

Smt. Soni Kumari vs Sri Akhand Pratap Singh on 28 March, 2018

Bench: Ajai Lamba, Anant Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

A.F.R.

Court No. - 3

Case :- FIRST APPEAL No. - 65 of 2017

Appellant :- Smt. Soni Kumari

Respondent :- Sri Akhand Pratap Singh

Counsel for Appellant :- Girija Shankar Tripathi, Upendra Nath Misra, Amicus

Counsel for Respondent :- Amol Kumar, Arvind Kumar Srivastava

Hon'ble Ajai Lamba, J.

Hon'ble Anant Kumar, J.

(Oral)

1. The First Appeal has been filed under Section 19(1) of The Family Courts Act, 1984 against award dated 8.4.2017 and the decree dated 27.4.2017 drawn by Lok Adalat (Principal Judge, Family Court, Sultanpur).

2. The appeal raises the following question of law for determination :

"Whether appeal is maintainable against an award and/or decree rendered by a Lok Adalat under The Legal Services Authorities Act, 1987 ?"

3. The facts in brief are that the appellant wife Smt. Soni Kumari preferred a petition for divorce under Section 13 of the Hindu Marriage Act dated 7.3.2017.

The pleading in the divorce petition is to the effect that the appellant is a Hindu and after attaining age of majority got married to the respondent in January, 2016. Thereafter, the appellant and the respondent started living as husband and wife. Initially, the married life was happy, however, after January, 2017, the relations between the husband and wife became strained. The appellant thereafter started feeling that she cannot live as wife of the respondent because of the friction with her husband.

There is no issue from the wedlock.

It has been pleaded that the respondent used to abuse the appellant and treat her with cruelty. It has been pleaded in the petition for divorce that the petition is not collusive. The appellant wants the marriage to be dissolved.

4. We have taken notice of the fact that the petition has been filed by the appellant through her counsel. The contents of the petition are supported by her affidavit.

5. The respondent filed written statement to the petition for divorce admitting therein that he is married to the appellant. Initially, the married life was pleasant, however, the relations are not as cordial. Although the appellant is not entitled to divorce, however, in case she wants a divorce, decree to that effect be issued.

6. It appears that the appellant and the respondent filed a joint application dated 20.3.2017 which has been placed on record as Annexure No.5.

Perusal of Annexure-5 indicates that the appellant and the respondent made a joint prayer before the Family Court that the parties had entered into a compromise. They do not want to contest the case; rather want the case to be decided in view of the compromise. Under the circumstances, the date be preponed and the case be disposed of in view of the compromise. It has been prayed in the application, Annexure-5 that the matter be referred to the Lok Adalat on the basis of compromise.

It further appears that the joint application is accompanied by a compromise deed dated 20.3.2017 in which the appellant stated that she wants divorce on the basis of compromise. The appellant does not want any maintenance or alimony. After the date of compromise, both the parties would be entitled to live their lives as per their own wish and the other side will not interfere. The parties would have the right to get married as per their own wish. The expenses of the litigation would be borne by the respective parties.

It has specifically been pleaded that a decree be issued on the basis of compromise. The appellant declared that she will live with her parents and would contract second marriage of her own will.

We find that the application/compromise has been signed by both the parties and their Advocates.

There is an endorsement by the Court on the compromise deed recording the presence of the appellant with her counsel, respondent with his counsel and the fact that the parties endorsed the

compromise. The document is signed by the appellant, the respondent and their respective counsels.

7. We have taken judicial notice of the fact that the Principal Judge, Family Court passed an order on 20.3.2017 to the effect that application along with compromise deed has been presented for referring the matter to Lok Adalat. Let the matter be fixed for 8.4.2017 in Lok Adalat.

8. It appears that the matter was placed before the Lok Adalat on 8.4.2017 whereupon the impugned order has been passed.

Impugned order dated 8.4.2017 records that the petition had been placed before the Lok Adalat. On being called, the applicant Smt. Soni Kumari along with her lawyer; and the respondent Akhand Pratap Singh along with his lawyer appeared, and presented the compromise deed and prayed that the case be disposed of on the basis of the compromise deed. The Court thereafter refers to the contents of the compromise deed presented by the parties, to the effect that both the sides want to lead their own independent life. The marriage between the parties be dissolved.

It has been recorded in the order that on perusal of the petition, it is evident that the appellant prays for divorce under Section 13 of the Hindu Marriage Act. On the basis of compromise deed, a prayer has been made for seeking divorce so that the parties could live separately.

The Lok Adalat further records that having considered the matter thoroughly, on the basis of compromise deed presented by both the sides, there are sufficient grounds for disposal of the matter. It has been recorded that in view of the facts and circumstances, the matter is disposed of on the basis of compromise deed and the marriage between the parties stands dissolved from this date. The file be consigned to record.

Report dated 15.4.2017 submitted by Court staff says that decree has been prepared. Information in that regard has been published on the Notice Board. In case there is any objection, the same be filed within a week. The file be presented for signatures on 27.4.2017.

Order dated 27.4.2017 passed by Lok Adalat records that no objection has been received in regard to the decree. The decree has been signed by the Court. The decree be included in the file.

We further find that the decree was drawn and signed by Judge presiding the Lok Adalat on 27.4.2017.

9. Learned counsel for the appellant has vehemently argued that the procedure laid down in The Family Courts Act, 1984 (in short, "The Family courts Act") and the Legal Services Authority Act, 1987 (in short, "Act of 1987") has not been followed by the Court below in rendering the award. In such circumstances, the appellant has the right to challenge the same in the present appeal.

It has been argued that award as envisaged under the Act of 1987, in particular, Sub-section (4) of Section 20 and under the National Legal Services Authority (Lok Adalat) Regulations, 2009 (in short, "Regulations of 2009"), in particular, Regulation 17(5)(b), is required to be in terms of the

principles of justice, equity, fair play and not on account of any threat, coercion or undue influence.

It has been argued that the appellant was under threat and the award is a result of coercion by the respondent husband, therefore, is liable to be set aside in these appellate proceedings.

10. Learned counsel for the respondent husband has raised a preliminary objection that this appeal under Section 19(1) of the Family Courts Act is not maintainable in so much as the impugned award has been passed by Lok Adalat in proceedings under The Act of 1987. Appeal does not lie against the award under the provisions of Section 21(2) of The Act of 1987.

It has further been argued that an award having been obtained by consent of the appellant, at the instance of the appellant on the basis of compromise cannot be challenged by her.

11. Learned counsel for the respondent husband has relied on para 12 of judgment rendered in (2008)2 SCC 660 State of Punjab and another versus Jalour Singh and others (3 JJ) as also a recent judgment reported as Bhavagi Constructions and others versus Kothakapu Muthyam Reddy and others AIR 2017 SC 4428.

It is the contention of learned counsel for the respondent that the appellant preferred petition for divorce under her own signatures. She was assisted by a counsel all through. The appellant requested, along with the respondent to get the matter referred to the Lok Adalat. Throughout the proceedings till the drawing of the decree, the appellant did not object. In such circumstances, the appellant is estopped from taking the plea that the award is a result of coercion. It has been argued that in view of judgment rendered by Hon'ble Supreme Court of India in Jalour Singh's case (supra) and in Bhavagi's case (supra), the appeal would not lie. The appeal under the circumstances be dismissed.

12. In view of the preliminary objection raised on behalf of the respondent, legal issue as framed hereinabove arises for consideration.

13. Considering peculiar facts and circumstances of the case and nature of the legal issue, we appointed Mr. Upendra Nath Mishra, Advocate as amicus curiae.

Mr. Upendra Nath Mishra, Advocate assisted by Mr. Neel Kamal Mishra, Advocate has given qualitative assistance to the Court by referring in detail not only to relevant and related provisions of the Family Courts Act and The Act of 1987 but also to other related laws.

14. Mr. Upendra Nath Mishra, amicus curiae has drawn particular attention towards Sub Section (3) of Section 10 of the Family Courts Act which provides that nothing shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement.

Mr. Mishra has highlighted that Sub Section (2) of Section 19 clearly provides that no appeal shall lie from a decree or order passed by the Family Court with the consent of the parties.

Learned counsel has drawn attention of the Court towards the provisions of Sub Section (5) of Section 19 of the Act of 1987 which 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 any case pending before it.

Likewise, it has been pointed out from the provisions of Section 20 of the Act of 1987 that in a case referred to in Clause (i) of sub-section (5) of Section 19, in case the parties agree or one of the parties 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 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.

Learned counsel *amicus curiae* has interjected to say that reference to the record of the case indicates that both the parties agreed for settlement of the dispute by Lok Adalat on the basis of compromise and therefore, the adjudication by the Lok Adalat under Sub Section (1) of Section 20 of the Act of 1987 is legal.

Learned counsel has pointed out that the matter between the appellant and the respondent has been settled on the basis of compromise by the Lok Adalat under Sub Sections (3) and (4) of Section 20 of the Act of 1987.

It has been said by Mr. Mishra that there is not a whisper in the entire record of the case that the appellant at any stage hesitated or objected to the reference of the matter to the Lok Adalat or to the decision rendered by the Lok Adalat on the basis of settlement/compromise.

Learned counsel has referred to the provisions of Sub Section (2) of Section 21 of the Act of 1987 to say that it has been provided in clear and unequivocal terms that 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.

Learned counsel has assisted the Court by saying that the provisions of the Act of 1987 are clear in their intent and effect that appeal shall not lie against an award rendered by the Lok Adalat.

It has been argued that the spirit of the law under related legislations also is that a decision rendered on the basis of settlement and compromise is not appealable.

Mr. Mishra has relied on (2008)2 SCC 660 State of Punjab and another versus Jalour Singh and others (3 JJ) (para 12).

15. We have considered the rival contentions, as also the assistance given by learned counsel *amicus curiae* Mr. Upendra Nath Mishra, assisted by Mr. Neel Kamal Mishra, Advocate.

We shall hereunder deal with the legislative intent on the subject and the judgments rendered by the Hon'ble Supreme Court of India.

16. So as to consider the legal modalities under which the petition was filed, referred to the Lok Adalat and disposed of by Lok Adalat, we need to take judicial notice of the relevant provisions from The Family Courts Act, 1984 (Sections 10 and 19), The Legal Services Authority Act, 1987 (Sections 19, 20, 21) and National Legal Services Authority (Lok Adalat) Regulations, 2009 (Regulation 17). The said provisions are extracted here-below for ready and exact reference.

Sections 10 and 19 of The Family Courts Act, 1984 read as under :

"10. Procedure generally.- (1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other.

"19. Appeal.- (1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties [or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991(59 of 1991).] (3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court.

[(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the

correctness, legality or propriety of the order, not being an interlocutory order, and as to the regularity of such proceeding.] [(5)] Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court.

[(6)] An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges."

(Emphasised by us) Sections 19, 20 and 21 (relevant portion) of The Legal Services Authority Act, 1987 read as under :

19. (1)

(2)

(3).....

(4).....

(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. (1) Where in 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 sub-section (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 advise 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. (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.

(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."

(Emphasised by us) Regulation 17 of the National Legal Services Authority (Lok Adalat) Regulations, 2009 reads as under :

"17. Award.-

(1) Drawing up of the award is merely an administrative act by incorporating the terms of settlement or compromise agreed by parties under the guidance and assistance from Lok Adalat.

(2) When both parties sign/affix their thumb impression and the members of the Lok Adalat countersign it, it becomes an Award. (See a specimen at Appendix-I) Every Award of the Lok Adalat shall be categorical and lucid and shall be written in regional language used in the local courts or in English. It shall also contain particulars of the case viz case no, name of court and names of parties, date of receipt, Register Number assigned to the case in the permanent Register (maintained as per Regulation- 44 below) and date of settlement. Wherever the parties are represented by counsel, they should also be required to sign the settlement or award before the members of the Lok Adalat affix their signature.

(3) In cases referred to Lok Adalat from a court, it shall be mentioned in the Award that the plaintiff / petitioner is entitled to refund of the court fees remitted. (4) Where the parties are not accompanied or represented by counsel, the members of the Lok Adalat shall also verify the identity of parties, before recording the settlement.

(5) Member of the Lok Adalat shall ensure that the parties affix their signatures only after fully understanding the terms of settlement arrived at and recorded. The members of the Lok Adalat shall also satisfy themselves about the following before affixing their signatures:

(a) That the terms of settlement are not unreasonable or illegal or one-sided; and

(b) That the parties have entered into the settlement voluntarily and not on account of any threat, coercion or undue influence.

(6) Members of the Lok Adalat should affix their signatures only in settlement reached before them and should avoid affixing signatures to settlement reached by the parties outside the Lok Adalat with the assistance of some third parties, to ensure that the Lok Adalats are not used by unscrupulous parties to commit fraud, forgery etc. (7) Lok Adalat shall not grant any bail or a divorce by mutual consent.

(8) The original Award shall form part of the judicial records (in pre-litigation matter, the original Award may be kept with the Legal Services Authority / Committee concerned) and a copy of the Award shall be given to each of the parties duly certifying them to be true by the officer designated by the Member Secretary, Secretary of the High Court Legal Services Committee or District Legal Services Authority or, as the case may be, the Chairman of Taluk Legal Services Committees free of cost and the official seal of the Authority concerned or Committee shall be affixed on all Awards. "

We may also refer to the related provisions from the Code of Civil Procedure, viz Section 96 and Order XXIII Rule 3 and Rule 3-A. The said provisions are extracted here-below :

96. Appeal from original decree.- (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any court exercising original jurisdiction to the court authorized to hear appeals from the decisions of such court.

(2) An appeal may lie from an original decree passed ex parte.

(3) No appeal shall lie from a decree passed by the court with the consent of parties.

[(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject matter of the original suit does not exceed [ten thousand rupees].] Order XXIII Rule 3 and 3-A Code of Civil Procedure:

3. Compromise of suit.- Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise [in writing and signed by the parties], or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith [so far as it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject matter of the suit]:

[Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the court, for reasons to be recorded, thinks fit to grant such adjournment.] [Explanation.- An agreement or compromise which is void or avoidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.] [3A. Bar to suit.- No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful."

(Emphasised by us) We shall now refer to the judgments relied on by learned counsel for the respondent and learned counsel appointed amicus curiae.

Para 12 of judgment rendered in Jalour's case (supra) reads as under :

"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."

(Emphasised by us) Paragraphs 12 to 18 and 22 to 29 in Bharvagi's case read as under :

"12. According to the plaintiffs, though they were parties to the award along with defendants in Civil Suit No. 481/2007 but since the award dated 22.08.2007 was obtained by the parties by misrepresenting the facts to the plaintiffs which was nothing short of fraud played by the defendants on them to grab their more land without their knowledge and taking advantage of their illiteracy, the same is not a legal award and hence not binding on the plaintiffs. On these averments, the plaintiffs prayed that the award dated 22.08.2007 be declared illegal, void, in-operative and not binding on the plaintiff.

13. The defendants, on being served with the notice of the suit, filed an application under Order 7 Rule 11 (d) of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") and prayed for rejection of the plaint. According to the defendants, since the suit seeks to challenge the Award of Lok Adalat, it is not maintainable being barred by virtue of rigour contained in Order 7 Rule 11(d) of Code. It was contended that the remedy of the plaintiff was in filing writ petition under Article 226 or/and 227 of the Constitution of India to challenge the award dated 22.08.2007 as held by this Court in *State of Punjab v. Jalour Singh*, (2008) 2 SCC 660.

14. The Trial Court, by order dated 24.07.2013 allowed the application filed by the defendants and rejected the plaint by invoking powers under clause (d) of Rule 11. It was held that the filing of the civil suit to challenge the award of Lok Adalat is impliedly barred and the remedy of the plaintiffs is to challenge the award by filing writ petition under Article 226 or/and 227 of the Constitution in the High Court as held by this Court in the case of *State of Punjab* (supra).

15. The plaintiffs, felt aggrieved, filed an appeal before the High Court. The High Court, by impugned order, allowed the appeal, set aside the order of the Trial Court and restored the suit on its file for its disposal on merits in accordance with law. The High Court held that since the suit is founded on the allegations of misrepresentation and fraud, it is capable of being tried on its merits by the Civil Court.

16. Against this order, the defendants have felt aggrieved and filed this appeal by way of special leave before this Court.

17. Heard Mr. Dushyant Dave and Mr. Jayant Bhushan, learned senior counsel for the appellants and Mr. B. Adinarayana, learned senior counsel, Mr. D. Mahesh Babu, Mr. Pranab Mullick, Mr. Ejaz Maqbool for the respondents.

18. Mr. Dushyant Dave, learned senior counsel, appearing for the appellants (defendants) while assailing the legality and correctness of the impugned order argued only one legal point. He urged that the reasoning and the conclusion arrived at by the Trial Court was right whereas the reasoning and the conclusion arrived at by the High Court was not so and hence the Trial Court's order deserves to be restored.

22. Learned counsel urged that the appellants (defendants) were, therefore, fully justified in invoking the powers under Order 7 Rule 11(d) of the Code praying for rejection of the plaint as being barred on the strength of law laid down by this Court in State of Punjab (supra).

23. In reply, learned counsel for the respondents while supporting the impugned order contended that the reasoning and the conclusion arrived at by the High Court is just and proper and hence does not call for any interference.

24. Having heard the learned counsel for the parties and on perusal of the record of the case, we find force in the submissions of the learned counsel for the appellants.

25. The question arose before this Court (Three Judge Bench) in the case of State of Punjab (AIR 2008 SC 1209)(supra) 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."

(Emphasised by us) It is evident from the relevant portion of judgment rendered by Hon'ble three Judges of the Hon'ble Supreme Court of India in Jalour Singh's case (supra) that where an award is made by Lok Adalat in terms of a settlement arrived at between the parties, it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a Civil Court.

It has specifically been held that no appeal lies against an award rendered by the Lok Adalat.

It has been held that in case any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Art. 226 and/or 227 of the Constitution of India and that too on very limited grounds.

It has further been explained that where no compromise or settlement is signed by the parties and the order of the Lok Adalat does not refer to any settlement, and further conditions are provided, it would not be an award on the basis of settlement rendered by a Lok Adalat. Such an order would be appealable.

17. In Bharvagi's case(supra), a suit was filed in challenge to an award rendered by a Lok Adalat on the ground that the plaintiffs were illiterate. The award was obtained from the Lok Adalat on the basis of fraud and misrepresentation to grab more land of the plaintiffs without their knowledge, therefore, the award being illegal was not binding and it be declared illegal, void, inoperative and not binding on the plaintiffs.

The defendants on being served a notice of the suit filed an application under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908 for rejection of the plaint on the ground that a suit against an award of Lok Adalat is not maintainable. The trial Court allowed the application and rejected the plaint.

The plaintiffs being aggrieved filed an appeal before the High Court. The High Court allowed the appeal and set aside the order of the trial Court while restoring the suit on its file for disposal on merits in accordance with law. The High Court held that since the suit is founded on the allegations of misrepresentation and fraud, it is capable of being tried on its merits by the Civil Court.

The defendants feeling aggrieved filed appeal by way of special Leave before the Hon'ble Supreme Court of India.

The Hon'ble Supreme Court of India while relying on judgment rendered by three Judges in Jalour Singh's case (supra) held that challenge to the award of Lok Adalat can be done only by filing writ petition under Article 226 and/or 227 of the Constitution of India in the High Court, and that too on very limited grounds. It has been held that it was 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.

Consequently, it has been held that the High Court was not right in holding that suit can be filed in challenge to award if the challenge is founded on the allegation of fraud.

18. We have taken judicial notice of another judgment rendered on the issue by Hon'ble Supreme Court of India viz (2005)6 SCC 478 P.T. Thomas versus Thomas Job. In the said judgment, two Hon'ble Judges of the Supreme Court have considered the issue raised in the present case in some detail. In reference to various pronouncements, it has been reiterated that award is enforceable as a decree and is final. It is equal and on a par with a decree on compromise and will have the same binding effect and be conclusive. Just as a decree passed on compromise cannot be challenged in a regular appeal, the award of the Lok Adalat being akin to the same, cannot be challenged by any of the regular remedies available under law, including by invoking Art. 226 of the Constitution and challenging the correctness of the award, on any ground. Judicial review cannot be invoked in such awards.

The award of Lok Adalat is final and permanent which is equal to a decree executable, and the same is an ending to the litigation among parties (paras 23 and 24 of judgment rendered in P.T. Thomas case (supra)).

Although in P.T. Thomas case(supra) also, it has been held that the award would be final and appeal against it shall not lie; however, it has also been added that even a writ will not lie against such an award.

19. The judgment rendered in Jalour's case (supra) is by three Judges of Hon'ble Supreme Court of India. In conformance with judicial propriety and judicial discipline, the said judgment would have predominance. In such circumstances, while following judgment rendered by Hon'ble Supreme Court of India in Jalour Singh's case (supra), we hold that appeal shall not lie against an award rendered by a Lok Adalat, but award can be challenged in writ jurisdiction under Art. 226 and/or 227 of the Constitution of India, that too on limited grounds on which a contract can be challenged.

20. We may refer to the essence of compromise in other related legislations and finality required to be attained in regard to a decision arrived at in view of settlement and compromise. Under Sub Section (2) of Section 19 of the Family Courts Act also, it has been provided that "no appeal shall lie from a decree or order passed by the Family Court with the consent of the parties".

Likewise, under Sub Section (3) of Section 96 of the Code of Civil Procedure, 1908, it has been provided that "no appeal shall lie from a decree passed by the court with the consent of parties."

Order XXIII Rule 3 Civil Procedure Code deals with compromise of suit. Under Rule 3A of Order XXIII, it has been provided that "no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful."

21. On the legal issue as regards maintainability of the appeal, we would at the first instance advert to the provisions of sub Section (2) of Section 21 of the Act of 1987 which specifies that "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." In the face of such specific provision in the Act of 1987 under which the award has been passed, we have no hesitation in holding that an award rendered by a Lok Adalat is not amenable to appellate jurisdiction. The appeal shall not lie against any such award at the instance of either of the parties, and the award shall be binding on all the parties to the dispute.

The purpose of such provision appears to be that compromise means settlement of differences by mutual concessions. It is an agreement reached by adjustment of conflicting or opposing claims by reciprocal modification of demands.

Compromise is a mutual promise of two or more parties that are at controversy. 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. A compromise is always bilateral and means mutual adjustment [vide (2006)8 SCC 364 State of Punjab and others versus Ganpat Raj]

22. The purpose of providing that every award passed in view of compromise/settlement by a Lok Adalat shall be binding on all the parties to the dispute, and appeal shall not lie against the award appears to be that every lis must have a terminus. Under Sub-Section (5) of Section 19 of the Act of 1987, Lok Adalat has the jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute. Lok Adalat decides and renders award only in cases of settlement and compromise under the provisions of Section 20 of the Act of 1987 and for that purpose is guided by the principles of justice, equity and fair play.

When no award can be made by the Lok Adalat on the ground of compromise and settlement, the record of the case is returned to the Court from which the reference had been made to the Lok Adalat.

Since both the parties consent to a particular settlement, they individually or jointly cannot be allowed to reprobate and therefore, Section 21(2) of the Act of 1987 provides that such award shall be final and binding and no appeal shall lie to any Court against the award.

23. In view of the above noted provisions from the Act of 1987, The Family Courts Act and the Code of Civil Procedure, the only conclusion that can be drawn is that appeal is not maintainable against a decision based on compromise and mutual settlement.

24. We would like to deal with the pleadings and the facts emanating from the record available with us at the first instance so as to deal with the contention and assertion of learned counsel for the appellant and the respondent.

25. Learned counsel for the appellant has not disputed that indeed, the petition for divorce under Section 13 of the Hindu Marriage Act was signed and filed by the appellant wife. It has not been disputed that the appellant swore an affidavit in support of her pleadings. It has not been disputed that compromise/settlement deed was signed by the appellant and her counsel, along with the respondent and his counsel.

It has not been disputed that the appellant and her counsel and also the respondent with his counsel filed a joint application for preponement of the case and referring the case to the Lok Adalat. The signatures of the appellant and her counsel throughout the proceedings have not been disputed.

It has also not been disputed that objection was not filed before the decree was drawn, even though notice was pasted on the Notice Board, as noticed above.

26. We have also confronted learned counsel for the appellant with the pleadings in the appeal to point out specific allegation/incident of coercion. Learned counsel has not been able to refer to any. We find that there is a bald statement of the appellant in the pleadings that she was under threat of her husband.

27. We have referred to the pleadings in the case in hand in the lower court in detail, modalities adopted by the Court and the procedure adopted by the Lok Adalat after reference. It stands

established that impugned award has been rendered by the Lok Adalat on the basis of a settlement. The impugned award has been drawn under the Act of 1987. In such circumstances, we have no hesitation in holding that the award rendered by the Lok Adalat is not appealable. The award, therefore, would be covered by sub Section (2) of Section 21 of the Act of 1987 and is final and binding on the parties to the dispute. The present appeal is not maintainable against the impugned award.

The question of law framed hereinabove is, therefore, answered in the negative.

28. In view of the law laid down in Jalour Singh's case (supra) by three Hon'ble Judges of the Hon'ble Supreme court of India and later judgment passed in Bharvagi's case (supra), we hold that an award rendered by a Lok Adalat can be challenged only in writ jurisdiction under Article 226 and/or 227 of the Constitution of India, and that too on very limited grounds.

The appeal is accordingly dismissed.

Order Date :- 28.3.2018 kkb/