A.No.145 of 2022
in
C.S.No.478 of 2007

Reserved on 02.12.2022	Pronounced on 03.03.2023

G.CHANDRASEKHARAN, J.

This application is filed to set aside the order dated 25.08.2021, in A.No.2856 of 2021 and pass a consequential order directing the first respondent to return the money of Rs.12,39,45,026.50 back to this Court.

2.The learned Senior Counsel Mr.A.R.L.Sunderasan for the applicants submitted that the first respondent filed a suit in C.S.No.478 of 2007 for recovery of a sum of Rs.4,26,67,982/- with interest against the applicants and respondents 2 to 5 herein. The suit was filed based on the claim that the applicants and their late father had entered into a sale agreement in respect of a portion of a property that was under land acquisition proceedings and hence, claimed repayment of the sale consideration. An ex-parte decree was passed in the suit on 25.08.2014. Applicants and their deceased father had been negotiating a settlement with the first respondent for many years. The first respondent filed an execution proceeding in E.P.No.445 of 2016, before the Principal District Court, Tiruvallur, for attachment and sale of certain properties situated at Chekanchery Village, Ponneri Taluk. A sum of Rs.1.94 Crores was already paid to the first respondent. The applicants bonafidely initiated the settlement of the dispute and the execution proceeding was referred to Lok Adalat proceedings in LAC No.436 of 2016. The applicants and the first respondent entered into a joint settlement memo, whereby, it was agreed that certain properties at Chekanchery Village, Ponneri Taluk will be sold to the first respondent. The parties had entered into a draft sale deed and it was filed along with the joint memo. Consequently, a settlement memo dated 09.03.2017 was filed in the Lok Adalat proceedings and the execution proceeding was dismissed as "not pressed".

3.The property situated at Chekanchery Village, Ponneri Taluk was already attached by this Court, vide order dated 22.12.2009, in A.No.3871 of 2007 in C.S.No.478 of 2007. It was agreed between the parties that the attachment had to be removed prior to registering the sale deed in favour of the first respondent. The first respondent informed the applicants that it will take necessary steps to remove the attachment and applicants waited in good faith for the first respondent to honour the settlement by removing the attachment. However, first respondent, suppressing the settlement memo dated 09.03.2007, moved an application in A.No.963 of 2018 in C.S.No.470 of 2007, seeking directions directing the Garnishee/NHAI to deposit the compensation amount in respect of acquisition proceedings of applicants' family property, situated at Adayalampattu Village before this Court. Accordingly, a sum of Rs.24,49,11,983/- was deposited by the NHAI in this Court. Applicants are challenging the land acquisition proceeding.

4.The first respondent had also filed A.No.1245 of 2021 for withdrawal of Rs.12,39,45,026.50 from the amount deposited by NHAI. That application was dismissed by the Master Court. The first respondent moved an application in A.No.2856 of 2021 to set aside the order passed in A.No.1245 of 2021. In A.No.1245 of 2021, no notice was served on the applicants, but paper publication was taken for substituted service behind the back of the applicants. Applicants came to know about all these facts upon perusing the papers. Applicants' niece and their brothers-in-law, namely, M.K.Jasmine Sharmila and others had moved this Court challenging the land acquisition proceedings of NHAI in W.P.No.8219 of 2020 and obtained interim injunction until further orders, on 25.06.2020. Without disclosing the said interim order, NHAI deposited Rs.24,49,11,938/-. The first respondent suppressed the fact that the second respondent/third defendant had passed away and failed to implead the legal heirs of the deceased second respondent/third defendant. Only in the present application, the second respondent/third defendant's legal heirs are impleaded as respondents 5 to 9. The compromise entered into between the parties in Lok Adalat is binding on the parties. However, suppressing the material facts, the first respondent withdrew the money deposited by the NHAI before this Court. If the challenge to the acquisition proceedings in Writ Petition is allowed, withdrawal of Rs.12,39,45,026.50/- will be deemed to be invalid. In the said circumstances, this application is filed for the aforesaid reliefs.

5.He further submitted that the first respondent had suppressed the pending execution proceeding and the Lok Adalat settlement and got the orders from the Court. Therefore, the orders for the facilitation of withdrawal of amount was obtained by playing fraud on the Court. If the first respondent is not satisfied with the Lok Adalat Award, he should have taken steps only by filing a Writ Petition, by challenging the Lok Adalat Award. He cannot circumvent the Lok Adalat Award, which still has a legal force and adopt illegal method for realising the amount. In support of his submissions, he relied on the following judgments:

(i)The case in ***K. Srinivasappa and Ors. vs. M. Mallamma and Ors. Dated 18.05.2022 - MANU/SC/0663/2022,*** has been relied on for the proposition that allegation of fraud on court has to be proved strictly. In the absence of any conclusive proof as to fraud on the part of the objectors, the decree should not be interfered with.

