

Nikita

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

WRIT PETITION NO.4505 OF 2022

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Shradha Prashant Kumbhar ... Petitioner

V/s.

Jayanti Bhaskar Shirsat and Ors. ... Respondents

WITH

WRIT PETITION NO.9063 OF 2022

Bhakti Vinaykumar Khatu ... Petitioner

V/s.

Jayanti Bhaskar Shirsat and Ors. ... Respondents

Mr. Nitin Gangal a/w Ashok Kadam a/w Ms. Perna Shukla a/w Ms. Prapti Karkera for the Petitioner, in WP/4505/2022.

Mr. Rajendra Pai, Sr. Adv. a/w Mr. Vinayakumar A. Khatu for the Petitioner in WP/9063/2022.

Mr. Abhay Khandeparkar, Sr Adv. a/w N. U. Dedhia a/w Mr. Rohit Mahadik, a/w Mr. Rushikesh Bhagat, a/w Mr. Farhan Shaikh a/w P. A. Sharma a/w Ms. Apoorva Khandeparkar i/b Khandeparkar and Associates for Respondent Nos.1 and 2.

Ms. Jayanti Shirsat and Mr. Kapil Shirsat, Respondent Nos. 1 and 2 are present in Court.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 27, 2024

P.C.:

1. The challenge in these petitions is to the compromise decree

dated 11th April 2015 recorded by the Lok Adalat recording compromise pursis dated 11th April 2015 below Exhibits-42 and 43 in Regular Civil Suit No.17 of 2015.

2. The facts relevant to the adjudication of the issue involved are as under:

3. Respondent No.1/original plaintiff filed Regular Civil Suit No.17 of 2015 for partition and separate possession of properties referred to in the plaint. In the said suit, defendant No.1 and the plaintiff filed a pursis on 4th April 2015 to place the suit for compromise before the Lok Adalat. Accordingly, on 11th April 2015, the head of the Panel of the National Lok Adalat recorded a compromise. While recording the compromise, he passed the following order:

“The matter is amicably settled between the parties in today's National Lok-Adalat. Both the parties are present before me today. Accordingly, both parties have filed compromise pursis exh.42 and compromise-memo exh. 43. Hence, the suit is required to be disposed of accordingly.

The suit is disposed of as compromised.

Parties to bear their respective costs.

Decree be drawn in terms of compromise pursis exh. 42

Court fees can be refunded as per the rules.

Sd/-
(Jaywant C. Yadav)
Head of the Panel
Civil Judge, J. D., Kudal”

4. This order passed by the Panel of Lok Adalat is the subject matter of the present writ petitions.

5. On behalf of the petitioners, the following submissions are made:

i) No power to compromise the petitioners' right was conferred on defendant No.1 expressly or by necessary implication. Defendant No.1 was not conferred with power to reduce the petitioners' share and, therefore, recording of compromise by the Lok Adalat based on such compromise without authority amounts to fraud.

ii) The satisfaction as required under Section 20 of the Act was not recorded and, therefore, the petitions challenging non-compliance of mandatory procedure laid down in Section 20 of the Act are maintainable.

iii) Under the provisions of the Act and Rules, notice needed to be issued to the parties to the suit and in the absence of individual notice being served on the petitioners recording of compromise by the panel of the Lok Adalat was contrary to the provisions of the Act and Regulations.

6. Per contra, respondent No.1 supported the compromise decree inviting my attention to clause (d) of the petitions wherein the petitioners admitted the execution of power of attorney in favour of defendant No.1. They submitted that the terms of power of attorney expressly conferred power on defendant No.1 to enter into a compromise and in the exercise of such power, the compromise was entered into by defendant No.1.

7. I have heard both sides. Before considering issues involved in the case, it is necessary to set out parameters of judicial review as

regards the challenge to the Award made by Lok Adalat in terms of settlement arrived at between the parties. The said issue is no longer *res integra* given the decision of the three-Judges Bench of Apex Court in the **State of Punjab & Anr. Vs. Jalour Singh & Ors.** reported in **(2008) 2 SCC 660** wherein it is held as under:

“12. It is true that where an award is made by 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.”

8. Regulation 12 of the National Legal Services Authority (Lok Adalat) Regulations 2009 also lays down parameters for challenge to the award based on settlement restricting it to the violation of procedure prescribed in Section 20 of the Act. Regulation 12(3) reads as under.

“12. Pre-Litigation matters.— (1)

(2)

(3) An award based on settlement between the parties can be challenged only on violation of the procedure prescribed in section 20 of the Act by filing a petition under articles 226 and 227 of the Constitution of India."

