IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(Through video conferencing)

1. CWP No.1825 of 2019 (O&M)
Date of Decision: 07.12.2021

Shivalik Cotsyn Limited and others ......Petitioners
Vs
Presiding Officer, Daily Lok Adalat, Hisar and another .....Respondents

2. CWP No.1828 of 2019 (O&M)

Shivalik Cotsyn Limited and others ......Petitioners
Vs
Presiding Officer, Daily Lok Adalat, Hisar and another .....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Raghav Gulati, Advocate and
Mr. R.K. Saini, Advocate
for the petitioners.

Mr. Aakash Singla, Advocate
for respondent No.2.

Mr. Ashwani Gaur, Advocate
for the applicants in CM No.15814-CWP of 2021 and
CM No.15810-CWP of 2021.

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<u>RAJ MOHAN SINGH, J.</u>

[1]. Vide this common order, CWP No.1825 of 2019 and CWP No.1828 of 2019 are being decided.

[2]. Petitioners have preferred the aforesaid petitions under

Articles 226/227 of the Constitution of India for the issuance of an appropriate writ in the nature of certiorari, quashing the order dated 08.05.2018 passed by respondent No.1 vide which the petitioners have been held liable for 2 years imprisonment and double of the cheque amount as compensation.

[3]. Since both the petitions have arisen out of common cause of action and similar facts are involved, therefore, for brevity the facts are being culled out from CWP No.1825 of 2019.

[4]. Petitioners are directors of the firm namely Shivalik Cotsyn Limited which used to manufacture yarn from raw cotton. Petitioners used to take raw material from the market and respondent No.2 supplied the same. Petitioners used to issue bank cheques to respondent No.2 as security of payment of raw material and used to make payment for the raw material through RTGS. On 16.02.2017, petitioners received a notice under Section 138/141 of the Negotiable Instruments Act sent by respondent No.2 through the counsel in respect of five cheques in a total sum of Rs.53,40,865/- in lieu of payment of material. On presentation, those cheques were dishonoured. On 17.03.2017, petitioners sent a reply by mentioning that the aforesaid cheques were issued as security of the payment of raw material. Liability was denied and there was no legally

enforceable debt against the petitioners.

[5]. Respondent No.2 filed a complaint under Section 138/141 of the Negotiable Instruments Act and the petitioners were summoned to face trial. Petitioners appeared before the Court of Judicial Magistrate, First Class, Hisar and the matter was referred to the Daily Lok Adalat as a measure of alternative dispute resolution mechanism. Petitioners No.2 to 4 appeared before the Lok Adalat on 08.05.2018 and a compromise was effected between the parties. Statement of petitioners No.2 to 4 was recorded to the following effect:-

> *"Stated that we have affected compromised with the complainant and as per compromise, we shall pay total amount of five cheques amounting to Rs.53 lac 40 thousand and 869 rupees to the complainant till 31.12.2018 and if we would not pay the above said amount till 31.12.2018, then we shall pay double amount of above said amount to the complainant and shall be liable to be prosecuted. Any litigation pending between the parties shall be deemed to be finalised."*

[6]. In view of aforesaid statement, petitioners No.2 to 4 undertook to make payments of cheque amount upto 31.12.2018 and in the event of default, they undertook to pay double of the amount besides being prosecuted. Statement of respondent No.2-Gopal Goyal was also recorded and he also stated that the case be disposed of on the basis of statement of

the petitioners. Thereafter, Daily Lok Adalat proceeded to pass the order dated 08.05.2018. The operative part/para nos.4 and 5 of the said order reads as under:-

> *"4. Considering the statement of accused that he has undertaken to pay an amount of Rs.53,40,869/- to the complainant as well as the statement of complainant, it appears that complainant is concerned with his payment only and will be satisfied if the same is made by the accused as undertaken by them vide their statement of even date. Hence, keeping in view the statement of parties, as the accused have acknowledged their liability to pay Rs.53,40,869/- to the complainant, the complaint in hand is hereby disposed of without any order as to costs as the present settlement arrived at between the parties is likely to curb the litigation and delay. The Award is passed to the effect that accused are directed to make the payment as per their even date statement and are bound by their statement. The complainant is also bound by his statement.*
>
> *5. It is made clear to the accused that if they do not make the payment to the complainant as per award, as per the statement made by him in the court, in view of which, this award has been passed, accused are held liable for two years imprisonment and double the cheque amount as compensation to the complainant. File be consigned to the record room."*

[7]. Perusal of the aforesaid order dated 08.05.2018 would

show that the complaint was disposed of in terms of the compromise, wherein the petitioners had acknowledged their liability to pay Rs.53,40,869/-. The Court also made it clear that if the accused do not make the payment to the complainant as per award and statement made by them, then the accused would be held liable for two years imprisonment and double of the cheque amount as compensation.

