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HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Order on : 25.11.2019

Order Passed on : 28/01/2020

W.P.(227) No. 711 of 2018

1. Indresh Patel, S/o. Late Shri Chhabi Lal Patel, Aged About 18 Years, R/o. Village Khokhara, Post- Tarkela, Tahsil- Pusour, District- Raigarh, Chhattisgarh
2. Minor Suyash Patel, S/o. Late Shri Chhabi Lal Patel, Aged About 11 Years, Through- His Mother Natural Guardian Smt. Sarita Patel, Wd/o. Late Shri Chhabi Lal Patel, R/o. Village- Khokhara, Post- Tarkela, Tahsil- Pusour, District- Raigarh, Chhattisgarh

---- Petitioners

Versus

1. Narad Choudhari, S/o. Late Shri Than Singh Choudhari, Aged About 37 Years, Occupation- Agriculture and Shop Keeper, R/o. Village Kodatarai, Tahsil- Pusour, District- Raigarh, Chhattisgarh.
2. Smt. Sarita Patel, Wd/o. Late Shri Chhabilal Patel, Aged About 36 Years, Occupation -Service, R/o. Village Khokhara, Post- Tarkela, Tahsil- Pusour, District- Raigarh, Chhattisgarh
3. The State of Chhattisgarh, Through- The Collector, District- Raigarh, Chhattisgarh.

-----Respondents

For Petitioners : Mr. Roop Naik, Advocate

For Respondents No.1 and 2 : Mr. R.S. Patel with Mr. Palash Agrawal,
Advocates

For State/Respondent No.3 : Mr. Arijit Tiwari, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

28/01/2020

1. Challenge in this petition is to the award of National Lok Adalat, passed in Civil Suit No.38-A/2016 on 08.07.2016.
2. It is submitted by the learned counsel for the petitioners that the petitioners were minor, who were arrayed as defendants in the suit No.38-A/2016 and represented by the guardian Sarita Patel, who is respondent No.2 in this petition. Award of Lok Adalat was passed on the basis of the compromise between the respondent No.1 as plaintiff and respondent No.2 as defendant on her own behalf as well as on behalf of the petitioners, who were minor defendants. It is submitted that the respondent No.2 has overlooked the interest and welfare of the minors, which is provided under Section 27 of the Guardians and Wards Act, 1890. The Presiding Officer of National Lok Adalat has also overlooked the interest of the petitioners by passing the impugned award, therefore, the award passed is illegal and arbitrary. Relying on the judgment of Privy Council in the matter of ***Mohori Bibee & Anr. Vs. Dharmodas Ghose***, reported in ***(1903) ILR 30 Cal. 539***, it is submitted that the minor is incompetent to contract, therefore, any money paid to him is not recoverable and any agreement on his behalf is not enforceable. Hence, the award of Lok Adalat is liable to be set-aside.

3. On behalf of the respondents, it is submitted that under Section 21 of the Legal Services Authority Act, the award passed by the Lok Adalat can not be challenged in any Court in appeal as well as under Article 227 of the Constitution of India. Placing reliance on the judgment of this Court delivered on 22.02.2019 in W.P. (227) 914 of 2018, it is submitted that setting-aside of any award of Lok Adalat would amount to frustrate the purpose and intention of the Legal Services Authorities Act, 1987, therefore, this petition can not be entertained and allowed.
4. I have heard the learned counsel for both the parties and perused the documents placed on record.
5. The question that mainly arises in this case is whether the petitioners were legally represented in the civil suit and their interest were legally protected by the guardian mentioned in the plaint in accordance with law.
6. When a suit is filed against any minor defendants, in that case, such suit has to be filed only as per the law of Code of Civil Procedure provides. Order 32 Rule 3 of C.P.C. provides as under :-

“3. Guardian for the suit to be appointed by Court for minor defendant— (1) Where the defendant is a minor the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.”

7. Therefore, it is a necessity that when the defendant is a minor, his guardian has to be appointed by the Court and the provisions

under Order 32 Rule 3 is mandatory provision, which has to be strictly followed.

8. On perusal of the record of the Civil Suit No.38-A/2016, it is found that suit was presented on 26.07.2016 and then notices were issued to the defendants. The petitioners, who are arrayed as defendant No.2 and 3 are shown to be represented by guardian Smt. Sarita Patel. Defendants gave appearance through their guardian, before the Court and then written statements was filed and subsequent to which during the pendency of trial, the guardian of the petitioners on their behalf has entered into a compromise and then compromise decree was passed by the Lok Adalat.
9. There is no where mentioned in the whole proceeding of the trial Court in civil suit until it was compromised that any application was filed by the petitioners praying for appointment of guardian on behalf of the minor defendant/petitioners, therefore, representation made by the respondent No.2 on behalf of the petitioners was without any authority of the Court, which was required compulsory under Order 32 Rule 3 of C.P.C. Without such authority, the respondent No.2 had no entitlement to make any submission on behalf of the petitioners. Therefore, this appears to be a serious procedure flaw in the proceeding of the civil suit and there is nothing to hold that the petitioners were lawfully represented and that respondent No.2 had a lawful authority to give consent for compromise on behalf of the

petitioners. Therefore, the compromise decree drawn on the basis of the consent on behalf of the minor defendants/ petitioners through the person nominated as guardian by the plaintiff, who is respondent No.2 and not lawfully appointed by the Court under Order 32 Rule 3 of C.P.C.. Therefore, the impugned award and decree of Lok Adalat on the basis of the said compromise is unlawful, therefore, unsustainable.

10. Hence the petition is allowed. The impugned award of National Lok Adalat, passed in Civil Suit No.38-A/2016 on 08.07.2016 is set-aside. However, the Civil Suit No.38-A/2016 is restored to the stage prior to the date of compromise that took place in Lok Adalat, which may be prosecuted by the respondent No.1 after following the procedure as provided under the law.

Sd/-
(Rajendra Chandra Singh Samant)
Judge