

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1688 of 2019

In
Civil Writ Jurisdiction Case No.19502 of 2016

=====

Sri Praveen Anand S/o Late Balram Anand, C-71, 7th Floor, Krishna Apartment, Boring Road, P.S.-Srikrishna Puri, Patna.

... .. Appellant/s

Versus

1. The Asst. General Manager State Bank of India, Atressed Assets Recovery Branch, (SARB), Patna at 2nd Floor, SBI Patna Main Branch Building, West Gandhi Maidan, Patna.
2. Union of India through Presiding Officer, Debt Recovery Tribunal, Wings A and B, 2nd Floor, Karpuri Thakur Sadan, GPOA, Near Rajeev Nagar, P.S. Ashiana Digha Road, Patna-800025.

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Arbind Kumar Jha, Advocate Mr. Vijay Kumar Verma, Advocate
For the Respondent/s	:	Mr. Kaushlendra Kumar Sinha, Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-08-2024

The writ petitioner is the appellant, who is aggrieved by the refusal of the learned Single Judge to interfere with the proceedings initiated by the Bank, against the order of the Lok Adalat before the Debts Recovery Tribunal (hereinafter referred to as 'DRT'), passed under Section 19(25) of the Recovery of the Debts and Bankruptcy Act, 1993 (hereinafter referred to as 'RDB Act'). The petitioner was also aggrieved



with the recovery proceedings initiated against him *de hors* the settlement arrived at, in the Lok Adalat. The order of the Lok Adalat is produced as Annexure-7 in the writ petition and the order of the DRT interfering with the same is produced as Annexure-13.

2. The learned Single Judge found that initially a settlement of Rs.27 lakhs was arrived at and despite the petitioner having not complied with that, the DRT had in Miscellaneous Applications filed before it, granted further time to the petitioner; which was not permissible. The time granted by the DRT also was without noticing the recovery proceedings already initiated, based on the earlier orders of the DRT, which was passed, on the writ petitioner not complying with the earlier order of the Lok Adalat. The last of such orders in a Miscellaneous Application, which granted further time to the petitioner was pending before the appellate authority. The certificate of recovery already issued by the DRT was still valid. The order of the Lok Adalat impugned in the writ petition was clearly a case of misrepresentation, wherein the Bank's dues were recorded as Rs.96,134/- when the total outstanding amount, as per the recovery certificate stood at Rs.52,07,624/- as on 30.11.2014.



3. The decisions referred to by the DRT were also looked into, to find that since the impugned award was passed on misrepresentation of facts; which ground did not exist in the various decisions cited by the writ petitioner, the DRT was perfectly within its jurisdiction to interfere with the award. It was held that the decision in *Indian Banks v. Blue Jaggers Estates Limited and Others; (2010) 8 SCC 129* applied squarely to the facts of the present case. Though, a settlement has been entered into by an Officer of the Bank; the Bank being the custodian of public money, the settlement having been clearly demonstrated to be on misrepresentation of facts, the Bank was perfectly justified in approaching the DRT against the order of the Lok Adalat, was the finding.

4. Before us, the learned Counsel for the appellant placed reliance on *Bhargavi Constructions and Another v. Kothakapu Muthyam Reddy and Others; (2018) 13 SCC 480*. Following a three Judge Bench judgment, in *State of Punjab and Another v. Jalour Singh and Others; (2008) 2 SCC 660*, the Hon'ble Supreme Court had categorically laid down that the challenge to an order of Lok Adalat can only be raised before the High Court under Article 226/227. The impugned order is totally without jurisdiction, is the argument raised.



5. The learned Counsel appearing for the respondent-Bank, however, asserted that when fraud and misrepresentation of facts are alleged, it vitiates the settlement arrived at before the Lok Adalat. The Officer of the respondent-Bank for some reason; probably not being apprised of the facts fully, agreed for the settlement, for a paltry sum when already recovery certificate for humongous amounts was pending realization against the writ petitioner-borrower. Reliance was placed on *R. Janakiammal v. S.K. Kumarsamy and Others; (2021) 9 SCC 114* to contend that the compromise decree if alleged to be void or voidable, a party to the said consent decree, for challenging the same, has to approach the same Court, which recorded the compromise. The DRT had recorded the compromise in the Lok Adalat and it was perfectly in order that the Bank had approached the DRT against the compromise.

6. At the outset, we have to observe that the conduct of the appellant, the borrower, is suspect, for reason of the earlier Lok Adalat order having not been complied with and then approaching the Tribunal multiple times for extension of time to comply with the compromise entered into at the Lok Adalat. However, legal issues, especially of jurisdiction or lack of it, cannot be decided merely on the suspect conduct of the



borrower or on the trite principle that Banks deal with public money and the Courts would be slow in interfering with the legal proceedings initiated for recovery of such public money, from unscrupulous defaulting borrowers, on purely technical issues.

