Dr. (Smt.) Shashi Prateek Vs Charan Singh Verma and Another

Court: Allahabad High Court

Date of Decision: Sept. 24, 2008

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 151, 152, 153, 96
Constitution of India, 1950 â€" Article 226, 227, 32, 323A, 323B
Criminal Procedure Code, 1973 (CrPC) â€" Section 195
Penal Code, 1860 (IPC) â€" Section 193, 219, 228

Citation: AIR 2009 All 109 : (2009) 1 AWC 212

Hon'ble Judges: Sabhajeet Yadav, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Sabhajeet Yadav, J.
By this petition, the petitioner has challenged the order dated 3.9.2008 passed by. Civil Judge (Senior Division),

Muzaffar Nagar purporting to be as Lok Adalat in Misc. Case No. 57 of 2007, whereby he has rejected the application of the petitioner moved

under Order IX, Rule 13 read with Section 151, C.P.C. and refused to set aside the award dated 30.4.2006 passed by Lok Adalat in Original

Suit No. 852 of 2005.

2. It is stated that Original Suit No. 852 of 2005 was instituted by respondent No. 1-father of the petitioner by impleading her brother Dr. Ravi

Kant as defendant No. 1 and petitioner as defendant No. 2. On 30.4.2006 the suit was decreed on the basis of compromise alleged to have been

signed by the petitioner as defendant No. 2 in suit before the Lok Adalat held on that day. It is stated that in fact the petitioner had neither any

knowledge of the institution of said suit nor she had engaged any counsel nor any compromise application was moved and signed by her nor she

was present before the Court or Lok Adalat on 30.4.2006 and signed said compromise before the Lok Adalat, as such no award could be made

by the Lok Adalat. When on 24.3/2007 the petitioner came to know about the said fraudulent compromise decree then she filed application under

Order IX, Rule 13 read with Section 151, C.P.C. for setting aside the said compromise decree which was registered as Case No. 57 of 2007. On

24.10.2007 the plaintiff opp. party No. 1 has filed his objection. Thereafter abruptly on 26.8.2008 the plaintiff opp. party No. 1 has moved an

application 112 Ga praying that Misc. Case No. 57 of 2007 be dismissed as not maintainable. Thereupon vide impugned order dated 3.9.2008

Civil Judge (Senior Division) Muzaffar Nagar has dismissed the aforesaid Case No. 57 of 2007 holding that the petitioner"s counsel had signed the

compromise on her behalf cannot be faulted with and application under Order IX. Rule 13 read with Section 151, C.P.C. is also not maintainable,

hence this petition.

3. Sri Ravi Kant learned senior counsel for respondent No. 1 and Sri Naveen Sinha for respondent No. 2 have contended that in view of law laid

down by Hon"ble Apex Court in P. T. Thomas v. Thomas Job 2005 (3) AWC 3048 (SC), writ petition against the award of Lok Adalat and

impugned order are not maintainable, wherein three Judges Bench of Apex Court had held that the order passed by Lok Adalat constituted under

the provisions of the Legal Services Authorities Act, 1987, (herein after referred to as the Act, 1987), cannot be called in question either in appeal

or revision or even under Article 226 of the Constitution of India.

4. Contrary to it, the submission of Sri M.K. Gupta, learned Counsel for the petitioner is that in case the remedy of judicial review under Article-

226 is barred against the impugned order, the petitioner would be left remediless to ventilate her grievances and urged that it is well settled that

every-authority has jurisdiction to recall its order if it is found that such order is obtained by misrepresentation or playing fraud upon the authority

or result of mistake of facts, without any express power of review is vested in such authority as the powers to recall such order is inherent in every

authority. He further urged that at any rate observation made by Hon"ble Apex Court in P. T. Thomas case (supra) should be understood in the

context of the facts of aforesaid case and the facts of the instant case are quite distinguishable and the question in consideration before this Court is

that as to whether any award made by the Lok Adalat was with the consent of the petitioner based on any compromise entered into between

parties, signed by the petitioner before Lok Adalat or not? Therefore, if the aforesaid fact that the parties have entered into a compromise before

the Lok Adalat is disputed by the petitioner, the issue could be examined by the Lok Adalat itself as the fraud played upon the authorities cannot

be permitted to be perpetuated and person alleging of playing fraud upon him/her and the authority concerned, cannot be left remediless. In

support of the case of petitioner Sri M. K. Gupta has referred several decisions of this Court as well as Supreme Court, the reference of some of

them shall be made hereinafter at relevant place.

5. Heard Sri M. K. Gupta, learned Counsel for the petitioner and Sri Ravi Kant, learned senior counsel assisted by Sri Nipun Singh and Sri Pratik

J. Nagar for respondent No. 1 and Sri Navin Sinha, learned senior counsel assisted by Sri Somesh Khare for respondent No. 2.

