



C.R.P.(NPD)Nos.1920 of 2019 and
1045 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:23.02.2024

Coram:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD)Nos.1920 of 2019 & 1045 of 2021
and
C.M.P.Nos.12630 of 2019 and 8345 of 2021

C.R.P.(NPD)No.1920 of 2019:

A.L.Abdul Kalam Azad

.. Petitioner

/versus/

A.L.Jawagarlal

Rep.by its power

Agent A.Sowkath Ali & Others

.. Respondent

Prayer: Civil Revision Petition filed under Article 115 of the Constitution of India, against the order dated 16.06.2006, recording the compromise in O.S.No.13 of 2005 on the file of the District Judge, Perambalur, the petitioner herein has filed the revision petition.

For Petitioner :Mr.V.Raghavachari,
Senior Counsel for
Ms.V.Srimathi

For Respondent :Mr.G.Ilamurugu

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C.R.P.(NPD)No.1045 of 2021:

A.L.Abdul Kalam Azad

.. Petitioner

/versus/

A.L.Jawagarlal

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order in I.A.No.2 of 2019 in O.S.No.13 of 2005, dated 17.06.2020 on the file of the Sessions Judge, Mahila Court, Perambalur.

For Petitioner :Mr.V.Raghavachari,
Senior Counsel for
Ms.V.Srimathi

For Respondent :Mr.G.Ilamurugu

COMMON ORDER

Civil Revision Petition No.1920 of 2019 is filed challenging the Lok Adalat Award passed in O.S.No.13 of 2005 on the file of the District Court, Perambalur dated 16.06.2006.



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Civil Revision Petition No.1045 of 2021 is filed challenging the order passed by the trial Court dismissing the application filed by the petitioner seeking a direction to the respondent to pay a sum of Rs.42,00,000/- with interest at the rate of 24% per annum and also a direction to the respondent to pay a sum of Rs.60,90,789/- with interest at the rate of 24% per annum from the date of payment to bank, till the date of repayment or in alternative allot properties commensurate to the aforesaid value.

2. The respondent herein filed a suit in O.S.No.13 of 2005 on the file of the District Court, Perambalur, against the petitioner seeking a preliminary decree for partition of half share. The said suit was compromised between the parties and a Lok Adalat Award was passed on 16.06.2006 in terms of the compromise.

3. Clause 3 of the compromise memo reads as follows:-

“3.Under these circumstances, out of 3 items of



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the suit property, whichever property sells first, the same should be immediately and quickly, jointly sold and the State Bank loan has to be firstly paid, Secondly, the amount spent by 1st defendant of Rs.42 lakhs has to be tendered and settled to the first defendant. Thereafter, the balance properties alone should be partitioned equally within a month. After payment of the above loans, there will be joint management of the remaining properties.”

4. The learned Senior Counsel appearing for the petitioner submits that as per Clause 3 of the Compromise Memo, the respondent has to pay a sum of Rs.42,00,000/- towards improvement made by him in the suit property and he should also co-operate with the petitioner for sale of the property mentioned in Clause 3 and discharge the loan amount payable to the Bank.

5. The learned Senior Counsel appearing for the petitioner also submits that the respondent failed to pay Rs.42,00,000/- to the petitioner as



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per Clause 3 of the compromise memo and he also failed to co-operate with the petitioner for sale of the properties and to discharge the bank loan. As a consequence, there was a threat of SARFAESI proceedings by the Bank and in order to save the property, the petitioner paid a sum of Rs.60,90,789/- to the bank and the said amount should also be paid by the respondent to the petitioner.

6. The learned Senior Counsel for the petitioner further submits that the respondent refused to pay a sum of Rs.42,00,000/- to the petitioner by stating that the said amount shall be paid only out of sale proceeds of the suit properties and not out of his own pocket. The learned Senior Counsel, by referring to Clause 3 of the Compromise memo, submits that the words in Clause 3 of the compromise memo clearly establish that the respondent shall pay a sum of Rs.42,00,000/- and he having failed to pay the said amount as per the terms of the compromise memo, is not entitled to take advantage of the Lok Adalat Award and proceed with the final decree proceedings. The learned Senior Counsel further submits that since there is no *consensus ad idem* between the parties, the compromise recorded in the Lok Adalat is



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liable to be set aside. It is also submitted by the learned Senior Counsel that there is an ambiguity or uncertainty in the terms of the compromise and it shall be treated as void as the same is contrary to Section 29 of the Indian Contract Act and as a consequence, the Lok Adalat award recorded in the above said suit is liable to be set aside.

7. As far as C.R.No.1045 of 2021 is concerned, the learned counsel submits that if C.R.P.No.1920 of 2019 is decided, the same will clinch the issue in C.R.P.No.1045 of 2021. In the sense, if the compromise decree is set aside, there may not be any legal impediment for the petitioner to seek direction to the respondent to pay the amount as per the compromise.

