

*IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH*

WP.No.46801 of 2016

Between:

Sai Vuma Chit Fund Co., & Group of
Companies Suffers Welfare Association,
reptd by its President-Voori Nagalaxmi
Girija Kumari

... Petitioner

And

The State of Andhra Pradesh, reptd by
Principal Secretary, Home Department,
Hyderabad and six others.

... Respondents

JUDGMENT PRONOUNCED ON 06.7.2017
HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE M.S.K.JAISWAL

1. Whether Reporters of Local newspapers : No
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : Yes

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE M.S.K.JAISWAL

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE M.S.K.JAISWAL

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> Head Note:

! Counsel for the petitioner: Mr. P.Veera Reddy

Senior counsel

for Mr. Shafath Ahmed Khan

^ Counsel for respondent Nos.1 & 2: GP for Home (AP)

^ Counsel for respondent Nos.4 to 6: Mr. T.Lakshmi Narayana

^ Counsel for respondent No.7: Mr. Jukanti Anil Kumar

Standing Counsel

^ Counsel for respondent No.3: None appeared

? Cases Referred:

NIL

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
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Senior counsel

for Mr. Shafath Ahmed Khan

Counsel for respondent Nos.1 & 2: GP for Home (AP)

Counsel for respondent Nos.4 to 6: Mr. T.Lakshmi Narayana

Counsel for respondent No.7: Mr. Jukanti Anil Kumar

Standing Counsel

Counsel for respondent No.3: None appeared

The Court made the following:

ORDER: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

M/s Sai Vuma Chit Fund Company and its Group of companies suffered an ad-interim order of attachment of their properties under the provisions of the Andhra Pradesh Protection of Depositors of Financial Institutions Act, 1999 (for short 'the Act'), vide G.O.M s.No.205, Home (General-B) Department, dated 07.8.2010.

Before the said ad-interim order of attachment was made absolute, respondent No.3 has filed Writ Petition No.18653 of 2011 questioning the said G.O. During the pendency of the said Writ Petition, final attachment of the properties was made by the learned Metropolitan Sessions Judge, Vijayawada, vide his order, dated 07.5.2012, in CrI.M.P.No.1185 of 2010. Obviously, the said fact was not brought to the notice of this Court when at the instance of respondent No.3 on the one side and respondent No.2 on the other side, the said Writ Petition was referred to Lok Adalat in the year 2015. By award, dated 07.12.2015, in Writ Petition No.18653 of 2011, the Lok Adalat recorded the purported compromise, dated 04.6.2015, between respondent Nos.2 and 3 and closed the said Writ Petition. The terms of the said compromise placed on record by the Lok Adalat read as under:-

“(a) The competent authority (under APPDFE Act, 1999)-cum-the Commissioner of Police, Vijayawada City has agreed for Indian Overseas

Bank to sell the mortgaged properties by conducting auction/tenders as per provisions of SARFAESI Act, 2002/as per law, by fixing upset price of the properties mutually agreed upon by the bank and the Competent authority (under APPDFE Act, 1999)-cum-Commissioner of Police, Vijayawada City. The property shall not be sold below the upset price fixed without the consent of both IOB and the competent authority (under APPDFE Act, 1999)-cum-Commissioner of Police, Vijayawada City.

(b) The Competent Authority (Under APPDFE Act, 1999)-cum-Commissioner of Police, Vijayawada City has agreed for the proposal made by the Indian Overseas Bank to the effect that after selling the properties the dues of Indian Overseas Bank will be recovered first and the remaining sale consideration will be kept separate deposits in the Special Court under APPDFE Act, 1999-cum-Metropolitan Sessions Judge Court, Vijayawada.

(c) Indian Overseas Bank and the competent authority (under APPDFE Act, 1999)-cum-Commissioner of Police, Vijayawada City have agreed to file a compromise petition before the disposed of by the High Court, Hyderabad based on the compromise arrived between the Indian Overseas Bank and the competent authority (under APPDFE Act, 1999)-cum-Commissioner of Police, Vijayawada City.”

The petitioner is a welfare association of M/s Sai Vuma Chit Fund Company and its group of companies, whose members claim to have invested their hard-earned monies in the said

group of companies. It has filed the present Writ Petition feeling aggrieved by the Lok Adalat award, dated 07.12.2015, in Writ Petition No.18653 of 2011, on multiple grounds.

The learned Government Pleader for Home (Andhra Pradesh) has entered appearance for respondent Nos.1 and 2. Respondent Nos.4 to 6 have entered appearance through Mr. T.Lakshmi Narayana and Mr. Jukanti Anil Kumar, the learned Standing Counsel, has entered appearance for respondent No.7, who was subsequently added.

As regards respondent No.3, a perusal of the proceeding sheet shows that on 17.3.2017, Mr. K.Surya Narayana Rao, an advocate, represented to the Court that he is appearing for the said respondent and requested for time for filing counter-affidavit. Though he has not entered appearance, his name is being shown as representing respondent No.3 in the cause list. When the Writ Petition came up before us on 30.6.2017, we adjourned the case, as the learned counsel for respondent No.3 was not present, with the observation that on the next date of hearing, the case will not be adjourned further. Even today, Mr. K.Surya Narayana Rao, learned counsel, is not present in the Court during the hearing, though his name is shown in the cause list.

Mr. P.Veera Reddy, learned senior counsel appearing for the petitioner, advanced the following submissions:

- (1) That the Competent Authority-cum-Commissioner of Police, Vijayawada-respondent No.2 has exceeded his power in entering into a settlement with respondent No.3 agreeing for sale of all the 61 items of properties by the latter;
- (2) that while only 22 items of the properties were mortgaged, respondent No.3-bank was authorised by respondent No.2 to sell all the 61 items of properties;
- (3) that though the properties under attachment belong to respondent Nos.4 to 6, the Lok Adalat has recorded the settlement only between respondent Nos.2 and 3; and
- (4) that the properties having already been attached finally, by order, dated 07.5.2012, of the Special Court, cannot be permitted to be sold without the Court's consent merely in pursuance of the settlement between respondent Nos.2 and 3.

The learned Government Pleader for Home (AP) and the learned Standing Counsel for respondent No.7 and the learned counsel for respondent Nos.4 to 6 tried to support the Lok Adalat Award.

In order to address and adjudicate various submissions of the learned senior counsel as noted above, it is necessary to refer to the relevant provisions of the Act. The Act is conceived to protect the interests of the depositors of the financial

establishments. Section-3 of the Act empowers the State Government concerned to pass an ad-interim order of attachment of properties. Under Sub-section-3 thereof, upon receipt of the orders of interim attachment from the Government, the competent authority shall apply within fifteen days to the Special Court for making the ad-interim order of attachment absolute. Section-4 of the Act envisages appointment of a competent authority by a notification by the Government to exercise control over the properties attached by the Government under Section-3. Under Section-6 of the Act, a District and Sessions Court will be constituted by the Government as a Special Court with the concurrence of the Chief Justice of the High Court.

Under Section-7(1) of the Act, the Special Court shall issue to the financial establishment or to any other person whose property is attached by the Government under Section-3, a notice accompanied by the application, affidavits and the evidence, if any, recorded, calling upon to show cause why the order of attachment should not be made absolute. Under Section-7(2) of the Act, the Special Court shall issue notice to all other persons represented to it as having or being likely to claim any interest or title in the property of the financial establishment or the person to whom the notice is issued calling upon such person to appear on the same date as that specified in the notice

and make objection, if he so desires, to the attachment of the property or any portion thereof on the ground that he has an interest in such property or portion thereof.

Under Section-7(3) of the Act, any person claiming an interest in the property attached or any portion thereof may, notwithstanding that no notice has been served upon him under this Section, make an objection as aforesaid to the Special Court at any time before an order is passed under Sub-section-(4) or Sub-section-(6), viz., the order for equitable distribution among the depositors of the money realised out of the properties attached. Under Section-7(4) of the Act, if no objections are made and no cause is shown on or before the specified date, the Special Court shall forthwith pass an order making the ad-interim order of attachment absolute.

Under Section-7(5) of the Act, if any objection is made or cause is shown as aforesaid, the Special Court shall proceed to investigate the same, and in so doing, as regards the examination of the parties and in all other respects, it shall, subject to the provisions of the Act, follow the procedure and exercise all the powers of the Court in hearing a suit under the Code of Civil Procedure, 1908 and any person making an objection shall be required to adduce evidence to show that at the date of the attachment, he had some interest in the property attached. Under Section-7(6) of the Act, after investigation

under Sub-section-(5), the Special Court shall pass an order making the ad-interim order of attachment absolute or varying it by releasing a portion of the property from attachment or cancelling the ad-interim order of attachment. Under Section-11 of the Act, any person aggrieved by the order making the attachment absolute may file an appeal.

The above broadly being the scheme of the Act, we shall now consider the submissions of the learned counsel.

As regards the first submission of the learned senior counsel, it is evident from Section-4 of the Act that the main function of the competent authority is to exercise control over the properties attached by the Government under Section-3 and also to discharge such other functions as may be prescribed under the Act. In addition to those specified under the Act, the competent authority is charged with the duty of making an application before the Special Court for making the ad-interim order of attachment absolute.

The learned Government Pleader has not brought to the notice of this Court any functions other than those referred to above empowering the Competent Authority-respondent No.2 to do any act including the act of entering into settlement with any person. She has also not placed before the Court either the order of the Government or any Court which empowered

respondent No.2 to enter into a settlement with respondent No.3-bank.

From the provisions of the Act, referred to above, it is evident that once an order of attachment is made, the same will continue till an appropriate order is passed by the Special Court under Section-7 of the Act. If any person is aggrieved by the final order of attachment, he is entitled to file an appeal under Section-11 of the Act. Thus, till the final order of attachment is vacated or varied in appeal filed under Section-11 of the Act, the order of the Special Court will remain in force. This being the legal position, we are unable to comprehend as to how respondent No.2 has entered into a settlement with respondent No.3, which has the effect of nullifying the order, dated 07.5.2012, of the Special Court by which it has made the ad-interim order of attachment absolute. The impugned award of the Lok Adalat does not show that it has taken into consideration the order of the Special Court making the ad-interim order of attachment absolute.

