

Serial No. 1
Regular List

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

WP(C) No. 3014/2024

UT of Ladakh and Ors.

..... Appellant/petitioner(s)

Through: -

Mr. T. M. Shamsi, DSGI with Ms. Sufaya, Advocate

V/s

Haji Asghar Ali th. Legal heirs and Anr.

..... Respondent(s)

Through: -

CORAM:

HON'BLE MS JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

(ORDER)

23.12.2024

In the instant petition, petitioners have challenged and sought quashment of the award/order dated 12.11.2021, passed by Lok Adalat District Kargil in suit File No. 10/N date of institution 15.06.2021 tilted ***Haji Asgar Ali Vs. Deputy Commissioner and Ors.***

Learned counsel for the petitioners has relied upon the Judgment passed by the Supreme Court in case Civil Appeal No. 14328/2024 @ SLP (Civil) No. 27723 of 2024 titled ***Navratan Lal Sharma Vs. Radha Mohan Sharma & Ors.***, on the grounds taken in the memo of petition. Paragraph 14 to 17 being relevant are taken note of herein:-

“14. By the impugned order, the High Court dismissed the application solely on the ground that the order dated 14.07.2022 recording the compromise does not grant liberty to restore the appeal. We are of the opinion that this is not the correct approach, as it defeats the statutory right and remedy available to the appellant under the CPC. This Court in Pushpa Devi Bhagat (supra), as well as several other cases, has held that only the court that entertains the petition of compromise can determine its legality, at the time of recording the compromise or when it is questioned by way of a recall

application. No other remedy is available to the party who is aggrieved by the compromise decree as an appeal and fresh suit are not maintainable under the CPC.

15. In view of this legal position, the High Court was not correct in curtailing the statutory remedy available to the appellant in the first place.¹¹ In fact, when there is a statutory remedy available to a litigant, there is no question of a court granting liberty to avail of such remedy as it remains open to the party to work out his remedies in accordance with law. Therefore, there was no occasion for the court to deny liberty to file for restoration by its order dated 14.07.2022 and the consequent dismissal of the recall application by the impugned order on this ground alone does not arise. Further, as a matter of public policy, courts must not curtail statutorily provisioned remedial mechanisms available to parties.

16. It is also relevant that para 4 of the compromise deed dated 18.05.2022 recognises the appellant's right to file for restoration of appeal in case of non-compliance. Further, para 7 stipulates that the compromise will be considered void in case of non-payment. Reading these clauses together, it is clear that the compromise deed itself recognises the parties' right to approach the court to question its validity in certain circumstances. These clauses are in line with the public policy consideration of access to justice reflected in Section 28 of the Contract Act that stipulates that agreements which restrain a party from enforcing his rights through legal remedies are void.

17. In this view of the matter, we allow the appeal, set aside the impugned order dated 19.10.2023, and remand the matter to the High Court to decide the application for recall on its own merits. Needless to say that we have not expressed any opinion on the merits of the matter."

In view of the Judgment (supra), the instant petition is disposed of with a direction to the petitioners to move an application before the concerned Court for recalling of the Lok Adalat award/order dated 12.11.2021. Delay if any caused in filing such application shall not come in the way of petitioners and shall be deemed to have been condoned.

Disposed of.

(MOKSHA KHAJURIA KAZMI)
JUDGE

SRINAGAR

23.12.2024

"Mohammad Yaseen Dar"