6. Learned Counsel appearing for the respondent did not choose to file any counter-affidavit rather agreed for disposal of case afresh. Accordingly

the case is decided finally at very threshhold, without calling for counter-affidavit, with the consent of learned Counsel for the parties.

7. Before I proceed to deal with the rival contention of the learned Counsel for the parties, I may conveniently refer some provisions of the Act,

1987 having material bearing with the question in issue. Provisions of Section 19 of the Act deal with the organisation of Lok Adalats, Section 20

of the Act deals with the cognizance of the cases by the Lok Adalats and Section 21 of the Act deals with the award of Lok Adalat as under:

19. Organisation of Lok Adalats. - (1) Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High

Court Legal Services Committee or, as the case may be, Taluk Legal Services Committee may organise Lok Adalats at such intervals and places

and for exercising such jurisdiction and for such areas as it thinks fit.

(2) Every Lok Adalat organised for an area shall consist of such number of--

(a) serving or retired judicial officers ; and

(b) other persons, of the area as may be specified by the State Authority or the District Authority or the Supreme Court Legal Services Committee

or the High Court Legal Services Committee, or as the case may be, the Taluk Legal Services Committee, organising such Lok Adalat.

(3) The experience and qualifications of other persons referred to in clause (b) of Sub-section (2) for Lok Adalats organised by the Supreme

Court Legal Services Committee shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India.

(4) The experience and qualifications of other persons referred to in clause (b) of Sub-section (2) for Lok Adalats other than referred to in Sub-

section (3) shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(5) A 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 organised:

Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.

20. Cognizance of cases by Lok Adalats.--{1) Where in any case referred to in clause (i) of Sub-section (5) of Section 19,--

(i) (a) the parties thereof agree ; or

(b) one of the parties thereof makes an application to the Court for referring the case to the Lok Adalat for settlement and if such Court is prima

facie satisfied that there are chances of such settlement; or

(ii) the Court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat, the Court shall refer the case to the

Lok Adalat:

Provided that no case shall be referred to the Lok Adalat under Sub-clause (b) of clause (i) or clause (ii) by such Court except after giving a

reasonable opportunity of being heard to the parties.

(2) Notwithstanding anything contained in any other law for the time being in force, the Authority or Committee organising the Lok Adalat under

Sub-section (1) of Section 19 may, on receipt of an application from any one of the parties to any matter referred to in clause (ii) of Sub-section

(5) of Section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination:

Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.

(3) Where any case is referred to a Lok Adalat under Sub-section (1) or where a reference has been made to it under Sub-section (2), the Lok

Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

(4) Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or

settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.

(5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the

record of the case shall be returned by it to the Court, from which the reference has been received under subsection (1) for disposal in accordance

with law.

(6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a

matter referred to in Sub-section (2), that Lok Adalat shall advice the parties to seek remedy in a Court.

(7) Where the record of the case is returned under Sub-section (5) to the Court, such Court shall proceed to deal with such case from the stage

which was reached before such reference under Sub-section (1).

21. Award of Lok Adalat--(1) Every award of the Lok Adalat shall be deemed to be a decree of 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 on it under Sub-section (1) of

Section 20, the Court fee paid in such cases 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.

8. Section 22 of the Act deals with the powers of Lok Adalat or Permanent Lok Adalat as under:

22. Powers of Lok Adalat or Permanent Lok Adalat.--(1) The Lok Adalat shall, for the purposes of holding any determination under this Act,

have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the

following matters, namely:

(a) the summoning and enforcing the attendance of any witness and examining him on oath ;

(b) the discovery and production of any document ;

(c) the reception of evidence on affidavits ;

(d) the requisitioning of any public record or document or copy of such record or document from any Court or Office ; and

(e) such other matters as may be prescribed.

(2) Without prejudice to the generality of the powers contained in Sub-section (1), every Lok Adalat shall have the requisite powers to specify its

own procedure for the determination of any dispute coming before it.

(3) All proceedings before a Lok Adalat shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian

Penal Code (45 of 1860) and every Lok Adalat shall be deemed to be a civil court for the purpose of Section 195 and Chapter XXVI of the

Code of Criminal Procedure, 1973 (2 of 1974).

9. Section 25 of the Act provides that the provisions of the Act shall have overriding effect upon the contrary provisions of any other law, which

reads as under:

25. Act to have overriding effect--The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other

law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

10. Now before proceeding further, it is necessary to analyse the relevant provisions of Act. Section 19 (5) of the Act provides that a 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 any court for which Lok Adalat is organised ; or (ii) any matter which is falling within the jurisdiction of any court for which the Lok Adalat

is organised but matter is not brought before any such court. A proviso is appended to said Sub-section to the effect that the Lok Adalat shall have

no jurisdiction in respect of any case or matter relating to an offence which is not compoundable under any law. Thus, from a plain reading of said

provisions, it is clear that a Lok Adalat organised u/s 19 of the Act shall have jurisdiction to determine and to arrive at a compromise or settlement

between the parties to a dispute in respect of any case either pending before any court or any matter falling within the jurisdiction of any court, for

which the Lok Adalat is organised but matter is not brought before any such court. Thus, it is clear that Lok Adalat has jurisdiction to settle the

dispute on the basis of compromise between the parties in both the cases, which are either pending before any court and/or also which are not

pending before any court but it has neither any jurisdiction to decide the case on merit nor any case or matter relating to an offence not

compoundable under any law.

