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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No.2782 of 2015 (O&M)
Date of Decision: 28.05.2018**

Gram Panchayat of Village Kadrabad

.....Petitioner

Vs

Sumer Chand and another

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Jagdeep S. Virk, Advocate
for the petitioner.

Mr. Sanjay Vashisht, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

CM No. 12250-51-CII of 2016 in CR No.2782 of 2015

These are applications for delay of 58 days in filing the application for restoration the revision petition and restoration of civil revision which was dismissed for non-prosecution on 03.03.2016.

Notices of the aforesaid applications were issued to respondents on 24.07.2017. Respondent No. 2 was proceeded against ex-parte. Learned counsel for respondent No. 1 sought time to address arguments.

Today, learned counsel for respondent No. 1 has no objection, in case, the revision petition is restored to its original number after condonation of delay of 58 days in filing the application.

In view of the aforesaid, I deemed it appropriate to condone the delay of 58 days in filing the application for restoration the revision revision which was dismissed for non-prosecution on 03.03.2016. Consequently, order dated 03.03.2016 is hereby recalled and the revision petition is restored to its original number.

CR No.2782 of 2015 (O&M)

With concurrence of the learned counsel for the parties, I have heard the arguments on merits.

Petitioner has assailed the order dated 08.01.2015 passed by the Civil Judge (JD) Karnal whereby an application under Order 7 Rule 11 readwith Section 151 CPC filed by respondent No. 1 for rejection of the plaint was allowed.

Silent features of the case are that the civil suit for declaration with consequential relief of permanent injunction was filed by respondent No.1 against the Gram Panchayat and one Bashershar Singh as performa defendant. Plaintiff alleged that the plaintiff is a proprietor of the village from the time of his forefather and is in cultivating possession of the land measuring 7 kanal 12 Marlas comprised in Khewat No. 86 Min, Khatoni No. 134, Rect. No. 11 Killa No. 10 (4-6), 12 (2-10), Khatoni No. 136, Rect. No. 11 (8-0) situated in the revenue estate of Village Budhanpur, Tehsil Indri , District Karnal

vide jamabandi for the year 2007-2008. Previously, the Gram Panchayat had constructed *gair mumkin* school in land Rect. No. 11 Killa No. 10 (4-6) in Khasra No. 86 as this land was lying between Village Ramgarh and Budhanpur and students of both the villages were getting education from that school. Later on, Gram Panchayat constructed a school in Buddanpur and Ramgarh near the *Abadi Deh* in the land of the plaintiff/respondent No. 1. The land mentioned herein above was given to the plaintiff in lieu of better adjustment. The land was already shown as *gair mumkin* in respect of Rect. No. 11 Killa No. 10 (4-6). There is no *gair marusi* school in this Killa number. At the time of construction of the school in the land of the plaintiff, the defendant entered into oral settlement/exchange of land and promised to transfer ownership of the land in the name of the plaintiff; due to this reason the defendant never auctioned the land. In response to the suit filed by the plaintiff/respondent No. 1, the Gram Panchayat/petitioner filed written statement. Para No. 3 of the written statement reads as under:-

“That the contents of para No. 3 of the plaint are correct and admitted. It is pertinent to mention here that in lieu of the land of the plaintiff, the land measuring 7K-12M comprised in Khewat No. 86 rect No. 11 killa no. 10 (4-6), 12/1 (2-10), 11 min (0-16) East North as per attached Aksh Shizra situated in Village Buddanpur Tehsil Indri District Karnal as per jamabandi for the year 2007-08 was given to the plaintiff and since then he continues to be in possession of the said land as owner thereof. The value of both the above said exchanged land was assessed same at that very time. Thus, in this way the defendant No. 1 became the owner in possession of land measuring 7K-12M being 152/1514 share of land measuring 75K-12M pertaining to khewat No. 2 of vilalge Buddanpur Tehsil Indri District Karnal as per jamabandi 2007-08 alongwith 22 (1-0)

approximately upto Murabba line, South situated in Village Ramgarh Tehsil Indri District Karnal as per jamabandi for the year 2003-05 out of land of plaintiff.”

The suit was ultimately referred to Permanent Lok Adalat on the basis of the compromise entered into between the parties. Joint statement of the parties were recorded and as per the compromise (Ex. PA), the suit was decreed vide award dated 15.04.2010. The operative part of the award reads as under:-

“In the light of the above legal position, we have gone through the compromise Ex. PA and the other documents placed on the file. We are of the opinion that the compromise Ex. PA regarding family settlement between the parties is genuine and lawful. In the result, the compromise Ex. PA is accepted and the award is passed in term of the same. The compromise Ex. PA will form part of this award. In view of the provisions of Section 21 of the Haryana State Legal Services Authorities Act, 1987, this Award will be deemed to be a decree passed by the Civil Court. Under Rule 28A(3) of the Haryana State Legal Services Authority Rules, 1996, the execution application, if any, shall be filed in the trial Court from where this case has been received. It is made clear that this award will not affect the rights, if any, of the third parties in respect of the suit property. It is the duty of the Revenue Officers/Authorities concerned to comply with this award and to correct the record as per this award. Although this consent decree does not require compulsory registration, but the parties will be at liberty to get it registered on payment of prescribed registration fee. Copies of this order and the compromise Ex. PA be supplied to the parties free of cost. The file be returned to the trial Court for consigning the same to the record room.”

