



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :05.04.2022

PRONOUNCED ON :13.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).No.1262 of 2014

Saraswathi

... Petitioner

vs.

Aruchamy

... Respondent

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, praying to set aside the fair and final orders dated 25.01.2012 passed in E.P.No.93 of 2011 in O.S.No.520 of 2009, on the file of the District Munsif Court, Udumalpet and the allow the above Civil Revision Petition.

For Petitioner :Mr.R.Nalliyappan

For Respondent :No Appearance

ORDER

The revision is filed against dismissal of E.P.No.93 of 2011 on the file of the District Munsif Court, Udumalpet.



2. The revision petitioner filed a suit for maintenance against her husband/respondent herein. When the suit was pending, the same was referred to Lok Adalat and the matter was compromised. A lok adalat award was passed on 05.07.2011, whereunder the respondent/husband agreed to pay Rs.2,500/- (Rupees Two thousand five hundred only) per month as maintenance to the petitioner/wife.

3. The suit appeared to have been filed on 15.10.2009 and the lok adalat award was passed on 05.07.2011. Thereafter, the petitioner herein filed execution petition in E.P.No.93 of 2011 for execution of the award. He prayed for recovery of Rs.47,500/- towards the arrears of the maintenance amount from the date of the suit namely 15.10.2009 to 15.06.2011. The said execution petition was resisted by the respondent on the ground that there was no agreement to pay the arrears of maintenance from the date of suit to the date of award. The executing Court after perusing the terms of compromise recorded in lok adalat award came to the conclusion that there was no decree for payment of arrears of maintenance from the date of suit to the date of award and consequently dismissed the execution petition.



4. Aggrieved by the said order, the wife/revision petitioner has come up with this instant revision petition.

5. Heard Mr.R.Nalliyappan, learned counsel appearing for the petitioner. Though the respondent was served nobody has entered appearance on behalf of the respondent and there was no representation for the respondent.

6. The learned counsel appearing for the petitioner submitted that the lok adalat award says that the respondent/husband agreed to pay Rs.2,500/- per month as maintenance. It should be presumed that he agreed to pay only from the date of plaint and hence, the executing Court ought to have allowed the execution petition.

7. I have perused the records, the relevant clause of the award runs as follows:

“1. After discussion before, lok adalat, the husband/defendant agreed to pay Rs.2,500/- (Rupees two thousand five hundred only) per month as maintenance to his wife the plaintiff herein who has



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agreed to receive the same as monthly maintenance.

2. The parties to bear their our costs;

3. The plaintiff is entitled to refund of entire court fee paid on the plaint has usual commission as per the rules;

4. If the defendant fails to pay the agreed maintenance amount, the plaintiff is entitled to have charge over the suit properties.”

8. A reading of the award makes it clear that the husband agreed to pay maintenance to wife at the rate of Rs.2,500/- per month. However, it was not mentioned in the award from which date, the husband is liable to pay. When husband agreed to a portion of a suit claim, it only means that he agrees to pay from the date of plaint. If he wants to restrict his liability there should be a specific clause in the compromise restricting his liability to pay maintenance only from the date of award or from any future date. In the absence of such a restricting clause in the compromise decree, restricting the liability of the husband to pay maintenance only from the date of award or from any other future date is not sustainable. The executing Court shall presume that the husband agreed to pay maintenance from the date of presentation of the plaint. Section 21 of Legal Services



Authority Act makes it clear that the award passed by the lok adalat is a decree executable under Code of Civil Procedure. Normally, the executing Court cannot go beyond that. However, in case, there is ambiguity in the decree, the executing Court can very well give harmonious interpretation to the decree, by taking into consideration the pleadings of the parties, relief sought for in the suit etc. The power of executing Court to interpret the decree in case of ambiguity was well recognized in *Avudayappan vs. Kanthimathi Ammal in [1965 II MLJ P.551]*, wherein, it was observed as follows:

“There is some ambiguity in clause 2 of the decree. It is not clear whether in drafting the decree it was intended that the third defendant should also be held to be jointly and severally liable. The learned counsel for appellant relied on a decision in [Topanmal v. Kundomal Gangaram](#), , where it was held that when the decree is ambiguous, it is the duty of the executing court to construe the decree, and for the purpose of interpreting the decree when its terms are ambiguous, the court would certainly be entitled to look into the pleadings.”

9. As far as the present lok adalat award sought to be executed is concerned, there is an ambiguity with regard to the date from which the



husband is liable to pay maintenance to the wife. Therefore, the executing Court in its discretion can very well interpret the decree in a reasonable and practical sense and remove the ambiguity.

10. When husband agreed to pay maintenance to the wife by submitting to the suit claim in part, it only means, he is liable to pay from the date of presentation of the plaint, unless a contrary intention appears by a specific term incorporated in the compromise memo. In the absence of such a restrictive clause in the compromise memo, the executing Court ought to have presumed that the husband is liable to pay maintenance from the date of plaint. In the present case, unfortunately the executing Court held that there was no recital about the payment of maintenance amount from 15.10.2009 to 15.06.2011 i.e., from the date of plaint to the date of award.

11. The conclusion arrived at by executing Court is unsustainable and it failed to exercise the jurisdiction vested with it to interpret the decree to remove ambiguity. Hence, the order of the executing Court is liable to be set aside and the same is set aside accordingly and it is made clear that the respondent/husband is liable to pay maintenance at the



agreed rate of Rs.2,500/- from the date of plaint namely 15.10.2009.

Therefore, the fair and final order dated 25.01.2012 made in E.P.93 of 2011 in O.S.No.520 of 2009, on the file of the District Munsif Court, Udumalpet, is set aside and E.P.No.93 of 2011 is restored to file. The CRP is allowed accordingly. The executing Court is directed to proceed with the execution petition, in the light of the directions indicated as above.

13.04.2022

Index : Yes/No
Internet : Yes/No
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To

The District Munsif Court, Udumalpet.

S.SOUNTHAR, J.
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