11. Section 20 of the Act deals with the cases in respect of which Lok Adalat can take cognizance including the procedure and manner how the

cases to be brought before it and how they can be disposed by Lok Adalat. Sub-section (1) of Section 20 stipulates that where in any case

referred to in clause (i) of Sub-section (5) of Section 19 i.e., in pending case before any court (a) the parties thereof agree ; or (b) one of the

parties thereof makes an application to the Court for referring the case to the Lok Adalat for settlement and if such Court is prima facie satisfied

that there are chances of such settlement ; or (ii) the Court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok

Adalat, the Court shall refer the case to the Lok Adalat ; provided that no case shall be referred to the Lok Adalat under subclause (b) of clause

(i) or clause (ii) of Sub-section (1) of Section 20 by such Court except after giving a reasonable opportunity of being heard to the parties. In other

words, Lok Adalat can take cognizance of a pending case before any court, only where the parties either agree to refer the dispute to it or the

Court refers the dispute by its own after hearing the parties or at instance of any one of parties after hearing other parties and not otherwise.

12. Sub-section (2) of Section 20 provides that notwithstanding anything contained in any other law for the time being in force, the Authority or

Committee organising the Lok Adalat under Sub-section (1) of Section 19 may, on receipt of an application from any one of the parties to any

matter referred to in clause (ii) of Sub-section (5) of Section 19 i.e., a matter which is not pending before any court but falling within the jurisdiction

of such court for which Lok Adalat is organised and such matter needs to be determined by a Lok Adalat, refer the matter to the Lok Adalat, for

determination ; provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other

party. Thus, Section 20 (2) provides that the Authority or Committee organizing the Lok Adalat under Sub-section (1) of Section 19 may on

receipt of an application from anyone of the parties to any matter referred to clause (ii) of Sub-section (5) of Section 19, i.e., any matter which is

falling within the jurisdiction of any court but is not brought before any court for which the Lok Adalat is organized, may refer such matters if it is

found that such matter needs to be determined by Lok Adalat, but no such reference can be made to the Lok Adalat by such Authority or

Committee except after giving a reasonable opportunity of being heard to other party.

13. Thus, from a close analysis of the provisions of Section 20 (1) and 20 (2) of the Act, it is clear that the Court dealing with the case can refer a

dispute for settlement to Lok Adalat either where the parties agree for such reference or where the Court, or the Authority or Committee

organising Lok Adalat, on application of any one of the parties to dispute after affording reasonable opportunity of hearing to the parties, or where

court itself found that such matter needs to be determined by Lok Adalat, in such situation they can refer any matter before Lok Adalat. In other

words the power of court before which any dispute is pending or any authority or committee organising the Lok Adalat to refer a dispute to Lok

Adalat is circumscribed by the aforesaid conditions laid u/s 19 (5) and Section 20 (1) and (2) of the Act. In my opinion, these conditions are sine

qua non for making a valid reference before Lok Adalat organised u/s 19 of the Act. Therefore, unless these conditions are satisfied, Lok Adalat

organised u/s 19 (1) of the Act has no jurisdiction to take cognizance of the matter or dispute, even if referred to it by the Court or authority or

committee organising the Lok Adalat.

14. Section 20 (3) of the Act makes it clear that where any case is referred to a Lok Adalat under Sub-section (1) or where a reference has been

made to it under Sub-section (2) of Section 20, the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or

settlement between the parties, but Section 20 (5) provides that where no award is made by the Lok Adalat on the ground that no compromise or

settlement could be arrived at between the parties, the record of the case shall be returned by it to the Court from which reference has been

received under Sub-section (1) for disposal in accordance with law and in a matter referred to Sub-section (2) of Section 20 the Lok Adalat shall

advice the parties to seek the remedy in a court and Sub-section (7) of Section 20 further provides that where the record of the case is returned

under Sub-section (5) to the Court, such Court shall proceed to deal with such case from the stage which was reached before such reference

under Sub-section (1).

15. While dealing with the power of Lok Adalat to settle a dispute u/s 20 of the Act in State of Punjab and Others Vs. Phulan Rani and Another, ,

Hon''ble Apex Court has held that Lok Adalat can dispose of the matters u/s 20 of the Act only by way of compromise or settlement between the

parties and if no compromise or settlement can be arrived at, no order can be passed by Lok Adalat. The pertinent observations made by the

Hon''ble Apex Court in paras 7 and 8 of the decision are as under:

7. The specific language used in Sub-section (3) of Section 20 makes it clear that the Lok Adalat can dispose of a matter by way of a compromise

or settlement between the parties. Two crucial terms in Sub-sections (3) and (5) of Section 20 are ""compromise"" and ""settlement."" The former

expression means settlement of differences by mutual concessions. It is an agreement reached by adjustment of conflicting or opposing claims by

reciprocal modification of demands. As per Terms de la Ley, ""compromise is a mutual promise of two or more parties that are at controversy. As

per Bouvier it is ""an agreement between two or more persons, who, to avoid a law suit, amicably settle their differences, on such terms as they can

agree upon."" The word ""compromise"" implies some element of accommodation on each side. It is not apt to describe total surrender. (See Re

N.F.U. Development Trust Ltd. (1973) 1 AllER 135 (Ch D). A compromise is always bilateral and means mutual adjustment. ""Settlement"" is

termination of legal proceedings by mutual consent. The case at hand did not involve compromise or settlement and could not have been disposed

of by Lok Adalat. If no compromise or settlement is or could be arrived at, no order can be passed by the Lok Adalat. Therefore, the disposal of

the Writ Petition No. 13555/1994 filed by respondent No. 1 is clearly impermissible.

8. What was challenged in Writ Petition No. 4708/2002 to which this appeal relates related to the powers of disposal of cases by the Lok Adalat.

In view of findings recorded that matter could not have been disposed of by the Lok Adalat, High Court ought to have directed restoration of writ

petition filed by Phulan Devi, i.e.. Civil Writ Petition No. 13555/1994 for disposal in accordance with law.

16. Now applying the aforesaid legal principles in given facts and circumstances of the case, it is no doubt true that the dispute in question could be

referred to the Lok Adalat for settlement even on the application made by the respondent but no such reference could be made by the Court in

which the alleged dispute was pending or if no such dispute or suit was pending before the Court, by Authority or Committee organising Lok

Adalat, without giving reasonable opportunity of being heard to the petitioner who was party in the matter or dispute referred to the Lok Adalat.

Therefore, in my opinion, the court below was required to examine the fact as to whether both the parties were agreed to refer the matter before

the Lok Adalat or not, or if the reference was made by court itself as to whether the parties of dispute were afforded reasonable opportunity of

being heard before such reference or not? If the reference was made at the instance of one of the parties in respect of the matter or dispute as to

whether other party was heard before making the reference to the Lok Adalat or not? Unless conditions laid down u/s 20 (1) and (2) are satisfied,

which are sine qua non for valid reference before the Lok Adalat organised u/s 19 of the Act, Lok Adalat can have no jurisdiction to settle the

dispute referred to it. But from the perusal of impugned judgement passed by Lok Adalat it is clear that while deciding the application moved by

the petitioner Lok Adalat did not examine the aforesaid aspect of the matter. Therefore, in my opinion, unless the aforesaid condition precedent for

taking cognizance of case was found satisfied Lok Adalat has no jurisdiction u/s 20 of the Act to take cognizance of the aforesaid dispute referred

to it and award, if any, made by Lok Adalat is without jurisdiction and nullity.

17. Further u/s 20 (3) of the Act the Lok Adalat is empowered to dispose of the case or matter referred to it only on the basis of compromise or

settlement between the parties alone. In case no compromise or settlement could be arrived at between the parties, no award could be made by

the Lok Adalat and the dispute was required to be returned to the Court which has made reference of dispute to the Lok Adalat under Sub-

section (5) of Section 20 of the Act. Therefore, while deciding the application moved by the petitioner the Lok Adalat was required to examine the

question as to whether the parties have in fact entered into compromise or not? In case it is found that they did not enter into compromise or

settlement as alleged by the petitioner that she was neither present before the Lok Adalat nor signed the compromise alleged to have been entered

into the parties before Lok Adalat, in that eventuality Lok Adalat could not make impugned award, therefore, it was necessary for the Lok Adalat

to recall the award and return the matter to the Court from which the reference was made to it but the Lok Adalat has not done so and rejected

the aforesaid application of the petitioner as not maintainable inasmuch as on merits too. In my opinion, such approach of Lok Adalat is erroneous

and contrary to law.

18. It is no doubt true that award made by Lok Adalat is final and binding on all the parties to dispute and no appeal shall lie to any court against

such award as barred by Section 21 (2) of the Act but the question involved in the instant case is not as assumed by the court below. Virtually the

petitioner did not challenge the correctness of the award made by the Lok Adalat on merit but she challenged the very basis of process of making

aforesaid award and asserted that alleged award was obtained by respondent by playing fraud upon her and upon the Lok Adalat. In this

connection, I would refer a decision rendered by Apex Court in United India Insurance Co. Ltd. v. Rajendra Singh and Ors. JT 2000 (3) SC 151

: 2000 (2) AWC 1349 (SC), wherein Hon''ble Apex Court has dealt with somewhat similar issue.

19. The brief facts of Rajendra Singh''s case (supra) were that one Rajendra Singh and his son Sanjay Singh (first respondent in the respective

appeals) filed two separate claim petitions before Motor Accident Claims Tribunal, Bulandshahr (for short the Tribunal) in 1994 praying for

awarding compensation in respect of an accident which happened on 9.11.1993. The claimants had filed their claims on the ground that they had

met with the aforesaid accident through an Ambassador car (DL 2C-9793) driven by Jai Prakash collided with the motorcycle of Sanjay Singh on

which Rajendra Singh was also sitting on back seat and caused injuries to both of them. The Ambassador car was owned by second respondent.

As the Ambassador car was, at the relevant time, covered by a policy of Insurance with the appellant company, the claimants made appellant

company also a party in the claim proceedings before the Tribunal. Though the owner of car as well as insurance company resisted the claims on

the premise that there was no negligence on the part of the driver of the car, but the Tribunal found the driver guilty of negligent driving.

Accordingly, two awards were passed on 15.1.1998, one in favour of Rajendra Singh in a sum of Rs. 3,55,000 and the other in favour of Sanjay

Singh in a sum of Rs. 1,52,000. The awards became final as neither the owner of the Ambassador car nor the insurance company filed any appeal

thereon.

20. Hardly four months elapsed after passing the awards, a gentleman visited the Divisional office of appellant company at Ghaziabad and

delivered the photocopy of a report prepared by Assistant Sub Inspector of Police, Sabji Mandi Police Station, Delhi on 9.11.1993 in which

contained a narration that Sanjay Singh and Rajendra Singh received injuries in a different circumstance at a different place altogether. On receipt

of the said information, the Divisional Office of appellant company made inquiries and they came across statements attributed to the claimants

prepared by Sub Inspector of police, Sabji Mandi Police Station, Delhi on 9.11.1993. Such statements contained the narration that the injuries

were sustained by Rajendra Singh and Sanjay Singh in the accident which happened when trailor trolly owned and driven by them had slipped into

the pit. Almost immediately after obtaining the above information, the appellant insurance company moved the Tribunal with two petitions

purportedly under Sections 151. 152 and 153, C.P.C. in which the appellant prayed for recall of the awards dated 15.1.1998 on the revelation of

new facts regarding the injuries sustained by the claimants. Those applications were resisted by the claimants solely on the ground that Tribunal has

no power of review except to correct any error in calculating the amount of compensation and hence Tribunal cannot recall the awards. It appears

that Tribunal accepted the said stand of claimants and dismissed the application for recalling the awards. It was in the background that the

appellant insurance company moved with a writ petition for quashing the awards as well as steps taken pursuant thereto.

21. Learned single Judge of this Court dismissed the writ petition holding that the Tribunal had no power of review under the statute. The

contention of appellant that fraud was played upon the Court/Motor Accident Claims Tribunal was repelled by this Court holding that writ

jurisdiction is not appropriate forum, the petitioner may avail himself of such legal remedy as may be available to him. Thereafter the appellant

approached Hon''ble Apex Court. In the aforesaid backdrop of the case, the Apex Court in para 11 of the decision observed as under:

11. Thus the Tribunal refused to open the door to the appellant company as the High Court declined to exercise its writ jurisdiction which is almost

plenary for which no statutory constrictions could possibly be imposed. If a party complaining of fraud having been practised on him as well as on

the Court by another party resulting in a decree, cannot avail himself of the remedy of review or even the writ jurisdiction of the High Court, what

else is the alternative remedy for him? Is he to surrender to the product of the fraud and thereby become a conduit to enrich the imposter unjustly?

Learned single Judge who indicated some other alternative remedy did not unfortunately spell out what is the other remedy which the appellant

insurance company could pursue with.

22. Thereafter, Hon''ble Apex Court has referred two earlier cases in paras 13 and 14 of the decision dealing with the similar issue as under:

13. In S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, the two Judges Bench of this Court held:

Fraud avoids all judicial acts, ecclesiastical or temporal""-observed Chief Justice Edward Coke of England about three centuries ago. It is the

settled proposition of law that a judgment or decree obtained by playing fraud on the Court is a nullity and non est in the eyes of law. Such a

judgment/decree--by the first court or by the highest Court--has to be treated as a nullity by every court, whether superior or inferior. It can be

challenged in any court even in collateral proceedings.

14. In Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd., . another two Judges Bench, after making reference to a number of earlier decisions

rendered by different High Courts in India, stated the legal position thus:

Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court,

the Courts have been held to have inherent power to set aside an order obtained by fraud practised upon that Court. Similarly, where the Court is

misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order.

23. Ultimately in paras 15 and 16 of the decision Hon"ble Apex Court has held as under:

15. It is unrealistic to expect the appellant company to resist a claim at the first instance on the basis of the fraud because appellant company had at

that stage no knowledge about the fraud allegedly played by the claimants. If the insurance company comes to know of any dubious concoction

having been made with the sinister object of extracting a claim for compensation, and if by that time the award was already passed, it would not be

possible for the company to file a statutory appeal against the award. Not only because of bar of limitation to file the appeal but the consideration

of the appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then.

16. Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of

high degree, cannot be foreclosed in such a situation. No Court or Tribunal can be regarded as powerless to recall its own order if it is convinced

that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.

24. Before applying the aforestated legal principles in given facts and circumstances of the case, at this juncture it is significant to notice that

although u/s 22 of the Act, Lok Adalat organized u/s 19 or Permanent Lok Adalat established u/s 22B of the Act have same powers as are vested

in civil court under the provisions of CPC while trying a suit in respect of several matters enumerated under said section, and all the proceedings

before the Lok Adalat shall be deemed to be a judicial proceeding within the meaning of Sections 193, 219 and 228, I.P.C. and every Lok Adalat

shall be deemed to be a civil court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure, but in my opinion, it

cannot be deemed to be a civil court, for all the purposes and all the provisions of C.P.C. can also not apply automatically for simple reason that

Lok Adalats are organised and established under the special enactment, the provisions of which have overriding effect upon the provisions of any

other law by virtue of the provisions of Section 25 of the Act. It is true that the nature or functioning of Lok Adalat is of a Tribunal of special

category and remedy of appeal against the award of Lok Adalat is barred by Section 21 (2) of the Act and remedies of review and revision are

also creature of Statute and unless there exist any statutory provisions for review or revision against the award of Lok Adalat, this Court cannot

assume availability of those remedies against such award, merely because Lok Adalat has power to apply certain provisions of C.P.C. and it is

deemed as civil court for certain limited purposes. Therefore, in my opinion, in absence of any provisions under statute, despite the award made by

Lok Adalat shall be deemed to be decree of a civil court or as the case may be, an order of any other court, the remedies of appeal, review and

revision are not available against the award of Lok Adalat. But in view of legal position enunciated hereinbefore I have no doubt in my mind that

the remedy to move for recalling the order/award obtained on the basis of playing fraud and misrepresentation upon the petitioner and upon the

Lok Adalat, cannot be foreclosed, for simple reason that no Court or Tribunal can be regarded as powerless to recall its own order if it is

convinced that the order was obtained through fraud or misrepresentation of such a high degree or dimension as would affect the very basis of

claim.

25. Now coming to P. T. Thomas case (supra), "in my opinion, the law laid down by Hon''ble Apex Court in aforesaid case have no application in

the facts and circumstances of present case but still I would deal with the aforesaid case. The brief facts of the case were that the appellant''s suit

was decreed as prayed for. When the matter was pending in appeal at the instance of respondents in the District Court, the matter was referred to

Lok Adalat constituted under the Act 1987 for resolution of the dispute. The matter was settled in Lok Adalat. The award of Lok Adalat dated

5.10.1999 provided for sale to the appellant or his nominee of the property scheduled to the award after a period of one year and within a period

of two years on payment of a sum of Rs. 9.5 lakhs to the respondent and on default of respondent to execute the document, the appellant could

get it executed through court. On the other hand, in case of default on the part of the appellant, he had to give up his aforesaid right and instead be

entitled to be paid Rs. 3.5 lakhs by the respondent. The respondent did not execute sale deed within time fixed, despite repeated requests by the

appellant. The appellant was, therefore, constrained to move for execution of award by filing petition In trial court, which was opposed on various

grounds. The Subordinate Judge overruled all the objections and appellant was directed to deposit a sum of Rs. 9.5 lakhs within three days i.e., on

or before 8.4.2003. The appellant, however, deposited the amount one day earlier on 7.4.2003 the next working day. But, the High Court

allowed the revision filed by the respondent and dismissed the execution petition, hence the appellant preferred SLP before Hon''ble Apex Court.

26. In paras 21, 22 and 23 of the decision the Hon''ble Apex Court observed as under:

21. The Lok Adalat passes the award with the consent of the parties, therefore, there is no need either to reconsider or review the matter again

and again, as the award passed by the Lok Adalat shall be final. Even as u/s 96(3) of C.P.C. that ""no appeal shall lie from a decree passed by the

Court with the consent of the parties."" The award of the Lok Adalat is an order by the Lok Adalat under the consent of the parties, and it shall be

deemed to be a decree of the civil court, therefore an appeal shall not lie from the award of the Lok Adalat as u/s 96(3), C.P.C.