Thereafter, the Gram Panchayat, Kadrabad filed an independent suit against the award dated 15.04.2010 passed by Permanent Lok Adalat (Samjhouta Sadan) Karnal challenging the award as well as mutation No. 459 to be illegal, null and void. In para

Nos. 2 & 3 of the plaint, the Gram Panchayat pleaded all the incriminating effect in respect of litigation and ultimately claimed that the award dated 15.04.2010 passed by the Permanent Lok Adalat was the result of fraud as the Member Panch, namely, Smt. Raj Bala was not authorised to compromise the matter. Resolution was passed only to contest the case only on behalf of the Gram Panchayat through Legal officer and not to compromise the matter on merits. In the aforesaid suit, the application under Order 7 Rule 11 CPC read with Section 151 CPC was filed by respondent No. 1 for rejection of plaint on the basis of admitted facts and averments made in the plaint. The suit was claimed to be barred by law as the Civil Court has no jurisdiction to entertain any challenge made to a decree based on compromise. The application was accepted vide order dated 08.01.2015 passed by Civil Judge (JD) Karnal. The said order has been assailed in the present revision petition.

Learned counsel for the petitioner submitted that the award passed by Lok Adalat is based on fraud and therefore, independent suit filed by Gram Panchayat, Village Kadrabad is maintainable.

As against this learned counsel for respondent No.1 contended that the award of Permanent Lok Adalat is a decree of a Civil Court. The award passed by Lok Adalat has to be taken as final and binding on all the parties to the dispute. No appeal shall lie to any Court against such award. Even in terms of Section 96 of CPC, the order passed on consent basis is not amenable to further appeal. In

view of Section 21 of the Legal Services Authorities Act 1987, every award of the Lok Adalat shall be deemed to be a decree of a Civil Court and as such it is executable by that Court. The act does not make out any distinction between reference made by a civil court and criminal court. There is no restrictions on the powers of the Lok Adalat to pass an award based on compromise between the parties in respect of the cases referred to by various Courts (Both civil and criminal), like Tribunals, Family Court, Rent Control Court, Consumer Redressal Forum, Motor Accidents Claims Tribunal and other forums of similar nature.

Learned counsel for the respondent further submitted that the petitioner cannot maintain independent suit in view of bar created under Order 23 Rule 3 CPC. Order 23 Rule 3 CPC deals with compromise of the suit. Any decree passed on compromise is not amenable to challenge. In a suit in terms of Order 23 Rule 3A, no suit lie to set aside the decree on the ground that the compromise on which the decree is based was not lawful. The expression “*not lawful*” used in Order 23 Rule 3A CPC also covers the decree based on a fraudulent compromise. A challenge to a compromise decree on the ground that it was obtained by fraudulent means would also fall under the provisions of Order 23 Rule 3A CPC, reference can be made to ***Haurel Versus Reshu, 2012 SCC(Civil)303.***

Learned counsel for respondent No. 1 further relied upon ***State of Punjab and another versus Jalour Singh and others; 2008***

(1) RCR (Civil) 857 and contended that the question to challenge the order passed by the Lok Adalat can only be done under Article 226 of the Constitution of India that too on a very limited grounds.

The pleadings of the suit would show that the plaintiff-Gram Panchayat itself has demonstrated earlier litigation in the pleadings. At the stage of consideration of the application under Order 7 Rule 11 CPC, only an averment made in the plaint are to be seen. The plaintiff itself has pleaded the earlier litigation as an admitted fact between the parties. In view of the legal position on record, a compromise decree passed by Lok Adalat could have been assailed in those very proceedings and an independent suit is barred in terms of Order 23 Rule 3A CPC. The decree passed by the Lok Adalat is a Civil Court decree for intense purposes in ***K.N. Govindan Kutty Menon Versus C.D. Shaji; 2012 (1) RCR (Criminal) 102***, the Hon'ble Apex Court while dealing with the reference to Lok Adalat in a criminal case held that the award of Lok Adalat in terms of Section 21 of the Legal Services Authorities Act, 1987 is applicable on both civil as well as criminal cases and the order passed by the Lok Adalat has to be treated as a civil Court decree executable by that Court.

In view of the aforesaid legal position, the bar created under Order 23 Rule 3A CPC would prevent filing of fresh suit even on the basis of fraud because such a course would be covered by the decree passed by the Lok Adalat. The filing of independent suit in the facts and circumstances of the case would be an abuse of process of law and is

not tenable in the eyes of law.

In my considered opinion, the acceptance of application under Order 7 Rule 11 CPC by the Civil Judge (JD) Karnal cannot termed to be an illegal exercise by any stretch of imagination. Consequently, this revision petition is found to be totally devoid of any merits.

The revision petition is dismissed, accordingly.

28th May, 2018

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(RAJ MOHAN SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	Yes
<i>Whether reportable</i>	Yes/No