9. It is well settled that the Regulations framed under a statute cannot restrict the power of judicial review of this Court under Article 226 or 227 of the Constitution of India. However, considering the scheme of the Act, a challenge to the award by way of a writ petition under Article 226 or 227 is restricted to limited grounds, such as fraud, and collusion.

10. Therefore, it is necessary to adjudicate whether defendant No.1 had authority to enter into compromise on behalf of the petitioners. For said adjudication, it is necessary to consider relevant clauses of power of attorney.

11. According to the petitioners, the Authority conferred on defendant No.1 was in relation to third parties and such authority could not have been used for resolution of dispute amongst the parties. According to the petitioners, said clause cannot be interpreted to confer authority on defendant No.1 to effect inequitable partition to the prejudice of the petitioners.

12. He relied on Bowstead on Agency 13th Edition Article 24 on construction of power of attorney reads as under:

"Article 24

CONSTRUCTION OF POWERS OF ATTORNEY

Powers of attorney must be strictly construed, and are interpreted as giving only such authority as they confer expressly or by necessary implication (*Bryant, Powis &*

Bryant v. La Banque Du Peuple [1893] A. C. 170; *Jonmenjoy Coondoo v. Watson* (1884) 9 App. Cas 561; *Jenkins v. Gould* (1827) 3 Russ. 385; and see Illustrations. As to execution of deeds under powers of attorney, see Article 90.) The following are the most important rules of construction:

(a) The operative part of a deed is controlled by the recitals where there is ambiguity.

(b) Where authority is given to do particular acts, followed by general words, the general words are restricted to what is necessary for the proper performance of the particular acts. (Illustration 2,3; *Perry V Holl* (1860) 2 De. G. F. & J. 38; *Harper v. Godsell* (1870) L. R. 5 Q. B. 422.)

(c) General words do not confer general powers, but are limited to the purpose for which the authority is given, and are construed as enlarging the special powers only when necessary for that purpose. (Illustrations 4 to 8. *Lewis v. Ramsdale* (1886) 55 L. T. 179; *Attwood v. Munnings* (1827) 7 B. & C. 178; *Re Bowles* (1874) 31 l. t. 365; *Bryant, Powis & Byrant v. La Banque du Peuple* [1893] A. C. 170)

(d) The deed must be construed so as to include all incidental powers necessary for its effective execution. (Illustrations 9 to 10 ; *Withington v. Herring* (1829) 5 Bing. 442; *Howard v. Baillie* (1796) 2 H. Bi. 618 ; *Willis v. Palmer* (1859) 7 C. B. (N.S.) 340 ; *I Routh v. Macmillan* (1863) 2 H. & C. 750.)”

13. The Judgment in the case of **Shankar Tukaram Kakade Vs. Lakshmibai Shankarrao Ghadge** reported in AIR 1928 Bombay 225 in paragraph No.3 observed as under:

“3. The Power-of-attorney must be strictly construed and it is necessary to show that on a fair construction of the whole instrument the authority in question is to be found within

the four corners of the instrument either in express terms or by necessary implication : see *Bank of Bengal v. Ramanathan Chetty* (A. I. R. 1915 P. C. 121 : 43 Cal. 527: 43 I. A. 48 (P. C.)). On the proper construction of the power-of-attorney, Baburao had no right to deal with the ornaments which were in his physical possession.”

14. The judgment of the Punjab High Court in the case of **Atma Ram Sohni Vs. Chitra Production Co. and Anr.** reported in A.I.R. (39) 1952 Punjab 99 held thus:

“8. The authority of an attorney has to be very strictly pursued, and Art. 36 of Bowstead's Law of Agency, in my opinion, corectly lays down the limits of this authority. This has received the approval of this Court in 'Pritam Singh v. Intizamia Committee Gurdwara Harimandir Sahib', 52 Pun L R 84. The law is expressed in the following terms in Bowstead at page 49:

“Powers of attorney must be strictly pursued, and are construed as giving only such authority as they confer expressly or by necessary implication. The following are the most important rule of construction:

1. The operative part of the deed is controlled by the recitals.
2. Where authority is given to do particular acts, followed by general words, the general words are restricted to what is necessary for the proper performance of the particular acts.
3. General words do no confer general powers, but are limited to the purpose for which the authority is given, and are construed as enlarging the special powers only when necessary for that purpose.
4. The deed must be construed so as to include all medium powers necessary for its effective execution”.

15. In the case of **Syndicate Bank Vs. Amitha and Ors.** reported in 1995 I.L.R. (Karnataka) 1902, the Karnataka High Court has held that the power of attorney should be strictly construed.

