

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.1361 of 2013

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed by the defendant in OS.No.317 of 2010 on the file of the Court of the learned Senior Civil Judge, Gajuwaka, Visakhapatnam District, requesting to set aside the Award, dated 05.02.2012, in the aforementioned suit, passed by the Lok Adalat Bench constituted by the District Legal Services Authority, Visakhapatnam.

2. I have heard the submissions of Smt. B. Neeraja Reddy, learned counsel appearing for the revision petitioner-defendant and of Sri N. Siva Reddy, learned counsel appearing for the respondent-plaintiff. I have perused the material record.

3. The parties shall hereinafter be referred to as they are arraigned in the suit for convenience and clarity.

4. At the outset, the facts, which lead to the filing of this revision petition by the defendant, in brief, are as follows:

The plaintiff brought the afore-stated suit against the defendant for recovery of principal amount of Rs.1,50,000/- due under a registered mortgage deed with interest and for granting a preliminary decree for the suit amount with interest and costs. The mortgaged property, as described in the plaint schedule, is a site of an extent of 488.9 square yards with 200 square feet ACC shed bearing plot no.84/35 in D Block, within S.No.64 part, Industrial Development Area, Chinagantyada village, within Greater Visakhapatnam Municipal Corporation area. The defendant filed a written statement resisting the suit. The learned Senior Civil Judge, at the request of both the parties, referred the suit to Lok Adalat to enable the parties to amicably settle the

matter. In the Lok Adalat held on 05.02.2012, the Bench of the Lok Adalat presided over by the learned VIII Additional District Judge, (Judge, Fast Track Court), Gajuwaka, an Advocate-cum-Member and a social worker-cum-Member passed the Award impugned in this revision and accordingly the suit was disposed of as per the terms and conditions stated in the Award passed by the Lok Adalat Bench. Aggrieved thereof, the defendant preferred this revision.

5. The case of the defendant, which is relevant and which requires consideration, in brief, is this: - 'The Lok Adalat Award was obtained by the plaintiff in collusion with the defendant's counsel. The defendant gave a complaint against his counsel to the Bar Council of Andhra Pradesh, on 25.11.2013, after coming to know of the Award of the Lok Adalat. No mediation or conciliation took place either before the civil Court or the Lok Adalat. The alleged compromise and the Lok Adalat Award are a result of the fraud played by the plaintiff. Indeed, this defendant filed a written statement resisting the suit, *inter alia*, pleading in the defence that the mortgage debt was already discharged in the year 2009 itself. The Award of the Lok Adalat is a one-sided Award. The terms and conditions in the Award itself reflect that it is a one-sided Award. Hence, the Award of the Lok Adalat is liable to set aside and the suit is liable to be restored to file for disposal after conducting full fledged trial.'

6. At the hearing, the learned counsel for the defendant while reiterating the case of the defendant, which is stated supra, further urged as under:

The defendant had taken a specific defence that the defendant had borrowed the amount covered by the registered mortgage deed only and that at the time of obtaining loan under the said mortgage deed, the plaintiff pressurized the defendant to sign two blank promissory notes and two blank cheques and also to deposit the title deed relating to the property of the defendant as security and that as per the demand of the plaintiff, the

