

THE HON'BLE SRI JUSTICE S.V. BHATT

C.R.P.No.4886 OF 2015

ORDER:

-

Heard Sri M.S.Prasad, learned Senior Counsel for the petitioner and Sri Kowturu Pavan Kumar, learned counsel for respondent.

The revision is directed against the order dated 30.10.2015 in E.P.No.41 of 2012 in P.L.A.No.349 of 2011 in P.L.C.No.198 of 2011 in the Court of the I-Additional District Judge, Nellore.

The circumstances for disposal of the revision are as follows:

The revision petitioner is admittedly the tenant of respondent herein of EP schedule. The subject matter of execution petition is as follows:

“Sri Potti Sreeramulu Nellore District Registration – Nellore Sub-Registration, Nellore Municipal Corporation, Nellore City, Achari Veedhi, Municipal Ward No.17, Old Door No.294, New Door No.17/2/147- an extent of 38 akanams of RCC & MTC building in Ground Floor therein and an extent of 38 akanams of RCC & MTC building in First Floor therein and an extent of 17 akanams in 3 portions in backyard out of 93 akanams”.

The petitioner in the EP schedule property is running a bar and restaurant in the name and style “Saritha Restaurant and Bar”. The revision petitioner obtained licence in Form 2-B under the provisions of the A.P. Excise Act, 1968 from Excise Superintendent and the A.P. Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2005. The petitioner had valid lease of EP schedule till 30.06.2010 in his favour, which is a condition precedent for renewal of licence under the Rules. The petitioner and respondent had disputes in vacating the EP schedule.

The parties to the revision to resolve these disputes preferred the mechanism under the Legal Services Authority Act, 1987 (for short '1987 Act') and invoked pre-litigation jurisdiction of Lok Adalat Bench, Nellore. The parties filed a petition for passing an Award to the effect that the revision petitioner shall vacate the building unconditionally and handover possession of the above building to respondent without any sort of objection or claim of any goodwill by 01.07.2011. On the basis of such lease agreement dated 30.07.2010, the parties requested Lok Adalat to pass an award in terms of memo of compromise between the petitioner and respondent which are enclosed to the petition. During the course of enquiry, the matter is referred to Lok Adalat and the dispute between parties is settled at the intervention of Lok Adalat. Both parties and their counsel filed compromise memo which has been accepted, recorded and resulted in passing Award No.300 of 2010 dated 30.06.2010.

It is matter of record that with a view to giving one more year of legality to the possession of revision petitioner herein, the parties preferred PLC.No.198 of 2011 which substantially resembles the petition, terms, conditions of Award dated 30.06.2010, except for the minor change of 30.06.2012 for 30.06.2011. The prayer in the petition reads as follows:

“This is a petition filed by the petitioner an award may be passed to the effect that the petitioner shall vacate the building unconditionally by 30.6.2012 and hand over possession of the above building to the respondent without any sort of objection or claim of any good will by 1.7.2012 after securing fresh lease agreement from the respondent till 30.6.2012 and securing Bar licence till 30.6.2012 on basis of such lease agreement dated 30.6.2011. The award may kindly be passed according to mutually agreed terms of memo of compromise between the petitioner and respondent which are enclosed herewith, as per the reason stated in the petition.”

On 30.06.2011, the Lok Adalat passed the following Award:

“Both parties present along with their respective counsel. Heard both parties. I have perused entire record and previous award. Both parties are appraised about the terms of compromise, which is filed before Lokadalat today. They have voluntarily agreed for the terms and conditions. Hence, the terms and conditions mentioned in the memo is recorded. Accordingly an award is passed today in their cases.”

The respondent by filing E.P.No.41 of 2012 has put Award No.349 of 2011 dated 30.06.2011 to execution. The revision petitioner has taken factual and legal objections to the maintainability of E.P as well as delivery of vacant possession of

E.P schedule to the respondent herein in terms of Lok Adalat Award No.349 of 2011. I propose to refer to these objections at the appropriate place of this order. It is brought on record and admitted by revision petitioner that the respondent filed W.P.No.3250 of 2013 questioning the renewal of Form 2B licence granted in favour of revision petitioner herein for the excise year 2012-13. The said writ petition was allowed on 25.06.2013. The revision petitioner aggrieved by the order of learned Single Judge filed W.A.No.1145 of 2013. Through order dated 13.08.2013, the writ appeal filed by the revision petitioner was dismissed. The filing of writ petition and writ appeal are brought on record through memo dated 04.02.2015 and the revision petitioner admits the filing of writ petition and writ appeal, as they are orders of this Court. The orders are made part of the revision in appreciating the rival contentions.

