

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10900 OF 2022

ALONGWITH

INTERIM APPLICATION (ST.) NO. 24108 OF 2023

Muhammad Hassan Mohd. Hadris Khan ...Petitioner

V/s.

Shri. Sanjay Atmaram Patel and Ors.Respondents

Mr. Avinash D. Kango, for the Petitioner.

Mr. Pradeep D. Dalvi, for the Respondents.

CORAM : SANDEEP V. MARNE, J.

Dated : 1 November 2023.

P.C. :

1. By the present petition, Petitioner challenges Judgment and Order dated 7 May 2022 passed in Regular Civil Suit No. 88 of 2018 by the National Lok Adalat at Ulhasnagar. Petitioner had filed Regular Civil Suit No.88 of 2018 before the Court of Civil Judge Junior Division, Ulhasnagar, in which he was arrayed as Plaintiff No.6. It appears that during the pendency of the suit, an application was filed on behalf of the Plaintiffs for withdrawal of the suit on 6 April 2022. That application was signed by Plaintiff No.3-Shri. Ahmed Hussain Sayee Mohd. Khan for himself and as a constituted

attorney of Plaintiff Nos.1, 2 & 4 to 6. On account of withdrawal application filed by the Plaintiffs, the suit was placed before the National Lok Adalat. Before the National Lok Adalat, Plaintiffs and Respondents filed "Terms of Compromise" stating that the disputes were amicably settled out of Court and that the Plaintiffs did not wish to proceed with the suit and desired withdrawal of the same. The said 'Terms of Compromise' was signed by Plaintiff No.3- Shri. Ahmed Hussain Sayee Mohd. Khan on behalf of himself and as Constituted Attorney of Plaintiff Nos.1, 2 and 4 to 6.

2. I have heard Mr. Kango, the learned counsel appearing for the Petitioner. He would submit that the suit has been withdrawn by Plaintiff No.3 without any authorisation by Plaintiff No.6 (Petitioner) by practicing fraud on him. He would submit that Petitioner had never authorised Plaintiff No.3 to withdraw the suit on his behalf. That the National Lok Adalat could not have permitted withdrawal of the suit without ensuring that all the Plaintiffs were present before it and signed the withdrawal application and Terms of Compromise. He would invite my attention to the provisions of Section 20 of the Legal Services Authority Act, 1987 in support of his contention that Lok-Adalat is required to record a satisfaction that the matter is appropriate for being taken cognizance by Lok-Adalat. According to Mr. Kango, the Lok-Adalat must give reasonable opportunity of being heard to all the parties to the suit. That such an opportunity was not given to the Petitioner and he was oblivious of filing of any application by Plaintiff No.3 seeking withdrawal of the Suit. Mr.

Kango would further submit that though Petitioner had executed Power of Attorney in favour of Plaintiff No.3, the said Power of Attorney did not authorise Plaintiff No.3 to withdraw Regular Civil Suit No.88 of 2018. He would therefore submit that the order passed by the National Lok Adalat on 7 May 2022 is required to be set aside and the suit is required to be restored. Mr. Kango would further submit that certain developments have taken place during the pendency of the present petition and Petitioner may be permitted to amend the petition to bring on record subsequent events.

3. *Per-contra*, Mr. Dalvi, the learned counsel appearing for Respondent Nos.1 to 3 would oppose the petition. He would submit that all the Plaintiffs have withdrawn the suit by filing withdrawal application and Petitioner had executed Power of Attorney in favour of Plaintiff No.3 which included *inter-alia* the power to settle, compound and compromise legal matters. He would therefore submit that on having withdrawn the Regular Civil Suit No.88 of 2018 on 7 May 2022, one of the Plaintiffs cannot now be permitted to wriggle out of such withdrawal. He would pray for dismissal of the petition.

4. I have considered the submissions canvassed by the learned counsel appearing for the parties. It appears that the Plaintiffs filed Regular Civil Suit No. 88 of 2018 jointly seeking a mandatory injunction against the Defendant from encroaching upon the suit land or from doing any activity disturbing or interfering with the possession of the Plaintiffs over the suit land. The suit was signed and

verified by Plaintiff No.3 alone i.e. Shri. Ahmed Hussain Sayee Mohd. Khan. Such signature and verification was done by Plaintiff No.3 on the strength of General Power of Attorney dated 5 February 2018. The said Power of Attorney was executed by Plaintiff Nos.1, 2 & 4 to 6 (Petitioner himself) in favour of Shri. Ahmed Hussain Sayee Mohd. Khan. The Petitioner does not dispute execution of the said Power of Attorney. Clause-9 of the said Power of Attorney gave following power in favour of the constituted attorney:

9) To proceed, prosecute, defend, settle, compound and compromise any legal matters in any forum regarding the said properties.”

