

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION No. 209/2018.

Sau.Jyotsnamala Ulhas Tawade,
(Original Respondent No.2)
Age 49 years, Occupation-
Household, resident of Dr.Zakir Hussain
Ward, Ballarpur, Tahsil Ballarpur,
District Chandrapur.

... **PETITIONER.**

VERSUS

1.The State of Maharashtra,
(Original Respondent No.1)

2.Ulhas Ashraf Tawade,
(Original Applicant No.1)
Age 58 years, Occupation – Service,
resident of Dr.Zakir Hussain
Ward, Ballarpur, Tahsil Ballarpur,
District Chandrapur.

... **RESPONDENTS.**

Mr. R.D. Hajare, Advocate for the Petitioner.
Mr. H.D. Dubey, A.P.P. for Respondent No.1.
Mr.R.M. Tahaliyani, Advocate for Respondent No.2.

CORAM : VINAY JOSHI, J.

DATE OF RESERVING THE JUDGMENT : 22.08.2022.
DATE OF PRONOUNCEMENT : 15.09.2022.

JUDGMENT :

Heard learned counsel for the parties. By their consent, Writ Petition is taken up for final disposal by issuing Rule, making the same returnable forthwith.

2. An unusual challenge has been raised in this petition to set aside the award passed by the Lok Adalat held on 06.02.2011, along with subsequent order dated 30.11.2017 in Criminal Revision Application No.103/2014, which flows from the initial proceeding. So also the petitioner has claimed for recovery of arrears of maintenance amount.

3. The facts of the case can be summarized as under :-

The petitioner [wife] was married to the respondent [husband] on 12.07.2009. On account of incident of domestic violence, the petitioner filed Criminal Application No.22/2010 in the Court of Judicial Magistrate First Class under Section 12 of the Protection of Women from Domestic Violence Act ("the D.V. Act" for

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short). The learned Magistrate vide order dated 30.09.2010 directed the respondent / husband to pay maintenance @ Rs.5678/- per month along with compensation to the tune of Rs.2 lakhs. In consequence, the petitioner / wife filed recovery proceedings bearing M.C.A.No.74/2010 claiming recovery of maintenance. The said recovery application was placed in Lok Adalat held on 06.02.2011. The matter was settled before the Panel of 3 Members and accordingly by way of settlement the execution proceeding bearing No.74/2010 came to be disposed of. In pursuance of the settlement an award was passed in the Lok Adalat which was signed by the parties, their respective Advocates and Panel Members of the Lok Adalat.

4. The settlement was in the form that the respondent / husband agreed to pay total sum of Rs.4.25 lakhs towards full and final settlement. It was agreed between the parties that the amount of settlement was to be paid in installments, out of which first installment of Rs.1.5 lakhs to be paid in proximity i.e. on 11.02.2011 whilst the remaining amount to be paid in quarterly installment of

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Rs.50,000/-. It was agreed that the respondent / husband shall return all household articles to the petitioner and the parties agreed to file a joint petition for divorce by mutual consent.

5. As per the terms of settlement, the respondent/husband though timely paid the first installment, however, failed to pay remaining installments, as per the schedule. After payment of first installment, parties have also filed a joint petition for divorce in terms of Section 13[b] of the Hindu Marriage Act. However, as the succeeding installments were not paid, the petitioner / wife has filed another recovery proceeding namely Misc. Criminal Application No.52/2013 for recovery of the maintenance amount granted in the D.V. proceeding bearing No.22/2010. In the said proceeding, the respondent / husband has filed an application [Exh.14], seeking dismissal on the ground of maintainability, by contending that the matter was already settled before the Lok Adalat, and therefore, the recovery proceeding is not maintainable.

6. The learned Magistrate has dismissed the application,

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however, in revision filed by the respondent/ husband, the Court has allowed the revision vide the impugned order dated 30.11.2017, thereby dismissing the recovery proceeding (M.C.A.No.52/2013), which is also impugned in this petition.