The revision petitioner has filed counter opposing the execution and the gist of the objections is that in case of pre-litigation conciliation and settlement, as per Section 22-E (5) of the Act, the permanent Lok Adalat transmits award passed by it to a civil Court having jurisdiction and such civil Court is empowered to execute the Award as a decree. According to the revision petitioner,

the principal award dated 30.06.2011 in Award No.349 of 2011 cannot be put to execution without the same being transmitted by the permanent Lok Adalat in terms of Section 22-E(5) of the Act.

The further objection is that the Award is not registered in terms agreed between the parties and for want of registration, the award cannot be executed. The respondent herein did not comply with the agreed terms and conditions and the revision petitioner refers to an alleged agreement of sale entered into between the parties for sale and purchase of EP schedule.

The revision petitioner claims that on account of these circumstances, she cannot be vacated through E.P.No.41 of 2012. Though a specific objection as to the executability of Award No.349 of 2011 dated 30.06.2011 is not taken, the learned Senior Counsel appearing for the revision petitioner adds one more objection to the executability of decree by contending that the Award dated 30.06.2011 is not an executable decree. At best, what is contained in the Award, according to him, is the terms for operation between the parties for the lease ending 30.06.2011 or 30.06.2012. The executing Court has considered the first two objections and rejected them with the following findings:

“The contention of judgment debtor that Award should be registered otherwise E.P is not maintainable does not hold the field. This point is settled by the Honourable High Court in Beedam Reddappa Reddy Vs. Yellaboyina Vani and others reported in 2011(6) ALD 471. Their Lordships has clearly observed that the Award of Lok Adalat need not be sent for registration. Their Lordships at para ‘5’ held as follows:

“In this case, there is no dispute that with consent of the petitioner and respondents, the matter was referred to Lok Adalat, which passed an award and it is binding on the parties. If any document is required for registration, as per the award, it shall be done according to law and there is no requirement of the court sending the award of the Lok Adalat for

registration.

Therefore, it is clear from the above judgment that the award passed by the Lok Adalat does not require any registration.

xxxxxxxxxxx

xxxxxxxxxxx

At the outset, it is seen from the record that the award passed by the Lok Adalath is under Section 21 of the Legal Services Act and the Lok Adalat is constituted u/s 19 of the Legal Services Authority Act. This is not an award passed by the Permanent Lok Adalat under Section 22 B of the Act. There is no Permanent Lok Adalat established in this District so far. When the award in this case is not passed by Permanent Lok Adalat, the relevancy of the provisions under Rule 22 E (5) in this case that the award is to be transmitted to the civil Court does not arise. Even the language used under Section 22 E (5) is word 'may'. Since the award is passed by the District Legal Services Authority under Section 21 of the Act, in my considered view, the said contention of the Judgment debtor is not tenable.

Further, as per Section 6 (*sic* Rule 18) of the Legal Services Authorities Act, the Awards passed by the Lok Adalat in respect of pre-litigation stage shall be executable through the District Judges of the District in which Lok Award is held. There is no such provision either in the rules or in the sections seeking transmission of the award to the civil court. When the rule directly and clearly postulates that they shall be executed by the Court of District Judge the question of transmitting the award from the Legal Services to the Civil Court does not arise."

Hence, the revision.

I have noted the contentions of learned counsel appearing for the petitioner and perused the material available on record and the order impugned in the revision.

At the outset, I refer to the admitted circumstances of the case and the circumstances under which the revision petitioner availed PLC before Lok Adalat.

The petitioner is the tenant of respondent herein of EP schedule property and running bar and restaurant in the schedule premises. To secure a licence from the Excise Department, the petitioner among other requisites should enclose a deed of lease in his favour for schedule premises. Disputes on eviction or vacation of premises have arisen between petitioner and respondent resulting in likelihood of non-renewal of excise licence of petitioner. It is in this background the petitioner invoked the jurisdiction of Lok Adalat under the Act. The petition for PLC or passing award reads as follows:

“This is a petition filed by the petitioner an award may be passed to the effect that the petitioner shall vacate the building unconditionally by 30.06.2011 and hand over possession of the above building to the respondent without any sort of objection or claim of any goodwill by 01.07.2011 after securing fresh lease agreement from the respondent till 30.06.2011 and securing Bar licence till 30.06.2011 on basis of such lease agreement dated 30.07.2010. The award may kindly be passed according to mutually agreed terms of memo of compromise between the petitioner and respondent which are enclosed herewith. During the course of enquiry the matter is referred to Lok Adalath and the same is settled at the intervention of Lok Adalath”.

It is matter of record that for the year 2011-12 the parties have followed the same procedure and Award dated 30.06.2011 was passed. As both the awards are same and similar, this Court, to avoid repetition of the contents does not refer to both the awards. The respondent questioning grant of 2-B licence for the year 2012-13 in favour of petitioner without a valid lease of EP schedule filed W.P.No.3250 of 2013. On 25.06.2013, W.P.No.3250 of 2013 was allowed. W.A.No.1145 of 2013 filed by revision petitioner was dismissed (see 2013 (6) ALD 130). I propose to refer to the order of the Division Bench at appropriate stage in the order. After all these

efforts were unsuccessful, the present objections, it appears, are taken by the petitioner.