16. The Apex Court in the case of **Timblo Irmaos Ltd., Margo v. Jorge Anibal Matos Sequeira & Anr.** reported in (1977) 3 SCC 474 has held in paragraph 11, 13, 15 and 16 as under:

11. We think that perhaps the most important factor in interpreting a power of attorney is the purpose for which it is executed. It is evident that the purpose for which it is executed must appear primarily from the terms of the power of attorney itself, and, it is only if there is an unresolved problem left by the language of the document, that we need consider the manner in which the words used could be related to the facts and circumstances of the case or the nature or course of dealings. We think that the rule of construction embodied in proviso 6 to Section 92 of the Evidence Act, which enables the Court to examine the facts and surrounding circumstances to which the language of the document may be related, is applicable here, because we think that the words of the document, taken by themselves, are not so clear in their meanings as the learned Judicial Commissioner thought they were.

13. The learned Judicial Commissioner had, in our opinion, overlooked several well-known rules of interpretation: firstly, that, a word used in a document has to be interpreted as a part of or in the context of the whole; secondly, that, the purpose of the powers conferred by the power of attorney have to be ascertained having regard to the need which gave rise to the execution of the document, the practice of the parties, and the manner in which the parties themselves understood the purpose of the document;

and, thirdly, that, powers which are absolutely necessary and incidental to the execution of the ascertained objects of the general powers given must be necessarily implied.

15. Learned Counsel for the respondents seemed to place much reliance on *Bryant, Powis, and Bryant, Limited v. La Banque De Peuple* [(1893) AC 170, 177, 179] , where it was observed (at p. 177):

“Nor was it disputed that powers of attorney are to be construed strictly — that is to say, that where an act purporting to be done under a power of attorney is challenged as being in excess of the authority conferred by the power, it is necessary to show that, on a fair construction of the whole instrument, the authority in question is to be found within the four corners of the instrument either in express terms or *by necessary implication*.”

It was also held there (at p. 179):

“To put it shortly, the power of attorney authorized Davies to enter into contracts or engagements for three specified purposes: (1) the purchase or sale of goods; (2) the chartering of vessels; and (3) the employment of agents and servants; and, as *incidental thereto, or consequential thereon*, to do certain specified acts and other acts of the same kind as those specified. If the instrument be read fairly, it does not, in Their Lordships’ opinion, authorise the attorney to borrow money on behalf of the company, or to bind the company by a contract of loan. It appears to Their Lordships that the words quoted in the judgment of the Court of Queen's Bench are to be read in connection with the introductory words of the sentence to which they belong, ‘for all or any of the purposes aforesaid’. So read, the words in question do not confer upon the agent powers at large, but only *such powers as may be necessary in addition to those previously specified, to carry into effect the declared purposes of the power of attorney*.”

16. We think that the passages quoted above correctly lay down the law which is applicable in this country as well and which we are applying here. The method of construing a power of attorney indicated above fully supports our view that the document we have to construe confers a power to sell iron ore on behalf of the Sequeiras.

17. The conspectus of the decisions relied upon on behalf of the petitioners is that the power of attorney must be strictly construed giving only such authority as it expressly or by necessary implication confers. In case of ambiguity, the operative part of the deed is controlled by recitals. Where an authority is conferred to do a particular act by general words, the general words need to be restricted to see what is necessary for the proper performance of a particular act. The general words do not confer general powers. The deed must conclude all incidental powers necessary for its effective execution.

18. I have scrutinized the power of attorney executed by the petitioners in favour of respondent No.1. As observed earlier, the execution of power of attorney has been expressly admitted by the petitioners in their petitions. Moreover, the petitioners have cancelled said power of attorney by public notice dated 24th July 2016. All suit properties are the subject matter of Power of Attorney. Clause (3) of page 51 confers power on defendant No.1 to resolve dispute in relation to properties mentioned in it, it also confers the right to compromise, to institute suit, to appear on behalf of defendant No.3 in Court, to depose, to appear in Appeal, to institute proceedings before the Revenue Authority, to institute proceedings in Civil Court, to conduct it. Clause (3) of power of

attorney executed in favour of Defendant No. 1 specifically confers the right on him to compromise a dispute about properties mentioned in it. In my opinion, such a right to compromise cannot be interpreted to mean disputes only with third parties. The said clause contains express terms authorising defendant No.1 to compromise on behalf of defendant No.3 and, therefore, I am satisfied that the compromise terms followed by defendant No.1 on behalf of defendant No.3 cannot be construed as an act beyond the authority conferred under the power of attorney. The power to compromise includes the power to distribute shares to maintain the peace in the family. The power to compromise cannot be given restricted meaning to appear on behalf of the person and to sign on behalf of such person. Had the petitioners intended to confer authority to appear but not to sign on behalf of the petitioners, the deed in question would have been differently worded. However, specific recital in the power of attorney to compromise disputes about properties takes within its fold power to distribute share. It also appears that a major share in properties has been allocated to the mother of defendant No.1 and 3. It also appears that the petitioner on 19th September 2014 executed another power of attorney in favour of respondent no.1 for the transfer of shares in the name of the mother and accordingly shares were transferred in the name of the mother. Therefore, I am satisfied that the petitioners have failed to make out a case of fraud for entertaining a petitions under Articles 226 and 227 of the Constitution of India.

