



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

907 WRIT PETITION NO. 11115 OF 2024

Kiran Bajaba Korde & others

....Petitioners

VERSUS

Shakuntala Limbaji Limbahari Korde
& others

.....Respondents

.....

Mr. A. A. Nimbalkar, Advocate for the Petitioners.

Mr. P. R. Nangare, Advocate for Respondent Nos. 1 to 3.

CORAM : R. M. JOSHI, J.

DATE : 12th MARCH, 2025.

PER COURT :

1. This petition takes exception to the order passed by the Trial Court in Civil M.A. No. 62/2021 whereby the application filed under Order 7 Rule 11 of Code of Civil Procedure read with Section 21 of the Legal Services Authorities Act came to be rejected by recording reason that Order 7 Rule 11 of Code of Civil Procedure deals with rejection of plaint and the present application is under Section 151 of Code of Civil Procedure and not suit.

2. Learned counsel for Petitioners has drawn attention of the Court to the settled position of law by Hon'ble Supreme Court with regard to the challenge to the award passed by the Lok Adalat.

By referring to the judgments in case of Banwari Lal vs. Smt. Chando Devi (Through LR) and another, AIR 1993 SC 1139, S. P. Chengalvaray Naidu (Dead) by LRs vs. Jagannath (Dead) by LRs and others, AIR 1994 SC 853, United India Insurance Co.Ltd. vs. Rajendra Singh and others, AIR 2000 SC 1165 and Govindrao s/o Gangarmji Ajmire vs. Dadarao @ Shrawan s/o Gangaram imire (D) By LRs, 2004(3) All MR, he contends that except for filing writ petition, order/award passed by the Lok Adalat cannot be taken exception to in any civil suit. It is his submission that the Trial Court has committed error in not considering the said settled position of law laid down by the Supreme Court. It is his submission that the purpose of the said provision is to scuttle unmerited litigation and that the judgment of Supreme Court cannot be permitted to be circumvented in this manner.

3. Learned counsel for Respondents supported the impugned order by contending that since the application is not plaint, Order 7 Rule 11 of Code of Civil Procedure has no application to the present case. It is his further submission by relying upon judgment of coordinate bench of this Court in case of Hiranman Shankar Khanavkar and others vs. Nitin Anant Khanavkar and

others (Civil Revision Application No. 481/2023) that miscellaneous application seeking heirship certificate does not constitute a civil suit and therefore, Order 7 Rule 11 of Code of Civil Procedure has no application.

4. At the outset, it would be relevant to consider the judgment in case of Hiranman (supra). The coordinate Bench of this Court, therein was considering question of applicability of the provisions of Order 7 Rule 11 of Code of Civil Procedure to the proceedings under provisions of Bombay Regulation Act for obtaining heirship certificate. The issue thereto was limited to the extent of application of Order 7 Rule 11 of Code of Civil Procedure to a miscellaneous application for revocation of heirship certificate granted under Bombay Regulation Act.

5. In the said judgment this Court has held that for applicability of Section 141 of Code of Civil Procedure other than suit, the Court must consider nature of these proceedings and relief sought. In paragraph Nos. 11 to 16 it is held thus :

“11. Though section 141 of the CPC applies to all civil proceedings, the procedure applicable is “as far as it can be made applicable”. For applying Section 141, it is

necessary to consider the expression “as far as it can be made applicable”. This expression makes it clear that in applying various provisions of the Code to the proceedings other than suit, the Court must consider the nature of those proceedings and the relief sought. The provisions of the said Regulation make it clear that a certificate issued under the said Regulation confers no right to the property but indicates the person who, for the time being, is in legal management thereof. It also makes it clear that the grant of such a certificate shall not finally determine or injure the right of any person, and the Zilla Court can annul such certificate upon proof that another person has the preferable right. The Regulation further makes it clear that refusal of a certificate by the Judge shall not finally determine the rights of the persons whose application is refused, and it shall be open for such person to institute a civil suit to establish his claim.

12. *It also needs to be stated that Section 141 applies to the extent of procedure under the Code to proceedings other an those in the Civil Court. It is to be noted that Section 141 speaks of procedure. What is made applicable to all proceedings in a Court of Civil jurisdiction is the procedure provided in the Code with regard to suits. What is to be underlined is that the provisions of section 141 of the CPC, cannot be applied except to procedural matters. By virtue of section 141 of the CPC, the substantive right to apply for revocation cannot be taken away, having resorted to Order*

7 Rule 11 of the CPC. Section 141 does not make the whole of the procedure in regard to suits applicable to proceedings in a suit of civil jurisdiction. Such procedure applies only as far as it can be made applicable.

