



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3461 OF 2022

Mumtaj Imran Kaskar @ Mumtaj
Allarakha Bhatti and Ors.

... Petitioners.

Versus

Imran Sharfuddin Kaskar and Ors.

... Respondents.

Mr. Vaibhav Gaikwad, for the Petitioners.
Mr. Rizwan Merchant, for Respondent Nos. 1, 2 and 3.
Ms. Shilpa Gajare, APP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : April 5, 2024.

P. C. :

1. By this Petition, the challenge is to the Award dated 14th September, 2019 passed under Section 21 of the Legal Services Authorities Act, 1987.

2. The facts of the case are that the Petitioner had filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, "DV Act") before the Judicial Magistrate First Class, Murud. The parties were referred to the Lok-Adalat and on 14th September, 2019 before the Lok Adalat, consent terms were entered into. The consent terms was supported by the affidavit dated 14th September, 2019 of the Petitioner reiterating the

terms of the compromise between the parties. As per the compromise terms there was onetime settlement of ₹18,00,000/- out of which a sum of ₹1,00,000/- was paid by way of cheque dated 7th September, 2019. It was further agreed that the balance amount of ₹17,00,000/- would be paid after the house i.e. House No.373 which is owned by the father-in-law of the Petitioner is vacated and "*khulanama*" is given by the Petitioner. The balance amount of ₹17,00,000/- was detailed in the consent terms to be paid in five installments. The first 2 installments of ₹4,00,000/- by Demand Drafts dated 11th September, 2019 and 3rd, 4th and 5th installment of ₹3,00,000/- each by Demand Drafts dated 13th September, 2019. The consent terms stated that the Demand Drafts were kept in the custody of one Suhel Anware. The consent terms recorded that in terms of the consent terms the complaint is disposed of. As far as the two installments of ₹4,00,000/- by virtue of the Demand Draft dated 11th September, 2019, it is admitted that the said amount has been received by the Petitioner and she has encashed the Demand Drafts.

3. As there is non-compliance of the terms to the extent that the house was not vacated and "*khulanama*" was not given, an execution application came to be filed on 17th August, 2020 by the Respondent. Subsequently, after a period of almost two years on 19th September,

2022, the present petition has been filed challenging the Award of the Lok-Adalat on the ground of fraud.

4. Heard Mr. Vaibhav Gaikwad, learned counsel appearing for the Petitioners and Mr. Merchant, learned counsel appearing for the Respondent Nos.1, 2 and 3 and Ms. Shilpa Gajare, learned APP for the Respondent-State.

5. Mr. Gaikwad, learned counsel appearing for the Petitioner submits that a fraud has been practiced upon the Petitioner as the terms of the compromise were not explained to her. He would further submit that the Petitioner was not aware that she has to vacate the house and give "*khulanama*". He would further submit that after the Execution Application was filed the Petitioner realised that she was cheated and approached the Legal Aid Services Authority and thereafter, the District Legal Aid Services Authority where she was advised to approach this Court by way of the present petition. He would submit that under Section 20 of the Legal Services Authorities Act, 1987 it is only when a case is referred to the Lok-Adalat for settlement by the Court that the Award could have been passed by the Lok-Adalat.

6. *Per contra*, Mr. Merchant, learned counsel appearing for the Respondent Nos.1, 2 and 3 would submit that the Petitioner was well

aware of the term of the consent terms and she has not only signed the consent terms and but also executed an affidavit in presence of her Advocate. He would further submit that she has accepted a sum of ₹9,00,000/- and has thereafter refused to comply with her obligations under the consent terms. He submits that it is only after the execution application was filed, the present petition has been filed. He submits that as no case of fraud is made out inasmuch as the benefit under the said consent terms were accepted by the Petitioner.

7. Considered the submissions and perused the record.

8. The execution of the consent terms and the affidavit before the Lok-Adalat is not disputed by the Petitioner. The case of the Petitioner is that the Award is liable to be set aside on ground of fraud. As to the fraud which is alleged the case is that the Petitioner was not aware that she has to vacate the house as part of the consent terms and give "*khulanama*". The said contention cannot be accepted for the reason that apart from the consent terms an affidavit has been filed by the Petitioner in support of consent terms which has been affirmed before the officer of the Court reiterating the terms of the consent terms. The petitioner has been identified by her Advocate which indicates that the Petitioner was represented by legal counsel. The terms have been executed before the Lok Adalat. The terms are very

clear in which it is stated that the full and final settlement was of ₹18,00,000/- and ₹1,00,000/- was paid and the balance was to be paid after compliance of the obligation by the petitioner. The Respondent Nos.1 to 3 have complied with their obligation under the consent terms and the Petitioner after receiving part benefit under the consent decree has declined to perform her obligation seeking instead to challenge the Award on ground of fraud. Incidentally under Section 96 of Civil Procedure Code, 1908 also no appeal is provided against consent decree intending finality to be attached consent decrees.

9. It is not the case of the petitioner that as soon as she realised that a fraud has been played the amount of ₹9,00,000/- received by her under the consent terms was returned to the Respondent. There is no notice issued to the Respondents alleging fraud in the proceedings before Lok Adalat. It is only after the execution application was filed in the year 2020 and possession warrant was issued on 29th July, 2022 that the present petition has been filed on 19th September, 2022. It is more than evident that the present petition is an afterthought. After having been accepted the benefit under the consent terms by accepting the part amount of ₹9,00,000/-, the petitioner is now having second thoughts and seeks to resile from the

terms entered before the Lok-Adalat. If such unscrupulous litigants are permitted to conduct themselves in the manner as has been done by the Petitioner in the present case, the object of the Legal Services Authorities Act, 1987 itself would be frustrated. For the purpose of giving teeth to the Award of the Lok-Adalat, provisions of Section 21 provide that the Award of the Lok-Adalat shall be deemed to be the decree of the Civil Court and to be executed in the same manner.

10. In the present case, contention is sought to be raised taking support of Section 20 of the Legal Service Authorities Act, 1987 that the case has not been referred by the Court. However, there is no material placed on record to show that the parties were not present before the Court and or had not agreed to appear before the Lok-Adalat. That apart, there is no ground taken in the petition for challenging the Award on the basis of Section 20 of the Legal Services Authorities Act, 1987. In any event in my opinion, considering the settled position in law that the Award of the Lok-Adalat can be challenged only on very limited grounds, reliance placed on Section 20 of the Legal Services Authorities Act, 1987 is clearly misconceived.

11. Apart from contending that the terms were not known to the Petitioner, no other submission is made in the context of the fraud, which submission cannot be accepted for the reason that the benefits

under the consent terms were accepted by the petitioner and it is only the obligation which is now sought to be avoided by the petitioner on the ground of fraud.

12. Having regard to the discussion above, there is no merit in the petition. Petition stands dismissed.

[Sharmila U. Deshmukh, J.]