

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM(M) No. 371/2023, CM No. 8102/2023

Danish Shabir Bhat and Anr.

...Petitioner(s)

Through: Mr. Mohammad Rafiq Bhat, Adv.

Vs.

Mir Abid Sultan and Anr.

...Respondent(s)

Through:

CORAM:

HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE

ORDER
22.12.2023

Oral:

- 01.** The petitioners herein, who are son and wife of Shabir Ahmad Bhat [the proforma respondent] have filed this petition under Article 227 of the Constitution of India to call in question an award passed by the National Lok Adalat held at District Court Complex, Srinagar on 12th November, 2022. The petitioners have also challenged the execution proceedings filed by respondent no. 1 for seeking enforcement of the award passed by the Lok Adalat. The grievance of the petitioners is that they have neither signed any compromise deed nor were they a consenting party before the Lok Adalat and, therefore, the award passed by the Lok Adalat cannot be put to the execution against them.
- 02.** Heard learned counsel for the petitioners and perused the material on record. It seems that two complaints filed by respondent Abid Sultan Mir; one

against Shabir Ahmad Bhat and another against his wife and son [the petitioners herein] came to be filed before the court of Additional Special Mobile Magistrate Panthachowk, Srinagar under Section 138 of the Negotiable Instrument Act, 1881 [‘ the Act’]. Both these complaints were referred to National Lok Adalat convened on 12th November, 2022, for amicable settlement. Before the National Lok Adalat, Shabir Ahmad Bhat and the complainant filed a joint application for settlement of the dispute in respect of cheques between them amicably. On the basis of compromise signed by the complainant and the proforma respondent- Shabir Ahmad Bhat, the National Lok Adalat passed the award dated 12th November, 2022. As per the award dated 12th November, 2022, the proforma respondent- Shabir Ahmad Bhat agreed to pay an amount of Rs. 14.00 lacs in three installments.

03. When this award was not complied with by Shabir Ahmad Bhat, an execution petition was filed by the complainant Abid Sultan Mir before the Additional Special Mobile Magistrate, Panthachowk, Srinagar, in which apart from Shabir Ahmad Bhat, the petitioners herein were also arrayed as party-respondents. In the execution application also, the complainant clearly submitted that, it was Shabir Ahmad Bhat, who had entered into compromise with the complainant and undertaken to pay an amount of Rs. 14.00 lacs in three installments up to February, 2023. The Executing Court, as it appears from a notice issued, has proceeded in the execution petition against the petitioners also.

04. In the aforesaid background, learned counsel for the petitioner submits that when the petitioners are neither signatory to any compromise deed/application nor have they given any consent before the Lok Adalat, it is

not legally permissible for the Executing Court to put them on notice in the execution petition.

- 05.** Indisputably, the Lok Adalat award is based on the amicable settlement arrived at between respondent-Abid Sultan Mir [complaint] and proforma respondent-Shabir Ahmad Bhat and it is Shabir Ahmad Bhat, who, in terms of the award, is liable to pay an amount of Rs. 14.00 lacs in three installments up to February, 2023. If Shabir Ahmad Bhat has failed to adhere to the terms of the award, he alone is liable to be proceeded in the execution proceedings. The complainant-Abid Sultan Mir has also correctly understood the award and has, in his application for execution, specifically pleaded that it is Shabir Ahmad Bhat who has undertaken and is liable to pay an amount of Rs. 14.00 lacs in three installments by or before February, 2023.
- 06.** In view of the clear position emerging from reading of the award, compromise application and the execution proceedings, it is not permissible for the Executing Court to put the award dated 12th November, 2022 to execution as against the petitioners herein. The petitioners are not parties to a compromise entered into between Abid Sultan Mir and Shabir Ahmad Bhat nor were they present or gave any consent before the Loke Adalat. Since the petitioners have been arrayed as respondents in execution petition, as such, the trial court has issued process as a matter of routine.
- 07.** For the foregoing reasons, the process issued as against the petitioner is illegal and cannot sustain. Accordingly, this petition is disposed of at this stage by providing that the award dated 12th November, 2022, which is, admittedly, passed against Shabir Ahmad Bhat, shall be executed against Shabir Ahmad Bhat only in accordance with law. The process as against the petitioners runs beyond the terms of the award and, therefore, quashed.

08. Disposed of along with connected CM(s) in the aforesaid terms.

(SANJEEV KUMAR)
JUDGE

SRINAGAR

22.12.2023

"Shamim Dar"

Whether the Order is speaking ? Yes/No

Whether the Order is reportable? Yes/No