Sri M.S.Prasad, learned Senior Counsel for the petitioner, contends that E.P.No.41 of 2012 is not maintainable and also illegal, for according to the learned counsel, E.P.No.41 of 2012 is filed to execute the Award dated 30.06.2011 and that the Award is not transferred to the executing court as required by Section 22 E of the Act.

Section 22 E reads as follows:

22E. Award of Permanent Lok Adalat to be final.—

- (1) Every award of the Permanent Lok Adalat under this Act shall, on merit or in terms of a settlement agreement, be final and binding on all the parties thereto and on persons claiming under them.
- (2) Every award of the Permanent Lok Adalat under this Act shall be deemed to be a decree of a civil court.
- (3) The award made by the Permanent Lok Adalat under this Act shall be by a majority of the persons constituting the Permanent Adalat.
- (4) Every award made by the Permanent Lok Adalat under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding.
- (5) The Permanent Lok Adalat may transmit any award made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

By reference to the requirement under sub-section (5) of Section 22 E of the Act, it is contended for petitioner that unless the Award is transmitted by the permanent Lok Adalat to the civil Court having local jurisdiction, the Award is inexecutable.

On the other hand, Sri Pavan Kumar, learned counsel appearing for respondent, contends that Chapter VI A of the Act is

exclusively intended for pre-litigation conciliation and settlement of disputes of public utility service organizations and not applicable to an Award passed at the instance of a party to pre-litigation dispute under Sections 19 to 21 of the Act. In other words, the contention of learned counsel for respondent is that Chapter VI A has no application to the pending execution in E.P.No.41 of 2012 or Award No.349 of 2011 and this contention is liable to be rejected. The contention of petitioner is noted to be rejected by this Court for the following reasons.

A close reading of the scheme under Section 22 A to E covered by Chapter VI A of the Act, it is clear that with a view to resolving the disputes of public utility services vis-à-vis the citizens, its customers, etc., establishment of permanent Lok Adalats is considered. The Lok Adalats established for this purpose deal with the disputes which are taken cognizance under Section 22 C of the Act and procedure under Section 22 D of the Act is followed

which if parties before the permanent Lok Adalat have consented to and settled the dispute. The Award under Chapter VI A is in different set of circumstances and cannot be executed with a consent Award under Section 21 of the Act. To appreciate the legality of this contention, it is necessary to refer to Rule 18 of the Andhra Pradesh State Legal Authority Rules, 1995. Rule 18 reads as follows:

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".

A plain reading of the above provisions makes it clear that the Awards referred to under Chapter VI A of the Act are different and distinct from the Awards passed by the Lok Adalat under Section 21 of the Act. Further, proviso to Rule 18 of the Rules provides for execution of Awards passed by Lok Adalats in pre-litigation cases. The contention of petitioner, if accepted, amounts to ignoring the distinct statutory scheme of passing Awards under Section 21 and Chapter VI A of the Act. The contention of petitioner that for execution, the award should be transmitted under Section 22-E of the Act fails and is accordingly rejected.

The further contention of learned counsel for the petitioner that there is no executable Award for filing E.P.No.41 of 2012 needs to be examined. According to petitioner, the parties to the Award dated 30.06.2011 have agreed the terms and conditions and accordingly an Award is passed. According to the petitioner, had it been the case that there should also be a clause dealing with vacation or eviction of petitioner from EP schedule, such conditions would have been spelt out with clarity in the Award. In the absence of such a clause in the Award, it is contended that there is no executable Award. On the other hand, learned counsel appearing for the respondent draws the attention of the Court to the petition filed by the petitioner herein invoking the jurisdiction of Lok Adalat for settlement of dispute with certain terms and conditions. Learned counsel specifically draws the attention of this Court to the following portion:

"This is a petition filed by the petitioner an

award may be passed to the effect that the petitioner shall vacate the building unconditionally by 30.6.2012 and hand over possession of the above building to the respondent without any sort of objection or claim of any good will by 1.7.2012 after securing fresh lease agreement from the respondent till 30.6.2012 and securing Bar licence till 30.6.2012 on basis of such lease agreement dated 30.6.2011. The award may kindly be passed according to mutually agreed terms of memo of compromise between the petitioner and respondent which are enclosed herewith. During the course of enquiry the matter is referred to Lok Adalath and the same is settled at the intervention of Lok Adalath". Both parties and their counsel filed compromise memo which reads as follows:

xxxx
xxxx
xxxx
xxxx
xxxx
xxxx

he petitioner shall vacate the building at the expire of the lease period or at any early date as required by notice to vacate unconditionally without any claim of good will.
xxxx

He contends that the terms and conditions are accepted between the parties and one of the conditions is that the petitioner herein shall vacate the building unconditionally by 30.06.2012. The counsel for the respondent relies upon the order passed by the Lok Adalat on 30.06.2011, which reads as follows:

"Both parties present along with their respective counsel. Heard both parties. I have perused entire record and previous award. Both parties are appraised about the terms of compromise, which is filed before Lokadalat today. They have voluntarily agreed for the terms and conditions. Hence, the terms and conditions mentioned in the memo is recorded. Accordingly an award is passed today in their cases."

