



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 8861 OF 2023

Avinash Madhav Dhotre
Age : 49 years, Occ: Rickshaw Driver
and Business, residing at Gat No.
409/5/6, Opp. Sainik School,
Sadar Bazar, Yojana Nagar Society,
Plot No. 6, Satara

...Petitioner

Vs.

Khushi Avinash Dhotre
Age : 21 years, Occ. : Education
Residing at Jagdamala Nagar,
Takali Road,
Taluka Pandharpur,
District Solapur

...Respondent

Mr. Samir Kumbhakoni	Advocate for the Petitioner
Mr. Vaibhav R. Gaikwad	Advocate for the Respondent

CORAM : S. M. MODAK, J.

DATE : 03rd DECEMBER 2024

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith.
2. Heard finally learned Advocate Shri Kumbhakoni for the
Petitioner- Defendant and learned Advocate Shri Gaikwad for the

Respondent-Plaintiff by consent. The only issue arisen in this petition is “*whether the suit is barred by law as contemplated under the provisions of Order VII Rule 11(d) of the Code of Civil Procedure and whether the trial committed an error in rejecting the application moved by the petitioner/ defendant ?*”. ‘Law’ in this suit is principle of res-judicata that is to say ‘when there is settlement between two spouses on matrimonial issues including quantum of maintenance, whether the daughter born out of the said wedlock after passage of time is justified in suing his father/petitioner/defendant’?

3. In fact the issue raised in this petition needs to be decided on ‘well established principle of stick to the averments in the plaint only and none other’. Learned advocate Shri Khumbhakoni tried his level best to convince me to decide the application of the basis of submission *‘finality to an award of Lokadalat passed on the settlement arrived in between parties and hence cannot be reopened unless the said award is set aside. But I can not accept his submission simply for the reason law does not permit the Court to reject the plaint by considering materials which are alien to scope of inquiry expected at this stage.*

Background facts

4. The Plaintiff and the Defendant are daughter and father. Daughter filed a suit for maintenance as per the provisions of Section 20 of the Hindu Adoption and Maintenance Act before the Court of Civil Judge Junior Division Pandharpur being R.C.S. No. 267/2019. The relationship is not disputed. She wants permanent maintenance of Rs. 30,000/- and 15,000/- interim maintenance. **The averments in the plaint relevant for this application are as follows :-**

- a. She has referred about the settlement entered into in between her mother and Defendant in Hindu Marriage Petition No. 53 of 2009. This petition was filed for divorce by the husband/petitioner (page no. 32).
- b. Settlement pursis was filed in that petition on 02.05.2009 (page no. 37). On the basis of said pursis, matter was referred to the Lok Adalat and **the petition was disposed of on 22.08.2009** (page no. 36A).
- c. In para no. 5, **she has quoted various reasons** why she wants maintenance. It is on the basis of the increase in prices and inadequate financial means, sufficient

financial resources available to her father/petitioner and other reasons.

- d. She has pleaded about in-capacities of her mother and financial resources of her father/petitioner.
- e. She has pleaded cause of action that arose when the petitioner failed to comply with the notice, instead gave false and evasive reply.

Filing of rejection application

5. Present petitioner/defendant filed an application for rejection of plaint on the ground of settlement earlier recorded and contention is unless and until the award is set aside, Respondent/defendant cannot file fresh suit(page no. 45). Trial Court rejected the said contention vide his order dated 28/2/2023 (page no. 47). It is challenged by the defendant.

6. Trial Court rejected the contention primarily for the reason settlement in Lokadalat is not an adjudication. As per Legal Service Authorities Act, 'determination' and 'award' does not contemplate 'adjudication'. The making of an award is merely an administrative act of incorporating the terms of settlement or compromise. Trial Court

rejected the contention by placing reliance on the provisions of Section 23 of Indian Contract Act. Statutory right which is conferred on unmarried daughter to claim maintenance cannot waived by mother. The reason is it is hit as 'the object if unlawful, it is against public policy'.

