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HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 55 of 2017**

(Arising out of judgment/order dated 21.11.2016 in Civil Suit No./A/1300/2013 passed by learned First Additional District Judge, Raigarh)

- Koushal Kumar S/o Late Govind Aditya, Aged 60 Years Occupation Retired Employee, R/o Baikunthpur Raigarh Tah. & Distt. Raigarh, Chhattisgarh(Defendant)

---- Petitioner**Versus**

1. Kishanlal S/o Late Govind Aditya, Age 30 Years R/o Baikunthpur Raigarh Tah. & Distt. Raigarh, Chhattisgarh(Defendant)
2. Mithilesh Kumar S/o Late Govind Aditya, Age 60 Years, Tailor, R/o Baikunthpur Raigarh, Tah. & Distt. Raigarh, Chhattisgarh(Plaintiff)
3. State Of Chhattisgarh, Through Collector, Raigarh, Chhattisgarh(Defendant)

---- Respondent

For Appellant	Mr. R. Tripathi, Advocate
For Respondent No.2	Mr. Vivek Tripathi, Advocate
For Respondent /State	Mr. Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Arvind Singh Chandel

Order On Board By**Prashant Kumar Mishra, J.****12/9/2017**

1. Heard.
2. The short question, arising for determination in this appeal, is

'whether a decree passed in the Lok Adalat can be declared as nullity and not binding on the plaintiff in a separately instituted Civil Suit challenging the Lok Adalat decree on the ground of fraud or for want of notice?'.

3. The facts of the case, briefly stated, are that a Civil Suit bearing No.24-A/2016 was preferred by appellant Koushal Kumar impleading his brothers Mithilesh Kumar and Kishanlal, seeking declaration of partition and separate possession of a share in the joint family property. The suit was placed before the Lok Adalat at the stage of pre-litigation. An application for compromise and passing decree in terms thereof was presented before the Lok Adalat on 3.4.2006, which persuaded the Lok Adalat to fix the matter for compromise on 23.4.2006 and thereafter, the judgment and decree was passed on the said date.
4. Mithilesh Kumar, the plaintiff, would aver in the present suit, that he was not present before the Lok Adalat nor he had signed on the compromise application in the previous suit, therefore, the decree is not binding on him. The subsequently instituted suit has been decreed by the present impugned judgment and the judgment and decree of the Lok Adalat passed on 23.4.2006 has been held to be not binding on plaintiff Mithilesh Kumar.
5. In the matter of **Bharvagi Constructions and another Vs. Kothakapu Muthyam Reddy and others** [Civil Appeal No.11345 of 2017, decided on 07.09.2017], the Supreme Court has held

thus in paras 27, 28, 29, 39, 40 & 41 :

"27) In our considered view, the aforesaid law laid down by this Court is binding on all the Courts in the country by virtue of mandate of Article 141 of the Constitution. This Court, in no uncertain terms, has laid down that challenge to the award of Lok Adalat can be done only by filing a writ petition under Article 226 and/or Article 227 of the Constitution of India in the High Court and that too on very limited grounds.

28) In the light of clear pronouncement of the law by this Court, we are of the opinion that the only remedy available to the aggrieved person(respondents herein/plaintiffs) was to file a writ petition under Article 226 and/or 227 of the Constitution of India in the High Court for challenging the award dated 22.08.2007 passed by the Lok Adalat. It was then for the writ Court to decide as to whether any ground was made out by the writ petitioners for quashing the award and, if so, whether those grounds are sufficient for its quashing.

29) The High Court was, therefore, not right in by passing the law laid down by this Court on the ground that the suit can be filed to challenge the award, if the challenge is founded on the allegations of fraud. In our opinion, it was not correct approach of the High Court to deal with the issue in question

to which we do not concur.

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39) As a result, the appeal succeeds and is allowed. Impugned order is set aside and that of the order passed by the Trial Court is restored. As a consequence, the application filed by the appellants (defendants) under Order 7 Rule 11 (d) of the Code is allowed resulting in rejection of the plaint.

40) We, however, make it clear that the respondents (plaintiffs) would be at liberty to challenge the legality and correctness of the award dated 22.08.2007 passed by the Lok Adalat by filing the writ petition under Article 226 or/and 227 of the Constitution in the High Court in accordance with law.

41) We also make it clear that we have not examined the merits of case of either parties which is the subject matter of the suit and hence the writ court, in the event of writ petition being filed, would decide the writ petition strictly in accordance with law without being influenced by any of our observations."

6. In view of the above, the law is now well settled that a compromise decree passed by the Lok Adalat is not open to challenge in a civil suit and the only remedy for a party aggrieved with the compromise decree of the Lok Adalat is to

maintain a writ petition under Article 226 and/or 227 of the Constitution of India.

7. In view of the settled legal position, the First Appeal is allowed and the impugned judgment and decree is set-aside. However, it will remain open for respondent No.2/plaintiff to avail the remedy available to him under Article 226 and/or 227 of the Constitution of India.
8. No order as to costs.

Sd/-

Judge

(Prashant Kumar Mishra)

Sd/-

Judge

(Arvind Singh Chandel)

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