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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3650 OF 2022

Vidya Somkant Zirpe & Anr.

... Petitioners

V/s.

Somkant Prabhakar Zirpe & Ors.

... Respondents

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Mr. Harindar Tur with Mr. Nitin Vhatkar i/by Mr.
Gautam S. Hiranandani for the petitioners.

Mr. Ranjeet H. Patil for respondent Nos.4 to 6.

Mr. V.S. Kapase with Mr. Shailesh Chavan for
respondent Nos.1 to 3.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 18, 2023

P.C.:

1. By this petition under Article 227 of the Constitution of India, the petitioners are challenging the legality and validity of the award/order dated 8th February 2020 passed by the Lok Adalat in Regular Civil Suit No.338 of 2019.

2. The material facts necessary for adjudication of the issue involved are as under:

Petitioner No.1 and Respondent No.1 are husband and wife. Due to the matrimonial difference between the parties, petitioner No.1 filed Marriage Petition No.274 of 2018 for restitution of conjugal rights on 1st August 2018. On 5th August 2019, petitioner

No.1 filed an application for interim maintenance against respondent No.1 under section 24 of the Hindu Marriage Act, 1955.

On 18th December 2018, petitioner No.1 filed Criminal Miscellaneous Application No.422 of 2018 for compensation residential accommodation against respondent Nos.1 to 6 under the provisions of the Protection of Women from Domestic Violence Act, 2005.

On 13th March 2019, petitioners Nos.1 and 2 filed Regular Civil Suit No.157 of 2019 seeking maintenance against respondents Nos.1 to 6 under sections 18 and 20 of the Hindu Adoption and Maintenance Act, 1956.

Additionally, criminal proceedings under section 498A, 323, 504, and 506 read with section 34 of the Indian Penal Code, 1860 was also filed.

3. The petitioners filed Criminal Miscellaneous Application No.26 of 2020 seeking maintenance against respondent Nos.1 to 6 under section 125 of the Criminal Procedure Code, 1973, on 14th February 2020.

4. On 22nd August 2019, respondent Nos.4 to 6 filed Regular Civil Suit No.338 of 2019 before Civil Judge, Senior Division, Baramati, against respondent Nos.1 to 3, claiming 1/6th share in ancestral property and prayed for relief for partition and possession. By consent of the parties, said suit was transferred to Lok Adalat, Panel No.4, Baramati. On 8th February 2020, parties to the suit filed a compromise pursis divesting respondent No.1 of a

major share in the ancestral property in exchange for a small plot of land. On 8th February 2020, the Lok Adalat recorded compromise terms and passed an award.

5. Therefore, the petitioner, wife and respondent No.1's minor son has filed a present writ petition invoking Article 227 of the Constitution of India challenging the award dated 8th February 2020 passed by the Lok Adalat.

6. Learned advocate for the petitioners relying on the Judgment of the Apex Court in **Bhargavi Construction and Another vs. Kothakapu Muthyam Reddy and Others** reported in (2018) 13 SCC 480, submitted that in view of observations made in paragraphs Nos.24 and 25 of the said judgment filing of a petition under Article 227 of the Constitution of India is the only remedy available with the petitioners. It is submitted that the release of a major share in favour of other co-sharers by respondent No.1 (husband) was done only with the view to defeat the rights of the petitioners to claim maintenance and other reliefs prayed in another proceeding. Petitioner No.2, despite being minor, was not made a party to the suit, particularly when suit properties are ancestral properties. The compromise terms are inequitable and unfair on the face of it as respondent No.1 is divesting almost the entire share in the properties in exchange for a small plot of land admeasuring 2 Guntha owned by respondent No.3. Moreover, respondent No.1 continues to deal with properties which were released in favour of other co-sharers. The said fact is evident from the execution of the registered lease deed dated 1st February 2021, executed by respondent No.1 in favour of a third party. According

to him, the award passed by Lok Adalat is hit by section 44 of the Evidence Act, 1872, as the award has been passed in collusion with other co-sharers only with a view to defeat a rightful claim of the petitioners. In support of his submission, he relied on the following judgments:

- (i) **Meenakshi Ammal vs. Ammini Ammal** reported in AIR 1927 Madras 657.
- (ii) **Sushilabehn and others vs. Anandilal Bapalal and others** reported in AIR 1983 Gujarat 126.
- (iii) **Kale and others vs. Deputy Director of Consolidation and others** reported in AIR 1976 SC 807
- (iv) **State of Punjab & Anr. vs. Jalour Singh & Ors.** reported in AIR 2008 SC 1209.
- (v) **Satluj Jal Vidyut Nigam vs. Raj Kumar Rajinder Singh (Dead) Through Legal Representatives and Others.** Reported in (2019) 14 SCC 449.

