

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227) No. 919 of 2019

Reserved On : 09.07.2020

Delivered On : 10.08.2020

Harsha Dewani, D/o Harish Dewani, Aged About 27 Years, Ex. Assistant Professor, R/o Getanjali Nagar, Street No. 4 Kashyap Colony, Old Bus Stand, Bilaspur (C.G.)

--- Petitioner

Versus

Ashutosh Gupta, S/o Narayan Prasad Gupta, Aged About 28 Years, R/o Kashyap Colony, Street No. 4, Police Station City Kotwali, District- Bilaspur (C.G.)

--- Respondent

For Petitioner : Mr. Vivek Kumar Tripathi, Advocate.

For Respondent : Mr. Manoj Kumar Paranjpe, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

1. This petition has been brought praying for invoking power under Article 227 of the Constitution of India for quashing order dated 23.10.2019 (Annexure P/1) passed by Additional Principal Judge, Family Court, Bilaspur, District- Bilaspur (C.G.) in Civil Suit No. 285A/2019.

2. Learned counsel for the petitioner submits that earlier the respondent had filed a civil suit under Section 9 of the Hindu Marriage Act, 1955 (for short "the Act, 1955") which was registered as Civil Suit No. 258A/2017. During pendency of that case, matter was placed before National Lok Adalat on 08.12.2018 and as the respondent/ applicant did not want to press on the proceeding of that case, therefore, the case was disposed of by the order passed on the same date.
3. In the present case, the respondent has filed a repeat application under Section 9 of the the Act, 1955 on 01.05.2019 which is present Civil Suit No. 258A/2017. The petitioner moved an application under Order 7 Rule 11 read with Section 23 Rule 4 of the C.P.C. challenging the maintainability of the civil suit, on the ground that the same prayer in the previous application filed by the respondent, has been disposed of by award dated 08.12.2018.
4. It is further submitted that Order 23 Rule 4 of C.P.C. specifically provides about abandonment of a suit under sub-rule 1 without permission of Court. As per sub-rule 4, the plaintiff shall be precluded from instituting any fresh suit with respect to such subject matter. Therefore, second suit filed by the respondent under Section 9 of the Act, 1955 was not maintainable. The

learned Family Court without appreciating the facts and law, has passed the impugned order and dismissed the prayer made by the petitioner.

5. It is further submitted that Section 21 of the Legal Services Authorities Act, 1987 (for short "the Act, 1987") provides that any award passed in the Lok Adalat shall be final and binding on all the parties to the dispute and no appeal shall lie to any court against the award, therefore, order dated 08.12.2018 had finality and the repeat application filed under Section 9 of the Act, 1955 is not sustainable, therefore, it is prayed that the impugned order is erroneous, which may be quashed.
6. Learned counsel for the respondent opposes the submission made by the petitioner and submits that during pendency of earlier Civil Suit No. 258A/2017, compromise had taken place between the respondent and the applicant, out of the Court. Because of which, the respondent made submission before the Lok Adalat for simple withdrawal of the case and on that basis, the order was passed. As the petitioner, wife of the respondent, did not honour the out of court compromise, therefore, the respondent was compelled to file application under Section 9 of the Act, 1955 again, which is the application in the present suit.

7. It is further submitted that the order dated 08.12.2018 passed in the civil suit was not an award. Section 21 of the Act, 1987 provides for award of Lok Adalat and if any award is made by Lok Adalat, that shall be final and binding on the parties and no appeal shall lie to any court against that award. This order was not passed on compromise, that had taken place between the parties. The case was simply withdrawn for the reason that the respondent/ plaintiff of the suit had made a statement, that he does not want to press on the suit, therefore, it was simple withdrawal. This order also does not fall in category of decree, which has been defined under Section 2 sub-section 2 of the C.P.C. The controversy between the parties was not settled by the order dated 08.12.2018, therefore, it was neither an award nor a decree.
8. Placing reliance the judgment of this Court in **Second Appeal No. 233/2014** decided on 03.10.2016 in the matter of **Dr. Somesh Pandeya & others Vs. Viseshwawr Prasad Pandeya**, it is submitted that principle of *res judicata* can apply only when the issue of *lis* between the parties, has been contested and decided in the previous suit. As the order in the previous suit, is simple withdrawal of the suit, which makes it clear that the grounds, on which, the relief was sought in the

previous application, have remained undecided, therefore, the present petition has no substance, which may be dismissed.