defendant executed not only the registered mortgage deed but also issued two signed blank promissory notes and signed cheques of UCO Bank, Gajuwaka, bearing numbers 455687 and 455688, and further deposited his sale deed dated 31.05.2006 and that the defendant subsequently discharged the mortgage debt by issuing a cheque dated 13.06.2009 and that the same was encashed by the plaintiff and that the defendant further paid Rs.1,00,000/- in cash and that the entire mortgage debt was thus discharged and that the plaintiff dragged on the issue without returning the blank signed promissory notes, blank cheques and the title deed of the defendant. The plaintiff through his relative got filed CC.No.617 of 2009 on the file of the Court of the learned II Additional Judicial Magistrate of First Class, Eluru. Then the defendant took the matter before the elders and demanded the plaintiff to return his said documents. Therefore, the plaintiff bore-grudge. Thereafter the plaintiff got filed, through the same relative, another suit in OS.No.201 of 2009 on the file of the Court of the learned Additional Senior Civil Judge, Eluru, besides another criminal case. Thus, a serious and strong contest was raised in the written statement. However, the above said calendar case and the suit got filed by the plaintiff through his relative were dismissed holding in favour of the defendant in all respects. In the said circumstances, there was no reason or necessity for the defendant to enter into a compromise more particularly in the light of his defence in the written statement in the subject suit. As per the terms of the Award, Rs.2,85,000/- was payable by the defendant towards full and final settlement of the suit claim to the plaintiff within one month from the date of the Award and on failure to do so, the plaintiff is entitled to recover the entire suit sum, which is more than Rs.3,00,000/-, with interest at 6%per annum on the principal amount of Rs.1,50,000/-. When the defence of the defendant in the written statement is considered together with the onerous terms in the Award of the Lok Adalat, it is clear that no prudent person like the defendant would agree for such terms. Thus, the Award terms do indicate that there is

collusion between the plaintiff and the counsel for the defendant and that the Award was obtained by the plaintiff by playing fraud. Hence, the Award is liable to be set aside.

7. Per contra, the learned counsel for the plaintiff would submit as follows: The defendant is admitting that he borrowed the amount under the registered mortgage deed. The principal amount is Rs. 1,50,000/- . The defendant pleads that he issued one cheque for Rs. 1,00,000/- and that the same was encashed by the plaintiff and that he paid another Rs. 1,00,000/- in cash. The said discharge pleaded by the defendant is false. The plaintiff has nothing to do with the calendar case and also the suit filed by a third party, V. Ravindranath Tagore. The judgment in the calendar case and decree and judgment in the said suit instituted by the said person are not binding on this plaintiff as he is not a party to the suit proceedings and as he has nothing to do with the same. The plaintiff and the defendant voluntarily requested the Court of the learned Senior Civil Judge to refer the subject suit to the Lok Adalat. The Court record cannot be doubted. After the suit was referred to the Lok Adalat, the Bench of the Lok Adalat took up the matter and before the Bench of the Adalat, the matter was amicably settled with free volition and as per the terms and conditions agreed to between the parties. The Award of the Lok Adalat clearly reflects that an amicable settlement was arrived at with free volition of the parties. The terms are not onerous. The plaintiff gave up his valuable right to proceed against the mortgaged property and agreed for a money decree before the Adalat. Therefore, the terms of the Award were agreed to on mutual consent and with free volition of the parties and were determined after balancing the interests of both the parties. Only after satisfaction that the terms and conditions are arrived at with free consent and free volition of the parties, the Lok Adalat Bench accepted the settlement and passed the Award. In-fact, the Adalat Bench was presided over by a Senior District Judge. The defendant is not disputing his attendance before the Adalat. He only states that there is no

conciliation; the said contention is contrary to the record and the terms of the Award and facts. The defendant is also not disputing his signature and also that of his counsel on the Award of the Lok Adalat. Therefore, the contention of the defendant that the Award was obtained in the circumstances stated by him and by playing fraud is false. The present litigation is a vexatious litigation intended to delay and defeat the just claim of the plaintiff under the Award, which has become final and which is equivalent to the decree of a civil Court and which is binding and is executable under facts and in law. In any view of the matter, this revision in which the defendant raised complex questions of fact is not maintainable and is liable to be dismissed.

8. Learned counsel for the defendant placed reliance on the following decisions on the aspect of fraud.

1. V. Kameswara Rao v. District Legal Services Authority-cum-VII Additional District and Sessions Judge Court (Lok Adalat), Vijayawada and others¹;
2. Kataru Anjamma v. Chairman, Lok Adalat Bench-cum-I Additional Senior Civil Judge, Guntur, and others²; and
3. Chaluvadi Murali Krishna and another v. District Legal Service Authority, Prakasam District, Ongole and others³.

Further, the following decisions are relied upon on the aspect of jurisdiction of this Court under Article 226 of the Constitution of India and power and jurisdiction to set aside the Award of the Lok Adalat when a request is made to set aside any Award on the ground of fraud.

