2024:PHHC:114617

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

206

CWP-21994-2017 (O&M).
Date of Decision: 03.09.2024.

RELIANCE GENERAL INSURANCE COMPANY LIMITED

.. Petitioner

Versus

NITIN KUMAR AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Satpal Dhamija, Advocate,
for the petitioner.

Ms. Shweta Sharma, Advocate, (Legal-aid-counsel)
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

The petitioner-Insurance Company has challenged the order dated 20.02.2017 (Annexure P-1) passed by the Presiding Officer, Daily Lok Adalat, Rewari whereby the execution petition filed by the petitioner-Insurance Company has been disposed of in view of the settlement arrived at to pay Rs.2,00,000/- as full and final settlement against the recovery of Rs.2,95,281/- along with interest @ 9% per annum awarded by the Motor Accidents Claims Tribunal, Rewari.

2 Learned counsel appearing on behalf of the petitioner-Insurance Company contends that the proforma respondent No.3 had filed a claim petition i.e. MACT Case No.154 of 2010 titled as 'Sunil Kumar Vs. Nitin Kumar and others', which was decided by the Motor Accident Claims Tribunal, Rewari vide award dated 08.09.2011 directing payment of a sum of Rs.2,79,019/- along with interest @ 6% per annum from the date of filing of the claim petition till realization and granting a right to the petitioner-Insurance Company to recover the same from respondent No.2 therein (proforma respondent No.3 herein) being owner of the insured vehicle, on account of violation of the terms and conditions of the insurance policy with regard to the driving license. It is submitted that dissatisfied with the said award, the petitioner-Insurance Company preferred an **FAO No.1914 of 2012 titled as 'Reliance General Insurance Company Vs. Sunil Kumar and others**', seeking exoneration from the fastened liability. He contends that an execution had been filed by the petitioner-Insurance Company before the Executing Court and that the impugned order was passed on 20.02.2017. He contends that the petitioner-Insurance Company never consented for settlement of the execution proceedings and that it is not bound by the same.

3 Learned legal-aid-counsel appointed by this Court, while defending the case on behalf of the respondents, contends that the petitioner-Insurance Company had already initiated recovery proceedings against the judgment debtor and it was during the course of said execution proceedings for recovery of the amount already paid to the decree holder

that the settlement was arrived at through the counsel appearing on behalf of the petitioner-Insurance Company. She places reliance upon the impugned order dated 20.02.2017 which is extracted as under:-

> *"File taken up today in Daily Lok Adalat. The present application has been moved by the applicant-Insurance company for recovery of the amount of award paid by it to the petitioner of claim petition No. 154 of 2010 titled Sunil Kumar Versus Nitin Kumar and others. The respondents-JDs have agreed to make the payment of Rs. 2,00,000/-towards full and final claim of the applicant-Insurance company. The respondents/JDs falls within the category of BPL family. An amount of Rs. 1,00,000/- has already been paid by them on 19.01.2017, Today an amount of Rs. 50,000/- has been paid in cash which has been received by learned counsl for applicant/Insurance company. The remaining amount of Rs. 50,000/- has been agreed to be paid by the respondents/JDs to the applicant/Insurance company by 07.03.2017 against receipt. It is further ordered that in case the respondents/JDs fail to make the payment of the remaining amount of Rs. 50,000/- by the aforesaid date i.e. 07.03.2017, the applicant-insurance company would be entitled to recover the entire remaining outstanding amount. The attached motor-cycle no. HR-43A-3834 is ordered to be released from attachment. The concerned SHO PS Kosli is directed to release the motor- cycle to its registered owner. Release order of motor-cycle be issued. The execution petition stands disposed of accordingly."*

(emphasis supplied)

4 Relying on the above, she contends that the specific offer of the judgment debtor to make a payment of Rs.2 lakhs was made to the counsel for the petitioner-Insurance Company followed by an act of receiving of Rs.50,000/-, on the same day, which clearly shows that there was a consent by the counsel appearing for the petitioner-Insurance Company. There was also an acknowledgment of Rs.1 lakh having already been paid by the judgment debtor to the petitioner-Insurance Company on 19.01.2017. She contends that the settlement is well established from the conduct of the counsel and is well reflected in the order passed by the Daily Lok Adalat, Rewari in the execution proceedings. She places reliance on the judgment of the Hon'ble Supreme Court in the matter of ***Shrimati Jamilabai Abdul Kadar v. Shankarlal Gulabchand and others reported as AIR 1975 SC 2202.*** The relevant paragraph of the same is extracted as under:-

