

**THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

WRIT PETITION No.8136 of 2015

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ORDER: (Per R. Subhash Reddy, J)

The petitioner seeks a Writ of Certiorari to call for the records pertaining to Award dated 08.07.2013 passed in Lok Adalat Case No.1232 of 2013 in M.C.No.129 of 2012 on the file of the 2nd respondent herein and to set aside the same to the extent of Clause 6 therein.

2. The petitioner and the 3rd respondent were married on 11.11.2009 as per Hindu rites and customs at Hyderabad and were blessed with a daughter who is named as Nitya. In view of serious disputes between them, series of cases were filed against each other. For the purpose of disposal of this Writ Petition, it is not necessary to go into the details of such cases as the scope and ambit of this Writ Petition is limited to the extent of questioning Clause 6 of the Award passed by the Lok Adalat.

3. The 3rd respondent filed C.C.No.835 of 2012 on the file of the II Metropolitan Magistrate, Cyberabad, for the alleged offences under Sections 384 and 506 IPC and, further, on the complaint of the 3rd respondent, a case was registered against the

petitioner in Cr.No.343 of 2012 for the offences under Section 498 (A) IPC on the file of the Penamaluru Police Station, Vijayawada City.

The 3rd respondent also filed FCOP No.1235 of 2011 initially on the file of the Family Court, Ranga Reddy District, which is transferred to Family Court, Vijayawada and re-numbered as O.P.No.51 of 2013. Yet another case was filed by the 3rd respondent in M.C.No.129 of 2012 on the file of the Family Court, Vijayawada for maintenance. The petitioner herein filed GWOP No.183 of 2013 on the file of the Family Court, Vijayawada for his appointment as guardian of baby Nitya and also seeking her custody. When all the aforesaid cases were pending, the petitioner and the 3rd respondent have decided to settle their disputes amicably by withdrawing the aforesaid cases which are pending in various Courts.

4. The petitioner has agreed for dissolution of marriage and by order and decree dated 08.07.2013, passed by the Family Court, Vijayawada, O.P.No.51 of 2013 filed by the 3rd respondent seeking dissolution of marriage was allowed. M.C.No.129 of 2012 filed by the 3rd respondent and her daughter was referred to the Lok Adalat bench at Vijayawada and Award dated 08.07.2010 was passed in L.O.C.No.1232 of 2013 with the consent of the parties. The said Award reads as under:

“Both the parties present. At the intervention of the members of the Lok Adalat the matter is settled as per the following terms.

1. The 1st petitioner and the Respondent agreed to dissolve their marriage voluntary by way of mutual consent by separate petition.
2. The petitioners agreed not to receive any money from the Respondent towards permanent alimony and have waived, relinquished right, if any to claim in future.
3. It is agreed by the petitioner and the Respondent that they shall not have any claims and counter claims against each other in future.
4. The 1st petitioner relinquished and waived all her rights in future in view of the compromise between them.
5. The 1st petitioner agreed to withdraw all the criminal cases filed against the Respondent at the earliest viz., 1) C.C.No.835 of 2012 on the file of Hon'ble II Metropolitan Magistrate, Cyberabad 2) Crime No.343 of 2012 dated 22-6-2012 before the Penamaluru Police Station, Vijayawada City 3) M.C.No.129 of 2012 before the Hon'ble Judge, Family Court-cum-IV Addl. District & Sessions Judge, Krishna at Vijayawada and 4) Crime No.123 of 2013 dated 15-3-2013 before the Arundalpet Police Station, Guntur Urban. 5) The Respondent has agreed to withdraw the G.W.O.P.No.183/2013 pending before this Hon'ble Court. And further 1st Petitioner had agreed to co-operate with the Respondent in withdrawing the same by appearing in person and by filing necessary petitions before the Hon'ble Courts.
6. The Petitioner No.1 shall have the permanent custody of Baby V. Nitya, i.e., the Petitioner No.2 herein and she is responsible for the welfare and upbringing of the baby V. Nitya. The respondent shall not claim any permanent or temporary custody of baby V. Nitya or claim visitation rights of Baby V. Nitya in future. The Respondent shall

not interfere either in upbringing or in welfare of baby V. Nitya in future.

