

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRP NO.31 OF 2010

Smt. Khairun Bibi,
wife of late Mastakin Ali,
resident of Vill. & P.S. East Kadamtala,
District North Tripura.

..... Petitioner

– Vs –

- 1. Smt. Salekha Begam,
wife of late Siyeb Uddin,
resident of Vill. East Kadamtala,
P.S. Kadamtala, District North Tripura

- 2. Md. Nijam Uddin,
son of late Mastakin Ali,
resident of East Kadamtala,
P.S. Churaibari, District North Tripura

- 3. Md. Taj Uddin,
son of late Mastakin Ali,
resident of East Kadamtala,
P.S. Churaibari, District North Tripura

.....Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Ms. A.S. Lodh, Advocate

For the respondents : Mr. D.C. Saha,
Advocate for the respondent No.1.

Date of hearing & order : 17.01.2015

Whether fit for reporting :	Yes	No
		√

JUDGMENT & ORDER (ORAL)

Heard Ms. A.S. Lodh, learned counsel appearing for the petitioner as well as Mr. D.C. Saha, learned counsel appearing for the respondent No.1, namely Salekha Begam,

2. The petitioner had approached the Lok Adalat for having maintenance as death of her husband rendered her and her son vagrant. On 22.01.2006, the Lok Adalat constituted by the Sub-Divisional Legal Services Committee, Dharmanagar, North Tripura, has passed the following order:

"The petitioner and the B.P. Khairam Bibi are present.

The dispute is taken up for prolonged hearing. It is ordered that the O.P. and her sons shall pay maintenance allowance to the petitioner @Rs.300/- p.m. from the month of January,2006 onwards. The O.P. shall pay the maintenance allowance within 1st week of the next following month on which the maintenance becomes due, the payment should be made directly by hand or through the O.C., Kadamtala O.P. The petitioner shall get the share of her deceased husband of the joint family property. The O.P. shall not raise any objection in this regard.

With this observation, the dispute is settled.

Inform all concerned."

After the order has been passed, Salekha Begam and Khairum Bibi put their respective signature and thumb impression on the order sheet.

3. Ms. A.S. Lodh, learned counsel appearing for the petitioner has submitted that the impugned order dated

22.01.2006 has been passed without jurisdiction, inasmuch as the respondent Nos. 2 and 3, on whom the direction for payment has been made, did not sign the memorandum of settlement as reflected in the impugned order. Apart that, the observation that has been made for giving the respondent No.1 her share from the joint family property, has been so given without any discussion or concurrence from the persons who have their interest in the joint properties.

4. Mr. D.C. Saha, learned counsel appearing for the respondent No.1, has submitted that the respondent No.1 had been passing her days in serious destitution and persuaded by the circumstances she approached the Lok Adalat. The petitioner had concurred with the settlement. Therefore, this petition by the petitioner is not maintainable. He has further submitted that, even if there is some irregularity in the proceeding, the matter could be remanded for re-adjudication or settlement.

5. To some extent, Mr. Saha, learned counsel is right. As the petitioner herein has consented to such order, it becomes obligatory for them to perform the said understanding. The respondent Nos. 1 and 2 might have approached this court or adopted other recourse. This court enjoys under Article 227 of the Constitution of India, the supervisory jurisdiction and when an absolutely illegal order is brought before its notice, the court is within its jurisdiction to

examine whether the order has been passed following the prescribed procedure of law. For that purpose, reference may be made to Section 19(5) of the Legal Services Authorities Act, 1987, which provides that :

“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 organized :

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.”

6. In Section 20, 21 and 22 of the Legal Services Authorities Act, 1987, the procedure for such Lok Adalat has been prescribed, whereas by Section 22 of the of the Legal Services Authorities Act, 1987, it has been provided that :

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.

(2) Notwithstanding anything contained in any other law for the time being in force, the Authority or Committee organizing the Lok Adalat under subsection (1) of section 19 may, on receipt of an application from any one of the parties to any matter referred to in clause (ii) of sub-section (5) of section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination:

Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.

(3) Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

(4) Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity fair play and other legal principles.

(5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub-section (1) for disposal in accordance with law.

(6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement

could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advise the parties to seek remedy in a court.

(7) Where the record of the case is returned under sub-section (5) to the court, such court shall proceed to deal with such case from the stage which was reached before such reference under sub-section (1).

21. Award of Lok Adalat – (1) 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 and where a compromise or settlement has been arrived at by a Lok Adalat in a case referred to it under sub-section (1) of section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court-fees Act, 1870 (7 of 1870).

(2) Every award made by a 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.