7. We have to detail the checkered history of the proceedings before the DRT. The Bank initially filed Original Application No.24 of 2008 before the DRT, Patna, for realization of a sum of Rs.34,01,934.21 with interest and costs. In a Special Lok Adalat, constituted at the DRT, by Annexure-1, a settlement was arrived at for satisfaction of the loan amounts, by payment of Rs.27 lakhs in installments; specified date-wise in the order itself, the last of which installments fell on 17.01.2011. The petitioner failed to comply with the terms and conditions of the order of the Lok Adalat and the DRT went ahead with the O.A. filed, the proceedings in which culminated in a certificate of recovery of the amounts demanded, along with *pendente lite* and future interest at contractual rate from 01.02.2008, being issued (Annexure-2 of the writ petition).

8. The Bank also initiated R.P. Case No.40 of 2011 before the Recovery Officer, DRT, Patna and during the pendency of the said proceedings, M.A. No.79 of 2012 was filed



before the DRT, Patna, to interdict the recovery, in view of the award of the Special Lok Adalat. Though, the contentions of the petitioner were rejected, a fresh direction by the DRT was issued that the petitioner would pay 40% of the settlement amount within 15 days and the balance in 3 months in equal installments, with simple Prime Lending Rate (PLR) interest; which order is produced as Annexure-3 to the writ application. The DRT had absolutely no jurisdiction to grant such time on the basis of the compromise; which compromise was hedged in, with the specific instalments date-wise; which if not complied with, the compromise itself would fall through and the award of the Special Lok Adalat would be of no consequence. Be that as it may, the Bank did not challenge the said order and the borrower also failed to satisfy the settlement amounts, even in the further time granted by the DRT.

9. The Recovery Officer, thus, proceeded with R.P. Case No.40 of 2011 and auction sale of the mortgage properties was notified. Once again, an M.A. was filed before the DRT with a cheque of Rs. 8 lakhs, praying for further time to pay the settlement amounts in installments. The DRT once again by its order dated 19.07.2012, deferred the recovery and a last chance was given to the borrower to clear the balance amounts as per



the settlement of 17.01.2010 before the Lok Adalat with 9% simple interest from the date of default. A time of two months was granted for settlement of the amounts by the Tribunal; which again was not complied with by the appellant/borrower.

10. Yet again, M.A. No.378 of 2005 was filed by the appellant in which an order was passed on 04.04.2014, again referring to the order of the Special Lok Adalat in 2010 and permitting three monthly installments to pay up the amounts as per the compromise and also permitting the appellant/applicant to approach the Tribunal, if any problem is faced in paying up the balance amounts; for reducing the compromise amount. We cannot but observe that these repetitive orders were clearly without jurisdiction. The last order has been challenged by the respondent-Bank before the Debts Recovery Appellate Tribunal (DRAT) wherein the proceedings are registered as S.R. No.135 of 2014.

11. The appellant's claim is that he had made substantial payments, as per the order dated 04.04.2014, and this led to the statement of the Bank before the Special Lok Adalat that what remains to be paid is only Rs.96,134/- and a compromise was arrived at to settle the claim by payment of Rs.20,000/-; which has been paid up by the appellant. The Bank



challenged the award passed by the Lok Adalat by way of M.A. No.51 of 2015 in which the impugned order was passed.

12. We will have to first deal with the decisions placed before us to understand the jurisdiction insofar as the challenge to a compromise decree; which we have to observe are distinct and different insofar as a compromise decree obtained in a compromise entered into between the parties before a Court of law, specifically under the Civil Procedure Code and a compromise resulting in an award passed by the Lok Adalat constituted under the Legal Services Authorities Act, 1987 (hereinafter referred to 'LSA Act').

13. *R. Janakiammal (supra)*, was a case arising under the family and personal laws which dealt with partitions, family arrangements and settlements and the status of the properties held by the family and its members, whether it was jointly held or self-acquired. The question dealt with and highlighted by learned Counsel appearing for the respondent-Bank was regarding the forum for challenging a compromise decree on the ground that it was unlawful. Noticing Order XXIII Rule 3A of the Code of Civil Procedure, which bars a suit to set aside the decree on the ground that compromise entered into was not lawful, the word 'lawful' in Order XXIII Rule 3A was



juxtaposed with the Explanation in Rule 3 which declared that an arrangement or compromise which is void or voidable under the Indian Contract Act shall not be deemed to be lawful. It was held that an agreement or compromise, if clearly void or voidable, will not be lawful and would attract the bar under Order XXIII Rule 3A and there cannot be a separate suit filed to set aside the void or voidable decree; but the party who assails the compromise can question the same before the Court which had recorded the compromise in question and that Court which passed the decree is enjoined to decide the controversy as to whether the parties have arrived and adjusted the lis, in a lawful manner.