(ii)The case in ***P.T. Thomas vs. Thomas Job dated 04.08.2005 - MANU/SC/0454/2005,*** has been relied on for the proposition that the award passed by the Lok Adalat is the decision of the court itself though arrived at by the simpler method of conciliation under the consent of the parties instead of the process of arguments in court. And thus, the award of Lok Adalat is deemed to be a decree of the Civil Court or as the case may be, final. Therefore even an appeal shall not lie from the award of the Lok Adalat as under Section 96 C.P.C.

(iii)The cases in ***P. Subramania Chetty vs. P.N. Narayana and Ors. dated 21.07.2014 - MANU/TN/3335/2014 & S.P. Chengalvaraya Naidu v. Jagannath*, (1994) 1 SCC 1,** have been relied on for the proposition that, a fraud is an act of deliberate deception in order to gain by another's loss. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. Suppression of any material fact or document amounts to fraud played on the court as well as on the opposite party, and judgment or decree obtained by playing fraud is *non est* in the eye of law.

6.In reply, the learned Senior Counsel Mr.T.V.Krishnamachari for the first respondent submitted that the suit in C.S.No.478 of 2007 was filed for recovery of money. When the suit is pending, A.Nos.3871 of 2007 and 3872 of 2007 were filed for attachment of immovable properties and prohibiting the disbursal of compensation amount payable under the Land Acquisition Act to the applicants. Orders were passed in A.No.3871 of 2007 on 22.12.2009 and in A.No.3872 of 2007 on 30.05.2007. The suit was also decreed as prayed for. Applicants have not taken any steps for setting aside the ex-parte decree. A.No.963 of 2018 was filed to direct the Garnishee/NHAI to deposit the land acquisition compensation amount in the Court. A.No.1245 of 2021 was filed for payment out, only after taking proper steps for serving notice on the applicants and on finding that the applicants have not received the notice, substituted service was ordered. However, the learned Master had dismissed A.No.1245 of 2021 on wrong reasoning. Against the said order, A.No.2856 of 2021 was filed. This Court, on going through the materials and finding merits in the claim of the first respondent, allowed A.No.2856 of 2021 on 25.08.2021. The order is perfectly legal and there is no reason for setting aside the order.

7.The learned Senior Counsel Mr.A.R.L.Sunderasan further submitted that the applicants had remained ex-parte throughout the suit and also in A.No.963 of 2018 and A.No.1245 of 2021. Therefore, it is not necessary to send notice to the applicants in A.No.2856 of 2021. Though a settlement was reached in the Lok Adalat, the settlement could not be immediately effected for the reason that it has certain conditions which have to be fulfilled by both parties. Applicants have not produced any document to show that they have marketable title in respect of the properties agreed to be sold to the first respondent. The settlement become unimplementable because of the non co-operation from the applicants. Therefore, the first respondent took steps for realising the amount available with NHAI towards the decree debt. It is not illegal and the first respondent is lawfully entitled for that amount.

8.It is further submitted that perusal of the draft sale deed filed along with the joint memo filed in the Lok Adalat shows that the draft sale deed is a forged document for the reason that the signature of Satchidanandam, who said to have represented the first respondent, totally differs. The Lok Adalat Award is not at all an executable award. The terms of the joint memo are mutually contradictory. The Lok Adalat

Award is void abinitio. The applicants, despite knowing the pendency of all these proceedings, deliberately not participated in the proceedings. They have watched all these proceedings from sidelines and only now they have filed this application by getting unauthorised copies of all the applications and orders. When the Lok Adalat Award is not satisfied, the applicants can resort to other means to recover the money. Without filing an application to recognise the respondents 5 to 9 as legal representatives of the second respondent/third defendant, they are straight away shown as respondents in A.No.145 of 2022. Sisters are not before this Court. The decree holder would lose the opportunity to recover the decree amount if this application is allowed. This application is an abuse process of law. Therefore, he prayed for dismissal of this application. In support of his submissions, the learned Senior Counsel for the first respondent relied on the following judgments.

(i)The case in ***P.O. Thomas v. Kollam Taluk Legal Service Committee in WP(C) No. 35992 of 2015,*** was relied on, to invite the attention of this court to the guidelines framed in **Rajagopala Rao v. State Police Chief, 2016 SCC online Ker 41236** as to the crucial points to be borne in mind by the persons presiding over the Lok Adalats and the lawyers appearing for the parties. The relevant extract is as follows:-

> ***"18.*** *...(i) The persons presiding shall thoroughly study and clearly understand the facts of the case coming up for settlement.*
>
> *(ii) They must have a clear understanding about the legal issues involved in the dispute between the parties.*
>
> *(iii) If the parties have engaged lawyers, they shall also participate in the proceedings before the Lok Adalat so that a proper settlement could be arrived at.*
>
> *(iv) The persons presiding over the Lok Adalat and the lawyers concerned shall bear in mind the fundamental principles, under the Indian Contract Act, 1872, essentially required for executing a legally enforceable agreement.*
>
> *(v) They shall bear in mind the principles under Order XXIII Rule 3 of the Civil Procedure Code, 1908 also, so that the award must be in the form of an enforceable decree, if the parties so wish. This is all the more important*

because by virtue of sub-section (2) of Section 21 of the Legal Services Authorities Act, 1987, every award made by Lok Adalats shall be final and binding on the parties to the dispute and no appeal shall lie to any court against the award.

