

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.08.2018

DELIVERED ON: 28.08.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.No.19147 of 2013

and

M.P.Nos.1 of 2013

T.Pugazhendi ... Petitioner/Respondent

Vs.

Amsa ... Respondent/Petitioner

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in C.M.P.No.1579 of 2012 in M.C.No.8 of 2004 on the file of the District Munsif-cum-Judicial Magistrate, Thirukkalukundram.

For Petitioner : Mr.R.Vijayaraghaven

For Respondent: Mr. Mani Prabu, Legal Aid Counsel

ORDER

This petition is under Section 482 of the Code of Criminal Procedure to quash the proceedings against the petitioner in C.M.P.No.1579 of 2012 in M.C.No.8 of 2004 on the file of the District Munsif-cum-Judicial Magistrate, Thirukkalikundram.

2. The brief facts of the case as narrated by the petitioner are that the petitioner got married to the respondent on 02.02.1996 at Vanniar Chatram, North Mada Street, Thiruporur. Post marriage, there were difference of opinions between them and the respondent filed M.C.No.8 of 2004 under Section 125 of the Code of Criminal Procedure before the District Munsif cum Judicial Magistrate, Thirukkalukundram praying for maintenance and the same was decided exparte granting Rs.1,500/- per month as maintenance, vide order dated 30.09.2003. According to the petitioner, subsequently, when the respondent claimed arrears of the maintenance before the same court, the petitioner appeared and claimed that due opportunity was not given to him, based on which, the matter was referred to Lok Adalat for mutual settlement and in the Lok Adalat, on 16.02.2008, it was settled that a sum of Rs.60,000/- in three instalments of Rs.20,000/- each should be paid by the petitioner. According to the petitioner, he paid the entire amount of Rs.60,000/- in the Court itself and despite the full and final, one time settlement, the C.M.P.No.1579 of 2012 claiming arrears of

maintenance was filed by the respondent, suppressing the fact of one time settlement paid by the petitioner through Lok Adalat on 16.02.2008. The petitioner also claims that he was forced to pay Rs.18,000/- to the respondent, which was also recorded by the court. Therefore, according to the petitioner, the C.M.P.No.1579 of 2012 in M.C.No.8 of 2004 on the file of the District Munsif-cum-Judicial Magistrate, Thirukkalikundram itself is not maintainable and that the modus operandi adopted by the respondent is a sheer abuse of the process of law. Hence, he prayed to quash the proceedings under C.M.P.No.1579 of 2012 in M.C.No.8 of 2004 on the file of the District Munsif-cum-Judicial Magistrate, Thirukkalukundram.

3. In her counter, the respondent has contended that the petitioner has no evidence whatsoever that he had settled the amount of one time settlement ordered by the Lok Adalat. It is also contended by her that due to her ignorance, she had not claimed the arrears every year and that being poor and sick, did not get any maintenance amount settled in M.C.No.8 of 2004, since December 2004. The respondent has also disputed the concept of any one time settlement in lieu of the monthly maintenance, as the responsibility of the estranged spouse to maintain the other non earning dependent spouse is not flexible and cannot be substituted by one time lump sum settlement.

4. The learned counsel for the petitioner relied on the rulings in M.I.Ibrahim Kutty V. Indian Overseas Bank, Maruthanvode Branch, Edaicode Post, Kanyakumari District represented by its Branch Manager reported in 2005 (3) Law Weekly 44 of the Madurai Bench of this Court in CRP No.435 of 2005, wherein it was held that, as per Section 21 of the Legal Services Authority Act 1987, the Lok Adalat Award once becomes final, cannot be challenged and that the award is enforceable as a decree and it is final.

