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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.914 of 2018****Order reserved on :11.02.2019****Order delivered on: 22.02.2019**

1. Central Board of Trustees, Through the Assistant Provident Funds Commissioner, Employees Provident Funds Organisation, Regional Office, Pandri, District Raipur (CG)
2. The Assistant Provident Funds Commissioner (Accounts), Employees Provident Funds Organisation, Regional Office, Pandri, District Raipur (CG)

---- Petitioners**Versus**

1. Smt. Eravati W/o Late Amarchand Repur, aged about 52 years,
2. Ku. Chunanjali D/o Late Amarchand Repur, aged about 22 years,
3. Ku. Avantika D/o Late Amarchand Repur, aged about 20 years,

Respondents 1 to 3 are R/o Shikaripara Balod, Tahsil & District Balod (CG)

4. Kanti Bai D/o Bisahu Ram, aged about 58 years,
5. Mahanand Repur S/o Late Amarchand Repur, aged about 33 years,
6. Muchkundh Repur S/o Late Amarchand Repur, aged about 31 years,

Respondents No.4 to 6 Address: Shikaripara, Balod, Dist-Balod (CG)

7. Branch Manager, Chhattisgarh State Gramin Bank, Bharritola, Tahsil Maanpur, District Rajnandgaon (CG)
8. Chhattisgarh State Gramin Bank, Regional Office, Rajnandgaon, District Rajnandgaon (CG)
9. Public in General, Chhattisgarh

---- Respondents

For Petitioners	:	Mr.Sunil Pillai, Advocate
Amicus Curiae	:	Mr.Kshitij Sharma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

1. Mahatma Gandhi – the Father of Nation has said:-

“I had learnt the true practice of law. I had learnt to find out the battle, side of human nature and to enter men's hearts. I realised that true function of a lawyer was to unite parties given as under. The lesson was so indelibly burnt unto me that large part of my time, during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing, thereby even money, certainly not my soul.”

2. Mr.Amarchand Repur while working in the Chhattisgarh Rajya Gramin Bank, Bharritola, Tahsil Maanpur, District Rajnandgaon died in harness leading to filing of application for grant of succession certificate No.02/2015 before the Succession Court by his first wife Kanti Bai (respondent No.4 herein) and her two sons-Mahanand Repur and Muchkundh Repur as well as second wife Erawati and her two daughters for getting retiral dues. The Succession Court by its order dated 21.10.2016 partly granted the application holding that Kanti Bai and two others as well as Erawati Bai and two others each of them are entitled for 1/4th share in the property/amount left by Mr.Amarchand Repur, against which, second wife-Erawati Bai and two others preferred appeal before the appellate Court. During pendency of the appeal, the matter was referred to the Lok Adalat and on the basis of compromise arrived at between the parties, an award was passed by Lok Adalat on 12.8.2017 and accordingly, the succession certificate was issued on 21.9.2017 by the Succession Court in favour of the persons held entitled thereto by Lok Adalat stating that parties are entitled for total amount of ₹ 31,74,939/-,

out of which, employees provident fund amount is ₹ 9,32,164/-. Now, the petitioner-Assistant Provident Fund Commissioner has preferred this writ petition under Article 227 of the Constitution of India stating inter-alia that the award passed is contrary to law and as such, it is violative to para 70 (ii) (a) of the Employees' Provident Funds Scheme, 1952 (hereinafter called as "EPF Scheme") as respondents No.5 and 6 are not entitled for any share in the property left by Amarchand Repur.

3. Mr.Sunil Pillai, learned counsel for the petitioner, would submit that the impugned award passed by the Lok Adalat is contrary to law as by virtue of para 70 (ii) (a) of the EPF Scheme, respondents No.5 and 6 being major sons of deceased are not entitled for amount of EPF accumulations, thus the award not being lawful is liable to be set aside.
4. Mr.Kshitij Sharma, learned Amicus, would submit that parties have entered into compromise with open eyes and it is mutual concession granted by the parties to sort out their dispute *qua* retiral dues finally, as such, para 70 of the EPF Scheme would not be applicable and respondent No.1 Erawati Bai being second wife is also entitled for share in the property/amount left by Mr.Amarchand Repur. He relied upon the judgments of the Supreme Court in the matters of State of Punjab and others v. Ganpat Raj¹ and State of Punjab and another v. Jalour Singh and others².
5. I have heard learned counsel for the petitioners and also heard learned Amicus and considered their rival submissions made herein-above and went through the records with utmost circumspection.

1 (2006) 8 SCC 364

2 (2008) 2 SCC 660

6. The parties to the lis respondents herein have settled their dispute amicably by entering into compromise by dividing the amount of retiral dues through Lok Adalat constituted under Section 13(5) of the Legal Services Authorities Act, 1987 (hereinafter called as 'the Act of 1987'). Section 20 (4) of the Act of 1987 provides for the principles on which Lok Adalat has to determine any reference made to it. Section 20 (3), (4) and (5) of the Act of 1987 states as under:-

“(3). Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

(4). Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive by at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.