(vi) The persons presiding over the Lok Adalat shall see that the award passed is clear in its terms and there, shall be no room for any confusion in respect of the terms and conditions in the award. They shall take care to see that on account of ill-drafting of the compromise, no litigation in future arises in respect of the matters once settled.

(vii) They shall see that the awards passed are not only legal, but also conforming to the norms prescribed for a decree with all the required details in clear and explicit terms."

(ii)The case in ***M. Lavanya vs. Secretary to Government of Tamil Nadu and Ors. Dated 23.04.2019 MANU/TN/8046/2019,*** was relied on for the proposition that, The law as contemplated in Lok Adalat Act is that compromise must be voluntarily made between the parties and the terms of settlement should not run contrary to any statute or rules. Settlement or contract in contravention to any provisions of legislation would never be approved.

(iii)The case in ***B.P. Moideen Sevamandir v. A.M. Kutty Hassan,* reported in *(2009) 2 SCC 198*** is relied on for the proposition that, If a compromise or a settlement is arrived at, the Lok Adalat has to make an award, incorporating such compromise or settlement. On the contrary, if no compromise or settlement is arrived at, it has to return the record with a failure report to the court. There can never be a third hybrid order by the Lok Adalat containing directions to the parties by way of final decision, with a further direction to the parties to settle the case in terms of such directions.

(iv)The case in ***Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, reported in (2010) 8 SCC 24** has been relied on to show the procedure that has to be followed for making the settlement before Lok Adalat effective. In a case, where on reference by court, a settlement is reached before any non-adjudicatory ADR forums, the court retains its control and jurisdiction over the case. Therefore, the award, if passed by Lok Adalat, is deemed to be a decree of the civil court, executable u/S. 21 of the Legal Services Authorities Act, 1987. The settlement agreement then has to be placed before the court for recording it and disposal in its terms, on the principles of O.23 R.3 of the Code. In case, where the settlement reached is not with regard to the subject-matter of the suit/proceedings, the court has to direct the settlement to be governed by Section 21 of the Legal Services Authorities Act, 1987.

(v)The cases in ***S.J.S. Business Enterprises (P) Ltd. v. State of Bihar*, reported in (2004) 7 SCC 166 & *A. John vs. Vasanthi and Ors. Dated 21.08.2018 MANU/TN/6816/2018*** have been pressed into service, for the proposition that suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. The criterion for deciding whether suppression of a fact constitutes a fraud on Court lies in the impact that such suppression or an omission of fact, makes on the cause of action for the Suit, and the extent of disadvantage it imposes on the other party, or even a third party to the litigation.

(vi)The case in ***Ilaiyaraja vs. B. Narsimhasn and Ors. Dated 03.03.2015 MANU/TN/0539/2015,*** has been relied on, to invite the court's attention to the existing distinction between terms "material facts" and "full particulars". The meaning as distinguished in the case is as follows:-

> *“"Material facts" are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. "Particulars" on the other hand, are details of the case, which is in the nature of evidence a party would be leading at the time of trial.”*

(vii)The cases in ***Rani Kusum v. Kanchan Devi*, reported in (2005) 6 SCC 705 & *Olympic Cards Ltd vs. Standard Chartered Bank, (MANU/TN/1941/2012),*** have been relied on to remind this court, the well settled principles of interpretation of procedural laws, that all the rules of procedure are the handmaids of justice. It should not ordinarily be construed as mandatory,unless compelled by express and specific language of the statute, it ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.

(viii)The case in ***A. Sivaprakash vs. Ammasaiathal and Ors. dated 05.10.2012 MANU/TN/2001/2012,*** has been relied on for the proposition that, Even if one of the LRs is on record, the suit doesn't get abated. As long as there is no collusion, fraud or failure to implead at least one or more of the several legal representatives, it would not affect the validity of the decree.

9.In reply, the learned Senior Counsel Mr.A.R.L.Sunderasan for the applicants reiterated that the Lok Adalat Award can be challenged only in a Writ Petition and not in a collateral proceedings. The first respondent suppressed the execution proceeding in the application filed by it. In the absence of any notice to the applicants in A.No.2856 of 2021, order cannot be maintained against the applicants. There is no plea of fraud raised against the Lok Adalat Award. The first respondent should alone have taken steps for raising attachment and for enforcing the Lok Adalat Award.

10.Considered the rival submissions and perused the records. It is not in dispute that the first respondent filed a suit in C.S.No.478 of 2007 against one Mohamed Ibrahim and four others for the recovery of Rs.4,26,67,982/-, the amount alleged to have been received by the defendants therein/applicants in connection with the sale agreement for the sale of their property to the first respondent, along with the interest. Defendants have not contested the case and therefore, the suit was decreed ex-parte on 25.08.2014. Earlier, the first respondent filed two applications, viz., A.No.3871 of 2007 for the relief of attaching the immovable properties mentioned in the schedule before the judgment and A.No.3872 of 2007 for the relief of order of attachment before the judgment by issuing a prohibition order, prohibiting the sixth respondent therein, namely, the Special District Revenue Officer, Land Acquisition - National Highways, from disbursing/parting with the compensation amount payable for the land to the respondents/defendants in C.S.No.478 of 2007. A.No.3872 of 2007 was allowed on 30.05.2007 and A.No.3871 of 2002 was allowed on 22.12.2009. As said earlier, the suit was decreed ex-parte on 25.08.2014. Thus, it is clear that the land acquisition proceedings amount due to the applicants from NHAI was attached during the pendency of the suit in C.S.No.478 of 2007. The first respondent filed execution proceeding in E.P.No.445 of 2016 for execution of the decree passed in C.S.No.478 of 2007. It appears that during the pendency of the execution proceeding, parties have filed a joint memo on 10.11.2016. This memo reads as follows:

BEFORE THE LOKADALATH THIRUVALLUR

(In the Court of the Principal District Judge –Thiruvallur)

E.P.No.445 of 2016
in
C.S.No.478 of 2007

Rajparis Civil Constructions Ltd
Rep. By its Director – R.Sachidanandam
Chennai – 600 006. ...Petitioner/Decree holder/plaintiff

And

1.Mohamed Ibrahim
2.A.Mohamed Yunus
3.M.S.Alliyar Bai
4.Mohuzeen
5.Khader Meeran ...Respondent/JudgementDebtors/Defendants

Joint memo filed by the plaintiff and J.D 1& 2

It is submitted that on this 10th day of November, 2016.

We had discussed the matter before the Chairman Lok Adalat and arrive at the follow:

1.To satisfy the decree obtained in the above suit, the plaintiff and the J.D 1 & 2 has agreed that J.D. 1 & 2 agree to execute a sale deed for Acre 8.00 in S.No. 13/ part, 6/part, 4/part , 8/part 9/part, 7/part, 11/part at Chikkancheri Village, Ponneri Taluk, Tiruvellur District excluding the Brick kiln within 1 month.

We request the Chairman some time to execute the sale deed and report the settlement for passing an Award.

Petitioner/plaintiff *Respondent/J.D 1 & 2*

11. Another joint memo was filed on 09.03.2007. It reads as follows:

Before the LokadalathThiruvallur
(In the court of the Principal District Judge - Thiruvallur)
E.P.No. 445 of 2016
In
C.S.No. 478 of 2007

Rajparis Civil Constructions Ltd
Rep. by its Director - R.Sachidanandam
Chennai - 600 006 ....Petitioner/Decree holder / Plaintiff

1. Mohamed Ibrahim,
Son of M.S. Alliyar Bai

2. A.Mohamed Yunus
Son of M.S. Alliyar Bai

3. M.S.Alliyar Bal
Son of Shaik Dawood Sahib
1 to 3 residing at No.1/59 Perumal Koil Street,
Poonamallee High Road,
Sivabootham Village, Vanagaram.
Chennai - 600 095

4. Mohuzeen
Son of K.S.M. Abdul Khader
No.6, 6th Avenue, Ashok Nagar,
Chennai 600 083.

5. Khader Meeran
Son of K.S. Meera Naina
No.3, Baroda Street, West Mambalam,
Chennai 600 033. ...Respondent / Judgment Debtors/ Defendants

JOINT MEMO FILED BY JUDGEMENT DEBTORS 1 AND 2

The Judgement Debtors and D.H above named respectfully submit that in the above E.P., a Joint Memo dated 10.11.2016 was filed before the Hon'ble Chairman Lokadalath, Tiruvallur submitting that land to an extent of 8 Acres

in different Survey Numbers as set out in the said Memo in Chekkancheri Village, Ponneri Taluk, Tiruvallur District would be conveyed by executing Sale Deed to and in favor the Decree Holder holder and report settlement for the purpose of passing award on the above matter.

The Judgment Debtors 1 and 2 respectfully submit that there has been some delay in procuring the Revenue records for the purpose of execution of the sale deed as submitted in the Memo dated 10.11.2016.

When the D.H. approached the Sub registrar Ponneri to execute the sale deed, he asked to cancel the attachment order in I.A.NO.3871 OF 2007 passed by Hon'ble High court In respect of the schedule mentioned property.