7. The petitioners and the Respondent have resolved all their disputes and shall not have any claim against each other of whatsoever and shall not interfere with each other's life in future.

Both parties have affixed their signatures in evidence of their consent of the terms award."

5. After the aforesaid Award is passed, the 3rd respondent has withdrawn all the criminal cases filed by her against the petitioner and the petitioner also withdrew GWOP No.183 of 2013 in which he has sought for his appointment as guardian of baby Nitya and her custody.

6. After withdrawal of the criminal cases which were filed against the petitioner by the 3rd respondent and withdrawal of GWOP No.183 of 2013 filed by the petitioner; again, petitioner has filed GWOP No.46 of 2014 on similar lines as that of GWOP No.183 of 2013, claiming custody of baby Nitya and seeking his appointment as her guardian. Thereafter, he filed the present Writ Petition questioning Clause 6 of the Award passed in L.O.C.No.1232 of 2013. In terms of Clause 6 of the Award, 3rd respondent is given custody of baby Nitya and the petitioner herein is not entitled to claim any permanent or temporary custody of baby Nitya or to claim any visitation rights.

7. It is the case of the petitioner that he, being father of baby Nitya, is entitled to have visitation rights and Clause 6 of the Award runs contrary to the provisions of Section 6

of the Hindu Minority and Guardianship Act, 1956, Section 3 of the Majority Act and Section 8 of Guardians and Wards Act, 1980. Petitioner also stated in the affidavit that he has filed GWOP No.46 of 2014 seeking his appointment as guardian to baby Nitya and also seeking visitation rights.

8. Detailed counter-affidavit is filed by the 3rd respondent with supporting material. While denying the various allegations made by the petitioner, in the counter-affidavit, it is stated by the 3rd respondent that, in view of the Award passed by the Lok Adalat in L.O.C.No.1232 of 2013 in M.C.No.129 of 2012, petitioner is not entitled to the relief sought for in this Writ Petition. It is further stated that the Award is final and not appealable; in view of the Award and further, in view of withdrawal of GWOP No.183 of 2013, there are no grounds to invalidate Clause 6 of the Award. It is also stated that even after withdrawal of GWOP No.183 of 2013, contrary to the terms of the Award, petitioner has filed GWOP No.46 of 2014; as such, this Writ Petition filed under Article 226 of the Constitution of India is not maintainable.

9. We have heard Sri Sitaram Chaparla, learned counsel for the petitioner and Sri K. Koteswar Rao, learned counsel for the 3rd respondent and perused the material on record.

10. It is contended by the learned counsel for the petitioner that in spite of Award passed in L.O.C.No.1232

of 2013 in M.C.No.129 of 2012, petitioner, being father of Baby Nitya is entitled for visitation rights; if any clause is incorporated in the Award which runs contrary to the several provisions in the substantive legislations, such clause is to be ignored and the petitioner, being natural father of baby Nitya, is entitled for visitation rights to visit baby Nitya. In support of his arguments, learned counsel for the petitioner relies on a judgment of the Hon'ble Supreme Court in *Indian Bank v. Manilal Govindji Khona*^[1].

11. On the other hand, it is submitted by the learned counsel for the 3rd respondent that, inasmuch as Award is passed by Lok Adalat constituted under the Legal Service Authorities Act, 1987, it is final and binding on the parties. It is further submitted that as per the terms of the Award passed by the Lok Adalat, which is based on the compromise arrived between the parties, the 3rd respondent has already withdrawn several criminal cases which were pending against the petitioner and the petitioner has also withdrawn GWOP No.183 of 2013 which was filed earlier, but, thereafter, filed the present Writ Petition by making false and untenable allegations, as such, the same is not maintainable. It is further submitted that petitioner has filed GWOP No.46 of 2014 in which he claimed the same relief as was sought in GWOP No.183 of 2013, as such, he is not entitled to the relief sought for in this Writ Petition, under Article 226 of the

Constitution of India. It is finally submitted that before the disputes were resolved, several times many threatening messages were sent by the petitioner to the 3rd respondent and if the petitioner is granted visitation rights, safety of the 3rd respondent would be at stake. In support of his arguments, learned counsel for the 3rd respondent relies on a judgment of the Hon'ble Supreme Court in *P.T. Thomas v. Thomas Job*^[2].