7. The petitioner – wife has principally challenged the award passed by the Lok Adalat dated 06.02.2011 on the ground that by way of misrepresentation the award was obtained by the respondent – husband. It is argued that the petitioner is an illiterate lady, however, by practising fraud, her signature was obtained at Lok Adalat. It is argued that the regular counsel appearing for her was not present on the date of Lok Adalat, however, the respondent – husband himself arranged for another counsel. Without informing the contents, her signatures were obtained on the basis of which award was passed, which is not legal.

8. The learned Counsel for the petitioner would submit that though initially divorce proceedings under Section 13[B] of the Hindu Marriage Act was filed, however, it came to be dismissed in

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default vide order dated 25.02.2013. The learned counsel for the petitioner would submit that during the pendency of the said divorce proceeding, the respondent husband by suppressing filing of earlier petition, has filed another divorce petition bearing H.M.P. No.123/2011, which ultimately came to be dismissed by the trial Court and Appellate Court. It is contended that the respondent has neither paid the amount as per the agreed terms of the award, nor paid the arrears, which were accrued due to order passed in D.V. proceeding No.22/2010. It is argued that the revisional court has seriously erred in appreciating the facts, and therefore, the order having consequence of dismissal of the execution proceeding is erroneous.

9. On the other hand the learned Counsel appearing for the respondent husband submits that the petitioner-lady has voluntarily entered into the compromise before the panel of Lok Adalat. She herself has agreed for all the terms and conditions before the Lok Adalat, on which the Panel Members have verified the contents and passed the award. It is submitted that the petitioner was well

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represented before the Lok Adalat, and thus by knowing fully the contents she has signed before the Panel Members of Lok Adalat. It is argued that the award passed by the Lok Adalat was acted upon. The respondent has paid first instalment of Rs.1.50 lakhs, which was very well accepted by the petitioner. She also participated in filing of the divorce petition by mutual consent, which was in accordance with the award passed in Lok Adalat. It is submitted that merely because there is some delay in paying rest of the instalments, the award would not become illegal. The respondent has supported the orders of the revisional Court by contending that unless the award of the Lok Adalat is set aside, the recovery proceedings is not maintainable. The revisional Court has rightly allowed the application for dismissal of the recovery proceeding which calls no interference.

10. At the inception, it was apposite on my part to make reference to the few admitted facts. The petitioner lady has filed proceeding under Section 12 of the D.V. Act bearing Criminal Application No.22/2010 on 29.03.2010. The said application was

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allowed on 30.09.2010 granting maintenance @ Rs.5678/- per month along with certain amount towards compensation. The petitioner filed execution application no.74/2010, which was placed before the Lok Adalat held on 06.02.2011. Admittedly the petitioner lady appeared at Lok Adalat and signed the consent terms in the requisite form. It is not in dispute that the petitioner was accompanied by her Advocate who has also signed on the requisite form "B". It is also not in dispute that the panel members have signed the award by endorsing as "ROAC" i.e. read over and accepted to be correct. The petitioner has not disputed that as per the terms of settlement, she has received the first instalment of Rs.1.50 lakh on 11.02.2011. She has also not disputed that both have jointly filed divorce petition under Section 13[B] of the Hindu Marriage Act.

11. In the wake of such admitted position, the question is about legality and sustainability of the award passed by the Lok Adalat. By virtue of Section 21 of the Legal Services Authority Act, the award made by the Lok Adalat in terms of settlement becomes

final and binding on the parties to the settlement and becomes executable like a decree of Civil Court. Thus, the statutory effect of the award is like a decree passed in judicial proceeding. The learned Counsel for the petitioner by placing reliance on the decisions of Supreme Court in case of (1) **Bharvagi Construction and another .vers. Kothakapu Muthyam Reddy and others – AIR 2017 SC 4428** and (2) **State of Punjab and another .vrs. Jalour Singh and others – AIR 2008 [SC] 1209**, would submit that the award of Lok Adalat can be challenged by filing a Writ Petition invoking Articles 226 and 227 of the Constitution of India. There can be no dispute about the legal proposition regarding filing of writ petition in which the award can be set aside, provided the party challenging the same satisfies the sheer illegality.

