

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 512 of 2021

- Shankar Lal Agrawal S/o Kundanlal Agrawal Aged About 50 Years R/o House No. 61,62, Park Avenue Colony, Dhimrapur, P.O. Raigarh, Tehsil And District- Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh

---- Petitioner

Versus

1. Champion Refratec Private Limited Industrial Area : Korba Road, Post Office Champa- 495671 District- Janjgir-Champa Chhattisgarh. Through its Director Sajjan Prasad Agrawal Aged About 61 Years R/o Village Sivni Post Sivni (Champa) District Janjgir-Chamap Chhattisgarh., District : Janjgir-Champa, Chhattisgarh
2. Rajat Ispat Private Limited, Marshal House 33/1, N.S. Road, Room No. 234, Second Floor, Kolkata - 700001.
3. Subhash Agrawal S/o Gulabchand Agrawal, 40/424, Kotra Road, P.O. Raigarh, Tahsil and District Raigarh Chhattisgarh.
4. Rekha Agrawal W/o Subhash Agrawal, 40/424, Kotra Road, P.O. Raigarh, Tahsil and District Raigarh Chhattisgarh.
5. Bhushan Power and Steel Ltd., Village Thelkoloi, P.O. Lapanga 768212, Tehsil Rengali, District Sambalpur Odisha.
6. Dayanand Agrawal S/o Kundanlal Agrawal R/o House No. 61, 62, Park Avenue Colony, Dhimrapur , P.O. Raigarh, Tehsil and District Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh

---- Respondents

For Petitioner – Shri Amit Sharma, Advocate.

For Respondent No.1 – Shri Kshitij Sharma, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

01-11-2021

Heard.

1. This petition has been brought against the order dated 11-09-2021 passed in Civil Suit No.19A/2019 between the parties in this petition by National Lok Adalat.
2. It is submitted that the civil suit has been filed by respondent No.1 for recovery of money from the petitioner. During pendency of the suit, respondent No.1 filed an application under Order 23 Rule 1 of the CPC praying that there is provision under Commercial Courts Act for filing such petition before the

Commercial Court and it was for that reason prayer was made for withdrawal of the civil suit. The learned Lok Adalat sitting on 11-09-2021 has decided this application by allowing it. The suit was dismissed as withdrawn and the order was passed for return of the court fees. It is submitted that the impugned order is illegal as it was not passed on any compromise between the parties, therefore, the order for making refund of the court fees to respondent No.1 is also unlawful. Prayer has been made to quash the impugned order.

3. Learned counsel for respondent No.1 submits that this Court has decided WP227 No.919/2019 between parties Harsha Dewani Vs. Ashutosh Gupta on 10-08-2020 that power under Order 23 Rule 1 of the CPC vests with the civil court only and the Lok Adalat is not empowered to pass any order on this provision. Therefore, if any such order is passed that is not an order at all. Therefore, the present petition may be disposed off. However, the respondent No.1 may be granted liberty to file application under Order 7 Rule 10 and Order 7 Rule 10(A) of the CPC before learned trial Court to make a prayer for return of plaint.

4. Considered on the submissions. It is clear that the impugned order has been passed by the Lok Adalat on the application under Order 23 Rule 1 of the CPC. This Court has in the case of Harsh Dewani Vs. Ashutosh Gupta (supra) held in paragraph 16 that:-

“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.”

5. Hence, on this basis it can be held that the impugned order passed by the Lok Adalat is without any authority and as such the order is non-est in the eyes of law. Therefore, the petition is allowed and disposed off at motion stage. The impugned order dated 11-09-2021 (Annexure-P/1) passed by the Lok Adalat is hereby quashed. The civil suit between the parties stands restored. Both the parties are directed to give appearance before the trial Court on **30-11-2021**. Respondent No.1 shall have liberty to file application under Order 7 Rule 10 and Order 7 Rule 10(A) of the CPC and if any such application is filed, then the learned trial Court is directed to consider on the same and dispose it off at the earliest.

6. The petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge