Supreme Court of India
P.T. Thomas vs Thomas Job on 4 August, 2005
Author: . Lakshmanan
Bench: Ruma Pal, Dr. Ar. Lakshmanan

CASE NO.:
Appeal (civil) 4677 of 2005

PETITIONER:
P.T. THOMAS

RESPONDENT:
THOMAS JOB

DATE OF JUDGMENT: 04/08/2005

BENCH:
RUMA PAL & Dr. AR. LAKSHMANAN

JUDGMENT:

JUDGMENT (ARISING OUT OF S.L.P (C) No..20179/2003) Dr.AR. LAKSHMANAN,J.

Leave granted.

The above appeal is directed against the final order of the High Court of Kerala at Ernakulam dated 27.8.2003 in CRP No. 1136/2003 allowing the Revision Petition filed by the Respondent herein.

The Appellant and the Respondent are brothers, Respondent being the elder. They have another brother who is well employed in the United States. The three brothers partitioned the property left behind by their father by metes and bounds. The Respondent was running a theatre. A part of the theatre fell in the property allotted to the appellant. Since Respondent did not vacate and give vacant possession to the Appellant, he was constrained to file a suit for a mandatory injunction for removal of the building and to surrender vacant possession. The Appellant also prayed for a decree for recovery of possession.

The appellant's suit was decreed as prayed for. When the matter was pending in appeal at the instance of the Respondent in the District Court, the dispute was referred to the Lok Adalat constituted under the Legal Services Authorities Act for resolution of the dispute. The matter was settled in the Lok Adalat. The award of the 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 the 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 to Rs. 3.5 lakhs by the Respondent.

The Respondent did not execute the sale deed within the time fixed despite repeated requests by the Appellant. The Appellant, therefore, sent a lawyer's notice on 3.10.2001 to the Respondent calling

upon him to execute the sale deed. Respondent did not receive the notice and the notice was returned unserved to the Appellant. The Appellant thereafter sent a telegram on 26.10.2001 requiring the Respondent to execute the sale deed and also sent him a copy of his earlier notice dated 3.10.2001 by certificate of posting. There was no response from the Respondent. The Appellant was, therefore, constrained to move for execution of the award by filing petition in the Trial Court, which was opposed on various grounds. The Subordinate Judge overruled all the objections and the 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 on grounds, which according to the Appellant, are irrelevant and incorrect. Hence, the Appellant preferred the above special leave petition. We have heard Mr. TLV Iyer, learned senior counsel for the Appellant and Mr. M.P.Vinod, learned counsel for the Respondent and perused the pleadings, orders passed by the courts below and the Annexures filed along with the appeal.

Mr. TLV Iyer, learned senior counsel appearing for the Appellant submitted that the High Court has exceeded its jurisdiction under Section 115 C.P.C in entering into the investigation of questions of fact and appraisal of evidence in setting aside the well considered order of the Executing Court. He further submitted that the High Court is in error in holding that the Appellant did not have the funds with him to have the deed of sale executed in his favour and the reasoning and the premises on which such a conclusion is based are faulty and fallacious besides being beyond jurisdiction. It is further submitted that the Respondent had not performed his obligations by evincing his willingness to execute the sale deed on receipt of the amount of Rs. 9.5 lakhs. Concluding his arguments, Mr Iyer submitted that the view taken by the High Court would totally defeat the object and purposes of the Legal Services Authorities Act and render the decisions of the Lok Adalat meaningless.

Per contra, Mr. Vinod, learned counsel for the Respondent submitted that the appellant has not paid the sum of Rs. 9.5 lakhs after one year from the date of the award, namely, 5.10.1999 and at any rate within two years therefrom. It is further submitted that the appellant also did not deposit the amount before filing the execution petition as contemplated in the award. Even when he was examined in court on 22.2.2003, he had not deposited the said amount. According to Mr. Vinod, the award of the Lok Adalat cannot be equated with a decree and it only incorporates an agreement between the parties and that in case of any violation of the said agreement, or the terms of the compromise recorded in the award, the parties lose their right to get the same executed and the compromise stands withdrawn. It is further argued that the Appellant admittedly had not produced any material to show that the Appellant had the resources to pay the said amount at any relevant point of time or that the said amount was ever offered to the respondent at any point of time and, therefore, the appellant is not entitled to any relief in this appeal.

It is further submitted that there is no effective service of any notice on the Respondent before 5.10.1999 and the only endorsement is that the Respondent was absent. It is submitted that the Appellant never had the money with him and the belated payment after the order of the executing court will not improve the case of the Appellant to prove his readiness and willingness to deposit a sum of Rs. 9.5 lakhs as agreed upon by him, and on the date specified, on the basis on which the

matter was compromised before the Lok Adalat and an award was passed. Concluding his arguments, learned counsel submitted that there is no merit whatsoever in the grounds raised in this appeal and therefore, the appeal, which is clearly without any merits, deserves to be dismissed.

We have carefully considered the rival submissions made by both the learned counsel. We do not find any merit in the submissions made by learned counsel for the Respondent. From the evidence and the documents filed, we see bona fides on the part of the appellant in giving effect to the compromise arrived at between parties in the Lok Adalat. We also see absolute merits on the submissions made by learned senior counsel, Mr. TLV Iyer.

It is seen from the records that the Appellant was compelled to file the suit for recovery of possession of Plot No. 2 since the Respondent herein refused to comply with the terms of the compromise arrived at between the parties. The suit was decreed on 26.7.1990 and appeal was filed by the Judgment Debtor Respondent before the District Court and during the pendency of the appeal the matter was compromised between parties on 5.10.1999. We have already extracted the terms of compromise in paragraph supra. It is thus clear that the decree holder Appellant has approached the executing court on the ground that the Judgment debtor/ Respondent failed to execute the sale deed after receiving Rs. 9.5 lakhs from the decree holder. Therefore the Appellant prayed before the Executing Court that he should be permitted to deposit Rs. 9.5 lakhs in that court and get the documents executed through court if the Judgment debtor failed to do so on issuance of notice for the purpose by the executing court. The respondent submitted that the compromise arrived at is a conditional one and Judgment debtor is liable to execute the sale deed in favour of the decree holder only if he remits the amount as agreed, and since decree holder has failed to comply with the conditions the Judgment debtor is not bound by the terms of the compromise. On the other hand the respondent/J.D. was ready and willing to deposit Rs.3.5 lakhs before the executing court as per the terms of the compromise.

Before the executing Court witnesses were examined on both sides and Exhibit A1 to A8 and B1 were produced by the respective parties. The executing court, accepting the evidence of PW 1 came to the conclusion that the notice issued requiring the respondent to execute the document as submitted in the award was not received by the Judgment debtor and it has been returned unclaimed. It is seen that notice was an attempt to be served on the Judgment debtor on 4.10.2001 and since he was absent, intimation regarding the notice has been given and the above notice has been returned as unclaimed on 19.10.2001. The Appellant after return of the Exhibit A2 notice immediately sent a telegram to the Judgment debtor on 26.1.2001. The receipt issued for the telegram and certified true copy of the telegram was marked as Exhibit A3 and A4. The Original telegram was produced on the side of the Respondent and marked as an Exhibit. By the telegram the Judgment debtor was intimated that the notice sent by the decree holder through his Advocate on 3.10.2001 was returned unclaimed and copy of that notice was being forwarded by certificate of posting and that he was always ready and willing to pay Rs. 9.5 lakhs and get the sale deed executed in terms of the award. The copy of the Exhibit A2 notice is marked as A5, the certificate of posting obtained for issuing the copy of notice along with the copy of the telegram is marked as Exhibit A6. Thus, it is clearly seen that the appellant decree holder has expressed his readiness and willingness to deposit the amount as per the award and get the document executed.

It is argued on the side of the Respondent that the Appellant has not sufficient fund to fulfill the obligation as per the award and that the Appellant had issued a notice and telegram so as to create some records in his favour that he is always willing and ready to pay the amount as per the award. It is submitted that it is only due to the default of the Appellant the execution of the sale deed has not taken place and therefore, the Appellant is not entitled to any relief in this appeal. The learned Subordinate Judge on a consideration of the entire evidence placed on record granted the Appellant three days time to deposit Rs. 9.5 lakhs before the said court upon which he could get the sale deed through court as stipulated in the award. The appellant as directed by the learned Subordinate Judge deposited the entire sum of Rs. 9.5 lakhs in the sub-court on 7.4.2003 as could be seen from Annxure 6.

We have also perused the order of the learned Single Judge of the High Court in revision. The learned Single Judge, in our view, has misunderstood the terms of the award. The obligation was on the Respondent to evince his willingness to execute the sale deed within two years and not vice-versa as assumed by the High Court. There was already a decree of ejectment against the Respondent in the suit in the trial Court and it was his appeal that was sought to be settled in the Lok Adalat. The settlement was a concession in his favour giving a breathing time to vacate and give vacant possession. Therefore, the initiative had to come from the Respondent after offering to execute the sale deed where upon it became necessary to comply with his obligations. However, without taking any initiative the Respondent has adopted the delaying tactics by alleging that the appellant was not able to provide the requisite funds for purchase and forgetting the facts that the Appellant's brother is in USA and providing the requisite funds for purchase. It was he, in fact, who had provided the amount which was deposited on 7.4.2003 and not on 8.4.2003 as assumed by the High Court. It is, thus, seen that the Appellant has performed his obligation. He had sent the notice on 3.10.2001 and it was 4.10.2001 well before the expiry of time on 5.10.2001. Though the notice was correctly addressed and despite the intimation by the post office, the notice was not accepted by the Respondent and was returned unserved. In such circumstances, the presumption of law is that the notice has been served on the Respondent.