> *"24. While we are not prepared to consider in this case whether an advocate or pleader is liable to legal action in case of deviance or negligence, we must uphold the actual, though implied, authority of a pleader which is a generic expression including all legal practitioners as indicated in Section 2(15) CPC to act by way of compromising a case in which he is engaged even without specific consent from his client, subject undoubtedly to two overriding considerations:-*
>
> *(i) he must act in good faith and for the benefit of his client; otherwise the power fails*

(ii) it is prudent and proper to consult his client and take his consent if there is time and opportunity. In any case, if there is any instruction to the contrary or withdrawal of authority, the implicit power to compromise in the pleader will fall to the ground. We need hardly emphasize that the Bar must sternly screen to extirpate the black-sheep among them, for Caesar's wife must be above suspicion, if the profession is to command the confidence of the community and the Court."

5 I have heard learned counsel appearing for the respective parties and have also gone through the documents appended along with the present petition with their able assistance.

6 The petitioner-Insurance Company before this Court has raised a challenge to the order passed by the Daily Lok Adalat, Rewari, in the presence of counsel appearing on behalf of the respective parties. It is specifically noticed by the Presiding Officer that JD had offered to make a payment of Rs.2 lakhs towards the total amount of Rs.2,95,281/-, for which the award had been passed and that an amount of Rs.1 lakh had already been paid by them, prior to the settlement. A further amount of Rs.50,000/- was paid on the date of order itself with an undertaking to pay the remaining amount of Rs.50,000/- by 07.03.2017 against receipt. The fact of acceptance of the said amount and lack of objection or protest to the offer made by the judgment debtor for a sum of Rs.2 lakhs towards final settlement of the claim shows that there was at least an oral agreement, on the date of proceedings itself, and the petitioner-Insurance Company had agreed to accept the offer towards full and final satisfaction of its claim.

There is also no material on record before this Court that the power of attorney executed on behalf of the petitioner-Insurance Company did not authorize him to enter into any settlement for and on behalf of the petitioner-Insurance Company. Further, there is also no material on the file of this Court that any proceedings had been initiated by the petitioner-Insurance Company against the counsel who represented the petitioner-Insurance Company in the execution proceedings. Hence, it is a simpliciter unilateral denial of the acts done by the Advocate, in the best interest of the petitioner-Insurance Company. Any such unilateral withdrawal is impermissible. An act done by an Advocate in Court, under a power of attorney executed in his favour, is an act as an agent and the petitioner-Insurance Company is bound by the acts of its agents unless it is established on record that the said act suffers from inherent illegality. In any case, even if such a clause is established, the entitlement of the principal is only to seek indemnification from the agent from whom the loss is so occasioned and cannot press upon his rights against the consumer.

7 The petitioner-Insurance Company has not placed on record even the statement of the counsel recorded by the Lok Adalat. It is not even its case that no such statement was recorded. The petitioner-Insurance Company has thus chosen to withhold the said documents from this Court which could have established whether the Advocate was authorized to enter into settlement and also as to whether the settlement was also got recorded or not. The petitioner-Insurance Company has not even placed on record any affidavit of the advocate representing the Insurance Company before

2024:PHHC:114617

the Executing Court to allege that the order does not record correct proceedings or that there was no settlement.

8 Under the given circumstances, I find that there are no sufficient circumstances on the basis whereof, this Court may prima facie hold that the order dated 20.02.2017 passed by the Presiding Officer, Daily Lok Adalat, Rewari, suffers from an illegality or impropriety. The case would rather fall under the ratio of the judgment cited by the Legal-aid-counsel. The present writ petition is accordingly dismissed. The order dated 20.02.2017 (Annexure P-1) passed by the Presiding Officer, Daily Lok Adalat, is upheld.

September 03, 2024. **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No