

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

13 WRIT PETITION NO.1142 OF 2023

**POOJA SATISH YADAV
VERSUS
SATISH BABURAO YADAV AND ANOTHER**

...
Advocate for Petitioner : Mr. Ajinkya A. Joshi h/f. Mr. Sharad V. Natu
Advocate for Respondent No.2 : Mr. Amol T. Jagtap

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CORAM : SHARMILA U. DESHMUKH, J.

DATE : 24-02-2023

PER COURT :

. The petition has been filed challenging the order dated 08.12.2018 passed by Lok Adalat being a compromise decree between respondent no.1 and respondent no.2. The petitioner is the daughter of respondent no.1 and has come with the case that the respondent no. 2 who claims to be the wife of respondent no.1 is not legally wedded wife of respondent no.1. It is further her case that by virtue of the compromise decree passed under the provisions of the Protection of Women from Domestic Violence Act dated 08.12.2018 is a decree obtained by fraud and as such seeks to quash and set aside the compromise decree.

2. Heard the learned counsel appearing for the petitioner.

3. By consent decree a compromise was entered into between respondent no.2 – Manisha and respondent no.1 – Satish wherein in lieu of her maintenance the respondent no.1 agreed to pay a sum of Rs.16,000/- per month to the respondent no.2 and their minor daughter Arya and also agreed to transfer some of the immovable properties which are claimed to be the ancestral property, out of the share of the respondent no.1. This compromise decree was executed on 08.12.2018.

4. The learned counsel appearing for the petitioner submits that respondent no. 2 is not legally wedded wife of the respondent no.1 and the amount of Rs.16,000/- per month which has been agreed to pay, could not have been given out of the salary of the respondent no.1. He further submits that 1/3rd share in the property has been agreed to be given in which petitioner claims a right. He further submits that she has share in the property of respondent no.1 and there is a violation of her right.

5. Per contra, the learned counsel appearing for respondent no.2 has placed on record the judgment of this Court dated 06.09.2022 in Criminal Writ Petition No.355 of 2022. Criminal Writ Petition No.355 of 2022 was instituted by the respondent no. 1

against the respondent no. 2 and minor child Arya seeking to challenge the same compromise decree dated 08.12.2018. By judgment dated 06.09.2022, the writ petition was dismissed.

6. The compromise decree which has been entered into between the parties, can be challenged only in event of a fraud being practiced as the provisions of the Legal Services Authorities Act, 1987 are intended to put an end to the litigation. However, in the present case, it appears that the petitioner and the respondent no.1 in collusion and connivance with each other are attempting to drag the litigation and are seeking to set aside the compromise decree which was voluntarily entered into between the respondent nos.1 and 2. It is apparent that after having failed in his attempt to set aside the compromise decree by filing Criminal Writ Petition No. 355 of 2022, the petitioner who is daughter of the respondent no.1 has been set up to challenge the said compromise decree. It is not disputed that there is a minor child of the respondent no.2 and the father of the said child is the respondent no.1. Issue as to whether respondent no.2 is the legally wedded wife of respondent no.1 or not, is not an issue before this Court to be considered in the present proceedings.

7. Upon a query by this Court as to the suppression of fact

of the earlier Criminal Writ Petition No.355 of 2022 and the order of dismissal, the learned counsel appearing for the petitioner submits that respondent no.1 and the petitioner are not on talking terms. No such pleading is found in the petition and there is no answer / explanation as to the date and manner the petitioner acquired the knowledge of the compromise award. In any event if the petitioner had acquired knowledge of the compromise award, then it is improbable that she was not aware of the filing of the Criminal Writ Petition No. 355 of 2022 by the respondent no.1 and the dismissal of the writ petition by this Court. Pertinently, present petition has been filed on 01.12.2022 i.e. after the dismissal of the Criminal Writ Petition No.355 of 2022 on 06.09.2022. The timing of the filing of the present petition also supports the finding that this is an act of collusion and an attempt to deprive the respondent no.2 of the benefits of the compromise decree. The compromise decree dated 08.12.2018 is sought to be challenged in the year 2022 and there is no explanation in the petition as regards the delay caused.

8. All these facts which are borne out from the material on record points out to the one inevitable conclusion that the petition in the present case is a gross abuse of the process of law. The conduct on the part of the petitioner needs to be deprecated. It is trite the

decree would be binding on respondent no. 1 and respondent no. 2 and as such filing of the petition itself is misconceived and abuse of process of law. Respondent no.2 is being dragged into litigation firstly by respondent no.1 and secondly by petitioner arising out of the same compromise decree.

9. For the reasons above and considering there is a suppression of material facts, the writ petition is dismissed with costs of Rs.15,000/-. Costs be paid to Respondent no.2 within a period of two weeks from today.

(SHARMILA U. DESHMUKH, J.)

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