The High Court, in our view, has also misinterpreted Section 27 of the Post Office Act. The requirement of Section has been complied with in this case. The reasoning of the High Court on this issue is not correct and not in accordance with factual position. In the notice issued, the Postman has made the endorsement. This presumption is correct in law. He had given notice and intimation. Nevertheless, the respondent did not receive the notice and it was returned unserved. Therefore, in our view, there is no obligation cast on the appellant to examine the Postman as assumed by the High Court. The presumption under Section 114 of the Evidence Act operates apart from that under the Post Office Act.

In our opinion, the award of the Lok Adalat is fictionally deemed to be decrees of Court and therefore the courts have all the powers in relation thereto as it has in relation to a decree passed by itself. This, in our opinion, includes the powers to extend time in appropriate cases. In our opinion, the award passed by the Lok Adalat is the decision of the court itself though arrived at by the simpler method of conciliation instead of the process of arguments in court. The effect is the same. In this connection, the High Court has failed to note that by the award what is put an end to is the appeal in

the District Court and thereby the litigations between brothers forever. The view taken by the High Court, in our view, will totally defeat the object and purposes of the Legal Services Authorities Act and render the decision of the Lok Adalat meaningless.

Section 21 of the Legal Services Authorities Act, 1987 reads as follows :-

"21. AWARD OF LOK ADALAT. 2[(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 on it under sub-section (1) of Sec.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.

Section 22 reads thus :-

"22. POWERS OF LOK ADALATS - (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 Secs. 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 Sec. 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2) of 1974).

UNREPORTED JUDGEMENTS 2004 (2) VOL 37."

What is Lok Adalat? :

"The "Lok Adalat" is an old form of adjudicating system prevailed in ancient India and it's validity has not been taken away even in the modern days too. The word 'Lok Adalat' means 'People Court'. This system is based on Gandhian Principles. It is one of the components of ADR system. As the Indian Courts are over burdened with the backlog of cases and the regular Courts are to decide the cases involve a lengthy, expensive and tedious procedure. The Court takes years together to settle even petty cases. Lok Adalat , therefore provides alternative resolution or devise for expedious and inexpensive justice.

In Lok Adalat proceedings there are no victors and vanquished and, thus, no rancour.

Experiment of 'Lok Adalat' as an alternate mode of dispute settlement has come to be accepted in India, as a viable, economic, efficient and informal one.

LOK ADALAT is another alternative to JUDICIAL JUSTICE. This is a recent strategy for delivering informal, cheap and expeditious justice to the common man by way of settling disputes, which are pending in Courts and also those, which have not yet reached Courts by negotiation, conciliation and by adopting persuasive, common sense and human approach to the problems of the disputants, with the assistance of specially trained and experienced Members of a Team of Conciliators."

Benefits Under Lok Adalat:

1. There is no Court fee and if Court fee is already paid the amount will be refunded if the dispute is settled at Lok Adalat according to the rules.

2. The basic features of Lok Adalat are the procedural flexibility and speedy trial of the disputes. There is no strict application of procedural laws like Civil Procedure Code and Evidence Act while assessing the claim by Lok Adalat.

3. The parties to the dispute can directly interect with the Judge through their Counsel which is not possible in regular Courts of law.

4. The award by the Lok Adalat is binding on the parties and it has the status of a decree of a Civil Court and it is non- appealable which does not causes the delay in the settlement of disputes finally.

In view of above facilities provided by the 'Act' Lok Adalats are boon to the litigating public they can get their disputes settled fast and free of cost amicably.

AWARD OF LOK DALAT :-

The Lok Adalat shall proceed and dispose the cases and arrive at a compromise or settlement by following the legal principles, equity and natural justice. Ultimately the Lok Adalat passes an award, and every such award shall be deemed to be a decree of Civil Court or as the case may be which is final.

AWARD OF LOK ADALAT SHALL BE FINAL :-

The Lok Adalat will 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 under Section 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 under Section 96(3) C.P.C.

In Punjab National Bank vs. Lakshmichand Rah reported in AIR 2000 Madhya Pradesh 301, 304, 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 under Sec.96 C.P.C." The Court further stated that "It may incidentally be further seen that even the Code of Civil Procedure does not provide for an appeal under Section 96(3) against a consent decree. The Code of Civil Procedure 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.

The High Court of Andhra Pradesh held that, in Board of Trustees of the Port of Visakhapatnam vs. Presiding Officer, Permanent, Lok Adalat-cum-Secretary, District Legal Services Authority, Visakhapatnam and another reported in 2000(5) ALT 577, " 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 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 compromises 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 awards especially on the grounds as raised in this writ petition.

The award of Lok Adalat is final and permanent which is equivalent to a decree executable, and the same is an ending to the litigation among parties.

In Sailendra Narayan Bhanja Deo vs. The State of Orissa, AIR 1956 SUPREME COURT 346, (CONSTITUTION BENCH) held as follows: A Judgment by consent or default is as effective an estoppel between the parties as a judgment whereby the court exercises its mind on a contested case. (1895) 1 Ch.37 & 1929 AC 482, Rel. on;

In 'In re South American and Mexican Co., Ex. Parte Bank of England', (1895) 1 Ch 37 ), it has been held that a judgment by consent or default is as effective an estoppel between the parties as a judgment whereby the Court exercises its mind on a contested case. Upholding the judgment of Vaughan Williams,J Lord Herschell said at page 50 :-

"The truth is, a judgment by consent is intended to put a stop to litigation between the parties just as much as is a judgment which results from the decision of the Court after the matter has been fought out to the end.

And I think it would be very mischievous if one were not to give a fair and reasonable interpretation to such judgments, and were to allow questions that were really involved in the action to be fought over again in a subsequent action."

To the like effect are the following observations of the Judicial Committee in 'Kinch v. Walvott', 1929 AC 482 at p.493 (D):- "First of all their Lordships are clear that in relation to this plea of estoppel it is of no advantage to the appellant that the order in the libel action which is said to raise it was a consent order. For such a purpose an order by consent , not discharged by mutual agreement, and remaining unreduced , is as effective as an order of the Court made otherwise than by consent and not discharged on appeal."

The same principle has been followed by the High Courts in India in a number of reported decisions. Reference need only be made to the cases of ' Secy. Of State v. Ateendranath Das', 63 Cal 550 at p. 558 (E) ; - ' Bhaishanker v. Moraji', 36 Bom 283 (F) and ' Raja Kumara Venkata Perumal Raja Bahadur', v. Thatha Ramasamy Chetty', 35 Mad 75 (G). In the Calcutta case after referring to the English decisions the High Court observed as follows :

"On this authority it becomes absolutely clear that the consent order is as effective as an order passed on contest, not only with reference to the conclusion arrived at in the previous suit but also with regard to every step in the process of reasoning on which the said conclusion is founded. When we say "every step in the reasoning" we mean the findings on the essential facts on which the judgment or the ultimate conclusion was founded. In other words the finding which it was necessary to arrive at for the purpose of sustaining the judgment in the particular case will operate as estoppel by judgment."

The Civil Procedure Code contains the following provisions: "Order 23 Rule 3 provides for compromise of suit where it is proved to the satisfaction of the Court that a suit has been adjusted wholly in part by any lawful agreement or compromise, written and signed by the parties. The Court after satisfying itself about the settlement, it can convert the settlement into a judgment decree."

We have already discussed about the steps taken by the appellant to serve notice on the respondent and the steps taken by him to perform his obligations and sending of the notice and telegram etc. would not have been done unless the appellant was ready with his obligations and the money all along. The appellant had waited till almost the last day for the respondent to perform his obligations. The High Court, in our view, has failed to note that the courts attempt should be to give

life and enforceability to the compromise award and not to defeat it on technical grounds. This is a fit case, in our view, where the Respondent ought to have been directed to execute the sale deed by the extended time, if necessary. The High Court is also not correct in holding that the Court has no jurisdiction to extend the time. In our view, the learned Subordinate Judge has rightly extended the time for depositing the money which the High Court has wrongly interfered with.

We, therefore, hold that the order passed by the High Court in C.R.P. 1136/2003 is liable to be set aside. We do so accordingly. We direct the Respondent herein to execute the sale deed within two weeks from today failing which the Appellant could get the sale deed executed though court as stipulated in the award. The respondent is now entitled to withdraw Rs. 9.5 lakhs from the Sub-Court Alapuzha. Though this is a fit case for awarding cost, we refrain from doing so in view of the relationship between the parties.

The appeal is allowed. No costs.