22. Powers of Lok Adalat or Permanent Lok Adalat - (1) The Lok Adalat "or Permanent Lok Adalat"] shall, for the purposes of holding any determination under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, (5 of 1908) while trying a suit in respect of the following matters, namely :-

- (a) the summoning and enforcing the attendance of any witness and examining him on oath;
- (b) the discovery and production of any document;
- (c) the reception of evidence on affidavits;
- (d) the requisitioning of any public record or document or copy of such record or document from any court or office;

and (e) such other matters as may be prescribed.

(2) Without prejudice to the generality of the powers contained in sub-section (1), every Lok Adalat or Permanent Lok Adalat shall have the requisite powers to specify its own procedure for the determination of any dispute coming before it.

(3) All proceedings before a Lok Adalat "or Permanent Lok Adalat" shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code (45 of 1860) and every Lok Adalat or Permanent Lok Adalat shall be deemed to be a civil court for the purpose of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

7. In the Chapter VIA of the Legal Services Authorities Act, 1987, pre-litigation conciliation and settlement has been provided under Section 22A of the said Act. Section 22B provides for establishment of Permanent Lok Adalats whereas Section 22C stipulates the cognizance of cases by the Permanent Lok Adalat. Sub-section (7) of Section 22C of the said Act provides that :

"When a Permanent Lok Adalat, in the aforesaid conciliation proceedings, is of opinion that there exist elements of settlement in such proceedings which may be acceptable to the parties, it may formulate the terms of a possible settlement of the dispute and give to the parties concerned for their observations and in case the parties reach at an agreement on the settlement of the dispute, they shall sign the settlement agreement and the Permanent Lok Adalat shall pass an award in terms thereof and furnish a copy of the same to each of the parties concerned."

8. Even the Permanent Lok Adalat may decide a dispute on merit after providing the due opportunity in conformity to the principles of natural justice, objectivity, fair play, equity and other principles of justice in terms of Section 22D of the Legal Services Act, 1987. The Permanent Lok Adalat, in terms of Section 22B of the said Act has the jurisdiction to adjudicate in respect of one or more public utility services as defined under Section 22A(b) of the Legal Services Authorities Act as under :

(b) "public utility service" means any-

- (i) transport service for the carriage of passengers or goods by air, road or water; or**
- (ii) postal, telegraph or telephone service; or**
- (iii) supply of power, light or water to the public by any establishment; or**
- (iv) system of public conservancy or sanitation; or**
- (v) service in hospital or dispensary; or**
- (vi) insurance service.**

and includes any service which the Central Government or the State Government, as the case may be, may, in the public interest, by notification, declare to be a public utility service for the purposes of this chapter."

In other matters, the Permanent Lok Adalat or for that matter the Lok Adalat does not have any jurisdiction to adjudicate on merit. From the nature of dispute it appears that the dispute does not come under the meaning and definition of

“public utility service” provided under Section 22A(b) of the said Act and, as such, the Lok Adalat had no jurisdiction to adjudicate it on merit and pass an award. Consequently, the Lok Adalat can bind the parties after conciliation by an award to be passed on consensus or settlement.

9. What transpires from the impugned order is that the award that has been passed on the respondent Nos. 2 and 3, has been passed without their consent. Such award per se is illegal and cannot sustain the scrutiny as the Lok Adalat does not have such jurisdiction, even to adjudicate the dispute on merit.

10. Having held so, the impugned order is set aside. But the case be remanded for fresh conciliation. The Sub-Divisional Legal Services Committee, Dharmanagar, North Tripura is directed to recommence the conciliation proceeding for arriving at a settlement or consensus on the basis of the application, filed by the respondent No.1, on 22.01.2006 to the Kadamtala Out Post under the Churaibari police station. It is further noted that, at the very outset, the Lok Adalat ought to have persuaded the respondent No.1 to file similar application before it for taking up the matter for conciliation. However, since the matter is pending since long, this court will not direct the Sub-Divisional Legal Services Committee to take up that exercise. But, in future if no application is filed before the Permanent Lok Adalat, the Lok Adalat or the Sub-Divisional Legal Services

Committee, they shall not take cognizance of dispute as it is the bare minimum requirement for taking cognizance of such dispute. It is expected that within 3(three) months from the day of receipt of the copy of this order, the Sub-Divisional Legal Services Committee, Dharmanagar, North Tripura, shall complete the conciliation and pass the appropriate order in terms of the provisions as laid down in the Legal Services Authorities Act, 1987.

11. With this observation and direction, this petition stands allowed to the extent as stated above. There shall be no order as to costs.

Send down the LCRs forthwith, with a copy of this order.

JUDGE

ROY