Hence, without cancelling the above said attachment order parties unable to registered the sale deed. Hence, the parties here by requested *this forum to cancel the said attachment order and directing the registration authority to register the sale deed and put an end to the litigation. The D.H. herein not press the E.P. against JD-3 to JD-5.*

To confirm the amicable settlement between the parties the formal sale deed was executed by the Judgment debtors 1 and 2 infavour of D.H. The Xerox copy of sale deed is enclosed herewith for perusal.

SCHEDULE OF PROPERTY

Agricultural lands situated in Chekkancheri Village, Ponneri Taluk, Tiruvallur District

	Survey No.	Extent
1.	6/1	44 Cents
2.	7/2	1 Acre and 52 Cents
3.	7/3A	23 Cents
4.	7/3B	26 Cents
5.	7/3C	23 Cents
6.	7/4	0.75 Cents
7.	8/1A	24 Cents
8.	4/1	31 Cents
9.	4/2	27 Cents

10.	8/1B	15 Cents out of 40 Cents
11.	9/4	20 Cents out of 43 Cents
12.	9/5	65 Cents out of 1 Acre and 10 Cents
13.	9/8	4/8th UDS out of 1 Acre and 81 Cents
14.	11/2	4/8th UDS out of 44 Cents
15.	11/3	4/8th UDS out of 86 Cents
16.	13/1	4/8th UDS out of 2 Acres and 17 Cents
17.	7/1	4/8th UDS out of 1 acre 44 cents.

All the above said extents of lands are situated in Chekkancheri Village, Ponneri Taluk, Tiruvallur District and the proposed conveyance by executing the sale deed in favor of the Decree holder is subject to the satisfaction of the Decree holder on the marketable title to the said extent of lands as well as the satisfaction of Judgement debtors regarding convenience in using the adjacent lands owned by them without changing Toral of 8 Acros the extent, and with the consent of D.H.

In the aforesaid circumstances, 's prayed that Hon'ble Chairman may pleased to record this joint memo and bass such other order or orders asit may deem fit in the circumstances of the case and render justice.

Dated at Tiruvallur on 9-3-2017

D.H./Plaintiff *Respondents /J.D.1and2*

Counsel for D.H. *Counsel for Jds 1 and 2*

12.A draft sale deed was also filed along with the joint memo. That is now challenged by the first respondent as not signed by Satchidanandam. On the basis of the joint settlement, award was passed in L.A.C. No.439 of 2016 with the following terms of settlement.

TERMS OF SETTLEMENT

தீர்ப்பு பெற்றவர் மற்றும் தீர்ப்பு கடனாளி*1* ‡ *2* மற்றும் இருதரப்பு வழக்கறிஞர்கள் ஆஜர். சமரசம் பேசப்பட்டது. தீர்ப்பு கடனாளிகள் *3* - *5*ஐ விலக்கிக் கொள்வதாக தீர்ப்பு பெற்றவர் கூறினார். சமரசம் பேசி முடிக்கப்பட்டது. இருதரப்பினரும் சேர்ந்து சமரச குறிப்பாணை தாக்கல் செய்தார்கள். மேற்படி சமரச குறிப்பாணை பதியப்பட்டது.

1. சமரச குறிப்பாணையில் கண்டுள்ள சொத்துக்களை பொன்னேரி சார்பதிவாளர் பதிவு செய்யவும்.

*2.*மீதமள்ள சொத்துக்கள் மீதான பற்றுகையை விலக்கவும்.

3.தீர்ப்பு பெற்றவரும், தீர்ப்பு கடனாளிகள் 1,2ம் முழுசம்மதம் தெரிவித்தனர்.

வழக்கை முடித்துக்கொள்ளவும் சம்மதித்தார்கள். சுமரச குறிப்பானை இதனுடன் இணைக்கப்பட்டுள்ளது.

13.As per this joint memo of settlement and Lok Adalat Award, we can gather that the judgment debtors 1 and 2 agreed to execute the sale deed for 8 Acres in S.No.13/part, 6/part, 4/part, 8/part, 9/part, 7/part and 11/part at Chekanchery Village, Ponneri Taluk, Tiruvallur, excluding the brick kiln. For facilitating the sale, the attachment order in A.No.3871 of 2007 is to be cancelled. On the basis of these terms, Lok Adalat Award was passed for registering the sale in respect of the aforesaid properties at Ponneri Sub Registrar Office and for raising of attachment in respect of other properties. However, it is claimed by the applicants that the first respondent had not taken any steps for raising of the attachment for facilitating the sale in favour of the first respondent. The first respondent says that the applicants have not taken any steps to produce the documents to show that they have marketable title to sell these properties. Both raise charges against each other for the non implementation of the Lok Adalat Award, but the fact remains that the Lok Adalat Award is not yet set aside by any of the parties and it is still in force. Lok Adalat Award can be executed as a decree.

