme Court on the ground that the suit can be

filed to challenge the award, if the challenge is founded on the allegations of fraud. The observations of the Supreme Court in paragraphs 24 and 26 are instructive, and, hence, extracted below :

> "24. In our considered view, the aforesaid law laid down by this Court is binding on all the Courts in the country by virtue of mandate of Article 141 of the Constitution. This Court, 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 this Court, we are of the opinion that the only remedy available to the aggrieved person(respondents herein/plaintiffs) was to file a writ petition under Article 226 and/or 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 are sufficient for its quashing."
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> 26. We also do not agree with the submissions of Mr. Adinarayana Rao, learned senior counsel for the respondents when he urged that firstly, the expression "law" occurring in clause(d) of Rule 11 Order 7 does not include the "judicial decisions" and clause (d) applies only to bar which is contained in "the Act" enacted by the Legislature; and Secondly, even if it is held to include the "judicial decisions", yet the law laid down in the case of State of Punjab (supra) cannot be read to hold that the suit is barred. Both these submissions, in our view, have no merit."
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> (emphasis supplied)

21. The aforesaid pronouncement in the case of Bhargavi Constructions

(supra) thus sets the controversy at rest as regards the challenge to the award passed by the Lok Adalat, even when the said challenge is premised on the allegations of fraud and misrepresentation.

22. As noted above, the principal contention of Respondent Nos.1 to 3 in the instant case as well is that, the signatures of Respondent Nos.1 to 3 on the joint pursis were obtained by practicing fraud on them and they were not present before the Lok Adalat when the Compromise Memo was accepted and recorded. Thus, the decision of the Supreme Court in the case of Bhargavi Constructions (supra), governed the facts of the case with equal force and rigour.

23. The learned Civil Judge was clearly in error in entertaining the main application on the ground that it was a Misc. Civil Application and not a suit. The medium of the proceeding by which the award of the Lok Adalat was sought to be assailed was of no moment. The challenge to the award of the Lok Adalat before the Court in which the original proceedings was filed or before the appeal Court was simply not maintainable. Whether the challenge was mounted by way of a separate suit or Misc. Civil Application in the original proceedings did not matter.

24. The learned Civil Judge also committed jurisdictional error in venturing on to entertain the Main Application on the premise that the said application was tenable under Order XXIII Rule 3 of the Code. It is true, a conjoint

reading of the provisions contained in Explanation to Order XXIII Rule 3 and Rule 3-A of the Code, leads to an inference that a consent decree on the strength of the compromise or settlement arrived at between the parties cannot be challenged by instituting a separate suit on the ground that the compromise or settlement arrived at between the parties was not lawful and the remedy is to approach the Court which passed a consent decree with a case that the underlying compromise or settlement was not lawful. However, the said provision cannot be resorted to where the award is passed by the Lok Adalat as constituted under the provisions of the Act, 1987. The law declared by the Supreme Court in the case of State of Punjab v/s. Jalour Singh (supra), cannot be indirectly circumvented by taking recourse to the provisions contained in Order XXIII Rule 3 of the Code.

25. The conspectus of aforesaid consideration is that the very act of entertaining the challenge to the award passed by the Lok Adalat was not legally sustainable. Thus *de hors* the tenability of the application for rejection of the Main Application under Order VII Rule 11 of the Code, the Main Application cannot be countenanced. Resultantly, the Revision Application deserves to be allowed.

26. Hence, the following order :

ORDER

(i) The Civil Revision Application stands allowed.

(ii) The impugned order dated 15 March 2022 stands quashed and set aside.

(iii) Main Application i.e. MCA No.87 of 2021 assailing the award passed by the Lok Adalat stands rejected.

(iv) In the circumstances, there shall be no order as to costs.

(N.J.JAMADAR, J.)