We are, therefore, of the opinion that the settlement arrived at by respondent No.2 with respondent No.3 runs contrary to the Scheme of the Act and consequently, the impugned award of the Lok Adalat, based on such a settlement, is not enforceable.

As regards the procedure followed by the Lok Adalat, the facts of the case would clearly show that Writ Petition No.18653 of 2011 was referred to Lok Adalat for settlement. However, the Lok Adalat has termed the said proceeding as a pre-litigation dispute which *ex facie* appears to be incorrect.

Be that as it may, from a perusal of the impugned award of the Lok Adalat, it is evident that respondent Nos.1, 2, 4, 5 and 6 herein were shown as respondent Nos.1 to 5, respectively. It is stated in the impugned Award that notices were served on respondent Nos.3 to 5 in Writ Petition No.18653 of 2011, but no one entered appearance on their behalf. It was further observed that the said respondents were impleaded as proforma parties in the said Writ Petition as no relief was sought against them.

True indeed, the prayer in Writ Petition No.18653 of 2011 was confined to setting aside the order of attachment, vide G.O.Ms.No.205, Home (General-B) Department, dated 07.8.2010, issued by respondent No.1. Had the settlement between respondent Nos.2 and 3 herein been confined to setting aside the said G.O., there would have been justification to term respondent Nos.4 to 6 herein as proforma parties. But the settlement has gone way ahead of the prayer in the said Writ Petition and under the said settlement, respondent No.3-bank was authorised by respondent No.2 to sell all the 61 items of

properties, including 22 items of properties mortgaged by respondent Nos.4 to 6 herein, who are the reputed owners of the said properties. The Lok Adalat ought not to have passed the Award based on a settlement only between respondent Nos.2 and 3, by which the interests of respondent Nos.4 to 6 are sought to be affected.

We are conscious of the fact that respondent Nos.4 to 6 have not questioned the impugned Lok Adalat Award as, it might have suited their purpose. However, in a case of this nature, where the interests of third parties are likely to be affected by the settlement, the Lok Adalat ought not to have allowed respondent Nos.2 and 3 to settle the dispute when such a settlement went far beyond the scope of the prayer in the said Writ Petition.

In this regard, a few statutory provisions are relevant to be noted hereunder:-

Regulation-17 of the National Legal Services Authority (Lok Adalats) Regulations, 2009 deals with 'Award'.

Under Regulation-17(1) thereof, it is declared that drawing up of the award is merely an administrative act by incorporating the terms of settlement or compromise agreed between the parties under the guidance and assistance from Lok Adalat.

Under Regulation-17(2) thereof, when both parties sign or affix their thumb impression and the members of the Lok Adalat countersign it, it becomes an award. It is further provided thereunder that whenever the parties are represented by a counsel, they should also be required to sign the settlement or award before the members of the Lok Adalat affix their signatures.

Regulation-38 of the Andhra Pradesh State Legal Services Authority Regulations, 1999, laid down the procedure for effecting compromise or settlement at Lok Adalat.

Under Regulation-39(2) thereof, the parties to the dispute shall be required to affix their signatures or, as the case may be, thumb impressions on the Award of the Lok Adalat.

On a reading of the above provisions, it is quite evident that the Lok Adalat shall ensure that the parties sign or affix their thumb impression, as the case may be, and their respective counsel also sign the settlement, which shall be countersigned by the members of the Lok Adalat and thereupon, the Award shall be drawn.

In our opinion, when any of the parties to the proceeding before the Lok Adalat does not appear for any reason, it is not permissible for the Lok Adalat to act on the settlement entered into by the other parties for, it will not be exercising its

adjudicatory power when it passes an Award based on a settlement simplicitor. In a case as the one on hand, when respondent Nos.4 to 6 herein have not entered appearance on receipt of notices in Writ Petition No.18653 of 2011, the Lok Adalat had no option other than closing the proceeding and referring the said Writ Petition back to this Court.

In this view of the matter, we hold that the impugned Lok Adalat Award, drawn based on the settlement between respondent Nos.2 and 3 leaving out respondent Nos.4 to 6, is not in conformity with the Regulations referred to above and it suffers from an incurable legal defect on this count also.

In the light of the findings rendered by us on the afore-mentioned points, the submission of the learned senior counsel appearing for the petitioner that the impugned Lok Adalat Award permitting respondent No.3-bank to sell all the 61 items of properties is not sustainable need not be adjudicated.

For all the afore-mentioned reasons, the impugned Lok Adalat Award is set aside and the Writ Petition is, accordingly, allowed.

As a sequel to disposal of the Writ Petition, WPMP.Nos.57634 of 2016 and 5055 of 2017 are disposed of as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE M.S.K.JAISWAL

06th July 2017

Note:

LR Copies to be marked.

B/o

DR