14.Both parties have not taken any steps for executing the Lok Adalat Award or to set aside the Lok Adalat Award. The execution proceedings, it is claimed that, it was dismissed as not pressed. Therefore, the first respondent filed A.No.963 of 2018 seeking directions to Garnishee, namely, the Special District Revenue Officer, Land Acquisition - National Highways, to deposit the land acquisition amount payable to the applicants in this Court. Accordingly, this Court ordered the deposit of the amount to this Court. This order does not reflect whether notice was ordered to the applicants and they were heard before passing the order. Further, the order was passed by just noting, none appeared for the sixth respondent, namely, Special District Revenue Officer, Land Acquisition - National Highways. Thereafter, first respondent filed A.No.1245 of 2021 before the learned Master seeking payment out for a sum of Rs.12,39,45,026.50. In this petition, affidavit of service was filed. In paragraph 7 of the affidavit of service, it was noted that notice to the first, second and third respondents has not been served till 08.04.2021. Then, A.No.2378 of 2021 was filed for ordering substituted service through local newspaper to respondents 1 to 5 therein. Thereafter, it appears that the substituted service was taken.

15.Orders passed by the learned Master in A.No.1245 of 2021 on 03.08.2021 does not have any information as to whether applicants herein were served or not and whether they were represented by counsel and heard before passing the order. The learned Master proceeded to dismiss the A.No.1245 of 2021 stating that the first respondent did not file any execution petition to execute the decree, instead filed an application against the Garnishee to deposit the amount and accordingly, the amount was deposited; the procedure adopted by the sixth respondent is not correct. It is further observed that “the first respondent had already filed a similar payment application in D.No.91830/2020; on 23.02.2021, an order was passed in that application that “this application is not maintainable”, the remedy available to the applicant is only to file an execution proceedings. Registry is directed to return the papers to the learned counsel for the applicant. However, it appears that the filing of the similar application was suppressed in A.No.1245 of 2021. For these reasons, the learned Master dismissed the above petition.

16.Challenging the order of dismissal, the first respondent filed A.No.2856 of 2021 for setting aside the order passed in A.No.1241 of 2021. This Court, on going through the entire records of the case and hearing the submissions of the learned counsel appearing for the first respondent that the defendants chose not to contest the suit and opt to remain ex-parte in the payment out application, even though they were served with notices and that the decree passed in 2014, has now become final, there may not be any procedural embargo in collecting the dues to which the plaintiff is entitled to, found considerable merits in the submissions of the learned counsel for the first respondent and proceeded to allow the petition and directed the Registry to issue a cheque for a sum of Rs.12,39,45,026.50 to the first respondent. This is the order which is under challenge now.

17.It appears from this order that no notice was given to the respondents in A.No.2856 of 2021. It is also explained that service against applicants was completed in A.No.1245 of 2021 through substituted service by issuing paper publication. There is also no indication as to whether notice was issued to the applicants in A.No.963 of 2018 and they were heard before passing orders in A.No.963 of 2018. It is the claim of the first respondent that the applicants had been watching from sidelines without actually participating in any of the proceedings till date. The fact that they obtained unauthorised copies of the applications and orders shows that they were watching from sidelines and now agitating against the order passed in A.No.2856 of 2021. Whether the applicants were watching from sidelines of all these proceedings or whether actually they did not have notice of all these proceedings, is a matter required to be enquired in detail. The fact remains that the applicants were not given notice in A.No.2856 of 2021.

18.Apart from the non service of notice on the applicants in A.No.2856 of 2021, two other issues are also involved in this application. They are (i) when there is a Lok Adalat Award passed and is still in force, whether the first respondent can resort to take the money deposited in the Court by NHAI payable to the applicants. (ii)whether the amount lying in the Court deposit can be paid to the first respondent without filing an execution petition/application.

19.As already stated, it is the submissions of Mr.T.V.Krishnamachari, the learned Senior Counsel for the first respondent that the draft sale deed filed in the Lok Adalat is a forged document, that the Lok Adalat Award is not an executable Award. The parties have to perform certain acts for giving effect to Lok Adalat Award.

20.As per Section 21 of the Legal Services Authorities Act, 1987, every award of the Lok Adalat shall be deemed to be a decree of a Civil Court. It reads as follows:

> ***21.Award of Lok Adalat-***
>
> *(1) Every award of the Lok Adalat shall be*

deemed to be a decree of a Civil Court or, as the case may be, an order of any other Court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of section 20, the Court-fee paid in such case shall be refunded in the manner provided under the Court-Fees Act, 1870.

(2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any Court against the award.

