

N.22Sl
151/CL
27.03.23
Sl-11
Ct.32
(S.R.)

FA 47 of 2023
FAT 52 of 2022
with
CAN 2 of 2022
Smt. Rakhi Patra (Das)
v.
Sri Manas Das & Ors.

Mr. Sukanta Chakraborty
Ms. Suparna Das
Mr. Soumya Kanti Sinha
Mr. Anindya Halder
Mr. Juber Ahmed ... for the appellant.

Mr. Goutam Kumar Das
Mr. Atanu Basu
Mr. Indranuj Dutta
Mr. Bikram Basak ... for the respondent nos.1 & 3.

The present appeal has been preferred challenging the judgment and decree dated 27th August, 2021 passed by the learned Civil Judge (Senior Division), 3rd Court, Paschim Medinipur in Title Suit no.450 of 2018. By the said judgment the suit was dismissed as not maintainable since the same was preferred seeking *inter alia* a declaration that an award passed by the Lok Adalat is a nullity. As a maintainability issue is involved and as all the relevant documents are on record, the appeal itself is taken up for final disposal with the consent of the parties, dispensing all the formalities.

It appears that an application under Section 5 of the Limitation Act has been inadvertently filed since there had been no delay in preferring the appeal and accordingly, the said application is dismissed. The application, being

CAN 2 of 2022, is an application for injunction and the parties have exchanged their affidavits in the same.

Mr. Chakraborty, learned advocate appearing for the appellant, namely, Rakhi Patra (Das) (in short, Rakhi) submits that the respondent nos.1 and 2, namely, Manas Das (in short, Manas) and Abhishek Das (in short, Abhishek) are the brothers of Rakhi and the respondent no. 3 namely, Namita Das (in short, Namita) is the mother of Rakhi. In the year 2013, Rakhi came to learn that a title suit being a Title Suit No. 358 of 2009 had been filed by showing her as plaintiff no. 2 and the same had been compromised on 22nd March, 2010 at Lok Adalat purportedly on the basis of a *solenama* executed by the parties therein. The wife of Manas impersonated Rakhi before the Lok Adalat and obtained the award practising fraud. The appellant never signed the alleged *solenama* before the Lok Adalat on 22nd March, 2010. On the said date Rakhi went to her school which is 66 kilometers away from Midnapore town. The learned court below dismissed the suit abruptly, without framing any issue and erroneously observing that the suit is not a suit for partition *simpliciter* failing to appreciate that the prayer for partition in the suit was a consequential relief sought for preceded by a declaration that the decree passed in Title Suit No.358 of 2009 is a nullity. The learned Court erred in law in not deciding the issue of fraud though specifically pleaded.

Drawing our attention to the contents of the judgment impugned, Mr. Chakraborty argues that on one hand the learned court below observed that it had no jurisdiction to declare the award of the Lok Adalat as null and void and on the other hand proceeded to return a finding that the suit was also barred by limitation. Such directions are self-contradictory and the observations pertaining to limitation are superfluous.

Mr. Dutta, learned advocate appearing for the respondent nos.1 and 3 submits that the respondent no.2 had already sold out his share to the respondent no.1. The allegations of fraud and misrepresentation, as urged, are absolutely unfounded. From the averments made in the plaint it would be explicit that the appellant came to know about the Title Suit, being no. 358 of 2013 in the year 2013. However, she did not take any appropriate step in the said proceedings and filed the present suit about five years thereafter without explaining the delay which had occurred. No contemporaneous complaint was lodged by Rakhi before any authority.

He submits that there is no infirmity in the observation of the learned trial court that it had no jurisdiction to declare the impugned Lok Adalat award as null and void and not binding upon the parties. The Legal Services Authorities Act, 1987 (in short, the 1987 Act) Act does not contemplate nor require an adjudicatory judicial determination, but a non-adjudicatory determination

based on a compromise or settlement, arrived at by the parties, with guidance and assistance from the Lok Adalat. The making of the award is merely an administrative act of incorporating the terms of settlement or compromise agreed by parties and no appeal lies against the same. Such an award can only be challenged by an application under Article 226 and/or 227 of the Constitution of India. In support of such contention reliance has been placed upon the judgment delivered in the case of *Bhargavi Constructions & Another vs. Kothakapu Muthyam Reddy & Others*, reported in 2018 (13) SCC 480.

We have heard the learned advocates appearing for the respective parties and considered the materials on record. It is no longer *res integra* that that no appeal lies against the award of Lok Adalat and the remedy lies in filing writ petition under Article 226 and/or 227 of the Constitution of India.

In the case of *Bhargavi Constructions & Another* (*supra*) the Hon'ble Supreme Court, considering its earlier judgment, delivered in the case of *State of Punjab vs. Jalour Singh*, reported in (2008) 2 SCC 660, observed as follows:

'24. In our considered view, the aforesaid law laid down by this Court is binding on all the courts in the country by virtue of mandate of Article 141 of the Constitution. This Court, in no uncertain terms, has laid

down that challenge to the award of Lok Adalat can be done only by filing a writ petition under Article 226 and/or Article 227 of the Constitution of India in the High Court and that too on very limited grounds. In the light of clear pronouncement of the law by this Court, we are of the opinion that the only remedy available to the aggrieved person (respondents herein/plaintiffs) was to file a writ petition under Article 226 and/or Article 227 of the Constitution of India in the High Court for challenging the award dated 22-8-2007 passed by the Lok Adalat. It was then for the writ court to decide as to whether any ground was made out by the writ petitioners for quashing the award and, if so, whether those grounds are sufficient for its quashing’.

In view of such mandate of the Hon’ble Supreme Court, the learned Court, in our opinion, did not commit any error in holding that the suit was not maintainable. In view thereof, no interference is called for in the present appeal and the same along with the application being CAN No. 2 of 2023 are dismissed.

However, when the suit itself was not maintainable due to lack of inherent jurisdiction, the learned court below ought not to have returned any finding as regards limitation. The observation pertaining to the said issue appears to be otiose.

Nothing in this order shall prevent the appellant from taking necessary steps before the appropriate forum, if so

advised and in accordance with law.

Let a decree be drawn up, accordingly.

The appellant would be at liberty to take back the certified copy of the judgment upon furnishing a photostat copy of the same.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)