12. In view of the rival contentions made by the learned counsel for the parties, the only question which falls for consideration in this Writ Petition is whether the petitioner is entitled to seek quashing of Clause 6 of the Award passed by the Lok Adalat in L.O.C.No.1232 of 2013.

13. From the material on record, it is clear that there were serious disputes between the petitioner and the 3rd respondent and series of complaints were filed by the 3rd respondent apart from filing O.P.No.51 of 2013 for dissolution of marriage and M.C.No.129 of 2012 claiming maintenance from the petitioner. At the same time, petitioner has filed GWOP No.183 of 2013 claiming guardianship and custody of baby Nitya. Subsequently, petitioner and 3rd respondent have amicably settled their disputes and O.P., filed by the 3rd respondent seeking dissolution of the marriage was allowed by order and decree dated 08.07.2013 and the same has become final. Even in the maintenance case,

petitioner as well as the 3rd respondent have filed compromise memo and the same is referred to Lok Adalat, which has passed Award and as per the terms of the Award, the

3rd respondent will have the custody of baby Nitya and she is responsible for her welfare and upbringing. The petitioner has specifically agreed that he shall not claim any permanent or temporary custody and also visitation rights to visit baby Nitya. Clause 6 of the Award is mainly questioned on the ground that the same runs contrary to the provisions under Section 6 of the Hindu Minority and Guardianship Act, 1956, Section 3 of the Majority Act and Section

8 of the Guardian and Wards Act, 1980. Section 6 of the Hindu Minority and Guardianship Act contemplates natural guardians of a Hindu minor. As per Section 6, natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property, in case of a boy or unmarried girl, is the father and after him, the mother. As per proviso to Section 6(a), custody of minor who has not completed the age of five years shall ordinarily be with the mother. Similarly, Section 3 of the Majority Act, 1875 states that every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before and the day on which he was born is to be included as a whole day and he shall be deemed to have attained majority at the beginning of the eighteenth

anniversary of that day. Further, Section 8 of the Guardians and Wards Act, 1890 contemplates persons who are entitled to apply for order for appointment as guardian to a minor. Clause 6 of the Award will not in anyway run contrary to any of the aforesaid provisions. Section 6 of the Hindu Minority and Guardianship Act, 1956 contemplates natural guardians of a Hindu minor. At the same time, if there are any disputes with regard to guardianship, it is always open for the parties to settle the issue. When compromise is filed before the Lok Adalat and when Award is passed, the same is final and the Award is like a decree passed by Civil Court and the same is not appealable. Having had the benefit of the Award, further, withdrawal of several criminal cases filed against the petitioner and having withdrawn GWOP No.183 of 2013 filed claiming guardianship and custody of baby Nitya, petitioner is not entitled to seek invalidation of Clause 6 of the Award. This Court is of the view that Clause 6 of the Award will not run contrary to any of the provisions referred above, so as to invalidate the same. In any event, the petitioner, after withdrawal of GWOP No.183 of 2013 filed GWOP No.46 of 2014 which is pending consideration. The judgment in the case of *Indian Bank* (1 supra) relied on by the learned counsel for the petitioner would not render any assistance in support of the claim of the petitioner. In the aforesaid case, when it was found that the Court which has passed the order was not having jurisdiction, the Hon'ble Supreme Court has held that when order is passed by the Court which is

not having jurisdiction, such proceedings are void *ab initio*. The ratio laid down therein no way helps the petitioner. On the other hand, in the judgment in the case of *P.T. Thomas* (2 supra) relied on by the learned counsel for the 3rd respondent, the Hon'ble Supreme Court has held that Award of Lok Adalat shall be deemed to be a decree of Civil Court and such Award is final and permanent. In view of the said ratio laid down by the Hon'ble Supreme Court and having regard to the reasons referred hereinabove, this Court is of the view that there is no merit in this Writ Petition so as to set aside Clause 6 of the Award.

14. Writ Petition is accordingly dismissed. No order as to costs.

As a sequel, miscellaneous petitions, if any pending in the Writ Petition, stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

7th August, 2015
MRR

[\[1\]](#) 2015 (3) ALD 146 (SC)

[\[2\]](#) (2005) 6 SCJ 146