It can be understood from this Section that Award of Lok Adalat is deemed to be a decree and it shall be final and binding on all the parties to the dispute. No appeal shall lie to any Court against the Award. It is reiterated by the Hon'ble Supreme Court in the judgment reported in ***(2005) 6 SCC 478*** in ***P.T.Thomas Vs. Thomas Job.*** It is further observed in ***A.L. Abul Kalam Azad Vs. A.L. Jawaharlal and Ors. C.R.P. Nos. 4093 and 4094 of 2010, dated 26.11.2018*** that no appeal is maintainable against the Lok Adalat Award, but the only course available to the aggrieved is to file a petition under Article 226 or 227, that too, on very limited grounds. The relevant extract of the judgment in ***A.L. Abul***

Kalam Azad Vs. A.L. Jawaharlal and Ors. C.R.P. Nos. 4093 and 4094 of 2010, dated 26.11.2018 is as follows:

> ***52.*** *Therefore, the decree by the Lok Adalat may be construed as preliminary decree or final decree, as the case may be, in relation to the definition of "decree" in Section 2(2) of the Code of Civil Procedure, which reads as follows:*
>
> *"Section 2: Definitions: In this Act, unless there is anything repugnant in the subject or context,-*
>
> *.... ......*
>
> *(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include-*
>
> *(a) any adjudication from which an appeal lies as an appeal from an order, or*
>
> *(b) any order of dismissal for default.*
>
> *Explanation:- A decree is preliminary when further*

proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;"

Further, under Section 21 of the Legal Services Authorities Act, the Lok Adalat Award has to-be construed as a decree of a Civil Court. On a reading of Section 21 of the Legal Services Authorities Act, it is clear that no appeal shall lie as against the decree passed by the Lok Adalat. Thus, the decree passed by the Lok Adalat is deemed to be the decree of a Civil Court for the purpose of execution and other consequential proceedings. Any order/decree/Award passed by the Lok Adalat, is executable before a Civil Court and the Award of the Lok Adalat is final and no appeal shall lie as against the Award of the Lok Adalat as per Section 21(2) of the Legal Services Authorities Act. In this regard, it is appropriate to refer a decision of the Supreme Court reported in MANU/SC/1119/2017 : 2018-1-L.W. 712 : 2017 (5) CTC 775 (SC) (Bhargavi Constructions Vs. Kothakapu Muthyam Reddy), wherein the Apex Court held as follows:

"25. The question arose before this Court (Three Judge Bench) in the case of State of Punjab (supra) (State

of Punjab Vs. Jalour Singh),MANU/SC/7021/2008 : 2008 (1) TN MAC 244 (SC): 2008 (2) SCC 660) as to what is the remedy available to the person aggrieved of the Award passed by the Lok Adalat under Section 20 of the Act. In that case, the award was passed by the Lok Adalat which had resulted in disposal of the Appeal pending before the High Court relating to a Claim case arising out of Motor Vehicle Act. One party to the Appeal felt aggrieved of the Award and, therefore, questioned its legality and correctness by filing a Writ Petition under Article 226/227 of the Constitution of India. The High Court dismissed the Writ Petition holding it to be not maintainable. The aggrieved party, therefore filed an Appeal by way of Special Leave before this Court. This Court, after examining the scheme of the Act allowed the Appeal and set aside the Order of the High Court. This Court held that the High Court was not right in dismissing the Writ Petition as not maintainable. It was held that the only remedy available with the aggrieved person was to challenge the Award of the Lok Adalat by filing a Writ Petition under Article 226 or/and 227 of the Constitution of India in the High Court and that too on very limited grounds. The case was accordingly remanded to the High Court for deciding the Writ Petition filed by the aggrieved person on its merits in *accordance with law.*

***26**. This is what Their Lordships held in Para 12:*

"12. It is true that where an Award is made by the Lok Adalat in terms of a settlement arrived at between the parties (which is duly signed by parties and annexed to the Award of the Lok Adalat), it becomes final and binding on the parties to the Settlement and becomes executable as if it is a Decree of a Civil Court, and no Appeal lies against it to any Court. If any party wants to challenge such an Award based on Settlement, it can be done only by filing a Petition under Article 226 and/or Article 227 of the Constitution, that too on very limited grounds. But where no Compromise or Settlement is signed by the parties and the order of the Lok Adalat does not refer to any Settlement, but directs the Respondent to either make payment if it agrees to the order, or approach the High Court for disposal of Appeal on merits, if it does not agree, is not an Award of the Lok Adalat. The question of challenging such an Order in a Petition under Article 227 does not arise. As already noticed, in such a situation, the High Court ought to have heard and disposed of the Appeal on merits."

***27 .** 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.*

***28**. 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 227 of the Constitution of India in the High Court for challenging the Award dated 22.08.2007 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.*

21.The grounds taken by the learned Senior Counsel Mr.T.V.Krishnamachari for the first respondent will not render the Lok Adalat Award invalid unless the first respondent initiated appropriate action to challenge the Lok Adalat Award in the manner known to law. As on today, the Lok Adalat Award passed in LAC No.436 of 2016 is in force and it is valid. When the Lok Adalat Award is still in force, this Court is of the view that the first respondent cannot resort to take the money deposited in the Court by NHAI.

22.It is not in dispute that as per the orders passed in A.Nos.3871 of 2007 and 3872 of 2007 a sum of Rs.24,49,11,983/-, the amount attached before judgment in C.S.No.470 of 2007, was deposited in the Court.