14. Again, we have to reiterate the distinct nature and status of a decree passed on compromise under the CPC and an award passed under the LSA Act. The question to be decided would be when a Lok Adalat is constituted in the DRT or any other Court; whether the members constituting the Lok Adalat would bring with him/her the status of the Courts, they are normally occupying and render the award passed also, the status of an award/decreed passed by the Court they officially occupy. If the answer is in the negative, there is no question of the award of the Lok Adalat being challenged in the Court, normally



occupied by the member/members. The decision in ***R. Janakiammal (supra)*** has absolutely no application insofar as the awards passed under the LSA Act.

15. In this context, a three Judge Bench in ***State of Punjab v. Jalour Singh (supra)*** is relevant. Therein, the award of the Lok Adalat was with respect to the compensation in a Motor Accidents Claim which was pending before the High Court in an appeal, from the order of the Motor Accidents Claims Tribunal. The appeal was referred to the Lok Adalat organized by the High Court for settlement and when the case was taken up, the parties were not present, but the Counsel were present. The Lok Adalat passed an order enhancing the compensation and also provided that if the parties object to the enhancement, then, they could move the High Court within two months for disposal of the appeal. The appellant challenged the award under Article 227 of the Constitution of India and a Single Judge of the High Court dismissed the same finding that it was not maintainable. The Hon'ble Supreme Court asserted and affirmed the jurisdiction of the High Court in deciding the writ petition under Article 226 or 227 as against the award of a Lok Adalat and expressed dismay at the manner in which the entire matter was dealt with, undermining the very purpose and



object of the Lok Adalat. In the context of the award of the Lok Adalat, not being agreed to, by the parties, the option was for the High Court to deal with the appeal against the order of the Motor Accidents Claims Tribunal itself, was the finding.

16. The Hon'ble Supreme Court dilated upon the manner in which the awards of the Lok Adalats are to be challenged; which the impugned judgment in this case failed to reckon. Referring to the provisions of the LSA Act, it was held that a Lok Adalat would have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of any case pending, for which Lok Adalat is organized and even in matters at the pre-litigation stage; but they have no adjudicatory or judicial functions and their function is purely and simply one of conciliation.

17. We specifically refer to paragraph 8 and 9 from *Jalour Singh (supra)*, which are extracted hereunder: -

8. It is evident from the said provisions that the Lok Adalats have no adjudicatory or judicial functions. Their functions relate purely to conciliation. A Lok Adalat determines a reference on the basis of a compromise or settlement between the parties at its instance, and puts its seal of confirmation by making an award in terms of the compromise or settlement. When the Lok Adalat is not able to arrive at a settlement or compromise, no award is made and the case record is returned to the court from which the reference was received, for disposal in accordance with law. No Lok Adalat has the power to "hear" parties to adjudicate cases as a court does. It discusses the subject-matter with the



parties and persuades them to arrive at a just settlement. In their conciliatory role, the Lok Adalats are guided by the principles of justice, equity and fair play. When the LSA Act refers to “determination” by the Lok Adalat and “award” by the Lok Adalat, the said Act does not contemplate nor require an adjudicatory judicial determination, but a non-adjudicatory determination based on a compromise or settlement, arrived at by the parties, with guidance and assistance from the Lok Adalat. The “award” of the Lok Adalat does not mean any 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 agreed by parties in the presence of the Lok Adalat, in the form of an executable order under the signature and seal of the Lok Adalat.

9. But we find that many sitting or retired Judges, while participating in the Lok Adalats as members, tend to conduct the Lok Adalats like courts, by hearing parties, and imposing their views as to what is just and equitable, on the parties. Sometimes they get carried away and proceed to pass orders on merits, as in this case, even though there is no consensus or settlement. Such acts, instead of fostering alternative dispute resolution through the Lok Adalats, will drive the litigants away from the Lok Adalats. The Lok Adalats should resist their temptation to play the part of judges and constantly strive to function as conciliators. The endeavour and effort of the Lok Adalats should be to guide and persuade the parties, with reference to principles of justice, equity and fair play to compromise and settle the dispute by explaining the pros and cons, strengths and weaknesses, advantages and disadvantages of their respective claims.

