

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

CRM-M-37268-2016 (O&M)
Date of decision: 19.09.2018

Kuldeep Singh

...Petitioner

Versus

Rajwinder Kaur and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Krishan Singh Dadwal, Advocate,
for the petitioner.

Mr. Rakesh Kumar, Advocate,
for the respondents.

JAISHREE THAKUR, J. (ORAL)

1. The petitioner seeks to challenge order dated 29.09.2016 passed by Additional Sessions Judge, Kapurthala, whereby application for restoration of revision petition in proceedings under Section 125 Cr.P.C. stands dismissed.

2. There is a chequered history to this case and in order to understand the dispute herein a few facts need to be noticed. The parties were married in 1993, out of which wedlock 2 children were born, a petition was filed under section 125 Cr.P.C. by wife (henceforth called the respondent) seeking maintenance for herself and the minor children. Interim maintenance was allowed at ₹ 7000/- per month by the JMJC. Aggrieved against the said order, the husband (henceforth called the petitioner)

preferred a revision petition and during those proceedings, the matter was referred to the Lok Adalat and a compromise was effected on 12.04.2014. The petitioner agreed to transfer half share of his property in which he was a co-sharer in the name of his wife and son in equal shares and it's vacant possession was to be delivered by 15.05.2014, after the crop was harvested. It was also agreed that the respondent would not alienate her share and would transfer the same onto her son after her death. It was also agreed that if the petitioner failed to transfer the land by the said date, he would be liable to pay the maintenance amount as directed by the Court below and in addition a sum of ₹ 5 lakhs as compensation to the wife. Both parties agreed to be bound by their statement. The Lok Adalat passed an order in the end saying that in case any party failed to comply with the compromise the other party was entitled to get the revision petition revived.

3. It is contended that the petitioner got the mutation in the revenue records on 16.06.2014, which was reflected in the Jamabandi, but he came to know that the suit filed by the wife and petition under section 125 Cr.P.C had not been withdrawn. An application was preferred by the petitioner before the revisional Court on 13.07.2014 seeking restoration of the Revision petition, on the ground that the respondent had failed to comply with the compromise arrived at before the Lok Adalat by not withdrawing the cases filed by her. During the pendency of the application seeking revival, the respondent approached the Revisional Court seeking execution of the order of the Lok Adalat and the possession. The Executing Court allowed the application filed by the respondent and the Court directed the petitioner to transfer his half share situated in different villages and hand

over possession to the decree holder by 05.12.2014. Aggrieved against this order, the petitioner approached the High Court by way of filing CRM-M No. 554 of 2015 contending that till the application for revival of the proceedings in the revision petition were not decided, the Executing Court ought to have stayed its hand. It was argued that it was the respondent herself who had not complied with the terms and conditions of the compromise arrived at between the parties before the Lok Adalat, and, therefore, the Executing Court could not have passed an order directing possession to be handed over until such time an application seeking revival of revision petition was not decided. The High Court after taking note of all orders passed in the proceedings filed under section 125 Cr.PC along with the order passed by the Lok Adalat, allowed the revision petition stayed the order of the Executing Court directing possession to be handed over. The matter was remanded back to the Revisional Court to decide the application seeking revival of the revision petition filed by the petitioner. The Additional Session Judge Hoshiapur, by impugned order dated 29.09.2016 dismissed the application, which is a subject matter of the instant proceedings.

4. Mr. K.S. Dadwal, learned counsel appearing on behalf of the petitioner would contend that the award of the Lok Adalat is not executable. It is also vehemently argued that the terms of the compromise arrived at before the Lok Adalat was not adhered to by the respondent herself, even though he had got mutation sanctioned in her and his sons favour by 16.05.2014. It was argued that the land could not be transferred on account of the fact that the minor children had a stay of alienation on the said land,

which stay was not vacated. That the compromise itself was conditional and the parties had failed to abide by the terms. The only remedy available was for revival and decision on merits.

5. Per contra, Mr. Rakesh Kumar, learned counsel appearing on behalf of the respondents argue that the petitioner himself is a defaulting party on the ground that he did get the land transferred in terms of the compromise. It was for the petitioner to have transferred the land and in lieu thereof cases were to be withdrawn by the respondents. The petitioner filed an application for revival of the revision petition on 26.05.2014 even before getting the mutation entered in the name of the respondents on 16.06.2014. It is also argued that the defaulting party cannot ask for revival of the revision petition.

6. I have heard the counsel for the parties and have also perused the voluminous paper book.

7. After the matter was remanded back by the High Court, the Additional Sessions Judge, Hoshiarpur dismissed the application for revival of the revision petition on the ground that the petitioner applicant himself did not adhere to the terms of the compromise. He was first to transfer the land and the respondent-wife was to reciprocate her by withdrawing the cases as filed by her.

