

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE P.KESAVA RAO

I.A.No.1 of 2014 (W.P.No.35463 of 2014)

in/&

W.P.No.19281 of 2011

Date: 17.08.2018

Between:

Mr.P.Prem Kumar, S/o.Late Devadas,
Aged: 57 years, R/o.98/289,
LIGH First Floor,
Vijayanagar Colony,
Hyderabad.

...

Petitioner

And

Legal Services Authority-
cum-Presiding Officer,
represented by its Secretary,
City Civil Court, Hyderabad
and 11 others.

...

Respondents

Counsel for the Petitioner : Mr.K.Nirmal Kumar Prasad

Counsel for the Respondents : Mr. J.Anil Kumar for R1
Mr.T.P.Acharya for R8&11
None appeared for other
respondents

The Court made the following:

Order: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This writ petition is filed for issue of mandamus for setting aside Award dated 07.02.2006 and consequential order dated 04.06.2011 in O.S.No.230 of 2002 on the file of respondent No.1.

2. After the filing of the writ petition, the sole petitioner died. Hence, his son filed W.P.M.P.No.35463 of 2014, for permitting him to come on record as petitioner No.2. Mr.T.P. Acharya, learned counsel for respondents No.8 and 11, submitted that he has no objection for allowing the petitioner's son to come on record. Counsel for the remaining private respondents are not present at the hearing, though their names are shown in the cause list.

3. We have heard the learned counsel for the petitioner, Mr.J.Anil Kumar, learned Standing Counsel for respondent No.1 and Mr.T.P.Acharya, learned counsel for respondents No.8 and 11 and perused the record.

4. Respondents No.2 to 7 filed O.S.No.230 of 2002 on the file of IX Fast Track Court-cum-IX Additional Chief Judge, City Civil Court, Hyderabad, for directing suit schedule properties to be divided into two halves and allot one such half to the plaintiffs and the other half to defendants No.1 to 4. After some respondents, including respondents No.8 and 11 entered their appearance, the matter was

referred to respondent No.1 for passing an Award in terms of a purported settlement between the plaintiffs and defendants No.1, 5 and 6. Accordingly, the impugned Award was passed, wherein it is stated as under:

“This suit is refereed from the Court of IX Additional Chief Judge to settle the matter before the Lok Adalat.

Both parties present. Counsel for both parties present. They represented that they have settled the matter and filed Memo. of Compromise and prayed to pass orders in terms of compromise. Recorded memo. The suit is dismissed in terms of compromise.

Plaintiff is entitled to refund of Court fee under Section 21 (1) of Legal Services Authorities Act, 1987”.

5. At the bottom of the Award, all the plaintiffs have signed but defendants No.1, 5 and 6 alone have signed. Defendant No.2 (the petitioner) and defendant Nos.3 and 4 were shown as ‘*ex-parte*’.

6. While plaintiffs have sought for a preliminary decree for dividing the property into two halves and allot one half each to the plaintiffs on one side and defendants No.1 to 4 who include the petitioner, on the other side, as per the settlement reached, the entire properties were agreed to be given to defendant Nos.1, 5 and 6, who are said to be two sisters and mother respectively of the petitioner and no share has been allotted to the petitioner. Mr.T.P.Acharya submitted that as his clients i.e. defendants No.1 and 5 have set up wills, the property was allotted to them and in lieu thereof, the plaintiffs have agreed to receive some cash.

7. Be that as it may, the short point that arises for consideration is whether respondent No.1 has jurisdiction to pass an award based on a purported compromise arrived at by only a few of the parties to the litigation. This aspect is no longer *res integra*.

8. A Division Bench of this Court, speaking through one of us **(CVNR,J)** in SAI VUMA CHIT FUND COMPANY AND GROUP OF COMPANIES SUFFERERS WELFARE ASSOCIATION VS. STATE OF A.P.¹, after analysing the extant provisions of the Legal Services Authorities Act and the regulations made thereunder, held as under:

“In our opinion, when any 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 proceedings 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.”

9. The above reproduced judgment applies in all fours to the present case.

¹ 2017 (5) ALD 249 (DB)

10. Mr.T.P. Acharya submitted that the petitioner has moved this court belatedly i.e. 5 years after the passing of the Lok Adalat Award. The petitioner has offered sufficient explanation for the delay in his filing this writ petition. Even otherwise, we are of the opinion that when the Award passed by respondent No.1 suffers from incurable illegality, the aggrieved party cannot be non-suited on the purported ground of laches, lest, it results in grave failure of justice.

11. In the light of the above discussion, the impugned Lok Adalat Award is set aside. O.S.No.230 of 2002 is restored to the file of IX Additional Chief Judge, City Civil Court, Hyderabad, for disposal on merits.

12. I.A.No.1 of 2014 (W.P.No.35463 of 2014) and the writ petition are, accordingly, allowed.

(C.V.Nagarjuna Reddy, J)

(P.Kesava Rao,J)

Date: 17th August, 2018

msb

