

253

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

**CR No.8343 of 2018
Date of Decision: 24.01.2019**

Ajay Kumar

..... Petitioner

Versus

Hukam Chand (now deceased) through his LR Sunil Kumar

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Sanjay Jain, Advocate
for the petitioner.

None for the respondent.

SUDIP AHLUWALIA J. (ORAL)

1. Seen office report.
2. There is no representation on behalf of the respondent despite service.
3. This revision is directed against the order dated 28.09.2018 passed by the Ld. Civil Judge (Junior Division), Ambala in case No.42/2013 of 20.12.2013/30.09.2016 vide which an application (Annexure P-2) under Section 152 of the Code of Civil Procedure (for short 'the CPC') filed on behalf of the petitioner-plaintiff was dismissed, in which he had prayed for modification of an earlier order dated 23.11.2013 (which in turn had been passed by the Lok Adalat, and not by

the Regular trial Court), and which is set out as below:-

*“Present: Sh. A. B. Kapoor, counsel for the plaintiff.
Sh. Pawan Kumar Goel, counsel for the defendant.*

....

File taken up in the Lok Adalat on the request of the parties for withdrawing the case. Compromise between the parties has been effected in sum of Rs.75,000/-. Ld. counsel for the defendant stated that defendant has paid Rs.5000/- in advance to the plaintiff and plaintiff has received the case and the remaining amount will be paid within seven months. Statement of both the parties has been recorded. Heard. In view of the above statements of the parties, the case stands dismissed as withdrawn. File be consigned to record room after due compliance.”

4. Perusal of the aforesaid order clearly goes to show that there were certain conditions imposed upon the respondent-original defendant, although the matter was treated as dismissed as withdrawn. On perusal of the statement (Annexure P-5) made by the respondent-original defendant before the Lok Adalat, it is seen that he had admitted his liability to pay the balance amount of Rs.70,000/- with interest over the period of following seven months, and in default of which, the petitioner's suit for specific performance was to be treated as being decreed.

5. It transpires, however, that the respondent-original defendant did not abide by his commitment as made in the statement given before the Lok Adalat, but which was unfortunately not noted in its final order dated 23.11.2013.

6. In the opinion of this Court since some part of the agreement had remained to be performed on the date, the matter was decided by the Lok Adalat, its observation to the effect that, “***in view of the above statements of the parties, the case stands dismissed as withdrawn***”, was actually in the nature of an incomplete recording of the proceedings, as the Lok Adalat also ought to have noted the agreed undertaking accepted by the defendant-original respondent.

7. It is submitted by Ld. Counsel for the petitioner that the Lok Adalat constituted of that date was specially operational on that day alone which was being held as “**National Lok Adalat**”. So, there was no scope for him to approach the same Forum to seek modification/correction of the aforesaid order and since in terms of the compromise agreed upon by the parties, the suit was still liable to be decreed in the event of non-payment by the respondent, it would become incumbent on the Ld. Trial Court itself to have taken notice of the situation and directed decreeing of the suit as sought for.

8. For the aforesaid reasons, the impugned order is set aside with a direction to the Ld. Trial Court to modify the same and hold that the suit stands decreed on account of non-performance of the agreed conditions by the respondent-original defendant of the terms of the compromise arrived at on 23.11.2013. It is, however, made clear that in the event that after the suit is treated as having been decreed in the given circumstances, the petitioner shall have the right to recover only the outstanding amount along with statutory interest thereupon in terms of

the agreement between the parties, and not qua any other relief made in the original plaint.

January 24, 2019

rittu

(SUDIP AHLUWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No