1. Chilukuru Umadevi v. Kalidindi Vijayalakshmi⁴
2. Commissioner of Customs v. Candid Enterprises⁵
3. Vyalikaval House building Co-op., Society v. V. Chandrappa and others⁶

¹ 2015(2) ALD 453 (DB)

² 2011(2) ALD 135 (DB)

³ 2013 (1) ALD 320 (DB)

⁴ 2010 (5) ALD 617

⁵ (2002) 9 SCC 764

⁶ (2007) 9 SCC 304

4. Ganpatbhai Mahijibhai solanki v. State of Gujarat and others⁷
 5. Badami (deceased) by her LR v. Bhali⁸
 6. Meghmala and others v. G. Narasimha Reddy and others⁹
9. There is no dispute with the legal propositions laid down in the two sets of decisions cited by the learned counsel on the aforesaid two aspects. It is pertinent to note that the present proceeding is not a writ petition filed under Article 226 of Constitution of India but is only a revision filed under Article 227 of the Constitution of India.
10. A conspectus of the facts, contentions and submissions would reflect that the revision petitioner/ defendant by way of this revision petition filed under Article 227 of the Constitution of India is requesting to set aside an Award of the Lok Adalat Bench passed in the subject suit on the ground of fraud, *inter alia*, contending that in view of his defence in the suit and the fact that he seriously resisted and succeeded in the suit and the calendar case earlier filed by one Ravindranath Tagore, who is said to be related to the plaintiff in the subject suit, there is no necessity for the revision petitioner/ defendant to compromise the suit before the Lok Adalat and that the plaintiff colluded with the counsel for the defendant/ revision petitioner herein and obtained the Award before the Adalat by playing fraud. It is also to be noted that the defendant is not disputing his signature and also that of his counsel on the Adalat Award. He is only disputing that there was no conciliation or settlement either before the trial Court or the Adalat. His further case is that the strong defence raised in the suit and the fact that the suit and the CC filed by Ravindranath Tagore were dismissed, strongly probabalize the fact that the defendant never ever was willing to compromise, that too, on the onerous terms that are mentioned in the Award of the Lok Adalat.

⁷ (2008) 12 SCC 353

⁸ (2012) 11 SCC 574

⁹ (2010) 8 SCC 383

11. In this backdrop, the following three aspects require advertence to in this revision.

(i) Whether the revision petition challenging the Award passed by the Lok Adalat on the ground of fraud is maintainable?

(ii) Whether the adjudication of the revision petition involves any complex and disputed questions of fact and whether such questions can be satisfactorily resolved in a revision of this nature? and

(iii) Whether the petitioner has any alternative or effective remedy for the resolution of the dispute raised in the revision?

12. Though the learned counsel for both the sides placed reliance on the decisions for and against the proposition as to the maintainability of the revision petition, without going into the depth of the said aspect, let it be assumed for a moment that the present revision petition for setting aside the Award of the Lok Adalat passed in the suit is maintainable, in view of the facts and circumstances of the case, as the maintainability of the revision petition would depend upon the facts and circumstances of each case and there cannot be a straight jacket formula on the issue of maintainability of the revision petition. Coming to the next aspect as to whether the questions of fact and the issue of fraud raised can be satisfactorily resolved in the revision petition, it is trite to note that in the factual background already stated supra, it is manifest that the questions of fact and issue of fraud raised by the revision petitioner/ defendant are complex questions and issue. One of the principal grounds on which the Award is being sought to be set aside is 'fraud' and it is being *inter alia* alleged that the counsel for the defendant colluded with the plaintiff and the Award was obtained without any amicable settlement before the Adalat and that the facts and circumstances stated by the defendant probablise that he would not have entered into such settlement before the Adalat.