18. We emphasize the caution expressed by the Hon’ble Supreme Court insofar as the members constituting the Lok Adalat; be it sitting or retired Judges, participating and conducting proceedings in the Lok Adalat, like Courts, by hearing parties and imposing their views which they deem to be



just and equitable. The Lok Adalats do not play the part of Judges and in that context, there is no question of the award being challenged in the Court in which the member of the Lok Adalat normally sits. We also emphasize the fact that often Lok Adalats are constituted of retired Judges in which event, there would be no Court existing to challenge the award passed. There would also be Lok Adalats constituted with members from the Bar which again cannot be challenged in the Courts occupied by such member; which is non-existent. Merely because a sitting Judicial Officer is the Lok Adalat or a member of the Lok Adalat, that would not confer jurisdiction on the Court, which he or she normally occupies, with the jurisdiction to challenge the award passed in the Lok Adalat. Nor can an award of the Lok Adalat be challenged before the Court which referred it, since once the matter is referred and the matter is settled, the Court of reference becomes *functus officio*. There is also pre-litigation matters settled in Lok Adalats which are not referred by any Court. This is why we emphasized at the outset that there is a distinction insofar as a compromise decree passed under the CPC and an award on the basis of a settlement entered into before the Lok Adalats, constituted under the LSA Act.

19. The subsequent judgment of the Hon'ble



Supreme Court in *Bhargavi Construction (supra)*, followed the three Judge Bench in *Jalour Singh (supra)* and categorically laid down a particular remedy for challenging the order of the Lok Adalat, which has to be followed by every litigant in letter and spirit especially the declaration made by the Hon'ble Supreme Court, being law under Article 141 of the Constitution of India as laid down in *M. Nagaraj and Others v. Union of India; (2006) 8 SCC 212*. Examining the case on the basis of the declaration of law made by the Hon'ble Supreme Court, we are clear in our minds that the challenge made by the Bank to the award, before the DRT by M.A. No.51 of 2015 is clearly without jurisdiction despite the fact that the Presiding Officer of the DRT was the Lok Adalat which passed the award. Neither that nor the fact that the matter was referred to the Lok Adalat by the DRT, does not empower or clothe the DRT with the authority to examine the correctness or otherwise of the award passed on settlement. Nor can it examine the issue as to whether the same is passed on fraud or misrepresentation; which grounds can be raised only when a proper challenge is made to the award passed in a petition under Article 226 before the High Court.

20. We also observed at the outset that, we cannot proceed to decide matters of jurisdiction, merely on the conduct



of the parties or based on our anxiety to protect public money. The learned Single Judge has noticed the decision in ***Indian Bank (supra)*** and the decision of the Allahabad High Court in ***Dr. (Smt.) Shashi Prateek v. Charan Singh Verma and Another; AIR 2009 ALL 109*** referred to by the Tribunal. With due respect, we have to notice that the paragraphs of the decisions in ***Indian Bank*** and ***Shashi Prateek (both supra)*** were extracted together in paragraph 24 of the impugned judgment; which gives the impression that the issue of jurisdiction decided in the later paragraph, was a consequence of the principle stated in the former paragraph; which it is not. The first paragraph from the decision in ***Indian Bank (supra)*** emphasize the aspect of the Banks being trustees of public funds, in a matter wherein there was no consideration of an award under the LSA Act. In the paragraph extracted by the DRT, from the decision of the Allahabad High Court, the Tribunal was found to be entitled to empower or recall the order or award passed by the Lok Adalat on the ground of fraud or misrepresentation or mistake of fact; which clearly runs against the decision of the Hon'ble Supreme Court in ***Jalour Singh (supra)***. ***Indian Bank (supra)*** does not deal with the issue of a challenge against a compromise decree, either under the CPC or



the LSA Act, and the principle stated therein, though having universal application; cannot render inconsequential the jurisdictional issue regarding the manner of challenge to an award passed by the Lok Adalat, as per a settlement arrived at between the parties before it.

21. We find no reason to sustain the order at Annexure-13 challenged in the writ petition. We reverse the judgment of the learned Single Judge and set aside Annexure-13 order. We make it clear that the Bank would be left remedy to challenge the award in a properly instituted writ petition under Article 226. The Bank would initiate such proceedings, if it desires, so to do, within 3 months from the date of uploading of this judgment. In the meanwhile, the Bank would not be coerced into surrendering the documents by which the borrower/appellant created mortgage of the properties, furnishing collateral security. The Bank would also be entitled to prosecute the appeal filed against the order of the DRT which granted further time to satisfy the loan amount, as per settlement arrived at by Annexure-1; after the borrower failed to comply with Annexure-1 and also failed to comply with two subsequent indulgence shown by the DRT to satisfy the loan amount as per Annexure-1; all of which as we held are without jurisdiction and



works against the principles enshrined under the LSA Act.

22. Just as a judicial decision, awards passed by the Lok Adalat also should have a finality to it. If the terms of the settlement are not complied with then, necessarily the order based on compromise works itself out and there cannot be a further settlement ordered by the Court or Tribunal, which has referred the matter to the Lok Adalat, especially without the consent of the other side.

23. The appeal is allowed but with the above reservations and the liberty conceded to the respondent-Bank. The parties are left to suffer their respective costs.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

sharun/-

AFR/NAFR	AFR
CAV DATE	31.07.2024
Uploading Date	06.08.2024
Transmission Date	

