IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10333 of 2018

==

National Insurance Company Limited Through Divisional Manager, Pandui Bhawan, Boring Road, Patna, Bihar, Mr. Manoj Kumar, Administrative Officer/Authorized Signatory/Duly Constituted Attorney, Regional Office, National Insurance Company Limited, 4th Floor, Sone Bhawan, Birchand Patel Marg, Patna.

... ... Petitioner/s

Versus

1. Dharamveer Paswan, S/o Lt. Hirday Paswan
2. Ramdeep Paswan, S/o Lt. Tasawal Paswan
   Both the above are resident of Village- Chhotki Kopa, Khurd, P.S.- Naubatpur, District- Patna.
3. Akhilesh Kumar, S/o Hari Rai, resident of Village- Awatarpur, P.S.- Parsa Bazar, District- Patna (Driver of Tractor).
4. Shambhu Prasad, S/o Sri Jawahar Lal Yadav, resident of East Saristabad, P.O.- Anishabad, P.S.- Gardanibagh, District Patna, (Owner of Tractor).

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr.Durgesh Kumar Singh, Adv.
For the Respondent/s	:	Mr.

==

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

2 21-08-2019 The petitioner in this case is looking for quashing of the award dated 12.11.2016 as contained in Annexure-4 passed in Lok Adalat at Patna in Claim Case No.42 of 2015 by which the case has been disposed off through compromise.

It is the case of the petitioner that the claimant had filed an another case bearing Claim Case No.3230 of 2014, but information with regard to this case was deliberately concealed. It is submitted that since the award of the Lok Adalat has been obtained by concealing the material facts that prior to the award

Claim Case No.3230 of 2014 was already allowed vide judgment dated 24.06.2016 and award had also been prepared, the award made in the Lok Adalat in Claim Case No.42 of 2015 stands vitiated by fraud.

Without going into the merit of the contentions of the petitioner at this stage, this Court is of the considered opinion that in case an award has been obtained from the Lok Adalat by playing fraud by one of the parties, there would be no impediment in the way of the aggrieved party to file an appropriate application before the Lok Adalat or the concerned Tribunal from where the records were transferred to the Lok Adalat for recalling the award. In this connection reference may be made to the judgment of the Hon'ble Apex Court in the case of **Indian Bank Vs. M/S Satyam Fibres (India) Pvt. Ltd.** reported in **AIR 1996 SC 2592**. The paragraphs 31, 32 and 33 of the said judgment reads as under:-

> "31. The Privy Council in *Satish Chandra Chatterji* v. *Kumar Satish Kantha Roy,* AIR 1923 PC 73, laid down as under:
>
> "Charges of fraud and collusion like those contained in the plaint in this case must, no doubt, be proved by those who make them — proved by established facts or inferences legitimately drawn from those facts taken together as a whole. Suspicions and surmises and conjecture are not permissible substitutes for those facts or those

inferences, but that by no means requires that every puzzling artifice or contrivance resorted to by one accused of fraud must necessarily be completely unravelled and cleared up and made plain before a verdict can be properly found against him. If this were not so, many a clever and dextrous knave would escape.

32. The above principle will apply not only to courts of law but also to statutory tribunals which, like the Commission, are conferred power to record evidence by applying certain provisions of the Code of Civil Procedure including the power to enforce attendance of the witnesses and are also given the power to receive evidence on affidavits. The Commission under the Consumer Protection Act, 1986 decides the dispute by following the procedure indicated in Section 22 read with Section 13(4) and (5) of the Act.

33. Sub-section (iv) of Section 13 which has been made applicable to the proceeding before the Commission lays down that it shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:

(*i*) the summoning and enforcing attendance of any defendant or witness and examining the witness on oath;

(*ii*) the discovery and production of any document or other material object producible as evidence;

(*iii*) the reception of evidence on affidavits;

(iv)…………………………………….

(*v*) issuing of any commission for the examination of any witness; and

(vi)…………………………………….

> The Commission has, thus, jurisdiction not only to examine a witness on oath but also to receive evidence in the form of affidavits."

Further in the case of **United India Insurance Co. Ltd. V. Rajendra Singh and others** reported in **AIR 2000 SC 1165,** the Hon'ble Apex Court had occasion to consider a case in which a fraud was played upon the claim tribunal and an award was obtained. Paragraphs 3, 4, 14 and 16 of the said judgment are quoted herein for a ready reference:-

> "3. "Fraud and justice never dwell together." (*frans etjus nunquam cohabitant*) is a pristine maxim which has never lost its temper over all these centuries. Lord Denning observed in a language without equivocation that "no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything" (*Lazarus Estae Ltd.* v. *Beasley* 1956 (1) QB 702 :
>
> 4. For a High Court in India to say that it has no power even to consider the contention that the awards secured are the by-products of stark fraud played on a tribunal, the plenary power conferred on the High Court by the Constitution may become a mirage and people's faith in the efficacy of the High Courts would corrode. We would have appreciated if the Tribunal or at least the High Court had considered the plea and found them unsustainable on merits, if they are meritless. But when the courts pre-empted the Insurance Company by slamming the doors against them, this Court has to step in and salvage the situation.
>
> 14. In *S.P. Chengalvaraya Naidu* (dead) by L.Rs. v. *Jagannath (dead) by Lrs.,* (1994) 2 SCC 1: (1994 AIR SCW 243: AIR 1994 SC 853) the two Judges Bench of this Court held:

> "Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the Court is a nullity and non est in the eyes of law. Such a judgment/decree by the first Court or by the highest Court - has to be treated as a nullity by every Court, whether superior or inferior. It can be challenged in any Court even in collateral proceedings.."
>
> 16. It is unrealistic to expect the appellant Company to resist a claim at the first instance on the basis of the fraud because the appellant Company had at that stage no knowledge about the fraud allegedly played by the claimants. If the Insurance Company comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation, and if by that time the award was already passed, it would not be possible for the Company to file a statutory appeal against the award. Not only because of the bar of limitation to file the appeal but the consideration of the appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then."

It would appear that by virtue of Section 22 of the Legal Services Authority Act, 1987 the Lok Adalat shall for the purpose of holding any determination under the Act have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 while trying a suit.

This writ application is being disposed off with liberty to file an appropriate application before the concerned Lok

Adalat or the Tribunal as the case may be from where the award was allegedly obtained by playing fraud/misrepresentation. If any such application is preferred within a period of 30 days from today the same shall be considered on its own merit and shall not be rejected on the ground of limitation.

(Rajeev Ranjan Prasad, J)

arvind/-

U			