

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

108

CWP-25435-2023 (O&M).
Date of Decision: 06.12.2023.

HARNEK SINGH

... Petitioner

Versus

THE PRESIDING OFFICER, NATIONAL LOK ADALAT,
BAGHAPURANA, DISTRICT MOGA AND ANOTHER.

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. G.S. Jagpal, Advocate,
for the petitioner.

VINOD S. BHARDWAJ, J. (ORAL)

Prayer in the present petition is for seeking setting aside of award dated 09.03.2019 (Annexure P-3) passed by respondent No.1- National Lok Adalat, in Civil Suit No.126 of 2018 titled as 'Gurdev Singh Vs. Harnek Singh' vide which the civil suit was disposed of as settled in an illegal and arbitrarily and without complete assurance that the statement of petitioner has been recorded voluntarily and without any pressure; coercion or fraud played by respondent No.2.

Learned counsel appearing for the petitioner contends that the respondent No.2 had filed the aforesaid civil suit for possession of 54 kanals 09 marlas of land by way of specific performance of agreement to sell dated 24.05.2016 for a total sale consideration of Rs.1,02,09,375/- out of which Rs.82,00,000/- was claimed to have been paid as earned money. The sale deed in terms of the above agreement to sell was to be executed on or before 25.04.2018. The petitioner (defendant in the Civil Suit) appeared through the counsel and filed the written statement contesting the averments made by the plaintiff (respondent No.2 herein) in the said civil suit and denying the execution of the agreement to sell as well as the receipt of any earnest money as claimed by the respondent-plaintiff. He further argued that during the pendency of the civil suit, the petitioner was compelled to enter into a settlement that he will return the earnest money of Rs.82,00,000/- along with interest @ 1% per month within a period of 04 months. The matter was thereafter referred to the National Lok Adalat, Bagha Purana. The statement of the petitioner was recorded that he will pay Rs.82 lakhs along with interest @ 1% per month within a period of 04 months in pursuance whereof a decree was passed on 09.03.2019.

It is argued by the learned counsel for the petitioner that the petitioner being an aged person was forced to get his statement recorded under mis-representation, mistaken belief, fraud and compulsion. Respondent No.2 is also resident of the same village and the petitioner was made to believe that the respondent No.2 will not claim anything in case the petitioner got his above said statement recorded. It is argued that it is incomprehensible that a prudent person would make a statement that such a

huge amount of Rs.82,00,000/- would be paid along with interest @ 1% per month and reiterated that he had not received the amount as stated by him.

He further submits that when the petitioner failed to make the payment, respondent No.2 filed an execution application bearing No.33 of 2019 on 09.07.2019. Notice in the said Execution was issued to the petitioner and land of the petitioner was also attached and put on sale. The respectables intervened yet again so that respondent no.2 withdraws the execution proceedings. The respondent No.2 delayed the execution proceedings by not depositing the proclamation fee. Eventually, vide order dated 07.11.2019, the executing Court fixed the date of auction for 09.01.2020 and the matter was adjourned to await report, however, the respondent No.2 moved an application to participate in the auction proceedings and to submit bid. The above application was also allowed on a condition that in the event of no other person participating or submitting a bid, the decree holder would be entitled to participate in the auction proceedings as per the Collector rate.

The auction, however, could not be held as per the schedule and had to be re-scheduled vide separate orders of the executing Court. The sale warrants were issued for auction on the spot for 10.03.2023. The reserve price being Rs.64,75,375/-. When no other person submitted the bid, respondent No.2-decree holder furnished his bid at the reserve price. A report was received by the Executing Court from the Naib Tehsildar that since there was nobody else to submit a bid, respondent No.2 was allowed to participate and had submitted the bid for Rs.64,75,375/-. A subsequent

execution bearing No.46 of 2023, was thereafter filed for the balance amount which still remains to be settled.

It was at that time, that the petitioner had approached this Court initially by means of filing CWP No.22432-2022 which was withdrawn with liberty to file a fresh one with better particulars vide order dated 28.09.2022. It is further submitted that the petitioner has also filed a separate Civil Revision No.4899 of 2023 challenging the order dated 07.11.2019 as well as the order dated 06.02.2023 against the order permitting the decree holder to participate and also against the sale proceedings wherein the further proceedings have been stayed vide order dated 31.08.2023.