(5). Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub-section (1) for disposal in accordance with law.”

7. The question is what is meaning of “compromise” or settlement as employed in Section 20 (5) of the Act of 1987. According to Advanced Law Lexicon 3rd edition:-

“A compromise takes place when there is a question of doubt and parties agree not to try it out but to settle it between themselves by a give and take agreement. Per Kay L.J. in *Hudders Field Banking Co. v. Lister* (1895) 2 CH 273, compromise is a mutual promise of two or more parties that are at controversy.

To adjust by mutual concession, to settle without resort to law

to compound. An adjustment of matter in dispute by mutual concessions. An agreement between the parties, to a controversy for settlement of the same. A settlement of differences by mutual concession. The mutual yielding of opposing claims. The surrender of some right or claimed right in consideration of like surrender of some counter claim.

A compromise is always bilateral and means a mutual adjustment. According to new Standard dictionary, a compromise means agreement or adjustment for settlement of controversy by mutual concessions, often involving partial surrender (See Kunjalal v. Nathmal³).

8. The Supreme Court in the matter of State of Punjab and others v. Phulan Rani and another⁴ has held that a compromise is always bilateral and means mutual adjustment and "settlement" is termination of legal proceedings by mutual consent within the meaning of Section 20 (3) of the Act of 1987 and succinctly held as under:-

"7. The specific language used in sub-section (3) of Section 20 makes it clear that the Lok Adalat can dispose of a matter by way of a compromise or settlement between the parties. Two crucial terms in sub-sections (3) and (5) of Section 20 are "compromise" and "settlement". The former expression means settlement of differences by mutual concessions. It is an agreement reached by adjustment of conflicting or opposing claims by reciprocal modification of demands. As per Terms de la Ley, "compromise is a mutual promise of two or more parties that are at controversy. As per Bouvier it is "an agreement between two or more persons, who, to avoid a law suit, amicably settle their differences, on such terms as they can agree upon". The word "compromise" implies some element of accommodation on each side. It is not apt to describe total surrender. (See Re NFU Development Trust Ltd. (1973) 1 All ER 135(Ch.D). A compromise is always bilateral and means mutual adjustment. "Settlement" is termination of legal proceedings by mutual consent. The case at hand did not involve compromise or settlement and

3 AIR 1957 MB 14

4 AIR 2004 SC 4105

could not have been disposed of by Lok Adalat. If no compromise or settlement is or could be arrived at, no order can be passed by the Lok Adalat. Therefore, the disposal of the Writ Petition No. 13555/1994 filed by respondent No.1 is clearly impermissible.”

Similar principle of law has been laid down by Their Lordships of the Supreme Court in the matters of Ganpat Rai (supra) and Union of India v. Ananto (Dead) & Anr.⁵.

9. Now the next question is, what is meaning and significance of expression “Justice, Equity and Good Conscience” employed in Section 20 (5) of the Act of 1987. The Formula “Justice, Equity and Good Conscience”- The origin of the formula lie in the Roman canonical sources, way back in the 16th Century. Late the formula was applied in Italy, Germany and France. It appealed the English legal system which modified and incorporated it in their own system. The preamble of the act of Succession enacted in 1536 used the expressions “Equity, reason and good conscience”. The East India Company carried the principle to India. In 1688, the Judges appointed in Bombay under the Company's Law were” to behave themselves according to good conscience”. The Royal Charters of 1683, 1687, 1726 and 1753 also used the expressions “Equity and Good Conscience” and “Justice and Right”. The Regulation of 1781 enjoined that in all cases for which no directions were given the respective Judge “do act according to Justice, equity and god conscience”. The principles were to be applied where positive law or custom did not assist the Court to dispense judicial Justice. Indeed, the term “Justice” eludes a precise definition. It means the constant and perpetual disposition to render to

5 AIR 2007 SC 1561

every man his due. The Courts are to administer “commutative justice” and “distributive justice” as well. The expression “commutative justice” means that virtue whose object is to render to every one what belongs to him, as nearly as may be, or that which governs contracts. To render commutative justice, the judge must make an equality between the parties, so that no one may be gainer by another's loss. The expressions “distributive justice” means that virtue whose object is to distribute rewards and punishments to each one according to his merits, observing a just proportion by comparing one person or fact with another, so that neither equal persons have unequal things nor unequal persons things equal. “Equity” is a system of law or rules more consonant than the ordinary law which opinions current for the time being as to a just regulation of the mutual rights and duties of men living in a civilized society, vide Halsbury's Laws of England, 3rd Edn., Vol. 14 P. 464. 'Equity' according to Blackstone means “that portion of remedial justice which was formerly exclusively administered by a court of Equity as contradistinguished from that portion which was formerly exclusively administered by a court of common law” - vide Blackstone's Commentaries, 429-437. The meaning of the expression “Justice, equity and good conscience was summed up by Lord Hobhouse in *Waghela Rajsanji v. Shekh Masludin* (1887) 13 Ind. Appl. 89(96). “Justice, equity and good conscience” could be interpreted to mean the rules of English Law and found applicable to Indian society and circumstances”. It was said with reference to the English Law (**See U. Bransly Nongaiang v.**

U. Drolishon Syiemiong and Ors.⁶).

10. In this connection, reference may be made to the observation of Sir Barnes Peacock, C.J., in Rambaksh v. Madhusudan⁷, that where rights of parties are determined according to the general principles of equity and justice, this must be done without any distinction, as in England, between that partial justice which is administered in the Courts of law and the more full and complete justice for which it is frequently necessary to seek the assistance of a Court of equity.