7. Per contra, the learned advocate for the respondents submitted that the petitioners have an alternative efficacious remedy by way of approaching Lok Adalat by filing an appropriate application for recall of terms. The petitioners have the remedy of suit to challenge the award passed by the Lok Adalat. According to him, regarding the question of fraud and collusion in the facts of the case being disputed question of fact, a civil suit would be the only remedy available to the petitioners in addition to the application before the tribunal under the provisions of the Legal

Services Authorities Act. In support of his submission, he placed reliance upon the following judgments:

- (i) **A.A. Gopalkrishnan vs. Cochin Devaswom Board and Others** reported in (2007) 7 SCC 482.
- (ii) **R. Rajanna vs. S. R. Venkataswamy and Ors.** reported in AIR 2015 SC 706.
- (iii) **Triloki Nath Singh vs. Anirudh Singh (Dead) Through Legal Representatives and Others** reported in (2020) 6 SCC 629.
- (iv) **R. Janakiammal vs. S. K. Kumarasamy (Deceased) Through Legal Representatives and Others** reported in (2021) 9 SCC 114.
- (v) **Sree Surya Developers and Promoters vs. N. Sailesh Prasad and Others** reported in (2022) 5 SCC 736.
- (vi) **Pushpa Devi Bhagat (Dead) Through Lr. Sadhna Rai (Smt) vs. Rajinder Singh & Others** reported in (2006) 5 SCC 566.

8. Considering the submission made on behalf of the parties, it is necessary to consider the objection regarding the maintainability of the writ petition under Article 227 of the Constitution of India. The petitioners are seeking a writ of certiorari. It is well settled that the plenary jurisdiction of this Court is unaffected by the self-imposed restrictions. The self-imposed restrictions include the following circumstances:

- (i) Presence of alternative statutory remedy.

- (ii) Unexplained inordinate delay on the part of the petitioners to approach the High Court.
- (iii) The petitioners approach the Court with unclean hands.
- (iv) When disputed questions of fact require the Civil Court to take evidence to decide the question of fact.
- (v) Issuance of writ would be futile.
- (vi) Interest in justice is against the grant of relief.

9. It is well settled that the availability of alternative remedies is not an absolute bar to the maintainability of petitions under Article 227 of the Constitution of India. However, in view of the availability of alternative remedies, such petitions may not be entertained; however, it is a self-imposed restriction.

10. The legal position regarding the power of the High Court under Article 227 of the Constitution of India was considered by the Apex Court in the judgment of the Hon'ble Apex Court in *SURYA DEV RAI v. RAM CHANDRA RAI*, (2003) 6 SCC 675, wherein it is held:—

“26. In order to safeguard against a mere appellate or revisional jurisdiction being exercised in the garb of exercise of supervisory jurisdiction under Article 227 of the Constitution, the courts have devised self imposed rules of discipline on their power. Supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available to the person aggrieved. The High Court may have regard to legislative policy formulated on experience and expressed by enactments where the legislature in exercise of its wisdom has deliberately chosen certain orders and proceedings to be kept away from exercise of appellate and revisional jurisdiction in the hope of accelerating the conclusion

of the proceedings and avoiding delay and procrastination which is occasioned by subjecting every order at every stage of proceedings to judicial review by way of appeal or revision. So long as an error is capable of being corrected by a superior court in exercise of appellate or revisional jurisdiction, though available to be exercised only at the conclusion of the proceedings, it would be sound exercise of discretion on the part of the High Court to refuse to exercise the power of superintendence during the pendency of the proceedings. However, there may be cases where but for invoking the supervisory jurisdiction, the jurisdictional error committed by the inferior court or tribunal would be incapable of being remedied once the proceedings have concluded.”

11. This Court is conscious of the fact that power under Article 227 of the Constitution of India needs to be used sparingly with the object of keeping the courts or tribunals within their bounds. However, if a case is made out where a subordinate court or tribunal exceeds the bounds of its authority, the High Court may interfere in its discretion with such order, irrespective of the availability of alternative remedy. Such power can be exercised if, on the face of it, facts are disclosed that there is a failure of justice or likelihood of a grave miscarriage of justice. Such power can be exercised if the Court is satisfied that non-interference with the order would lead petitioners to prolonged and indefinite litigation, depriving them of benefits conferred under the provisions of statutes. Such power can be exercised if the Court is satisfied that ex-facie ingredients of section 44 of the Evidence Act have been fulfilled. If collusion or fraud, as contemplated under section 44 of the Evidence Act, is made out without requiring oral evidence, this Court, in its extraordinary constitutional jurisdiction, can entertain the petition to prevent miscarriage of justice.

12. The facts of the present case indicate that on 22nd August 2019, when respondent Nos.4 to 6 filed suit for partition, various proceedings were pending against respondent No.1 (husband) for various reliefs under the provisions of the Domestic Violence Act, the Hindu Adoption and Maintenance Act and the Criminal Procedure Code. Any order passed in said proceeding could have been executed against the husband's share in the ancestral property. There is no dispute amongst the parties as regards the share of respondent No.1 in ancestral property. From the averments of the plaint, it is undisputed that suit properties are ancestral properties initially owned by the parties' father to the suit.

13. From the terms of compromise, it appears that the following properties stood in the name of respondent No.1 (husband):

- (i) Gat No.135 measuring 1H. 13R.
- (ii) Gat No.377 measuring 1H. 02.50R.
- (iii) Gat No.378 admeasuring 0.20R.
- (iv) Gat No.384 measuring 0.40R.
- (v) Gat No.387 admeasuring 1H. 59R.