Learned counsel for the petitioner vehemently argues that as per Section 20 (4) of the Legal Services Authorities Act, 1987, it was the duty of the Lok Adalat to look into the matter and see the genuineness of the consent/compromise/settlement between the parties. Section 20 (4) the Legal Services Authorities Act, 1987 is extracted as under:-

“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)(a) the parties thereof agree; or

(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 cither 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 such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination:

Provided that no matter shall be 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 no 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 advice the parties to seek remedy in a court.

(7) Where the record of the case if returned under sub-section (5) to the court, such court shall proceed to deal with such case from the stage which was reached before such reference under sub-section (1).”

It is also argued by the petitioner that the decree dated 09.03.2019 passed by the Lok Adalat was not in consonance with the provisions of Section 20 (4) of the Legal Services Authorities Act, 1987, rendering the decree liable to be set aside. He further argues that the Lok Adalat never examined or satisfied itself that respondent No.2 does not have any capacity to pay such a huge amount because one Ram Singh had filed a civil suit for recovery of Rs.12 lakhs along with interest and that the said civil suit had been decreed vide judgment and decree dated 23.07.2021. Execution has already been filed by the decree holder Ram Singh against the respondent No.2 in which land of respondent No.2 has been attached and put to auction. He thus contends that the above circumstances sufficiently establish that such a huge amount of Rs.82 lakhs could not have been paid as earnest money by respondent No.2-Gurdev Singh for purchase of land belonging to the petitioner and that a false civil suit had been instituted by him and that the statement of the petitioner, who was then

about 72 years of age, was obtained by mis-representation and by playing fraud upon him.

I have heard the learned counsel appearing for the petitioner and have gone through the documents available on record.

Having heard the learned counsel appearing on behalf of the petitioner and having gone through the record as well as the statutory provision, it is established that jurisdiction of the Lok Adalat is exercised only in the event of a compromise/settlement is arrived at between the parties to dispute in respect of a case pending before it. The Lok Adalat can only initiate steps to persuade the parties to arrive at a settlement, however, while exercising its jurisdiction as Lok Adalat, it does not decide the lis sans the voluntary compromise/settlement amongst the parties. The legal position has been well laid down in the case of **State of Punjab Vs. Jalour Singh, C.A. No.522 of 2008, decided on 18.01.2008.**

In so far as the argument of the petitioner in respect of Section 20 of the Legal Services Authorities Act, 1987, is concerned, the said provision pertains to cognizance of cases by the Lok Adalat and sub Section (4) thereof deals with an endeavour to be made by the Lok Adalat for arriving at a compromise or settlement between the parties and that the Lok Adalat is required to be guided by the principles of equity, fair play and other legal principles.

The above said provision by its very Scheme would come into play in an eventuality where the Lok Adalat is itself instrumental in motivating and persuading the parties to arrive at a settlement/compromise.

Hence, the Lok Adalat has to actively indulge as an intermediary and involve in settlement of the dispute. It is not the case of the petitioner that the compromise in question, on the basis whereof, the petitioner got his statement recorded, was effectuated with the intervention of the National Lok Adalat. Rather, during the course of arguments and as per the pleaded case as well, the parties claim to have had entered into a settlement and decided the dispute without the intervention of the National Lok Adalat. The language of Section 20 (4) of the Legal Services Authorities Act, 1987, uses the phrase.....

“*That 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...*”

The above frame of the clause infers active participation of the Lok Adalat in determination and arriving at a settlement. It does not require the Lok Adalat to probe into settlement of the parties that have been arrived at voluntarily and without the Lok Adalat.

The statement of the petitioner was recorded in terms of the settlement that had already been entered into between the parties. There was thus no involvement or intervention of the National Lok Adalat in forging a settlement between the parties. Hence, the wisdom behind the settlement was not to be examined by the National Lok Adalat, more-so, when the parties did not suffer any incapacity in law. The parties having arrived at a mutual settlement and having got their statements recorded in support

thereof, there was no occasion or reason for the National Lok Adalat to have questioned the legality and validity of the settlement.

Still further, an argument was raised by the counsel for the petitioner that the National Lok Adalat did not seek verification of the settlement, however, on a specific query, he fairly concedes that the signatures on the compromise are actually by the petitioner himself and the same is not disputed but he was allowed to sign it under pressure or fraud.