[8]. In the connected petition i.e. CWP No.1828 of 2019, the admitted liability toward the petitioners is Rs.37,23,900/- which was to be paid to the complainant as per statements of the parties and acknowledged by the petitioners during the proceedings before the Daily Lok Adalat, Hisar on 08.05.2018.

[9]. On 23.01.2019, learned counsel for the petitioners sought time to have complete instructions as to whether petitioners No.2 to 4 would still abide by their statement/undertaking that had been recorded before the Permanent Lok Adalat, Hisar during proceedings dated 08.05.2018. Thereafter on 05.02.2019, learned counsel for the petitioners on the basis of instructions received from the petitioners, stated that the petitioners are ready and willing to settle the matter with respondent No.2. Learned counsel for the petitioners conceded that outstanding amount is Rs.88 lakhs approximately, excluding interest thereon. In order to show his

bona fide, learned counsel made a statement that he would bring a demand draft of Rs.20 lakhs drawn in the name of respondent No.2/company on the next date of hearing.

[10]. On 26.02.2019, learned counsel for the petitioners furnished three demand drafts in a sum of Rs.20 lakhs in the name of respondent No.2-Company. Learned counsel for the petitioners was directed to deposit the same with the Registry of this Court. Notice of motion was issued accordingly and interim order was also passed that no coercive steps shall be taken against the petitioners in pursuance of the impugned order.

[11]. Vide order dated 20.05.2019, three demand drafts in a sum of Rs.20 lakhs were ordered to be released in favour of respondent No.2 subject to final outcome of the writ petition. Thereafter the case was taken up along with connected case i.e. CWP No.1828 of 2019 on 07.12.2020 and following order was passed:-

> *"Petitioner-Shivalik Cotsyn Ltd. and three others have filed the present writ petition, inter alia, with the prayer to quash the order dated 08.05.2018 (Annexure P-5) passed by respondent No.1 vide which petitioners have been held liable for two years imprisonment and double of the cheques amount as compensation. Records of the case show that vide order dated 23.01.2019, learned counsel for the petitioners was granted time to seek specific instructions as to whether petitioners No.2 to 4 would still*

abide by their settlement/undertaking that had been recorded before the Permanent Lok Adalat, Hisar. Thereafter, on 05.02.2019 and again on 26.02.2019, following orders were passed:-

> *"Counsel upon instructions from the petitioner who is present in Court makes a statement that he is ready and willing to settle the matter with respondent No.2. He concedes that outstanding amount is rupees 88 lakhs approximately as of today (excluding the interest component) and to show his bona fides he is ready and willing to bring a draft of rupees 20 lakhs drawn in the name of respondent no.2-company on the adjourned date.*
>
> *List on 26.02.2019.*
>
> *A copy of this order be placed on other connected matter. "*
>
> *"In pursuance to the order dated 05.02.2019, passed by this Court, counsel has furnished today three demand drafts drawn in the name of respondent No.2-company for a total sum of Rs.20,00,000/-. Counsel is directed to deposit the same with the registry of this Court during the course of the day.*
>
> *Statement of the counsel is recorded to the effect that petitioners are ready and willing to settle the matter with respondent No.2 in these connected petitions in pursuance to the undertaking recorded before the Permanent Lok Adalat.*
>
> *Notice of motion returnable for*

26.03.2019.

In the meanwhile no coercive steps shall be taken against the petitioners in pursuance to the impugned order. A copy of this order be placed on other connected matter."

On 12.10.2020, this Court once again granted an opportunity to the petitioners to settle the matter amicably.

Today on resumed hearing of the case, both the counsels submitted that they could not reach any amicable settlement.

Faced with this situation, learned counsel for the petitioners has submitted that he has instructions from their clients that on 01st February, 2021 onwards, on every first of the month, the petitioners shall keep paying Rs.5,00,000/- (Rupees five lacs only) to the respondents regularly.

Adjourned to 03.05.2021.

Both the parties are directed to inform the Court, if the petitioners have complied with this offer.

Photocopy of this order be placed on the file of other connected case.