19. The next limb of submission on behalf of the petitioners is an infraction of Section 20 of the Act. To consider the said submission

it is necessary to set out Section 20 of the Legal Services Authorities Act, 1987 which reads 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 other 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)

(6)

(7)”

20. Section 20 confers power on the Court to refer proceedings to the Lok Adalat for settlement: if, i) parties to the suit agree; ii) the Court is prima facie satisfied that there are chances of settlement; and iii) the Court is satisfied that it is an appropriate case to be taken cognizance by the Lok Adalat.

21. It is true that the satisfaction of the Court referring proceeding to the Lok Adalat is mandatory; however, the satisfaction contemplated is in relation to i) chances of settlement; ii) The Court think it appropriate to be taken cognizance by the Lok Adalat; iii) proviso to Sub-Section (1) requires Court to give opportunity of hearing to the parties being heard.

22. In the context of Section 20, according to the petitioners, prima satisfaction of the possibility of settlement under Clause (1) (i)(b) has not been recorded and the opportunity of hearing as required under proviso to Sub-Section (1) was not given.

23. The Roznama in the suit is placed on record by way of affidavit in reply by defendant No.1. The Roznama dated 4th April

2015 indicates that the plaintiff and defendant filed a joint pursis for placing the matter before the Lok Adalat. Hence, the entry in the Roznama indicates that the Court noted as under:

“Hence, place the suit for compromise before Lok Adalat.”

24. In my opinion, the remark quoted above satisfies the requirement of Sub-Section (1) of Section 20 where the said remark indicates the satisfaction of the Court that it is appropriate to be taken cognizance by the Lok Adalat. In so far as giving the opportunity of hearing to the parties is concerned, the petitioners were represented by defendant No.1 the said requirement is also fulfilled.

25. Once it is held that defendant No.1 was within his power to enter into a compromise on behalf of defendant No.3 giving opportunity to the parties would mean giving opportunity only to defendant No.1. Therefore, in my opinion, the order passed by the Lok Adalat granting the compromise need not be interfered on the ground of non-compliance of mandatory provisions of Section 20 of the Act.

26. The petitioners submitted that the context of mandatory procedure under Section 20, the procedure under Rule 5 and Rule 13(4) of Regulation has been violated. Regulation (5) requires the Principal Secretary or Secretary, Legal Service Committee to inform every party concerned to grant him an opportunity to prepare himself for Lok Adalat. Proviso to Rule 5 contemplates dispensing of such notice if the Court while referring the case to Lok Adalat fixes the date and time of the Lok Adalat in the

presence of parties or their advocates. The Roznama placed on record indicates that 11th April 2015 was the date fixed by the Court for the purpose of compromise and the compromise was recorded by the Lok Adalat on 11th April 2015. Therefore, the requirement of notice to individual parties was deemed to have been dispensed with. Moreover, as held also defendant No.1 was representing defendant No.3 through their power of attorney and, therefore, for the purpose of expression "party", defendant No.1 needs to be treated as an authorized representative of defendant No.3 (petitioner).

27. Regulation (13)(4) requires Members of Lok Adalat to be guided by principles of natural justice, equity, fairplay, objectivity, giving consideration to, among other things, the rights and obligations of the parties. As held earlier, the scope of the petitions challenging the Award of the Lok Adalat is restricted on the grounds of fraud/collusion or non-compliance with Section 20 of the Act.

28. Therefore, in my opinion, the petitioners have failed to make out a case of fraud, collusion or breach of mandatory provisions of Section 20.

29. Hence, both the writ petitions stands disposed of. No costs.

30. At this stage, learned advocate for the petitioners in Writ Petition No.9063 of 2022 requests for a stay for the continuation of stay of the settlement made on behalf of the Respondent. However, considering the facts of the case, no case of continuation of stay is made out. The application for stay is rejected.

31. In view of disposal of the writ petitions, all pending interlocutory application(s), if any, stands disposed of as infructuous.

(AMIT BORKAR, J.)