7. **I am inclined to confirm the decision of trial court but for different reasons.** I am on the considered view 'the grievances raised in the rejection application are on the basis of *'settlement arrived at in between parties and consequential award passed in Lodadalat'*. But this plea is taken by the father/defendant. The Respondent/daughter in the suit has not made any complaint about the settlement arrived by her mother on her behalf and by the father/petitioner. No doubt, the award passed on private settlement is public document. But the issue is when the plaintiff/respondent has not said anything about this award (except referring it), whether the Court is expected to make observations by invoking the power under the provisions of Order VII Rule 11(d) of C.P.C.? **The answer is no.** I will give reasons herein after.

8. On this background, I have perused the settlement pursis on page no. 37. This was filed in the Marriage petition for divorce filed by

the husband. The petition is on page no. 32. The husband has also referred about earlier proceedings including maintenance in para no. 4 of that petition. His prayer is for divorce. It was filed on 02.05.2009. The settlement pursis was also filed on 02.05.2009 and petition was disposed of 22.08.2009.

Submissions

9. According to learned Advocate Mr. Kumbhakoni the award passed in the Lok Adalat is having effect of decree and it cannot be challenged in the light manner. He relied upon the following two judgments:-

(i) *Sau. Jyotsnamala Ulhas Tawade Vs. State of Maharashtra*¹

Wherein this Court has refused to entertain the petition challenging the award. He invited my attention to the contents of para nos. 5, 7, 11 and 13 and 16. This Court has observed :--

*“There can be no dispute about the legal preposition regarding filing of writ petition in which the award can be set aside, provided the party challenging the same **satisfies the sheer illegality**”.* para no. 11.

According to learned Advocate Mr. Kumbhakoni, the plaint is silent

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about any illegality in the said award. It is true in the said matter the dispute was in between the husband and the wife. Learned Single Judge has refused to entertain the petition for the reason there are no justifiable reasons in entertaining the petition in making grievance about the award. This Court has granted liberty to the wife to take appropriate steps if the amount is not paid as per the settlement decree.

(ii) **Hemantha Kumar Vs. R. Mahadevaiah and Others**²

In this case even the Hon'ble Supreme Court has refused to entertain the grievance made about award passed in Lok adalat. Observations in para no. 6 are important. Parties have settled the dispute and it was informed to the trial Court as per the provisions of order XXIII Rule 3 of the Civil Procedure Code. The trial Court has referred the matter to the Lok adalat and the award was passed. Grievance was on filing of settlement application, trial court ought to have accepted it but instead referred it to lokadalat. The grievance was '*proper procedure was not followed*',. On this background, the Hon'ble Supreme Court refused to accept '*not following procedure is ground to doubt genuineness of the award*'.

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Consideration

10. This Court is not inclined to interfere in the conclusion drawn by the trial court. It is for two reasons. *Prima-facie* I feel interpretations by various constitutional court does not support this submission. Even the observations in two judgments relied upon by Mr. Khumbhakoni do not support him. **Second** is giving a finding ‘on the basis of plea taken on facts which is not part of plaint’ is strictly outside the purview of an inquiry contemplated under the provisions of Order VII Rule 7 of the Code.

11. Learned Advocate Shri Gaikwad emphasized on the provision of **Order XXXII Rule 2 of the CPC** which requires obtaining leave if settlement is arrived at by next friend or guardian. According to learned Advocate Mr. Kumbhakoni this is not applicable when the mother being natural guardian has settled with the husband. This grievance cannot be decided at this stage.

12. One of the signatory to said settlement is her mother and she has not made any grievance about said settlement. Even in the suit the daughter has simply referred it, but she has nowhere pleaded showing displeasure about the said settlement. So to say she has nowhere

pleaded about “the right of mother to settle with the husband about her right to pay maintenance”. It is but natural for the daughter-Plaintiff not to make grievance because that settlement was arrived at by her mother. This may be one of the reason.

13. The Defendant can take plea about validity of the award by way of written statement. He cannot take the plea that the award is valid by making grievance as per the Order VII Rule 11 of the CPC. So the petitioner/defendant needs to be relegated to take plea in written statement and then parties must be given an opportunity to deal with the evidence.

14. For the above reasons, the decision taken by the trial Court cannot be faulted. In fact, trial court ought to have considered the aspect about scope of an inquiry contemplated under the provisions of Order VII Rule 11 of the Code. No observations are made about that claim and it can be decided after the evidence.

15. With these observations writ petition is dismissed.

16. Rule is discharged accordingly.

[S. M. MODAK, J.]