



**139 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-5324-2024 (O&M)

Date of decision : 30.01.2025

Ashok Gupta and others

...Petitioners

Vs.

Raj Kumari @ Rajbala and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Vibhu Aggarwal, Advocate
for the petitioner.

Mr. Namit Khurana, Advocate
Mr. Satpal Bhasin, Advocate
for respondent No.1 & 3.

Ms. Veena Hooda, Advocate
for respondent No.4.

ANIL KSHETARPAL, J. (Oral)

1. Through this revision petition, the petitioner (defendant) assails the correctness of the trial Court's order dated 15.05.2024 while dismissing his application under Order VII Rule 11 of the Code of Civil Procedure to reject the plaint at the threshold.

2. A suit for specific performance of the agreement to sell was filed by Ashok Gupta against Subhash, Ramesh, Raj Kumari @ Rajbala (plaintiff) and Meena Kumari. Ramesh, Raj Kumari @ Rajbala and Meena Kumari were impleaded through general power of attorney of Subhash s/o Sh Dharam Singh. During the pendency of the suit, Subhash on the basis of attorney entered into the settlement before the Lok Adalat, which resulted in passing of decree by



the Civil Court on 08.12.2018. Subsequently, Raj Kumari @ Rajbala filed a suit for declaration and for passing a decree of permanent injunction claiming that Subhash was never authorized to make settlement because no power of attorney was given to him. It was claimed that the compromise arrived at before the Lok Adalat and subsequent decree passed by the Court on the basis of compromise is illegal. The petitioner filed an application under Order VII Rule 11 of the CPC, which as noticed has been rejected.

3. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

4. Learned counsel representing the petitioner while relying upon the judgment in '*Bhargavi Construction and another vs. Kothakapu Muthyam Reddy and others*', 2017 (4) RCR (Civil) 359, contends that the correctness of the Award passed by Lok Adalat can not be questioned before the Civil Court. She further submits that as per Order 23 Rule 3-A of the CPC, no separate suit is maintainable to challenge the decree passed on the basis of compromise.

5. *Per contra*, learned counsel representing the respondents submits that validity of the compromise is dependent upon validity of power of attorney. He submits that the disputed questions of facts are involved and hence, the only remedy available with the plaintiff is to file a civil suit. He submits that *Bhargavi Construction's case* has been explained by a Co-ordinate Bench in '*Ramphal vs. Maya Devi and another*, 2020(1)) *Law Herald* 864. He also relies upon the judgment passed in '*Jagir Singh vs. Shama*', 2016(1) PLR 500.

6. Para 10 of the judgment in *Ramphal's case* (supra) reads as



under:-

“10. Learned counsel for the petitioner has not been able to draw attention of this Court to any statutory provision, which per-se, bars the present suit. However, learned counsel for the petitioner has relied upon the judgment of the Supreme Court in Bhargavi Constructions (supra) to contend that the law laid down by the Supreme Court through a judgment, is also a law, which would have the effect of barring the civil suit in the present case. However, this court finds itself unable to agree with the submissions raised by learned counsel for the petitioner. There cannot be any dispute regarding the preposition of law laid down by the Hon'ble Supreme Court in the judgment rendered in Bhargavi Constructions (supra), which is being relied upon by learned counsel for the petitioner, however, this Court finds that the present case is totally distinguishable on the facts involved in that case. A reading of the judgment of the Supreme Court shows that the plaintiff in that case had never disputed his presence before the Lok Adalat. His only claim was, at the best, that he had not understood the scope of the suit or he was misled by some misrepresentation. The total absence before the Lok Adalat was not even pleaded in that case. Therefore, in that case, it was so held by the Supreme Court that if a person, who was; undisputedly; party to the proceedings before the Lok Adalat, was having any grievance against the award of the Lok Adalat, then he can approach the High Court through writ petition for challenging the said award. Even in that case Hon'ble Supreme Court had not left the affected party without a remedy but since the award of Lok Adalat was not appealable under the Legal Services Authorities Act, 1987, therefore, the aggrieved person was held entitled to remedy of writ petition. However, in the present case, the positive assertion and averment of the plaintiffs in the plaint is that she was not ever even served with any notice from the Court in the proceedings where the Lok Adalat had passed the said award. The said award was based upon fraud



committed through impersonation of the plaintiff. In that situation, the plaintiff cannot even be taken to be a party to the said proceedings. Hence, no fault could be found with the suit filed by the plaintiff. Needless to say that it is well established law that any order based upon fraud, even if the same happened to be an order obtained from the Supreme Court; but through fraud, can very well be challenged before the civil Court. The legal principle to make such a suit maintainable is that in such a suit, the challenge is to the fraud, and not to the Court order as such. Law cannot even be seen to be standing on the side of fraudster, much less to protect him. In the present case, so far as the averments, for the purpose of application under Order 7 Rule 11 CPC, are concerned, it is not disputed that the plaintiff has specifically asserted that she was impersonated. Hence, for this reason alone; her suit is perfectly maintainable. No fault could be found with the order passed by the trial Court in this regard.”

7. This Court has considered the submissions made by the learned counsel representing the parties.

8. While deciding application under Order VII Rule 11 of the CPC, the Court is required to examine only the contents of the plaint. The plaintiff while filing the suit alleges that she neither authorized Subhash nor executed any power of attorney in his favour.

9. In this case also the plaintiff's claimed that Subhash has no authority to enter into settlement as no power of attorney was given to him. The plaintiff (respondent herein) has not signed the deed of settlement before the Lok Adalat.

10. In these circumstances, the appropriate remedy is available only before the Civil Court because highly disputed questions of facts including the allegations of fraud cannot be properly decided in a petition filed under Article

227 of the Constitution of India.

11. With reference to the second submission, it would be noticed that the plaintiff alleges fraud, hence, at this stage it will not be appropriate to reject the plaint. It shall be open to the defendant to take all objections while contesting the suit.

12. Moreover, the plaintiff while filing the suit has sought multiple reliefs including challenge to the genuineness of the general power of attorney which can be adjudicated by the Civil Court, hence, the rejection of the plaint at the threshold would not be appropriate.

13. Hence, no ground to interfere is made out.

14. The revision petition is dismissed.

15. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)

30.01.2025

JUDGE

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No