8. In order to examine the contentions raised by both sides, it would be necessary to revert to the statements recorded and the order passed by the Lok Adalat in compromise proceedings. The translated version of the statement of Kuldeep Singh petitioner and the respondent are reproduced as under;

“Statement of Kuldeep Singh s/o Ajit Singh:- *Stated that today in the court in the presence of respectable persons, a compromise has been got effected between me, my wife, children i.e. wife Rajwinder Kaur and Children Lakhwinder Singh and Sandip Kaur. As per the compromise, the land which is in my name in Miani Bakarpur and Village Dhilwan, Tehsil Dhilwan, District Kapurthala and which is in my share and out of the total land, 1/2 of the share be transferred in the name of my wife namely Rajwinder Kaur, son Lakhwinder Singh and regarding the same, I have no objection and from 1/2 share, if my wife and my son will became the owner of the same and from the said 1/2 share, the 1/4th share, which has been transferred in the name of my wife and my wife will have no right either to sell or to transfer the same, but she will be entitled to enjoy the fruit of the produce and will take loan from the bank. After the death of my wife, my son Lakhwinder Singh will be the full fledged owner of 1/4th share. After harvesting the crop standing in 1/12 share land, I will be bound to give the possession of the same upto 15th May 2014 to my wife and son. **If I will not transfer the ownership of 1/2 share of my land upto 15th May 2014 in the name of my wife and son, then as per the order of the court, the maintenance, which is to be paid to my wife, I shall be bound to pay the same and I am also bound to pay Rs.5,00,000/- as fine and my wife will have the right to accept the same. Apart from***

that I shall be bound to pay Rs.25,000/- in cash to my wife.

Apart from that a case under section 125 Cr.P.C. which has been got filed by my wife in the court and the same is still going and she will be bound to take back the same. One separate Civil Suit, which has been filed by my son and daughter in the court regarding to take share in the land, which is going in the court of Civil Judge (Sr. Div.) and in that case while producing the said compromise in the case and while giving statement, the case be got decided. The land which is in my name in village Miani Bakarpur and Village Dhilwan and out of the same after giving 1/2 share to my wife and my son, the remaining 1/12 share, which remained in my name and out of same, I will be the full owner in possession of 1/4th share and as per my need, I can use the same and the remaining 1/4th share, which is there in my name and I have no right either to sell or to transfer the same and the same 1/4th share after my death will be got transferred in the name of my son. I have right to get loan from this land from the bank and the loan, which I had taken on the afore-stated land and I shall be bound to repay the loan amount. Regarding any share of my aforesaid land, I have not made any agreement to sell with any other person and the advertisement regarding disowning of my son and daughter, which has been given, the said dis-owning be treated as cancelled and my wife and children will have the right to live in the said house. If I will

sell of the house, then I will be bound to make the arrangement of residence for my wife and children.

Statement of Rajwinder Kaur w/o Kuldeep Singh: *“Stated that I with the efforts of Lok Adalat has got compromise the matter with my husband and regarding the same, I have heard the statement, which has been given by me. My daughter Sandip Kaur who is minor and being heir, I found correct the aforesaid compromise. As per the compromise, the cases, which we have filed against Kuldeep Singh and we shall be bound to take back the same as per the compromise and the civil suit, which has been filed by my children against my husband and we are bound to decide the same as per the compromise. From today onwards, we are having no right to file any type of case against my husband Kuldip Singh. As per compromise, I will not liable to get any future maintenance or remaining balance and nor my daughter namely Sandip Kaur will have any right to file any type of case of maintenance or civil suit against Kuldip Singh. The remaining amount which is lying pending in the case of Section 125 Cr.P.C., the same be treated as over and no, there are no dues left.”*

9. The Permanent Lok Adalat after referring to the statements made by both the sides, passed the order. It reads as under:-

“In view of these statements of the revisionist as well as respondent no.1, which are duly endorsed by their respective counsel, the present revision petition stands disposed off

accordingly in terms of aforesaid statements of the parties. The parties will remain bound by their statements. However, it is made clear that as per terms of compromise effected between the parties, if a party fails to comply with the terms of said compromise, the other party will be entitled to get revived the present revision petition. Record of learned lower court, alongwith copy of the order, be returned back immediately. The revision petition file be consigned to the record room.”

10. On a conjoint reading of statements recorded, as well as the order passed by the Lok Adalat, it is manifestly clear that there was an obligation on the petitioner to hand over possession of ½ share land by 15.05.2014 to his wife and son, as well as to make a payment of ₹ 25,000/-. Similarly, an obligation was cast upon the respondent to get withdrawn the petition under Section 125 Cr.P.C., as well as to get the civil suit filed by the children against their father seeking joint possession of land and permanent injunction regarding alienating the land concerned (in which civil suit, there was a status quo order dated 30.8.2012). Both failed in performing their part of the compromise. No doubt, the petitioner was able to get the mutation sanctioned though the same was delayed by one month. However, there is nothing available on the record to show that the respondent-wife had made any application to have the proceedings under Section 125 Cr.P.C. withdrawn or that any application had been preferred in the civil suit to have the same withdrawn. The Addl. Sessions Judge has simply dismissed the revival petition holding that it was firstly the petitioner who was to transfer the land and it was thereafter that the respondent was to

perform her part and withdraw the cases. This is not born out from either of the statements or from the order passed in the Lok Adalat. The statement of the petitioner ***'If I will not transfer the ownership of 1/2 share of my land upto 15th May 2014 in the name of my wife and son, then as per the order of the court, the maintenance, which is to be paid to my wife, I shall be bound to pay the same and I am also bound to pay Rs.5,00,000/- as fine and my wife will have the right to accept the same.'*** also has not been dealt with. Even the order passed by the Lok Adalat is not happily worded insofar as it permits a party to have the revision petition revived in case there is a default. In case, the defaulting party would have been the petitioner, there was no question of the respondent reviving the revision, it would only have been an execution of the award.

11. In view of the above observations, impugned order dated 29.09.2016 is set aside and the matter is remanded back to the Addl. Sessions Judge, Kapurthala for afresh decision in the case.

12. The parties are directed to appear before the Addl. Sessions Judge on 28.09.2018 and the Addl. Sessions Judge to decide the matter within a period of six weeks from the date of receipt of certified copy of this order.

19.09.2018

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes.
No.