

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T. AMARNATH GOUD

WRIT PETITION Nos.3164 and 3395 of 2018

COMMON ORDER: (Per Hon' ble Sri Justice C.Praveen Kumar)

- 1) W.P.No.3164 of 2018 came to be filed seeking issuance of writ of mandamus to set aside the award passed by respondent No.1 in P.L.C.No.3 of 2016, dated 10.12.2016.
- 2) W.P.No.3395 of 2018 came to be filed seeking issuance of writ of mandamus to set aside the award passed by respondent No.1 in P.L.C.No.4 of 2016, dated 10.12.2016.
- 3) Since the issues involved in both the writ petitions are interconnected, they are being disposed of by this common order.
- 4) The averments in the affidavits filed in support of the writ petitions would show that respondent No.2 herein filed applications before the XVI Additional District and Sessions Judge, Malkajgiri, contending that respondent No.2 advanced a sum of Rs.53,00,000/- and Rs.2,41,00,000/- respectively and in pursuance of the same, the petitioner and respondent No.2 entered into two memorandum of understandings and that the petitioner agreed to repay the

said amount with interest. Since the amount was not paid as agreed upon, respondent No.1 herein was requested to take steps to settle the issue. Pursuant to a notice issued both the parties appeared before respondent No.1 and filed their terms of settlement which lead to passing of the impugned awards. The terms of compromise are read over and explained to the parties, who admitted to be true and correct and signed the same on 10.12.2016. One of the conditions was that if the petitioner failed to pay the amount with 18% interest on or before 31.03.2018, respondent No.2 herein can get transferred the property mentioned in the awards, in his name and that he would become the absolute owner of the property. The awards also refer to the issuance of cheques by the petitioner herein towards repayment of the outstanding amount with interest.

5) The averments in the affidavits also refer to filing of cases under Section 138 of the Negotiable Instruments Act, 1881, by respondent No.2 against the petitioner, which are at the stage of 313 Cr.P.C. examination. While things stood thus, the present writ petitions came to be filed alleging that the terms of the compromise were signed due to threat and coercion, as such the same are liable to be set aside.

6) A counter came to be filed by respondent No.2 opposing the same. It is urged by the learned counsel for respondent No.2 that if really there was a threat or coercion, nothing prevented the petitioner in making such a representation before the concerned authorities, at the time of passing of the award or immediately thereafter. To this, learned counsel for the petitioner would submit that in fact the petitioner lodged a report against respondent No.2 on 05.01.2017 through his wife in Bangalore Police Station alleging that respondent No.2 demanded cheques from the petitioner and when he refused to issue the cheques, he was kidnapped. A criminal case was also said to have been registered in Bangalore.

7) As seen from the record, the awards of the Lok Adalat came to be passed on 10.12.2016, by which time there was no criminal case registered against the petitioner or respondent No.2. Criminal complaints for the offences punishable under Section 138 of the Negotiable Instruments Act and also for kidnapping came to be filed against the petitioner after passing of the awards. Therefore, the plea that is sought to be advanced by the learned counsel for the petitioner that because of the disputes, respondent No.2 herein induced him and threatened him to sign on the compromise, cannot be accepted.

8) As stated earlier, the petitioner is not disputing his presence before the Lok Adalat and also signing on the said document. It is not the case of the petitioner that there was any fraud or misrepresentation at the time of settlement. His plea only appears to be that there was force or threat behind him when he was signed the awards. If really that was the case, he should have complained before the Member about the same or atleast challenge the validity of the same immediately before the higher authorities. No reasons are forthcoming as to why he kept quiet for nearly one and half year before filing this writ petition. No material is placed on record by the petitioner even to show a *prima facie* case of threat and coercion.

9) The counsel for respondent No.2 would contend that when the cases filed by respondent No.2 are coming to an end, the petitioner filed these writ petitions only to create a defence and threaten the respondent No.2. This aspect cannot be totally ruled out.

10) For the aforesaid reasons, we are not inclined to interfere with the awards dated 10.12.2016 passed by respondent No.1 in P.L.C.Nos.3 of 2016 and 4 of 2016.

11) Accordingly, both the writ petitions are dismissed.

12) There shall be no order as to costs. Miscellaneous Petitions, pending if any in these Writ Petitions shall stand closed.

C. PRAVEEN KUMAR, J

T. AMARNATH GOUD, J

11.04.2018
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