14. On reading the consent terms, it appears that respondent No.1 was divested of his title over all five properties in consideration of the transfer of 2 Guntha properties bearing Plot No.24. According to the petitioners, the total value of respondent No.1's share was six crore approximately. However, he got property worth Rs.1.5 lakh approximately.

15. Another circumstance which casts doubt on the compromise terms is the execution of the lease deed by respondent No.1 (husband) in favour of a third party on 1st February 2021 in relation to property divested in favour of the co-sharer. Considering the compromise terms, an irresistible conclusion could be drawn that releasing the husband's share in favour of other co-sharers in exchange for 2 Guntha land is inequitable and unfair. It also raises the inference of collusion between the parties to the suit, as it appears that the suit was filed on 22nd August 2019. Immediately thereafter, it was referred to Lok Adalat, and on 8th February 2020, a compromise award was passed. Therefore, in my opinion, I am satisfied that the passing of the award dated 8th February 2020 was done to defeat the statutory right and claim of petitioner Nos.1 and 2 of their rights of claiming maintenance in various proceedings pending on the date of filing of suit.

16. Moreover, it is undisputed that petitioner No.2 is the son of respondent No.1 out of wedlock with petitioner No.1. Therefore, the status of petitioner No.2 is that of a co-passer. Without making petitioner No.2 party to the suit for partition and obtaining his consent (though guardian), a valid and enforceable decree could not have been passed as the suit was barred for non-joinder of necessary party.

17. The Apex Court, in the case of **State of Punjab & Anr. vs. Jalour Singh & Ors.** reported in AIR 2008 SC 1209, had occasion to consider the award passed under the provisions of the Legal Services Authorities Act arising out of a claim petition before Motor Accident Tribunal. In the said context, the Apex Court held

that Lok Adalat has no adjudicatory or judicial powers. Their functions relate purely to conciliation. They need to make an award in terms of compromise or settlement between the parties. In the absence of compromise, no award can be made. Lok Adalat has no power to hear parties to adjudicate the award passed by Lok Adalat. He has no status of independent verdict or opinion arrived at by any decision-making process. The making of the award is merely an administrative act of incorporating the terms of settlement or compromise arrived at by the parties in the presence of Lok Adalat.

18. The judgment in the case of **State of Punjab & Anr. vs. Jalour Singh & Ors.** (supra), the Apex Court, in the context of the rejection of an application under Order 7 Rule 11 of the CPC in a suit challenging the award passed by Lok Adalat, observed that the only remedy available to aggrieved persons was to file a writ petition under Article 226 and/or Article 227 by Constitution of India. In the said case, the petitioners were indeed party to the compromise decree. However, in the present case, the petitioner not being a party cannot be used to the detriment of the petition.

19. Learned advocate for the respondents relying on judgments in the case of **A.A. Gopalkrishnan** (supra) and **Sree Surya Developers and Promoters** (supra), submitted that the only remedy for the aggrieved persons is to approach the same authority for recalling compromise terms. However, the judgments relied upon by the respondents are distinguishable from the facts. In the facts of the said cases, the Civil Court passed the compromise decree in exercising power under Order 23 Rule 3 of

CPC. Order 23 Rule 3(a) bars a suit at the instance of parties to the suit. The rationale behind such a rule is the principle of estoppel, as the persons who consented to the passing of the decree are not entitled to withdraw the consent by filing an independent suit. However, the Apex Court observed that the only remedy available to a party to a consent decree to avoid such consent decree is to approach the court which recorded the compromise and made a decree in terms of it and establish that there was no compromise. In that event, the Court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not, as a consent decree is nothing but a contract between parties superimposed with the seal of approval of the court. It is well settled that the Civil Court has the power to review under Order 47 of the CPC.

20. In the facts of the case, Lok Adalat, being a creature of statute, has only those powers which will be expressly conferred on it under a statute which created it. In the absence of the power of review, a party is not entitled to approach the court or tribunal to seek review on merits. Procedural review may be permissible; however, such technicalities are not applicable when facts indicate the existence of ingredients of section 44 of the Evidence Act.

21. Therefore, in my view, refusal to interfere with the award passed by Lok Adalat would amount to a miscarriage of justice as a legitimate claim of the wife and minor child would be defeated. The petitioner will be embroiled in prolonged indefinite litigation if the process deprives them of the fruits of the decree likely to be passed in their favour, recognizing the right of maintenance and

succession. Therefore, in my opinion, the petitioners have made out a case for interference. Hence, the following order:

Impugned award dated 8th February 2020 passed by Head of Panel No.4, Lok Adalat, Baramati in Regular Civil Suit No.338 of 2019 is quashed and set aside.

The writ petition stands disposed of in the above terms.

22. At this stage, a learned advocate for the respondents seeks a stay of the order. Considering the facts of the case, the effect of the order is to stay for a period of four weeks from today.

(AMIT BORKAR, J.)