Once the identity of the petitioner herein being the signatory of the settlement and having got his statement recorded is not being disputed, the argument of the petitioner fails to find any weight. The question of verification of signature would come into play only in case there is a dispute as regards the identity of the person who got his statement recorded qua the settlement between the parties creating a binding obligation and passing of a decree. Once the identity of the person making the statement itself is not being disputed, such argument fails to impress this Court.

Even otherwise, the petitioner has failed to point out the nature of coercion or pressure or a fraud played upon him. The use of expressed allured itself contradicts the plea of being forced to make a statement. The entire case is just based upon a self serving statement and is not supported by any contemporaneous evidence or documented record. The conduct of the petitioner, however, does not support any inference of petitioner being innocently victimized.

Further, the petitioner has sought to draw an adverse inference and to impugn the settlement on the strength that the respondent No.2

claims to have paid a sum of Rs.82 lakhs whereas a decree of Rs.12 lakhs has been filed against him which he could not pay and his land has been attached. There may be varied reasons for his inability to pay or his failure to pay, however, the same cannot be construed that the settlement which has been arrived by the petitioner himself ought to be disbelieved. The said settlement being a question of wisdom of the petitioner himself, he cannot be permitted to impugn and seek impeachment of his own statement by referring to an alleged inability of the respondent and to thereafter draw an inference that the said respondent could not have advanced the amount as claimed by him and agreed to be returned by the petitioner. It is reiterated that the Court would not stand in the way of a party autonomy to enter into a settlement. The said settlement having been arrived at between the parties, the presumption in law is that the settlement was voluntary, willful and without any pressure etc. If the petitioner wants to dispute the same, burden lies on him to prove his case and stand on his own legs instead of suggesting remote and distant inferences from secondary evidence and defaults of respondent.

There was no occasion for the Court to have influenced the decision arrived at between the parties since that would amount to an interference by the Lok Adalat and would run contrary to the Statute which promotes resolution of the issues by the parties themselves or with independent intervention of Court which only acts as a catalyst and a motivator but does not substitute for the wisdom of the parties entering into settlement.

Another aspect which draws attention of this Court is that even though the aforesaid decree was passed on 09.03.2019 and the first execution was filed on 09.07.2019, however, the petitioner, for reasons best known to himself, never raised a challenge to the decree at the first available opportunity. In case the decree would have been secured by playing some fraud or misrepresentation, there was no reason as to why the petitioner preferred to stay home and not to agitate the said issue or approach the Court immediately thereafter. The subsequent proceedings also show that the land of the petitioner was attached and put to auction. Permission was also granted to the decree holder to participate in the auction proceedings. Hence, the execution itself is a contested execution and all long the petitioner (defendant in the civil suit-judgment debtor) was fully aware of all those proceedings that had been initiated. It was only after a lapse of nearly 04 years of the award having been passed and the execution proceedings having been initiated that the petitioner preferred to impugn the settlement by raising a plea that he had been misled by misrepresentation to get his statement recorded. The conduct of the petitioner and his actions fail to inspire confidence of this Court. It cannot be perceived that a settlement, which was entered into between the parties and which was never objected to by the petitioner herein for a good period of 04 years, would all of a sudden become a settlement arrived at by misrepresentation only after the execution proceedings have led to auction of the land of the petitioner. The contention of mis-representation thus seems to be an afterthought and only to delay the execution proceedings that have been instituted. The plea of fraud and mis-representation deserve to be rejected.

I also find that the institution of the present petition is highly belated and does not give any valid reason for such delay more-so, when petitioner is evidently aware of all proceedings. Even though an arduous attempt has been made to contend that the petitioner was 72 years of age at the time when he made the said statement, however, it is not the pleaded case or argued before this Court, on the dint of any evidence, that he was mentally not alert or was unfit to make such a statement. There can be thus no presumption of his mental inability or him being incapable of taking decisions or to know the consequences thereof. The petitioner, rather, being a person who has faced all weathers in life would be fully aware of the consequences of making any such statement. A presumption to the contrary could have been drawn only in case there was an unimpeachable evidence on record to suggest that on account of his medical conditions, his mental faculties were compromised and he could not have understood the consequences and hence, made a statement against his own interest.

Considering it from any of the above said accounts, I do not find it a fit case to accept the present writ petition and to unsettle an award that has already attained finality way back in the year 2019 between the parties and the parties had altered their position on the strength thereof.

The present petition is accordingly dismissed.

December 06, 2023
raj arora

(VINOD S. BHARDWAJ
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No