11. Having considered the meaning and significance of “conciliation” & settlement, justice, equity & good conscience, it would be appropriate to consider the submission of learned counsel for the petitioners, based on para 70 (ii) (a) of the EPF Scheme, which states as under:-

“70. Accumulations of a deceased member-To whom payable.-On the death of a member before the amount standing to his credit has become payable or where the amount has become payable before payment has been made-

(i) xxx xxx xxx

(ii) if no nomination subsists or if the nomination relates only to a part of the amount standing to his credit in the Fund, the whole amount or the part thereof to which the nomination does not relate, as the case may be, shall become payable to the members of his family in equal shares:

Provided that no share shall be payable to-
(a) sons who have attained majority.”

12. Resting his submission on the above-stated paragraphs of the Provident Fund Scheme, it has been submitted by Mr. Pillai, learned counsel for the petitioners, that though the scheme prohibits allotment of

⁶ (1986 2 Gauhati Law Reports 487

⁷ 7 W.B. 377 (1867)

share of provident fund to major sons, yet respondents No.5 and 6 (major sons) have been allotted share, therefore, the award is not lawful and therefore, liable to be set aside. It is pertinent to mention here that total amount of retiral dues is ₹ 31,74,939/-, out of which, the amount of EPF is only ₹ 9,32,164/-. The parties have settled not only the dispute of EPF dues but have settled all the disputes of entire retiral dues in Lok Adalat by way of conciliation during the pendency of appeal as the Succession Court had granted 1/4th share to each of them, as such, there is mutual adjustment of their rights between the parties *qua* the entire amount of retiral dues and in that adjustment, if one of the parties i.e. respondents No.5 and 6 (major sons) have received some amount, it cannot be held contrary to the above-stated scheme as already held hereinabove that it is the concillation/settlement of all retiral dues including amount of EPF finally and it is not the settlement of EPF amount only, as such, by the impugned award, parties have settled their dispute *qua* the entire retiral dues including EPF amount by conciliation in Lok Adalat and agreed to accept the award by mutual concession, mutual yielding of contested claim and by surrender of some right which each one is entitled, within the meaning of Section 20 (3) read with Section 20 (5) of the Act of 1987, which cannot be branded as unlawful by any stretch of imagination, as such, I do not find any good ground to entertain the writ petition. It deserves to be and is hereby dismissed.

13. Before parting with record, it would be appropriate to mention here that the impugned award was passed on 21.9.2017, but out of total EPF amount, only ₹ 3,10,721/- has been said to be paid by the petitioners to

the beneficiary, but rest of amount has been retained by the petitioners claiming the award to be unlawful. Since the writ petition has been dismissed, the petitioners are directed to pay the balance amount to the claimants/respondents herein forthwith without any further loss of time. They are directed to pay interest on the said amount at the rate of 12% from 21.9.2017 till date of payment to them. The award was passed on 21.9.2017, the petitioners' filed this writ petition on 29.10.2018 with a delay of one year. In the considered opinion of this Court, this is nothing but an act on the part of Provident Fund authorities to deprive the claimants from reaping the fruits of award and thereby to frustrate the object of the Legal Services Authorities Act, 1987, which has been enacted to achieve the objective enshrined in Article 39A of the Constitution of India. The Act of 1987 has been enacted with a purpose that it would not only reduce the burden or arrears of work in regular Courts, but would also take justice to the door steps of poor and needy and make justice quicker and less expensive. Thus for delay of one year in honouring the award, the petitioners are saddled with cost of ₹ 25,000/- payable to respondents No.1 to 6, which will be borne personally by petitioner No.2 and he will not be entitled to claim that amount officially.

14. The writ petition being devoid of merit is liable to be and is hereby dismissed with above-stated direction (s) and cost to the petitioners.

Sd/-

Sanjay K.Agrawal)
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (227) No.914 of 2018

Petitioners

Central Board of Trustees and
another

Versus

Respondents

Smt. Eravati and others

(Head-note)

(English)

The award of Lok Adalat has always to be honored promptly looking to the object of the Legal Services Authorities Act, 1987.

(हिन्दी)

विधिक सेवा प्राधिकरण अधिनियम, 1987 के उद्देश्य को ध्यान में रखते हुये, लोक अदालत के अधिनिर्णय का पालन सदैव तत्परता से किया जाना चाहिए।