13. It is no doubt true that fraud vitiates every solemn act. It is also true that an Award of the Adalat obtained by fraud would be a nullity; and in case the contention of fraud stands established, the said Award would be liable to be set aside. The following principles are undisputed: 'Fraud avoids all judicial acts, ecclesiastical or temporal. A judgment, decree or order obtained by playing fraud on the Court, Tribunal or authority is a nullity and non-est in the eye of the law. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings. [A.V. Papayya Sastry v. Government of AP ((2007) 4 SCC 221); S.P. Chengalvaraya Naidu v. Jagannath (1994 AIR 853)]. As per the settled principle of law, the defendant in order to succeed in his claim must establish fraud beyond reasonable doubt. However suspicious may be the circumstances, however strange the coincidences, and however grave the doubt, suspicion alone can never take the place of proof. [Union of India v. Chaturbhai M. Patel & Co., (1976 AIR 712)]. Therefore, unless the defendant/revision petitioner establishes fraud beyond doubt, which is a complex factual issue, he would not be entitled to any relief in this revision. Since the adjudication of the revision involves complex and disputed questions of fact and also the issue of fraud, satisfactory resolution of such questions of fact and issue require full-fledged trial, in the well-considered view of this Court. Hence, it is just and fair to relegate the revision petitioner to pursue any alternative or effective remedy for resolution of the questions of fact and the issue of fraud raised in this revision.

14. Coming to the aspect as to whether or not an effective and alternative remedy is available to the defendant, the said question is no longer *res integra*. In Kothakapu Muthyam Reddy & Ors v. Bhargavi Constructions & Ors.¹⁰, a Division Bench of this Court while considering the question as to whether the civil suit is maintainable against the Award of Lok Adalat, having referred to the relevant position of law, held that a Civil suit can be filed to set aside the

¹⁰ 2015 (6) ALD 1 = 2015 (5) ALT 476

Award of the Lok Adalat, if such an Award was obtained by fraud. The point for consideration in the said decision was – ‘*Whether a party, to an award passed by the Lok Adalat, is barred by the provisions of the Act and Section 9 CPC, from invoking the jurisdiction of the Civil Court seeking to have the award declared as a nullity on the ground that it was obtained by misrepresentation and/or fraud?*’. The said point was answered as follows: “The point for consideration is answered holding that the remedy of a Civil Suit is not barred where the jurisdiction of the Civil Court is invoked by a party to the compromise, or the Award of Lok Adalat, alleging that the said compromise or award was obtained by misrepresentation or fraud.” In the cited decision, the Division Bench of this Court also held as follows: “Though an award of the Lok Adalat can be subjected to challenge in a Civil Court if it is vitiated by fraud, it must be borne in mind that allegations of fraud are easier made than established.” Further, law requires strict proof of fraud. Fraud is essentially a question of fact, the burden to prove which is upon him who alleges it. Mere allegations or averments of facts do not make a strong *prima facie* case of fraud. The material and evidence has to show it. A finding as to fraud cannot be based on suspicion and conjecture and must be established beyond reasonable doubt. Ordinarily, the burden to prove fraud would be on the party who asserts the affirmative of the issue and it rests, after evidence is gone into, upon the party against whom, at the time the question arises, judgment would be given if no further evidence were to be adduced by either side. The degree of proof required in such cases is extremely high. (A.C. Ananthaswamy v. Boraiah [2004 (8) JT SC 581]).

15. In view of the above analysis, this Court finds that the complex questions of fact and the issue of fraud cannot be resolved except after a full-fledged trial in a suit but not in this revision and that as an efficacious alternative remedy by way of a civil suit is available to the revision petitioner/ defendant, the revision petition cannot be entertained in the facts and circumstances of

the case. As a sequel, this Court further finds that it is just and fair to relegate the petitioner to a civil suit while dismissing the revision petition as not maintainable.

16. In that view of the matter, the Civil Revision Petition is dismissed as not maintainable reserving liberty to the revision petitioner/ defendant to pursue an efficacious alternative remedy by way of a civil suit, if he chooses so to do. It is made clear that the defendant/ revision petitioner is at liberty to invoke the provision of Section 14 of the Indian Limitation Act, 1963, if he chooses so to do while pursuing the remedy of a civil suit as directed in this order, provided the facts and law permits him so to do.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.



M. SEETHARAMA MURTI, J

13th December, 2016
Vjl