He further contends that on the contention of executability of award the findings recorded by a Division Bench of this Court in **ALLA**

**VENKATA KRISHNA REDDY V. GOVERNMENT OF ANDHRA
PRADESH AND OTHERS^[1]**

between the parties is binding on this Court and the same cannot be ignored.

Now, the question for consideration is - whether the Award dated 30.06.2011 is executable or not?.

It is evident that in the writ appeal filed by the petitioner herein a Division Bench of this Court formulated the following questions for consideration:

- “1. Whether an applicant seeking renewal of license is required to fulfill the conditions under Rule 6 of the Rules even though Rule 9-A provides for renewal whereas Rule 6 provides for conditions to be fulfilled for grant of license, in the first instance?
2. What is the effect of the Lok Adalat Award No.349 of 2011 dated 30.06.2011 and whether the excise authorities could consider the case of the tenant on the basis of subsequent agreement of sale, which is disputed by the landlady?”

Question No.2 deals with the effect of Lok Adalat Award No.349 of 2011 dated 30.06.2011 and whether the Excise Authorities could consider the case of tenant for renewal of licence on the basis of subsequent agreement of sale between parties, which is disputed by the landlady.

The second question has two limbs. First limb deals with the effect of Lok Adalat Award No.349 of 2011. In paragraph No.28, the Division Bench has recorded the findings as follows:

“In our view, the question really is required to be considered from the standpoint of the award of the Lok Adalat, being Award No.349 of 2011 dated 30.06.2011. The said award records the terms and conditions of the compromise between the landlady and the tenant wherein the term of the lease was granted up to 30.06.2012 and where the tenant also undertook to vacate on expiry of the term. The tenant, therefore, has

suffered a decree for eviction in terms of the said award and the landlady has already filed EP to execute the said award.”

From the above finding, it is very clear that a Division Bench of this Court has treated the Award dated 30.06.2011 as a decree for eviction in terms of the said Award. As the finding on Question No.2 in the reported decision has become final, the finding of fact recorded by the Division Bench is binding on this Court and I have no hesitation to hold that the Award dated 30.06.2011 is as a result of terms and conditions agreed between the petitioner and respondent and one or the other condition agreed by petitioner is to vacate the schedule premises unconditionally by 30.06.2012.

If the petitioner fails to conform to the agreed conditions, it does not lie in the mouth of petitioner to contend that the Award is not executable and on that E.P.No.41 of 2012 is liable to be dismissed. Further, the petitioner on the one hand takes full benefit of Award, completes both the terms granted by the Lok Adalat and then commits default in vacating the premises. The option available to the other party to the Award is to file EP and secure vacant possession.

The relevant portions of the petition and Award are already excerpted. I do not propose to reproduce or restate the commencement of pre-litigation case by the petitioner, what is the prayer of the petitioner and the Award accepted by the Lok Adalat. Stated in one sentence, the petitioner himself has gone before the Lok Adalat to say that she is prepared to vacate the schedule premises by the agreed date subject to the terms and conditions set out therein. If the petitioner fails to vacate by the agreed date, it cannot be said that the Award dated 30.06.2011 is inexecutable. For these two reasons, I am of the view that the second contention raised by the petitioner is without merit and is accordingly rejected.

The third contention raised by the learned senior counsel for

petitioner is that the Award dated 30.06.2011 requires registration, as the lease is for more than 11 months. In the case on hand, this Court is not considering the grant of a lease in terms of the Award. If the Award contains any of the clauses, which according to Section 17 of the Registration Act requires registration, then it is for a party who wishes to take advantage of such clause to get the document or Award registered. In the case on hand, the prayer of respondent/DHr is to secure vacant possession of EP schedule property as agreed by the revision petitioner through Award dated 30.06.2011. As rightly contented by the learned counsel for the respondent, the Award does not require registration. All the three objections raised by the petitioner fail and are rejected.

The revision fails and is accordingly dismissed. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

S.V.BHATT,

J

Date: 11.12.2015

Lrkm

–

LR copy to be marked.

[\[1\]](#) 2013(6) ALD 130