5. The Power of Attorney is undoubtedly executed in respect of the suit property. It is acting on this Power of Attorney that Shri. Shri. Ahmed Hussain Sayee Mohd. Khan signed and verified the plaint in Regular Civil Suit No.88 of 2018.

6. The Power of Attorney undoubtedly conferred power to proceed, prosecute, defend, settle, compound and compromise in suit concerning the property included in the schedule of the said POA. It is acting on the Power of Attorney that Plaintiff No.3 has withdrawn Regular Civil Suit No.88/2018 by filing withdrawal application before the Court signing the terms of compromise and remaining present before the National Lok Adalat.

7. Petitioner had clearly empowered Shri. Ahmed Hussain Sayee Mohd. Khan not just to institute the suit but to withdraw the same. The withdrawal of the suit is effected by the said constituted attorney in exercise of power conferred upon him under the General Power of Attorney which admittedly was not revoked as on the date of withdrawal of the suit.

8. Reliance of Mr. Kango on the provisions of Section 20 of the Legal Services Authority would not assist his case. Section 20 of the Act reads thus ;

Section 20. Cognizance of Cases by Lok Adalats

(1) Where in any case referred to in clause (i) of sub-section (5) of Section 19-(i)

(i) (a) The parties thereof agree or

(i) (b) One of the parties thereof makes an application to the court, for referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such settlement or

(ii) The court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat, the court shall refer the case to the Lok Adalat: Provided that no case shall be referred to the Lok Adalat under sub-clause (b) of clause (i) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties.

(2) Notwithstanding anything contained in any other law for the time being in force, the Authority or Committee organising the Lok Adalat under sub-section (1) of Section 19 may, on receipt of an application from any, one of the parties to any matter referred to in clause (ii) of sub-section (5) of Section 19 that Lok such matter needs to be determined by a Lok Adalat, refer such matter to the determination; Provided that Adalat, for matter shall be no referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.

(3) Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat

shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

(4) Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.

(5) Where no award is made by the Lok Adalat on the ground that compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub-section (1) for disposal in accordance with law.

(6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advise the parties to seek remedy in a court.

(7) Where the record of the case is returned under sub-section (5) to the court, such court shall proceed to deal such reference under sub-section (1)."

9. Under Section 20, the Lok-Adalat has to merely satisfy itself that the nature of the matter sought to be settled is such that the same can be taken by the Lok Adalat. The Proviso to Section 20(1) provides that no matter can be taken up in Lok-Adalat without grant of reasonable opportunity of being heard to the parties. In the present case, all the Plaintiffs were always represented by Shri. Ahmed Hussain Sayee Mohd. Khan throughout the suit. Therefore, it was not necessary to give any separate notice to the Petitioner either for taking up the suit before Lok Adalat or permitting withdrawal of the suit.

10. Mr. Kango has placed reliance on the judgment of the Apex Court in **New Okhla Industrial Development Authority (NOIDA) V/s. Yunus & Ors**, (Civil Appeal No. 901/2022 decided on 3 February 2012). The issue before the Apex Court was however

entirely different. The Apex Court has decided the issue as to whether an application under Section 28A of the Legal Services Authority Act can be entertained in respect of the Award passed by the Lok Adalat under Section 20 of the Act. Therefore, reliance of Mr. Kango on the said judgment is completely irrelevant to the facts of the present case.

11. I therefore do not find any reason to interfere in the order permitting withdrawal of the suit. Once Petitioner executed the Power of Attorney in favour of Shri. Ahmed Hussain Sayee Mohd. Khan and permitted him to represent them in Regular Civil Suit No.88/2018, he cannot subsequently complain about actions taken by the constituted attorney. As a matter of fact, Petitioner apparently did not even participate in prosecution of the suit in any manner as the pleadings in the suit were already signed, verified and filed by Shri. Ahmed Hussain Sayee Mohd. Khan on Petitioner's behalf acting as his constituted attorney. It is only after withdrawal of the suit that Petitioner wants to take a different position than the one taken by Shri. Ahmed Hussain Sayee Mohd. Khan in withdrawing the suit. In my view, therefore, the Petitioner cannot be permitted to reopen the suit which has been closed on account of withdrawal thereof on 7 May 2022. If Petitioner did not have trust in Shri. Ahmed Hussain Sayee Mohd. Khan, he ought to have revoked the Power of Attorney and ought to have represented himself before the Civil Court. Admittedly, the Power of Attorney continued to remain valid on the date of withdrawal of the suit. In such circumstances, the Petitioner cannot now be permitted to disown such withdrawal. I therefore do

not find any merit in the present petition. Interim Application for amendment need not be entertained since the present petition itself is meritless.

12. The Writ Petition is accordingly **dismissed**. With dismissal of the Appeal, Interim Application also stands disposed of.

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SANDEEP V. MARNE, J.