12. The principal ground to challenge the award is that the petitioner was totally unaware of the contents of settlement. By misrepresentation, her signatures were obtained before the Lok Adalat. Pertinent to note that the petitioner lady has signed Form -B in English, meaning thereby it cannot be presumed that the

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petitioner was totally illiterate lady. Undisputedly, the award was also signed by the counsel for the petitioner and unless otherwise proved, it cannot be said that the petitioner was unrepresented or the concerned Advocate was engaged by other side. Admittedly, the petitioner lady has not raised grievance against the concerned Advocate for alleged misrepresentation. It is also signed by three panel members of the Lok Adalat, including the panel head who is a judicial authority. The said judicial process has sanctity which cannot be doubted unless otherwise it has been established with adequate material.

13. The petitioner lady got maintenance order in the D.V. proceeding, in which she had filed execution application No.74/2010, which was placed before the Lok Adalat. Award indicates that the parties have agreed for full and final settlement by paying one time amount of Rs.6,25,000/- in certain instalments. They have also agreed to jointly apply for divorce by mutual consent. It is not in dispute that as per the terms of award the first instalment of Rs.1.50 lakhs was paid to the petitioner by cheque, as well as she has also signed and appeared before the concerned Court for

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verification of the proceeding for divorce by mutual consent. These admitted facts itself indicate that the petitioner had sufficient knowledge regarding the terms of compromise, otherwise she has no reason to sign and appear before the concerned Court in divorce proceeding. Moreover, there was no reason for the respondent to pay Rs.1.50 lakhs to the petitioner within one week from the date of award passed by the Lok Adalat. This fact itself speaks that the petitioner was well aware of the contents of settlement and thus, the grievance raised does not found to be acceptable.

14. The matter can be viewed from one another angle that the award of the Lok Adalat was passed on 06.02.2011 and it was within the knowledge of the petitioner. It is not the case of the petitioner that she was totally unaware because on the basis of said award she had appeared before the civil court for filing divorce proceeding by mutual consent. Moreover, the contents of joint divorce petition (HMP No.18/2011) also bears a reference regarding the settlement held in Lok Adalat dated 06.02.2011. In that context, it is to be viewed that the petitioner lady has not challenged the award till this petition was filed in the year 2018. True, there appears to be

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reference in second execution application No.52/2013, that the petitioner does not accept the award of Lok Adalat, however, no specific grievance was put against the award as permissible under the law. It appears that merely because the respondent – husband has not paid the subsequent instalments, the petitioner is bent upon to deny the award itself. Always there is a limited scope to challenge the award passed by the Lok Adalat, which is a judicial process. The petitioner has utterly failed to establish that the award was obtained by practising fraud and thus, the challenge to that regard is untenable.

15. Another grievance of the petitioner is about the order passed by the revisional Court by which the second execution petition No.52/2013, came to be dismissed. As noted above, the petitioner has filed second execution application No.52/2013 for executing the order passed in D.V. proceeding i.e. Case No.22/2010. As observed above by virtue of award passed by the Lok Adalat, the same was settled in execution proceeding. The revisional Court has rightly considered the said aspect and held that the execution is not maintainable since the matter was already settled in Lok Adalat as

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well as, the award is not set aside by this Court. Thus, there appears to be no illegality committed by the revisional court in allowing the application Exh.14, and consequently dismissing the revision.

16. As noted above, the award of Lok Adalat is having effect of a decree of civil Court, and therefore, if the terms are not complied, they have to be enforced in accordance with law. However, as the partial terms are not complied with, that cannot be a reason to set aside the award passed by the Lok Adalat. Though the petitioner has also claimed a direction for recovery of arrears of maintenance, the respondent has submitted that though belatedly, from time to time he has cleared the arrears. I am not inclined to go into the said disputed question in writ jurisdiction. The petitioner is at liberty to recover the arrears by filing appropriate proceedings, if permissible in law. In view of above discussion, the writ petition carries no merits and hence, the same is dismissed. Rule discharged.

JUDGE