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[12]. Perusal of aforesaid order would show that the parties could not reach to any amicable resolution of dispute. Learned counsel for the petitioners on the basis of instructions received from the clients submitted that from 01.02.2021 onwards, the petitioners shall keep paying Rs.5 lakhs per month to

respondent No.2 regularly. The case was adjourned and the parties were directed to inform whether the petitioners have complied with the aforesaid offer or not.

[13]. It appears that there is a dispute with regard to the total amount due as per the award. According to learned counsel for the petitioners, the due amount was only Rs.88 lakhs approximately, whereas respondent No.2 has refuted the same on the strength of the award, according to which the original admitted liability was Rs.53,40,869/- and as per award, total of the amount was to be paid. In the event of failure to honour the commitment/compromise, the petitioners were also held liable to undergo two years of the imprisonment and to pay double of the cheque amount as compensation.

[14]. Learned Senior counsel for the petitioners submitted that the petitioners would discharge the entire liability of Rs.88 lakhs towards respondent No.2 by 31.12.2021. Learned Senior counsel also submitted that the Daily Lok Adalat could not have passed the order of imprisonment without there being any trial by the competent Court.

[15]. Learned counsel for respondent No.2 on the other hand submitted that statement to the extent of acknowledging Rs.88 lakhs was the unilateral act of the petitioners and the same was never admitted by respondent No.2. As per the award, the

liability of the petitioners was to pay double of the cheque amount and also to undergo imprisonment for two years.

[16]. Learned counsel by relying upon ***K.N. Govindan Kutty Menon vs. C.D. Shaji, 2012(1) R.C.R. (Criminal) 102*** submitted that Section 21 of the Legal Services Authorities, 1987 would make the award of the Lok Adalat as decree by legal fiction being a deeming provision. The award would be a decree by a civil Court and is executable by that Court. Every award passed by the Lok Adalat is deemed to be a decree of civil Court and as such executable by that Court. The purpose and object of creating legal fiction in the statute has to be given full effect. Section 21 of the Act provides unambiguous terms and according to which every award of the Lok Adalat shall be deemed to be a decree by the civil Court and as such it is executable by that Court. The Act does not make any such distinction between the reference made by a civil Court and a criminal Court. There is no restriction on the power of the Lok Adalat to pass an award based on compromise arrived at between the parties in respect of cases referred by both civil and criminal Courts, Tribunals and other Forums of similar nature. Even if the matter is referred by a criminal Court under Section 138 of the Negotiable Instruments Act and by virtue of the deeming fictions, the award passed by the Lok Adalat based

on a compromise has to be treated as a decree capable of being executed by a civil Court. Learned counsel also relied upon ***Arun Kumar vs. Anita Mishra & Ors., 2020(1) R.C.R. (Criminal) 130***, wherein ratio of ***.N. Govindan Kutty Menon's*** case (supra) has again been reiterated.

[17]. Learned counsel by relying upon ***Dr. Subhash Solanki vs. Smt. Nirmala Yadav, 2018(2) NIJ 664*** submitted that when the order is passed by the Lok Adalat on the basis of compromise arrived at between the parties and accepted the conditional order of undergoing two years imprisonment in the event of failure to pay the total due amount, therefore, the order passed by the Lok Adalat cannot be challenged by the petitioners. Once the petitioners have agreed before the Lok Adalat to pay double of the amount then in such eventuality, they are bound by the order and there is no equity in favour of them. Relevant part i.e. Para No.5 of the aforesaid judgment reads as under:-

> *"5. The petitioner is not alleging any fraud behind the order. He himself filed an application along with the respondent for compromising the decree. The order dated 22.8.2015 was passed in his presence as he signed the order sheet. The order was passed on the basis of compromise arrived between the parties before the Court. That, by way of compromise, he has agreed to undergo three months sentence in failure to*

> *pay the amount of Rs.12 lacs therefore, the order passed by the Lok Adalat cannot be challenged by the petitioner once he has agreed before the Lok Adalat to pay the amount to the complainant then he is bound by the order. There is no equity in favour of petitioner."*

[18]. Learned counsel further submitted that acceptance of the monthly installments of Rs.5 lakhs cannot be termed to be acquiescence by the petitioners as the same were deposited by the petitioners through RTGS in the account of respondent No.2. Even otherwise, the amount received by respondent No.2 can be adjusted towards remaining liability of the petitioners strictly in terms of liability arising out of the impugned order.

[19]. Owing to the aforesaid legal position as well as the facts involved in the present cases, no indulgence can be granted in favour of the petitioners. Both the petitions are found to be totally devoid of merits and are accordingly dismissed. All the pending civil misc. applications are accordingly disposed of.

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No