

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.891 of 2017

- 1.1. Asif Nadeem Son of Late Syed Mohammad Sohail @ Saiyad Mohamad Sohail @ Md. Sohail Permanent resident of Village- Malipur, Police Station- Garhpura District Begusarai, At present residing at ward no.- 39, New Colony, Pokhariya, Police Station- Begusarai, District- Begusarai.
- 1.2. Sana Naz Daughter of Late Syed Mohammad Sohail @ Saiyad Mohamad Sohail @ Md. Sohail Permanent resident of Village- Malipur, Police Station- Garhpura District Begusarai, At present residing at ward no.- 39, New Colony, Pokhariya, Police Station- Begusarai, District- Begusarai.
- 1.3. Saba Naz Daughter of Late Syed Mohammad Sohail @ Saiyad Mohamad Sohail @ Md Sohail, Resident of Village- Malipur Police Station- Garhpura, District- Begusarai, At present residing at C/o Md. Jalaluddin Roomi, Block- B, Flat no.- 10, 4/1, Bechulal Road, Entaly, Police station District- Kolkata, State- West Bengal.
- 1.4. Md. Tausif Kalim Son of Late Syed Mohammad Sohail @ Saiyad Mohamad Sohail @ Md. Sohail Permanent resident of Village- Malipur, Police Station- Garhpura District Begusarai, At present residing at ward no.- 39, New Colony, Pokhariya, Police Station- Begusarai, District- Begusarai.
- 1.5. Yoosuf Waseem Son of Late Syed Mohammad Sohail @ Saiyad Mohamad Sohail @ Md. Sohail Permanent resident of Village- Malipur, Police Station- Garhpura District Begusarai, At present residing at ward no.- 39, New Colony, Pokhariya, Police Station- Begusarai, District- Begusarai.
- 1.6. S.M. Wasif Karim Son of Late Syed Mohammad Sohail @ Saiyad Mohamad Sohail @ Md. Sohail Permanent resident of Village- Malipur, Police Station- Garhpura District Begusarai, At present residing at ward no.- 39, New Colony, Pokhariya, Police Station- Begusarai, District- Begusarai.
- 1.7. Kashif Sohail Son of Late Syed Mohammad Sohail @ Saiyad Mohamad Sohail @ Md. Sohail @ S.M. Sohail Permanent resident of Village- Malipur, Police Station- Garhpura District Begusarai, At present residing at ward no.- 39, New Colony, Pokhariya, Police Station- Begusarai, District- Begusarai.
- 1.8. Shahin Bano Widow of Late Syed Mohammad Sohail @ Saiyad Mohamad Sohail @ Md. Sohail Permanent resident of Village- Malipur, Police Station- Garhpura District Begusarai, At present residing at ward no.- 39, New Colony, Pokhariya, Police Station- Begusarai, District- Begusarai.

... .. Petitioner/s

Versus

1. S. M. Ashfaq Usmani Son of Late Mir Usman Resident of Village- Malipur, Police Station- Garhpura, District- Begusarai.
2. S.M. Tanweer Usmani, Son of Late Mir Usman Resident of Village- Malipur, Police Station- Garhpura, District- Begusarai.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Abdul Mannan Khan, Advocate Mr. Allama Abdul Quadir Jamal Faridi, Advocate
For the Respondent/s	:	Mr. Raghbir Ahsan, Sr. Advocate Mr. Ashar Akhtar, Advocate



CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 03-09-2024

Heard learned counsel for the petitioners and learned senior counsel for the respondents.

2. The petitioners are aggrieved by the order dated 14.12.2016 passed in Misc. Case No. 01 of 2008 by learned Sub Judge, Bakhari, Begusarai whereby and wherein the petition filed by the petitioners questioning maintainability of the miscellaneous case filed against the Award passed by learned Lok Adalat on the basis of compromise between the parties in Title Suit No. 67 of 2004 has been rejected.

3. Learned counsel for the petitioner submits that the impugned order is not sustainable in the light of settled position of law that a miscellaneous case against an Award passed by the Lok Adalat is not maintainable before the Civil Court as the same can only be assailed before this Court under Article 227 of the Constitution of India. On this limited point, the impugned order has been challenged as the same is an illegal order and an illegal proceeding is being conducted against the settled position of law.

4. Learned senior counsel appearing on behalf of the respondents submits that there is no infirmity in the impugned order as the order has been passed considering the fact that



challenge to the Award is on the ground of fraud and the same could be challenged before the same Court in terms of provisions of Order 23 Rule 3 of the Code of Civil Procedure. The Award of the Lok Adalat is treated as decree of the Civil Court and on the basis of the Award, decree has been passed by learned Sub Judge so the respondents have rightly approached the learned Sub Judge which has passed the decree. Learned senior counsel has referred to the decision of Hon'ble Supreme Court in the case of *K. Srinivasappa vs M. Mallamma* reported in **2022(4) BLJ SC 357** to show that the Award has been challenged on the ground of fraud before the forum which passed the Award. Further reference has been made to a decision of this Court in the case of *National Insurance Company Ltd. & Anr. Vs. State of Bihar & Ors.* reported in **2022(4) BLJ 163**.

5. I have given my thoughtful consideration to the different aspects of the matter. An Award passed by Lok Adalat could not be assailed by filing a petition for miscellaneous case before the Court which sent the matter to the Lok Adalat for settlement. Award passed in such situation could be challenged before this Court under Article 227 of the Constitution of India. The decisions cited by the learned senior counsel also point to



this fact. Further, challenge to the Award passed by Lok Adalat in a matter sent by the Civil Court has been held to be assailable before this Court as held in the case of *National Insurance Company (Supra)*.

6. At the stage, learned senior counsel for the respondents submits that if the impugned order is set aside the respondents may be granted liberty to take recourse to the appropriate forum in accordance with law.

7. Having regard to the facts and circumstances and discussion made herein before, I do not think the impugned order could be sustained and hence, the same impugned order dated 14.12.2016 passed in Misc. Case No. 01 of 2008 is set aside along with the proceedings in the Misc. Case No. 01 of 2008.

8. Accordingly, the present petition stands allowed.

9. However, the respondents are at liberty to take recourse to appropriate forum in accordance with law.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05.09.2024
Transmission Date	N/A

