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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10479 OF 2012

1. Sangita w/o Karbhari Abhang,
Age: 29 years, Occu: Nil,
R/o. C/o Pandurang Bhaurao Phulari,
at post Bhenda, Tq. Newasa,
Dist. Ahmednagar
2. Nitin Karbhari Abhang,
Age: 11 years, Occu: Nil,
R/o as above
3. Mauli @ Akshya Karbhari Abhang,
Age: 9 years, Occu: Nil,
R/o as above

..PETITIONERS

VERSUS

1. Bappasaheb Mahadeo Abhang,
Age: 35 years, Occu: Agril.,
R/o. Hatgaon, Tal. Shevgaon,
Dist. Ahmednagar
2. Subhadra w/o Baban Kathkade,
Age: 30 years, Occu: Household,
R/o: Gevrai, Tal. Umapur,
Dist. Beed
3. Shashikla w/o Narayan Takale,
Age: 45 years, Occu: Household,
R/o. Umapur, Tal. Gevrai,
Dist. Beed
4. Sunita w/o Mahadev Abhang @
Sunita Shitaram Bhagwat,
Age: 25 years, Occu: Household,
R/o. Gevrai (Partachi), Tal. Newasa,
Dist. Ahmednagar

..RESPONDENTS

Mr K. N. Lokhande, Advocate for petitioners;
Mr D. G. Nagode, Advocate for respondent No.1

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CORAM : NITIN W. SAMBRE, J.**DATE : 30th October, 2017****ORAL ORDER**

The petitioner no.1 herein was married to one Karbhari and was blessed with two children. Said Karbhari was defendant no.1 in Regular Civil Suit No.312 of 2011 filed by his sisters in the Court of Civil Judge Junior Division, Shevgaon, for partition and separate possession.

2. The aforesaid suit was compromised before Maha Lok Adalat and accordingly a compromise decree was drawn pursuant to the order dated 18th September, 2011, passed by Civil Judge Junior Division, Shevgaon. It is this order, which is questioned in the present petition. Petitioners claim that a separate suit, being Regular Civil Suit No.379 of 2011, at the behest of the petitioners, for partition is already pending before the Court of Civil Judge Junior Division, Shevgaon.

3. Learned Counsel appearing on behalf of the petitioners submits that the husband of petitioner no.1, namely, Karbhari expired on 15th April, 2012, i.e. after the compromise decree was passed. He would invite attention of this Court to the judgment and order passed by learned Judicial Magistrate First Class, Newasa on 13th October, 2008 in O.M.A. No.256 of 2007, i.e. proceedings initiated under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short "D.V. Act"). The said Court has passed following order :-

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- “1. Application is partly allowed as under.
2. Police Inspector of P.S. Newasa is hereby appointed as Protection Officer so as to provide protection to the petitioner as and when required.
3. Opponent No. 1 is hereby restrained from alienating land Gat No. 754 of village Hatgaon, Tq. Shevgaon to any other person without prior permission of the Court.
4. Opponent No. 1 is directed to provide one room to the petitioner for her residence with her two sons or to pay Rs.1000/- per month towards rent.
5. Opponent No. 1 pay Rs.1,000/- per month to petitioner for her maintenance from the date of petition.
6. Opponent No. 1 do pay Rs. 700/- each per month to her two sons as their maintenance from the date of petition.
7. Protection officer do provide protection to the petitioner in respect of domestic violence if required.
8. Opponent No. 1 do not commit breach of any order passed in favour of petitioner, on failure to abide condition, opponent No.1 will be held responsible for provisions contemplated under section 31(3) of said Act.
9. Protection officer i.e. Police Inspector of P.S. Newasa to get executed bond from the opponent for preventing the commission of domestic violence.

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10. Opponent No.1 is also restrained from performing second illegal marriage with any lady/girl.

11. Opponent no.1 do pay Rs.1000/- towards cost of petition.”

According to the learned Counsel, since the compromise decree obtained by playing fraud, by suppressing the order dated 13th October, 2008, passed in O.M.A. No.256 of 2007, is liable to be set aside.

4. In response to the query as regards maintainability of the present petition, learned Counsel appearing on behalf of the petitioners has invited attention of this Court to the judgment of the Apex Court, in the matter of **State of Punjab & anr. vs. Jalour Singh & ors.**, reported in **2008 AIR (SC) 1209**, particularly observations in paragraph 12, which read thus :-

“12. It is true that where an award is made by Lok Adalat in terms of a settlement arrived at between the parties, (which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court, and no appeal lies against it to any court. If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under [Article 226](#) and/or [Article 227](#) of the Constitution, that too on very limited grounds. But where no compromise or settlement is signed by the parties and the order of the Lok Adalat does not refer to any settlement, but directs the respondent to either make payment if it agrees to the order, or approach the High Court for disposal of appeal on merits, if it does not agree, is not an

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award of the Lok Adalat. The question of challenging such an order in a petition under [Article 227](#) does not arise. As already noticed, in such a situation, the High Court ought to have heard and disposed of the appeal on merits.”

5. In view of aforesaid observations of the Apex Court, in my opinion, the present petition under Article 227 of the Constitution is very much maintainable.

6. Learned Counsel appearing on behalf of respondent no.1 does not dispute the aforesaid position.

7. So far as rest of the respondents are concerned, none appears on their behalf though duly served. The rest of the respondents were earlier represented by an Advocate, however, said Advocate came to be discharged, as he reported no instructions. In view thereof, this Court had issued notices to respondents no.2 to 4, however, they have chosen not to appear before this Court, in spite of service of Court notice.

8. In the aforesaid background, what could be ascertained from the record is, in O.M.A. No.256 of 2007, initiated under Section 12 of the D.V. Act before Judicial Magistrate first Class, Newasa, on 13th October, 2008 the said Court has passed an injunction order against the respondents, restraining them from alienating the suit property being Gat No.754 of village Hatgaon, Taluka Shevgaon. So far as the compromise decree passed in Regular Civil Suit No.312 of 2011 is concerned, the same

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pertains to the property Gat No.754 about which there was already a charge of the present petitioners, as is apparent from the order passed in O.M.A. No.256 of 2007, whereby the parties were restrained from alienating the property. Apart therefrom, it is not in dispute that the suit for partition instituted by petitioner no.1, being Regular Civil Suit No.379 of 2011 is already *sub judice* and pending on the file of Civil Judge Junior Division, Shevgaon, in relation to the very same property.

9. In view of above, the impugned judgment and order dated 18th September, 2011, passed below Exh.1 in Maha Lok Adalat, in view of settlement at Exh.15, in Regular Civil Suit No.312 of 2011, is noticed to be by suppressing earlier order passed in O.M.A. No.256 of 2007, wherein the rights of the present petitioners are jeopardized, by virtue of drawing a settlement decree in Maha Lok Adalat.

10. In the result, the impugned judgment and order dated dated 18th September, 2011, passed below Exh.1 in Maha Lok Adalat, in view of settlement at Exh.15, in Regular Civil Suit No.312 of 2011 and consequential compromise decree drawn therein, is hereby quashed and set aside.

Regular Civil Suit No.312 of 2011 stands restored on the file of Civil Judge Junior Division, Shevgaon, which should be decided along with Regular Civil Suit No.379 of 2011, instituted by respondents no.2 to 4 herein, in accordance with law.

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Writ Petition stands allowed in above terms.

(NITIN W. SAMBRE, J.)

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