23.Section 51 C.P.C. deals with powers of the Court to enforce execution. Section 51 C.P.C.reads as follows:

> ***51. "Powers of Court to enforce execution"***
>
> *Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree-*
>
> *(a) by delivery of any property specifically decreed;*
>
> *(b) by attachment and sale or by the sale without attachment of any property;*
>
> *(c) by arrest and detention in prison 1[for such period not exceeding the period specified in*

section 58, where arrest and detention is permissible under that section];

(d) by appointing a receiver; or

(e) in such other manner as the nature of the relief granted may require :

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied-

(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,-

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or

(b) that the judgment-debtor has, or has had since the date of the decree. the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

24.Order XXI Rule 1 deals with the modes of paying money under decree.

1.Modes of paying money under decree.-

(1) All money, payable under a decree shall be paid as follows, namely :-

(a) by deposit into the Court whose duty it is to execute the decree, or sent to that Court by postal money Order or through a bank; or

(b) out of Court, to the decree-holder by postal money Order or through a bank or by any other mode wherein payment is evidenced in writing; or

(c) otherwise, as the Court which made the decree, directs.

(2) Where any payment is made under clause (a) or clause (c) of sub rule (1), the judgment-debtor shall give notice thereof to the decree-holder either through the Court or directly to him by registered post, acknowledgement due.

(3) Where money is paid by postal money Order or through a bank under clause (a) or clause (b) of sub-rule (1), the money Order or payment through bank, as the case may be, shall accurately state the following particulars, namely : -

(a) the number of the original suit;

(b) the names of the parties or where there are more than two plaintiffs or more than two defendants, as the case may be, the names of the first two plaintiffs and the first two defendants;

(c) how the money remitted is to be adjusted, that is to say, whether it is towards the principal, interest or costs;

(d) the number of the execution case of the Court, where such case is pending; and

(e) the name and address of the payer.

(4) On any amount paid under clause (a) or clause (c) of sub-rule (1) interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule (2).

(5) On any amount paid under clause (b) of sub-rule (1) interest, if any, shall cease to run from the date of such payment: :

Provided that, where the decree-holder refuses to accept the postal money order or payment through a bank, interest shall cease to run from the date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall cease to run from the date on which money would have been tendered to him in the ordinary course of business of the postal authorities or the bank, as the case may be.

25.Order XXXIX of the Madras High Court Original Side Rules deals with the execution of decree and orders. Necessary application to be filed under Order XXXIX for execution of decree and orders. However, in the case before hand, the first respondent has not filed any application under Order XXXIX for realising the amount attached before judgment. Without filing an appropriate application under Order XXXIX, first respondent filed A.No.963 of 2018 in C.S.No.470 of 2007, seeking directions directing the Garnishee/NHAI to deposit the compensation amount which is already attached before judgment. Again an application in A.No.1245 of 2021 was filed for withdrawal of Rs.12,39,45,026.50 from the amount deposited by NHAI. This application was dismissed by the learned Master stating that the first respondent did not file any execution petition to execute the decree. Similarly, an application filed by the applicant in D.No.91830/2020 was also dismissed stating that "the application is not maintainable and the remedy available to the applicant is to file only a execution proceedings". Thus, it is quite clear that the first respondent without filing the execution proceedings straight away filed A.No.963 of 2018 in

C.S.No.470 of 2007, for directions to deposit the amount by NHAI and A.No.1245 of 2021 for withdrawal of the amount. Filing of these applications, without resorting to execution proceedings are not approved by law. First respondent should have taken steps to set aside the Lok Adalat Award and filed Execution Petition to realise the decree amount. That is not done in this case. As already stated, challenging the dismissal of A.No.1245 of 2012, A.No.2856 of 2021 was filed. It is not in dispute that no notice was given to the respondents in A.No.2856 of 2021. The legal maxim *Audi alteram partem* requires that other side must be heard. Any order passed without giving notice to the other side cannot be sustained under law.

26.Thus, this Court finds that in view of the non service of notice to the respondents in A.No.2856 of 2021; that the Lok Adalat Award passed in LAC No.436 of 2016 is still in force and is not challenged by the first respondent in the manner known to law; that the amount of Rs.12,39,45,026.50 was withdrawn by the petitioner without filing an execution petition under Order XXXIX of the Madras High Court

Original Side Rules in tune with Section 51 and Order XXI Rule 1 C.P.C., this Court is of the view that the order passed in A.No.2856 of 2021 has to be necessarily set aside and accordingly set aside.

27.In view of the setting aside of the order passed in A.No.2856 of 2021 on 25.08.2021, this Court directs the first respondent to re-deposit the amount of Rs.12,39,45,026.50 into the Court within a period of one month from the date of receipt of a copy of this order.

28.Accordingly, this Application is allowed.

sli **03.03.2023**

G.CHANDRASEKHARAN , J.

sli

Pre-Delivery Order in
A.No.145 of 2022
in
C.S.No.478 of 2007

03.03.2023