22. In Punjab National Bank Vs. Laxmichand Rai and Others, , the High Court held that ""The provisions of the Act shall prevail in the matter of

filing an appeal and an appeal would not lie under the provisions of Section 96, C.P.C. Lok Adalat is conducted under an independent enactment

and once the award is made by Lok Adalat the right of appeal shall be governed by the provisions of the Legal Services Authorities Act when it

has been specifically barred under provisions of Section 21 (2), no appeal can be filed against the award u/s 96, C.P.C."" The Court further stated

that ""It may incidentally be further seen that even the CPC does not provide for an appeal u/s 96(3) against a consent decree. The CPC also

intends that once a consent decree is passed by civil court finality is attached to it. Such finality cannot be permitted to be destroyed, particularly

under the Legal Services Authorities Act, as it would amount to defeat the very aim and object of the Act with which it has been enacted, hence,

we hold that the appeal filed is not maintainable.

23. The High Court of Andhra Pradesh held that, in Board of Trustees of the Port of Board of Trustees of the Port of Visakhapatnam Vs.

Presiding Officer, District Legal Service Authority, Visakhapatnam and another, ""The award is enforceable as a decree and it is final. In all fours,

the endeavour is only to see that the disputes are narrowed down and make the final settlement so that the parties are not again driven to further

litigation or any dispute. Though the award of a Lok Adalat is not a result of a contest on merits just as a regular suit by a Court on a regular trial,

however, it is as equal and on par with a decree on compromise and will have the same binding effect and conclusive just as the decree passed on

the compromise cannot be challenged in a regular appeal, the award of the Lok Adalat being akin to the same, cannot be challenged by any regular

remedies available under law including invoking Article 226 of the Constitution of India challenging the correctness of the award on any ground.

Judicial review cannot be invoked in such award especially on the grounds as raised in this writ petition.

27. From a close analysis of decision of Hon''ble Apex Court rendered in P. T. Thomas case (supra) it is clear that in the case under consideration

the award of Lok Adalat was set aside by the High Court on merit, in revision filed against the said award. The aforesaid decision of High Court

was under challenge before Apex Court, wherein the Hon''ble Apex Court has quoted the observations of M.P. High Court in case of Punjab

National Bank Vs. Laxmichand Rai and Others, to the effect that ""The provisions of the Act shall prevail in the matter of filing an appeal and an

appeal would not lie under the provisions of Section 96, C.P.C. Lok Adalat is conducted under an independent enactment and once the award is

made by Lok Adalat the right of appeal shall be governed by the provisions of the Legal Services Authorities Act when it has been specifically

barred under provisions of Section 21 (2), no appeal can be filed against the award u/s 96, C.P.C."" In para 23 of the decision the Hon''ble Apex

Court has quoted the observation made by Andhra Pradesh High Court in case of Board of Board of Trustees of the Port of Visakhapatnam Vs.

Presiding Officer, District Legal Service Authority, Visakhapatnam and another, , to the effect that ""Though the award of a Lok Adalat is not a

result of a contest on merits just as a regular suit by a Court on a regular trial, however, it is as equal and on par with a decree on compromise and

will have the same binding effect and conclusive just as the decree passed on the compromise cannot be challenged in a regular appeal, the award

of the Lok Adalat being akin to the same, cannot be challenged by any regular remedies available under law including invoking Article 226 of the

Constitution of India challenging the correctness of the award on any ground. Judicial review cannot be invoked in such award especially on the

grounds as raised in this writ petition.

28. Thus, from bare reading of paras 22 and 23 of the aforesaid decision, it is clear that Hon''ble Apex Court in P. T. Thomas case has quoted the

observations made by Madhya Pradesh High Court and Andhra Pradesh High Court, even if for approval of the aforesaid decision nevertheless

the same cannot be held to be the observation of Hon''ble Apex Court itself. As held by High Courts there can be no quarrel with the legal

proposition that appeal against the award of Lok Adalat is barred by Section 21 (2) of the Act and as indicated earlier that the provision of Act is

special enactment having overriding effect over the provisions of any other law for the time being in force, therefore, it shall prevail upon the

provisions of such other laws. As such, in absence of any provision for review or revision under the Act, 1987, the provisions pertaining to review

and revision contained under C.P.C. would not apply to challenge the award of Lok Adalat as indicated hereinbefore, but so far as the observation

of Andhra Pradesh High Court to the effect that remedy of judicial review is also barred against the award of Lok Adalat, in my opinion, cannot be

taken in absolute term, as the Andhra Pradesh High Court itself has observed that a judicial review cannot be invoked in such award specially on

the grounds as raised in this petition. Therefore, bar of remedy of judicial review under Article 226 against the award of Lok Adalat should be

understood in respect of the grounds raised in the writ petition before the aforesaid Court and same cannot be taken in absolute term. Thus, the

decision rendered by Hon''ble Apex Court by quoting the observations of aforesaid case of Andhra Pradesh High Court should be understood in

context of aforesaid case alone, as there is nothing to indicate from the decision of Hon''ble Apex Court that the Hon''ble Apex Court has intended

to lay down any such broad proposition having universal application in all the cases. It is also for the simple reason that power of judicial review of

the High Courts under Article 226 of the Constitution of India is part, of the basic structure of the Constitution and cannot be taken away even by

amending the Constitution ; what to say of any ordinary Parliamentary legislation under which the Lok Adalat is constituted. Therefore, the

contention of learned Counsel for the respondents that the power of judicial review under Article 226 in respect of award of Lok Adalat is also

barred, in my opinion, cannot be countenanced.