5. He has also relied on another ruling of this court in M/s Valarmathi Oil Industries, Represented by its Partner K.Srinivasan S/o A.M.Krishnaswamy and another V. M/s Saradhi Ginning Factory represented by its partner A.Govindarajan in CrI.R.C.No.1857 of 2007 reported in 2009-2 L.W. (CrI.) 941, in which this court held thus

As per Section 21(1) of the Legal Services Authorities Act, 1987, the award passed by a Lok Adalat is final and binding on all the parties to the dispute and no appeal shall lie. In this case, it is not in dispute that there was an award passed by the Lok Adalat, based on the consensus arrived at between the parties and for which, the parties and their respective counsel have signed. Then the award was signed by the Judge and the members of the Lok Adalat, therefore, the award could be construed as contemplated under Section 21 of the Legal Services Authorities Act a decree, passed by a civil court. As per the award, it is seen that the petitioners/accused had agreed to pay the

said award amount on or before 03.09.2007, but subsequently, fail to pay the amount. In such circumstances, the remedy available to the respondent is similar to that of decree-holder, who obtained a decree through civil court, his remedy is executing a decree passed by a civil court.

.... In such circumstances, the petitioners could have filed the Execution Petition before the appropriate court, seeking the award amount to be paid with interest and costs. In such circumstances, it is clear that the learned Judicial magistrate became functus officio, to decide the case, after the award passed by Lok Adalat

6. In the instant case, it is clear that the Lok Adalat had vide its award dated 16.02.2008, settled the matter with mutual consent, which has not been denied by the respondent. Though the petitioner claims that in 2008 itself, the respondent filed a petition for payment of arrears of maintenance, the petition filed by the respondent in C.M.P.No.1579 of 2012 clearly mentions that the arrears of maintenance from December 2004 was not claimed, since the claim for arrears in maintenance had to be made every year, which shows that the first such petition was made only in 2011. However, there is no denial by the respondent of the Lok Adalat settlement agreed mutually by both parties. Regarding the payment of the lump sum, the petitioner has not come with clean hands. He claims that the entire payment was made in the Lok Adalat itself. If so, why it was not recorded and why the Lok Adalat had given three months time for payment of Rs.60,000/- in three equal installment of Rs.20,000/- each, is a big question. There is no iota of doubt that Lok Adalat have been empowered to the extent that the award by them cannot be challenged. At the same time, it is also incomprehensible as to why and how C.M.P.No.967 of 2011 and C.M.P.No.1579 of 2012 in M.C.No.8 of 2004 were entertained, much after the settlement by Lok Adalat. It is also strange as to why the Lok Adalat mentioned only the M.C.No.8 of 2004, which was already disposed of by the competent court. The petitioner has also not explained as to why he did not mention about the Lok Adalat award at the time of payment of Rs.18,000/- by him as directed by the court in the C.M.P.No.967 of 2011.

7. There is also a statement by the petitioner that he had paid Rs.60,000/- in one go to the counsel for the respondent, Advocate Pandiarajan, while in his counter in C.M.P.No.1579 of 2012, it is stated that the counsel for the respondent was one Mr.B.Sudhakar. Therefore, there is no evidence of payment of Rs.60,000/- awarded by the Lok Adalat to the respondent by the petitioner.

8. Nevertheless, the Lok Adalat award or the proceedings itself have not been denied by the respondent. The petitioner on his side has been a willful defaulter and has not paid any amount except for the Rs.18,000/- paid for the year

2010-2011. The award of the Lok Adalat is the finality and any default in payment of the arrear amount ought to have been enforced only by way of execution petition in a competent civil court and not by way of Criminal miscellaneous petition. In any event, since both the parties had agreed for a one time settlement before the Lok Adalat, and the award of Rs.60,000/- as a one lump sum payment was agreed upon as full and final settlement, the M.C.No.8 of 2004 got settled and the recourse for the respondent to get the amount cannot be filing by Criminal miscellaneous petition, but only by way of Execution Petition. Therefore, it is not a case, where the respondent is left high and dry by the petitioner and legal recourse in the form of Execution Petition is very much available and therefore, this petition is allowed.

9. In the result,

(i) The criminal original petition is allowed and consequently, connected miscellaneous petition is closed.

(ii) The C.M.P.No.1579 of 2012 in M.C.No.8 of 2004 on the file of the District Munsif-cum-Judicial Magistrate, Thirukkalukundram is quashed.

(iii) The respondent is advised to take legal recourse to enforce the award of the Lok Adalat.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mst

To

1. The District Munsif cum Judicial Magistrate,
Thirukalikulundram

+1cc to Mr.R.Vijayaraghavan, Advocate SR.NO.59097

SR.NO.(CO)

sm:25.9.2018

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M.P.No. 1 of 2013