9. I have heard learned counsel for the parties and perused the records.
10. Considered on the submissions made by learned counsel from both sides. The order dated 08.12.2018 passed in Civil Suit No. 258A/2017, shows that the respondent was present before the Lok Adalat, however, the petitioner/defendant had not appeared. The respondent had made simple submission that he does not want to press on the proceeding of that case and then, the order was passed disposing of the case.
11. The earlier application filed by the respondent under Section 9 of the Act, 1955 praying that his wife, i.e. the petitioner herein, has withdrawn from his society without any reasonable cause. The issue on that point was not decided in the previous suit, as it was simple withdrawal made by the respondent side. Further, the respondent has filed repeat application under Section 9 of the Act, 1955 making the same prayer, which is the present suit.
12. Section 21 of the Act, 1987 reads as under:-

“21. **Award of Lok Adalat** - (1) Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or

settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of Section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court Fees Act, 1987.

(2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.”

13. It has been expressly mentioned in Section 21 of the Act, 1987, that an award of Lok Adalat shall be deemed to be a decree of civil court, which includes the order on compromise or settlement between the parties before the Lok Adalat. As per definition of decree under section 2 sub-section 2 of the C.P.C., 'decree' means formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit. The word 'award' has not been defined in the Act, 1987 or in the C.P.C., 1908. Reference of award is seen in Arbitration and Conciliation Act, 1996 (for short “the Act, 1996”). There is brief mention in Section 2(1)(c) of the Act, 1996 about the interim arbitral award. Chapter 6 of this Act provides for making of arbitral award and termination of procedure, which implies simple decision making by the arbitrator or arbitrators.

14. Section 20 (1) of the Act, 1987 provides about cases on which the Lok Adalat may take cognizance. The conditions for taking cognizance are that the parties thereof agree or one of the parties thereof makes an application to the court, for referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such settlement, the court shall refer the case to the Lok Adalat. The court has to decide that the matter is appropriate on which, Lok Adalat should take cognizance.
15. Section 20 sub-section 4 of the Act, 1987 provides that the Lok Adalat shall act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles. Sub-section 5 of Section 20 of the Act, 1987 provides that when no award is made for the reason that there is no compromise or settlement between the parties could be arrived at, 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.
16. The power of Civil Court under Order 23 of C.P.C., it is specially vested with the civil court only. On perusal of provision under Order 23 Rule 1 of C.P.C. and comparing the same with the

power of Lok Adalat under Section 20 of the Act, 1987, it is clearly found that Lok Adalat has no authority to exercise the power under Order 23 Rule 1 of C.P.C. The Lok Adalat on taking cognizance in any matter, referred to it from a court, can act only in accordance with Section 20 sub-section 4, 5 & 6 of the Act, 1955 and there is no mention that the Lok Adalat can allow the withdrawal of the civil suit, therefore, the order passed in the Civil Suit No. 258A/2017 on 08.12.2018, is not found to be within scope and power of the Lok Adalat. Therefore, this order has no force under the law. It had been a simple case of abandonment by the respondent side before the Lok Adalat, which was not competent to pass any such order. Hence, it is held that the order dated 08.12.2018 having no legality and not passed by the competent court in exercise of the law empowering such court, is not an order at all.

17. The order dated 08.12.2018 was passed in Civil Suit No. 258A/2017 and the case of the respondent against the petitioner was terminated on the basis of the statement made by the respondent side, that some agreement has taken place between the parties out of the court. As that agreement out of Court was not honoured by the petitioner side, therefore, the respondent was compelled to file repeat application under Section 9 of the

Act, 1955. This appear to be the circumstance, present is the case in favour of the respondent for bringing the second civil suit. There is no need to mention that by the order dated 08.12.2018 passed in Civil Suit No. 258A/2017, the dispute between the parties was neither settled nor compromised. However, on the basis of the finding hereinabove, this order does not have force of decree in any respect. Apart from that, this order is not decree in accordance with definition under Section 2 sub-section 2 of the C.P.C. The order dated 08.12.2018 is nullity and is no order in the eyes of law, therefore, it cannot be said that Order 23 Rule 1 & 4 has come into operation to restrain the respondent for instituting present suit under Section 9 of the Hindu Marriage Act, 1955.

18. It would be appropriate to note that in matrimonial dispute, the cause of action can arise again and again, even if dispute is settled and compromised, before the court and the case is withdrawn. When a dispute crops up again at any subsequent stage on account of differences between the parties to the matrimony, that would be a separate cause of action, on which the party aggrieved, has entitlement to maintain legal proceeding under the provision of the Hindu Marriage Act, 1955.

19. On overall consideration of the facts and circumstances of this case, I am of this view that the learned Family Court has not committed any error in passing the impugned order, therefore, I do not find any substance in this petition.
20. In view of the above, the instant writ petition is liable to be and is hereby dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge