

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

OWP 384/2018

Reserved on: 09.10.2023

Pronounced on: 16.10.2023

1. Chief Engineer PWD Kashmir
2. Superintending Engineer PWD R&B Baramulla.
3. Executive Engineer R&B Special Division Uri.
4. Asstt. Executive Engineer Special Sub Division Uri.

...Petitioner(s)

Through: Mr. Ilyas Laway, GA.

V/s

1. Fahmeeda Begum W/o Lt. Mohammad Naseem Khan R/o Pahlipora Boniyar.
2. Raja Waseem Khan S/o Lt. Mohammad Naseem Khan R/o Pahlipora Boniyar
3. Amara Khan D/o Lt. Mohammad Naseem Khan R/o Pahlipora Boniyar.

...Respondent(s)

Through: Ms. Toyiba Gulzar, Advocate vice
Mr. Syed Faisal Qadri, Sr.Advocate.

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

Brief Facts:-

- 1.** Through the medium of the instant Writ Petition filed under Section 103/104 of the erstwhile Constitution of Jammu and Kashmir, petitioners have thrown challenge to the order dated 09.05.2015 passed by Lok Adalat held at Baramulla, whereby the respondents therein were under command to release the outstanding payment of Rs.3.00 lacs to the petitioner therein (Mohammad Naseem) within a

period of three months on the basis of alleged admission made by the then Executive Engineer, Uri. Also, challenge is thrown to the order dated 17.11.2017 passed by District & Sessions Judge, Baramulla, in an Execution Petition, filed for implementation of the order dated 09.05.2015 passed by Lok Adalat, whereby the Account No. CG-72 of Executive Engineer Special Sub Division Uri, was attached.

- 2.** Before proceeding further in the matter and in order to appreciate the controversy involved in the instant petition, it would be appropriate to give factual matrix of the case:
- 3.** An application came to be filed before the Chairman, Legal Services Authority, Baramulla, by one Mohammad Naseem Khan (father of the respondents herein and a Contractor by profession), seeking recovery of an amount of Rs.3.00 lacs outstanding towards the petitioners herein on account of having executed construction work of the road from Zehampora to Pahlipora via Naganari, in the year 2008, and the said application was filed for settlement of the case at pre-litigation stage.
- 4.** It is the specific case of the petitioners herein that the J&K Legal Services Authority (for short 'Authority') was required to afford opportunity of being heard to them in terms of the proviso to Section 19(1) of the J&K Legal Services Authority Act, 1997, before referring the matter to the Lok Adalat, but without putting the petitioners herein to notice, the Authority made the reference to the Lok Adalat,

which according to the petitioners is against the letter and spirit of the Legal Services Authorities Act. It is pleaded that the aim and object of the Legal Services Act is to constitute/organize Lok Adalat. The power of jurisdiction of Lok Adalat is contained in Chapter-5 from Section 18 to 20.

5. In terms of Section 18(4), the Lok Adalats' shall have jurisdiction to determine and to arrive at a compromise between the parties to a dispute. It has no jurisdiction to determine the issues except by way of compromise or settlement. Section 18(4) is reproduced as under:-

“Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of:

- i) Any case pending before; or*
- ii) Any matter which is falling within the jurisdiction of and is not brought before any court for which the Lok Adalat is organized.”*

6. Further case of the petitioners is that the Chairman Legal Services Authority, instead of restricting himself not to determine the issue but to seek compromise or settlement, proceeded to determine the issue on the basis of the documents allegedly indicating that the payment is due to the applicant therein. It is further pleaded that neither any settlement has been arrived at between the parties nor the parties have made any compromise, yet the Lok Adalat has directed the petitioners herein to release the amount of Rs.3.00 lacs in favour of Mohammad Naseem Khan (petitioner before the Lok Adalat).

7. According to the petitioners herein, both the impugned orders i.e., order dated 09.05.2015 passed by Lok Adalat and order dated 17.11.2017 passed by Sessions Judge, Baramulla, are beyond the scope of their jurisdiction and cannot sustain the test of law.
8. In response to the instant writ petition, respondents have filed objections, stating therein that the instant writ petition is not maintainable, as the same does not fall within the purview of Section 103/104 of the erstwhile Constitution of J&K, as the petitioners are themselves not clear as to whether the petition has been filed under Section 103 or under Section 104 of the erstwhile Constitution of J&K.
9. It is further contended that none of the fundamental rights of the petitioners have been infringed, therefore, the petition could not be maintained under Section 103 of the erstwhile Constitution of J&K, and so far as invoking the provisions of Section 104 of the erstwhile Constitution of J&K, it has been observed in various judgments of Hon'ble Supreme Court that by entertaining petitions under Article 227 of the Constitution of India, which is *pari materia* to Section 104 of the erstwhile Constitution of J&K, the justification for maintaining the petition in view of the amendment to Section 115 of CPC has to be curtailed and deprecated.
10. Further contention of respondents is that the petitioners herein have not chosen to release the balance amount of Rs.3.00 lacs in favour of the deceased Mohammad Naseem Khan, so the said

deceased have preferred pre-litigation petition before the Legal Services Authority, seeking release of the said balance amount along-with interest towards the delayed payment. Pursuant to the notice issued to the respondents therein by the Legal Services Authority, claim of the petitioner therein was admitted and the respondents therein were directed to release the admitted amount within three months with liberty to the petitioner therein to file an execution petition in case of non-payment. Further, case of the respondents is that after the elapse of three months, petitioners herein have failed to release the admitted amount and the petitioners therein were left with no other option but to prefer an execution petition claiming release of the admitted amount along-with 18% interest from the year 2003 till 2016 amounting to Rs.10,20,000/-.

11. It is further stated in the objections that during the pendency of the execution petition, the petitioner therein namely Mohammad Naseen Khan expired on 14.05.2017, and accordingly application came to be filed on behalf of his legal heirs for bringing them on record as his legal representatives, which application was allowed. Thereafter, respondents therein did not chose to appear before the appellate court, constraining the said court to issue show cause as to why the Account Head belonging to the respondents therein should not be attached in order to meet the execution, and, accordingly, by virtue of order dated 12.12.2017, the appellate court attached the Account No. CG-72, belonging to the respondents therein.

12. Learned counsel appearing for the petitioners, reiterating the grounds taken in the writ petition, vehemently argued that Mohammad Naseem Khan, who was shown as petitioner in the execution petition, was dead at the time of filing of the execution petition, even no attempt was taken for bringing on record the legal heirs of the deceased Mohammad Naseem Khan. He further argued that during the execution proceedings, the order dated 17.11.2017 came to be passed by the executing court, whereby the direction was issued to the extent that the Account No. CG-72, operating by judgment-debtor i.e. Executive Engineer Special Sub Division R&B, Uri, shall be attached.

13. Per contra, Mr. Faisal Qadri, Sr. Advocate, appearing for respondents herein contended that during the pendency of execution petition, Mohammad Naseem Khan expired on 14.05.2017, and, accordingly, application was filed on behalf of his legal heirs for bringing them on record as legal representatives of the said deceased Mohammad Naseem Khan, which application was allowed by the executing court on 03.08.2017, copy of the application as well as copy of the said order dated 03.08.2017 has been annexed with the objections filed by the respondents.

14. Further argument of learned counsel for the respondents is that the power under Section 103/104 of the erstwhile Constitution of J&K, cannot be taken as a matter of right to prefer an appeal by an aggrieved party, nor this power can be invoked to point out an error

of law or fact in the order or judgment/decision of a subordinate court, as has been averred by the petitioners herein in the instant case. His further argument is that when the statutory appeal is either available or is expressly barred, maintaining of the instant writ petition by invoking powers under Section 103/104 of the erstwhile Constitution of J&K, is not permissible and is liable to be dismissed.

15. Heard learned counsel for the parties at length and perused the record.

Petition is admitted to hearing.

16. With the consent of learned counsel for the parties, the instant petition is taken up for final disposal.

Legal Analysis:-

17. I have gone through the order passed by Lok Adalat dated 09.05.2015, which amounts to compromise decree, whereby in pursuant to admission of the claim of the petitioners by the Executing Engineer, Uri, Shri Nazir Ahmad Bandy who was present in person, has specifically stated that since he has already brought the matter before the Chief Engineer, which was in pipe-line at that time and has assured that on receiving the sanction for its payment, same shall be released in favour of the petitioner therein.

18. Before the Lok Adalat, the petitioner Mohammad Naseem Khan, who has since expired, has submitted that he does not want to charge any interest on the balance amount provided the same is released expeditiously.

19. In the aforesaid backdrop, respondents therein were directed to release the outstanding payment within the period of three months

from the date of passing of the said order by Lok Adalat, and, accordingly, copy of the said order was endorsed to Chief Engineer PWD Kashmir for compliance within the stipulated period, failing which the petitioner therein was granted liberty to file execution petition. Pursuant thereto, execution petition was filed before the competent court in which the executing court has enlarged the scope of the basis order / decree passed by the Lok Adalat by entertaining the execution petition for recovery of Rs.10.00 lacs from the judgment-debtor instead of the balance amount of Rs.3.00 lacs which was recoverable and payable to the petitioner therein.

20. The Executing court, by virtue of the order dated 12.12.2017, has been pleased to pass the following order:-

“..On 17.11.2017 the above mentioned order along with the notice was duly served upon the judgment debtors. Despite the service of the order the judgment debtors have not filed the objections, nor they have deposited the money in this Court till date. Thus, it can be presumed that judgment debtors have nothing to say in their defence. In these circumstances, the Account No. CG-72 operated by judgment debtor No.2 (Executive Engineer, Special Sub Division Road and Buildings Uri) in Jammu and Kashmir Bank Branch Uri is hereby attached with the direction to the Manager J&K Bank Ltd. Branch office Uri not to honour any of the bills of the office of judgment debtor No.2 (Executive Engineer, Special Sub Division Road and Buildings’ Uri).”

21. From the perusal of the order passed by the executing court, it is manifestly clear that the executing court has gone beyond what was recorded by the Lok Adalat in the compromise-decree, whereby the petitioner, in unambiguous terms, has declined to charge any interest on the balance amount and as per the order passed by the Lok Adalat, which is impugned in the instant petition, the amount of Rs.3.00 lacs,

was payable to the petitioner therein and the said balance amount was admitted by the concerned Executing Engineer and in the aforesaid backdrop, the direction was issued to the respondents to release outstanding amount within three months but the executing court, vide order impugned dated 12.12.2017, has enlarged the scope of basic order by entertaining the execution petition for the recovery of Rs.10.00 lacs, which includes interest.

22. Reliance is placed on a judgment titled **Sanwarlal Agrawal & Ors. Vs. Ashok Kumar Kothari & Ors reported as (2023) 7 SCC 307,** in which the Hon'ble Supreme Court has held that:-

“Even if there is any ambiguity, it is for the executing court to construe the decree if necessary after referring to the judgment. If sufficient guidance is not available even from the judgment, the court is even free to refer to the pleadings so as to construe the true import of the decree. No doubt, the court cannot go behind the decree or beyond the decree. But while executing a decree, in case of any ambiguity, has necessarily to construe the decree so as to give effect to the intention of the parties. It is undeniable that an executing court can construe a decree if it is ambiguous But not otherwise.”

23. In **Topanmal Chhotamal Vs. Kundomal Gangaram, reported as AIR 1960 SC 388,** Hon'ble Apex Court has been pleased to observe as under :-

“It is a well-settled principle that a Court executing a decree cannot go behind the decree: it must take the decree as it stands, for the decree is binding and conclusive between the parties to the suit”.

24. The executing court by no stretch of imagination could have entertained the said execution petition in the light of the specific statement by the petitioner, whereby, the deceased has declined to charge any interest on the amount and thus, the order passed by the

executing court was beyond what has already been ordered by way of compromise decree by both the parties.

25. It goes without saying that the order passed by Lok Adalat on 09.05.2015 amounts to compromise decree, which by no stretch of imagination could be challenged by the petitioner herein by way of preferring appeal.

26. The power under Section 103/104 of the Constitution of erstwhile State of J&K which is *pari materia* to Article 227 of the Constitution of India cannot be taken as a matter of right to prefer an appeal by an aggrieved party, not this power can be invoked to point out an error of law of fact in the order of judgment/decision of subordinate court, as has been alleged by the petitioner in the instant writ petition.

27. The law is well settled that when the statutory appeal is either available or is expressly barred, maintaining of the instant writ petition by invoking powers under Section 103/104 of the Constitution of erstwhile State of J&K, which is *pari materia* to Article 227 of the Constitution of India, is not permissible. Since none of the fundamental rights of the petitioners have been infringed in the instant case, therefore, the petition could not be maintained under Section 103 of the Constitution of erstwhile State of J&K. As far as invoking of provision under Section 104 of the Constitution of erstwhile State of J&K, which has been set at naught by the Hon'ble Supreme Court in various authoritative pronouncements that by entertaining petition under Article 227 of the Constitution of India which is *pari materia* to Section 104 of the Constitution of erstwhile J&K, the justification for

maintaining a petition, in view of the amendment of Section 115 of the CPC, has to be curtailed and deprecated.

28. Every award of Lok Adalat is deemed to be a decree of the civil Court as provided under Section 21 of the Legal Services Authority Act, 1987. In this regard, it may be apposite to refer to Section 21 of the Legal Services Authorities Act, 1987, which is extracted as under:

“21. Award of Lok Adalat.—

(1) Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court-fees Act, 1870 (7 of 1870).

(2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.”

29. Section 21 of the Legal Services Authorities Act, 1987 equates an award of the Lok Adalat, to a decree of a Civil Court and imputes an element of finality to an award of compromise passed by the Lok Adalat. When the Lok Adalat disposes cases in terms of a compromise arrived at between the parties to a suit, after following principles of equity and natural justice, every such award of the Lok Adalat shall be deemed to be a decree of a Civil Court and such decree shall be final and binding upon the parties. Given the element of finality attached to an award of the Lok Adalat, it also follows that no appeal would lie, under Section 96 of the CPC against such award, as has been held by Hon’ble Apex Court in case titled as **P.T. Thomas vs. Thomas Job** reported as [(2005) 6 SCC 478].

30. This Court is of the view that a writ petition would be maintainable against an award of the Lok Adalat, especially when such writ petition has been filed alleging fraud in the manner of obtaining the award of compromise, the writ court cannot, in a casual manner, *de hors* any reasoning, set aside the order of the Lok Adalat. The award of a Lok Adalat cannot be reversed or set aside without setting aside the facts recorded in such award as being fraudulent arrived at.

31. The Latin maxim “*cessante ratione legis cessat ipsa lex*” meaning “reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself” vide **H H Sri Swamiji of Sri Admar Mutt vs. the Commissioner, Hindu Religious and Charitable Endowments Dept.**– [(1979) 4 SCC 642], is also apposite.

32. In the instant case, no such allegation of fraud has been pleaded and on the other hand, a categorical statement has been made by the deceased that he will not charge any interest and, thus, the respondents in the instant petition are bound by the said statement and the appellants, as such, are under a legal obligation to pay the admitted liability to the tune of Rs. 3.00 lacs.

33. Since, the petitioner no.3 has admitted the claim of the respondents and has agreed for the settlement before the Lok Adalat and has never objected to release of the balance amount of Rs.3.00 lacs and thus, the order passed by the Lok Adalat, which is impugned in the present petition dated 09.05.2015, being award and decree, deserves to be executed, and thus, the petitioners are estopped in law to challenge the same by filing the instant petition by invoking the powers under

Section 103/104 of the Constitution of erstwhile J&K which is *pari materia* to Article 227 of the Constitution of India.

34. In **Pushpa Devi Bhagat (dead) through LR. Sadhan Rai Vs. Rainer Singh & Ors.** reported as (2006) 5 SCC 566, the Apex Court has held that:-

“...Since no appeal would lie against a compromise decree, the only option available to a party seeking to avoid such a decree would be to challenge the consent decree before the Court that passed the same and to prove that the agreement forming the basis for the decree was invalid. It is therefore, imperative that a party seeking to avoid the terms of a consent decree has to establish, before the court that passed the same, that the agreement on which the consent decree is based is invalid or illegal.”

35. In another judgment titled **Ruby Sales and Services Pvt. Ltd. Vs. State of Maharashtra** reported as (1994) 1 SCC 531, the Apex Court has observed that :-

“... that a consent decree is a creature of an agreement and is liable to be set aside on any of the grounds which will invalidate an agreement. Therefore, it would follow that the level of circumspection, which a court of law ought to exercise while setting aside a consent decree or a decree based on a memo of compromise, would be atleast of the same degree, which is to be observed while declaring an agreement s invalid.”

Conclusion:-

36. Thus, this Court holds that the instant writ petition, being devoid of any merit, is not maintainable and liable to be dismissed as the challenge thrown to the order passed by Lok Adalat dated 09.05.2015, is ill-founded. Accordingly, the instant petition, is, dismissed. Order passed by Lok Adalat, whereby the deceased has given his consent not to charge any interest is upheld and the legal heirs (Respondents) are

bound by the said statement. Petitioners are directed to release the outstanding payment of Rupees Three Lacs in favour of the respondents within the period of one month from today. It is made clear that in case payment is not made within the aforesaid period, the petitioners are directed to pay interest @ 6% per annum w.e.f., 09.05.2015 i.e., the date of order/decreed passed by Lok Adalat

37. The Executing court, in the instant case, has enlarged the scope of the basic order/decreed passed by the Lok Adalat contrary to the stand taken by the deceased, whereby, he had declined to charge any interest on the balance amount. However, the court below has entertained the execution petition for recovery of Rupees Ten Lacs, which is inclusive of the interest. Consequently, order dated 12.12.2017, which has been passed by the Executing court by attaching the Account No. CG-72 operated by Executive Engineer, Special Sub Division R&B, Uri, cannot sustain the test of law in light of discussion hereinabove and thus is set aside/quashed.

38. Ordered, accordingly.

(WASIM SADIQ NARGAL)
JUDGE

Srinagar
16.10.2023
Muzammil. Q

<i>Whether the Judgment/Order is Reportable:</i>	Yes
<i>Whether the Judgment/Order is Speaking:</i>	Yes