8. The learned counsel for the respondent contended that Clause 3 of the compromise entered between the parties was already interpreted by the Hon'ble Division Bench of this Court in its order dated 26.11.2018 passed in C.R.P.Nos.4093 of 2010 and other batch cases for the very same properties. In the above mentioned case, it has been categorically held by the Hon'ble Division Bench that Rs.42,00,000/- shall be paid to the



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petitioner only out of sale proceeds and not out of own pockets of the respondent. Therefore, the interpretation given by the petitioner is contrary to the findings rendered by the Hon'ble Division Bench in the above mentioned case.

9. The learned Senior Counsel for the petitioner further submits that both the parties appeared before the Lok Adalat and put their signatures by accepting the terms of compromise and hence, it is binding on both the parties, in the absence of any plea of fraud, coercion, misrepresentation or other vitiating factors recognised under the Indian Contract Act. In the case on hand, the petitioner has not pleaded any vitiating factors recognised by law like fraud, coercion, misrepresentation or undue influence. The only contention made by the petitioner is with regard to the interpretation of Clause 3. When Clause 3 is already interpreted by the Hon'ble Division Bench of this Court, it is not open to the petitioner to give a different meaning contrary to the findings rendered by the Hon'ble Division Bench.

10. The Hon'ble Division Bench of this Court in its order dated



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26.11.2018 in C.R.P.No.4093 of 2010 and other batch cases, while interpreting Clause 3 of the terms of the compromise has observed as follows:-

“42. On a reading of the above clause 3 of the terms of compromise entered into before the Lok Adalat, it gives a meaning that the property(ies) would go for sale first and thereafter, from the sale proceeds, the loan amount of the Bank had to be discharged and thereafter, Rs.42,00,000/- spent by the appellant-Abul kalam Azad, had to be paid by the respondent-Jawaharlal, and therefore, the rest properties had to be divided equally. Absolutely, the Lok Adalat Award did not state anything that the respondent would pay the amount to the appellant independently irrespective of the sale of the property(ies). Had the intention been to pay the amount independently, it would have been stated specifically in the terms of compromise, whereas in the Memorandum of Compromise, first it speaks about only the sale of the property(ies), and thereafter, it speaks about the payment of loan amount to the Bank and thirdly, about payment of Rs.42 lakhs to the appellant by the respondent.”

11. Therefore, the Hon'ble Division Bench of this Court on the earlier round of litigation between the petitioner and the respondent



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categorically held that the sum of Rs.42,00,000/- referred to in Clause 3 of the Compromise shall be paid only out of sale proceeds of the suit property and not out of the own funds of the respondent. Therefore, the submissions made by the learned Senior Counsel for the petitioner that the respondent failed to pay Rs.42 lakhs as per Clause 3 of terms of the compromise, is not acceptable.

12. In the Memorandum of grounds of Revision challenging the Lok Adalat award, the petitioner has not pleaded any fraud, coercion, misrepresentation or undue influence. The only contention raised by the petitioner is that the respondent failed to act in accordance with Clause 3 of the compromise memo by making payment of Rs.42 lakhs. The Hon'ble Division Bench of this Court, while interpreting the terms of Clause-3, already held that the amount shall be paid to the petitioner only out of the sale proceeds of the suit properties. The petitioner, being a party to the earlier litigation, is not entitled to turn around and give a different meaning to the Clause 3 of compromise memo.



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13. In the light of the order passed by the Hon'ble Division Bench, the submissions made by the learned Senior Counsel for the petitioner with regard to the uncertainty in terms of the compromise and absence of *consensus ad idem* are also not acceptable to this Court. Therefore, the petitioner in C.R.P.(NPD)No.1920 of 2019 has not made out any case to set aside the Lok Adalat award. Both the petitioner and the respondent appeared before the Lok Adalat and put their signatures by accepting the terms of compromise. Accordingly, this Civil Revision Petition is dismissed.

14. In C.R.P.No.1045 of 2021, the petitioner is challenging the order passed by the Court below dismissing the application filed by him seeking a direction to the respondent to pay a sum of Rs.42 lakhs and also to pay a sum of Rs. 60,90,789/- towards amount paid by him to the bank.

15. As far as the first limb of the prayer is concerned, the Division Bench of this Court already found that a sum of Rs.42 laksh shall be paid



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only out of sale proceeds of the suit property. Therefore, the petitioner is not entitled to maintain the direction to the respondent to pay Rs.42 lakhs, pending final decree proceedings. It is the further case of the petitioner that he paid a sum of Rs.60,90,789/- to the bank to save the property from the SARFAESI proceedings. The said issue has to be gone into in the final decree proceedings. Infact, in the order impugned in C.R.P.No.1045 of 2021 the trial Court rightly held that the request made by the petitioner can be considered only in the final decree application and dismissed the petition for a direction.

16. In such circumstances, I do not find any error in the order passed by the trial Court dismissing the claim of the petitioner. Accordingly, these Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

23.02.2024

Index:yes/no
Internet:yes/no
Speaking order/non speaking order

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Neutral Citation:yes/no
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To:

The District Judge, Perambalur.



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S.SOUNTHAR,J.

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