

CWP No.3990 of 2018

[1]

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

**CWP No.3990 of 2018
Date of decision:09.03.2018**

M/s CHD Developers Limited

...Petitioner

Versus

Suraj Sharma and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Vinod S. Bhardwaj, Advocate,
for the petitioner.

Rakesh Kumar Jain, J.

The petitioner has challenged the award of the Permanent Lok Adalat, Public Utility Services, Karnal (hereinafter referred to as the "PLA") dated 26.09.2017, by which application filed by respondents no.1 and 2 under Section 22-C of the Legal Services Authorities Act, 1987 (hereinafter referred to as the "Act") has been allowed.

In brief, respondents no.1 and 2 booked a Villa No.BVV-T/B-310, measuring 1300/144.44 sq. ft./sq. yds., situated in Bule Var Villa, Chandigarh City, Karnal on 03.10.2013 against Booking No.1723 for a total sale consideration of ₹55,42,985/-. Respondents no.1 and 2 paid the entire sale consideration but possession of the unit was not delivered to them by the petitioner within the time prescribed. Thus, they filed the application under Section 22-C of the Act in which, after taking into consideration the documentary evidence led by both the parties, the PLA ordered for refund of the amount paid by respondents no.1 and 2 along with interest @ 12% per

annum calculation from the date of booking, i.e. 03.10.2013, within 45 days from the date of passing of the order. It was also directed that if the said direction is not complied with, the petitioner would further pay interest @ 18% per annum for the period of default. The PLA also awarded a lump sum compensation of ₹2,00,000/- for mental and physical agony besides the litigation expenses of ₹21,000/-.

Learned counsel for the petitioner has vehemently argued that the PLA did not comply with the provisions of Section 22-C(7) of the Act as no efforts were made for holding conciliation proceedings before taking upon adjudication of the lis between the parties on merits.

I have heard learned counsel for the petitioner in detail and perused the available record in which the petitioner has reproduced the *zimni* orders passed by the PLA from time to time, in which one of the *zimni* order dated 08.05.2017 needs to be mentioned and is reproduced as under:-

“Present: Sh. V.K.Kapoor, Adv. for petitioner.
Sh. Amit Gupta, Adv. for respondents.

The learned counsels for the parties submit that they are acquainted with the facts of this case and have been authorized to participate in conciliation proceedings.

As envisaged under Section 22-C(4) of the Act, the conciliation proceedings were conducted between the parties to the application, taking into account the circumstances of the dispute. The parties were assisted to their attempt to reach an amicable settlement of the dispute, in an independent and impartial manner. The parties also cooperated in good faith with this Adalat in conciliation of the dispute. This adalat formed the opinion that there existed elements settlement which might be acceptable to the parties and thus, the terms of a possible settlement of the dispute were made known to the parties for their observations, but the parties have failed to reach an agreement under sub-section (7). So, in view of Sec. 22C(8) of the Act, the Adalat is left with no

other option except to proceed further to decide the dispute on merit.

As such, case is adjourned to 22.05.217 for evidence of the parties.”

There is no dispute that the PLA has to first make an attempt for exploring the possibility of an amicable settlement between the parties and in that process it has to submit to the parties the terms of a possible settlement and in case they fail to reach to an agreement, only then the PLA can initiate proceedings under Section 22-C(8) of the Act. From the *zimni* order dated 08.05.2017, it is evident that the efforts were made by the PLA in reaching out to the parties for an amicable settlement. It is categorically recorded in the said *zimni* order that the parties had cooperated with good faith in conciliation of the dispute and the PLA had referred to the parties the terms of possible settlement but they failed to reach to an agreement.

In the case of **State of Maharashtra vs. Ramdas Shrinivas Nayak & Anr**, 1982 AIR 1249, the Supreme Court has held as under:-

“We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. (2) That is

the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an Appellate Court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.

In Rev. Mellor, 7 Cox. P.C. 454 Martin was reported to have said: "we must consider the statement of the learned judge as absolute verity and we ought to take his statement precisely as a record and act on it in the same manner as on a record of Court which of itself implies an absolute verity".

In Ring Emperor v. Barendra Kumar Ghose, 28 C.W.N. 170 said, ".. these proceedings emphasise the importance of rigidly maintaining the rule that a statement by a learned judge as to what took place during the course of a trial before him is final and decisive; it is not to be criticized or circumvented; much less is it to be exposed to animad version".

In Sarat Chandra vs. Bibhabati Devi, 34 CLJ 302, Sir Asutosh Mookerjee explained what had to be done:

"It is plain that in cases of this character where a litigant feels aggrieved by the statement in a judgment that an admission has been made, the most convenient and satisfactory course to follow, wherever practicable, is to apply to the Judge without delay and ask for rectification or review of the judgment"

So the judges, record is conclusive. Neither lawyer nor litigant may claim to contradict it, except before the judge himself, but nowhere else."

If the petitioner was aggrieved against the recording of the *zimni* orders, it should have challenged the same before the matter reached to a conclusion or should have filed the affidavit before the same Court but no such procedure had been adopted by the petitioner and had continued with the proceedings of the case on merits thereafter and has challenged the award of

the PLA after loosing the battle on merits on the ground that the terms of the settlement were not mentioned in the *zimni* order.

Thus, in view thereof, I do not agree with the contention raised by learned counsel for the petitioner and as such, the present petition is hereby dismissed but at the same time, while parting, it may be an advisory note to all the PLAs in the States of Punjab, Haryana and Chandigarh to record in the *zimni* order the terms of settlement offered to the parties so that it would be more transparent in future and this kind of litigation could be avoided.

Registry is directed to send a copy of this order to all the Permanent Lok Adalats, Public Utility Services in the States of Punjab, Haryana and Chandigarh for their perusal and compliance.

March 09, 2018
vinod*

(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No