13. Insofar as the judgment in the case of ITI Limited (supra) is concerned, there cannot be a dispute about the proposition of law laid down by the Apex Court that the provisions of CPC would apply to the proceedings governed by the Arbitration and Conciliation Act, 1996 unless there is expressed exclusion. However, considering the scheme of the said Regulation, the judgment in the case of ITI Limited is inapplicable.

14. The judgment in the case of Babubai Muljibhai Patel (supra) is in relation to the applicability of the provisions of the Code of Civil Procedure, 1908, to the writ petition under Article 226 of the Constitution of India. It is held that considering the object of the writ petition, it is different from the suit, and it would be incorrect to assimilate and incorporate the procedure of a suit in the proceedings of writ petition under Article 226 of the Constitution of India.

15. In the judgment in Murlidhar Datoba Nimanka (supra), this Court was considering the applicability of CPC to the Cooperative Court under Section 91 of the Maharashtra Cooperative Societies Act, 1960. It is held that the provisions of the Code of Civil Procedure, 1908, do

not apply to the proceedings before the Cooperative Court when specific provisions are contained under the provisions of the Maharashtra Cooperative Societies Act, 1960. However, penal provisions, along with Order 39, Rule 11 of the code of Civil Procedure, 1908, cannot be attracted to the disputes under Section 91 of the Maharashtra Cooperative Societies Act, 1960.

16. Considering the reasons stated above, in my opinion, it is held that the provisions of Order 7, Rule 11 of the CPC do not apply to the application for revocation under the provisions of the said Regulation and Chapter X of the Indian Succession Act, 1925.”

6. This Court therefore was of the view that having regard to the nature of the proceeding under Bombay Regulation Act, which does not decide the rights of the parties, provisions of Order 7 Rule 11 of Code of Civil Procedure would not apply to the same. In contrast, here in this case, the Respondents have filed an application before the Civil Court for setting aside judgment and decree dated 30.06.2013 in Regular Civil Suit No. 292/2013, in a Lok Adalat. It is thus clear that though the proceeding is filed in form of miscellaneous application, the same is for seeking substantial relief.

7. As per Section 141 of Code of Civil Procedure, the procedure provided in the code to the suits shall be followed, as far as it can be made applicable in all proceedings under code. Section 151 speaks about inherent powers of the Court in order to prevent abuse of process of the Court. Thus the object of this provision is to supplement and not replace remedy. Thus, the remedy which is barred by law cannot be replaced by invocation of Section 151. Having regard to the pleadings in application and the prayer made therein, practically Trial Court is called upon to decide the correctness of the judgment and decree passed by Lok Adalat. Thus, the Court will have to grant an opportunity to the other side to file written statement/reply. The issue necessary to be framed. Unless evidence is led it is not possible to decide the said issue. Therefore, for all practical purposes it is a suit though wisely filed under guise of miscellaneous application.

8. Hon'ble Supreme Court in case of Bhargavi Construction and another Vs. Kothakapu Muthyam Reddy and others, **2017 AIR SC 4428**, has held that suit challenging award on the ground of same being obtained by fraud or misrepresentation is not maintainable and only Writ Petition is maintainable that too on

limited grounds. The Hon'ble Supreme Court has taken into consideration the judgment of the three judges bench in case of **State of Punjab, [2008 ALL SCR 692]** and observed thus:

25. The question arose before this Court (Three Judge Bench) in the case of **State of Punjab [2008 ALL SCR 692]** as to what is the remedy available to the person aggrieved of the award passed by the Lok Adalat Under Section 20 of the Act. In that case, the award was passed by the Lok Adalat which had resulted in disposal of the appeal pending before the High Court relating to a claim case arising out of Motor Vehicle Act. One party to the appeal felt aggrieved of the Award and, therefore, questioned its legality and correctness by filing a writ petition Under Article 226/227 of the Constitution of India. The High Court dismissed the writ petition holding it to be not maintainable. The aggrieved party, therefore, filed an appeal by way of special leave before this Court. This Court, after examining the scheme of the Act allowed the appeal and set aside the order of the High Court. This Court held that the High Court was not right in dismissing the writ petition as not maintainable. It was held that the only remedy available with the aggrieved person was to challenge the award of the Lok Adalat by filing a writ petition Under Article 226 or/and 227 of the Constitution of India in the High Court and that too on very limited grounds. The case was accordingly remanded to the High Court for deciding the writ petition filed by the aggrieved person on its merits in accordance with law.

26. This is what Their Lordships held in Para 12:

12. It is true that where an award is made by the 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.

27. In our considered view, the aforesaid law laid down by this Court is binding on all the Courts in the country by virtue of mandate of Article 141 of the Constitution. This Court, in no uncertain terms, has laid down that challenge to the award of Lok Adalat can be done only by filing a writ petition Under Article 226 and/or Article 227 of the Constitution of India in the High Court and that too on very limited grounds.

28. In the light of clear pronouncement of the law by this Court, we are of the opinion that the only remedy available to the aggrieved person (Respondents herein/Plaintiffs) was to file a writ petition Under Article 226 and/or 227 of the Constitution of India in the High Court for challenging the award dated 22.08.2007 passed by the Lok Adalat. It was then for the writ Court to decide as to whether any ground was made out by the writ Petitioners for quashing the award and, if so, whether those grounds are sufficient for its quashing.

29. The High Court was, therefore, not right in by passing the law laid down by this Court on the ground that the suit can be filed to challenge the award, if the challenge is founded on the allegations of fraud. In our opinion, it was not correct approach of the High Court to deal with the issue in question to which we do not concur.

9. Now question arises as to whether it would be permissible to file an application invoking inherent powers of the Civil Court under Section 151 of Code of Civil Procedure, when there is embargo created for filing any proceeding to challenge award passed by Lok Adalat except before High Court in a writ petition. A useful reference can be made to the judgment of Supreme Court in this regard. In case of Shipping Corporation of India Ltd. vs. Machado Brothers and others, **AIR 2004 Supreme Court 2093**, the Supreme Court has observed thus :-

“19. Coming to the maintainability of I.A. No. 20651/2001, the learned counsel for the appellant in support of his contention that an application under Section 151, CPC for the dismissal of the suit on the ground of same having become infructuous was maintainable, has relied on number of judgments. In M/s Ram Chand and Sons Sugar Mills Pvt. Ltd., Barabanki (U.P.) v. Kanhayalal Bhargava and others (AIR 1966 SC 1899) while discussing the scope of Section 151, CPC this Court after considering various previous judgments on the point held :

“The inherent power of a Court is in addition to and complementary to the powers expressly conferred under the Code. But that power will not be exercised if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred by the other provisions of the Code. If there are express provisions exhaustively covering a particular topic, they give rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provisions. Whatever limitations are imposed by construction on the provisions of S. 151 of the Code, they do not control the undoubted power of the Court conferred under Section 151 of the Code to make a suitable order to prevent the abuse of the process of the Court.”

20. From the above, it is clear that if there is no specific provision which prohibits the grant of relief sought in an application filed under Section 151 of the Code, the Courts have all the necessary powers under Section 151, CPC to make a suitable order to prevent the abuse of the process of Court. Therefore, the Court exercising the power under Section 151, CPC first has to consider whether exercise of such power is expressly prohibited by any other provisions of the Code and if there is no such prohibition then the Court will consider whether such power should be exercised or not on the basis of facts mentioned in the application.

10. The law settled by Hon'ble Supreme Court therefore does not permit grant of relief by exercise of inherent powers under Section 151, where such power is expressly prohibited by law. The law laid down by Supreme Court about non maintainability of any other proceeding than a writ petition, creates express bar for an application invoking provisions of Section 151 of Code of Civil Procedure.

11. In view of above position of law, a wise pleading and filing of a proceeding in the nomenclature of a miscellaneous application under Section 151 of Code of Civil Procedure, instead of suit, with

same plea and prayer as taken in suit, would not enable the Civil Court to entertain the same.

12. Order 7 Rule 11 of Code of Civil Procedure deals with rejection of plaint. Rule 1 provides as to what should be the contents of the plaint. If application filed before the Trial Court is considered, the same satisfies said requirements. Application is filed seeking setting aside of the award passed by the Lok Adalat. Perusal of pleadings in the application as well as prayers made therein clearly shows that though there pleading in disguise and instead of a suit application is filed by invoking provisions of Section 151 of Code of Civil Procedure, for all practical purpose this is nothing but suit for taking exception of the order/award passed by the Lok Adalat in Regular Civil Suit No. 293/2013.

13. Judgments of Hon'ble Supreme Court in above cases in no uncertain terms hold that the no suit or other proceeding can be filed for taking exception to the award passed by the Lok Adalat and such award can only be challenged by filing writ petition before this Court. Having regard to the finality attached to the award of Lok Adalat, it is not open for the parties to circumvent the provisions of

Legal Services Authorities Act so also judgment of Hon'ble Supreme Court and to file application as done in this case. Having regard to the aforestated facts, the application was not tenable and ought to have been rejected by the Trial Court.

14. In view of above, this Court finds substance in the challenge to the order impugned. Hence, petition is allowed. application/plaint in Civil M.A. No. 62/2021 stands rejected.

(R. M. JOSHI)
Judge

dyb