29. The view taken by me hereinbefore is also fortified by the decision of Hon''ble Apex Court rendered in L. Chandra Kumar Vs. Union of India

and others, , wherein seven Judges Constitution Bench of Hon''ble Apex Court in its landmark decision has held that the power of judicial review

over legislative action vested in the High Courts under Article 226 and in the Supreme Court under Article 32 is an integral and essential feature of

the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the

constitutional validity of legislations can never be ousted or excluded (paras 78, 90, 93 and 94). In the aforesaid case the Hon''ble Apex Court has

further held that the power vested in the High Courts,to exercise judicial superintendence over the decisions of all Courts and Tribunals within their

respective jurisdiction is also part of the basic structure of Constitution. And the subordinate judiciary or Tribunals created under ordinary

legislation cannot be to the exclusion of the High Court and Supreme Court. Therefore, all the decisions of Tribunals whether created pursuant to

Article 323A or 323B of the Constitution will be subject to the High Court''s writ jurisdiction under Article 226/227 of the Constitution within

whose territory particular Tribunal falls.

30. Besides that the P. T. Thomas case cited by learned Counsel for the respondents is distinguishable on facts and law laid down therein has no

material bearing with the question in controversy involved in instant case. It is also noteworthy to mention that the decision of Hon''ble Apex Court

in L. Chandra Kumar''s case is although earlier in point of time but was of larger Bench of seven Judges Constitution Bench, whereas decision of

P. T. Thomas case is of no doubt later in point of time but of smaller three Judges Bench, therefore, in view of law laid down by Hon''ble Apex

Court in Union of India (UOI) and Another Vs. K.S. Subramanian, and N. Meera Rani v. Government of Tamil Nadu and Anr. 1989 (4) SCC

412 (para 21) that even later decisions of smaller Bench of Apex Court cannot be construed at variance to the earlier larger Bench decisions.

Therefore, in view of such legal position, the law laid down by Hon''ble Apex Court in L. Chandra Kumar''s case on question in issue is binding

upon this Court and law laid down in P. T. Thomas case cannot be construed at variance to the aforesaid earlier larger Bench decision.

31. In view of the aforesaid discussion there can be no scope for doubt to hold that although the provisions of the Act are intended to make award

of the Lok Adalat arrived at on the basis of compromise or settlement between the parties to dispute as final and the remedies of appeal, review

and revision against the award of Lok Adalats are not available under law as indicated hereinbefore, but being a Tribunal of special nature, the

remedy to recall the order/award passed by Lok Adalat on the ground of fraud or misrepresentation or mistake of fact cannot be held to be barred

under law, as power to recall its order on the aforesaid grounds is inherent in every Court or Tribunal or statutory functionary. Similarly, the

awards made by the Lok Adalat organised or established under the Act cannot be held to be immune from judicial review as this Court under

Article 227 of the Constitution has ample power of superintendence over decisions of all the Courts or Tribunals throughout the territories in

relation to which it exercises jurisdiction, therefore, I have no hesitation to hold that orders passed or awards made by Lok Adalats organised or

established under the Act within the territorial limits of this Court, are subject to judicial review on the grounds available under Article 226/227 of

the Constitution of India, otherwise person aggrieved would be left remediless.

32. Thus for the reasons aforestated, the impugned judgment and order dated 3.9.2008 passed by the Civil Judge (Senior Division) Muzaffar

Nagar purporting to act as Lok Adalat is contrary to the view taken by me, therefore, cannot be sustained and the same is hereby set aside and

Lok Adalat of concerned district is directed to decide the recall application moved by the petitioner before Lok Adalat afresh on merits in the

manner indicated hereinbefore after taking evidence from the parties, without rejecting on question of its maintainability but shall be decided by

another officer except Civil Judge (Senior Division) who has passed the impugned order, expeditiously within a period of two months from the date

of production of certified copy of the order passed by this Court before the Court concerned. In case it is found that the petitioner was either not

afforded reasonable opportunity of hearing before the matter was referred to the Lok Adalat and/or she has not entered into compromise with the

respondents or she had not signed the compromise on the basis of which award was made by Lok Adalat, the matter shall be returned back to the

Court having jurisdiction to try the suit by recalling the award dated 30.4.2006, which shall proceed with the suit from the stage which was reached

before reference to the Lok Adalat by restoring the suit to its original number. By that time, the'' parties are restrained from alienating the property

in suit.

33. With the aforesaid observation and direction, writ petition succeeds and is allowed to the extent indicated hereinbefore. There shall be no

order as to costs.