

SUPREME COURT OF INDIA

B. P. Moideen Sevamandir

Vs.

A. M. Kutty Hassan

C.A.Nos.7282-7283 of 2008

(R. V. Raveendran and D. K. Jain JJ)

12.12.2008

ORDER

R.V.RAVEENDRAN, J.

1. Leave granted. Mr. A. Raghunath, learned counsel accepts notice for the sole respondent. Heard by consent.

2. The appellants were the defendants in a suit for declaration and mandatory injunction. Having lost before the trial court and the first appellate court, the appellants filed a second appeal before the High Court of Kerala on 6.2.2005. The appeal was admitted and an interim stay of execution was granted in the said appeal on 1.6.2005. The pending second appeal was referred to the Lok Adalat organized by the Kerala High Court Legal Services Committee on 25.5.2007. Before the Lok Adalat, parties apparently arrived at a tentative settlement. The Lok Adalat consisting of two retired Judges of the High Court purported to pass the following 'award' dated 25.5.2007 in the appeal:

AWARD

"Counsel for the parties and the appellants and respondent present.

The parties have settled the dispute and agreed to file a memorandum of settlement before the High Court to obtain orders for disposal of this appeal and for refund of court fee. A plan of the property is produced by the appellant and it is received. The plan used will form part of this order. The appellant will vacate the buildings in plot A to the respondent on or before 31st July, 2007. On such surrender, plot B will belong to the appellant and A compromise deed to this effect will be drawn by the parties and file before the court."

Post before the court on or before 31st July, 2007" [emphasis supplied]

3. The appellants allege that the parties could not finalise the terms of settlement as it was found that there was no access to the portion to which they had to move, and therefore no compromise petition was drawn up or filed. As the settlement was not reported, the High Court, by order dated 10.4.2008 made a second reference to the Lok Adalat. The parties and counsel again appeared before Lok Adalat. Further negotiations were unsuccessful and the Lok Adalat sent the following failure report dated 3.4.2008 to the court :

"We have discussed the matter with the counsel and their parties and considering the nature of demand made by the appellants, there is no chance of settlement." [emphasis supplied]

4. The second appeal was thereafter listed for the final hearing on 19.8.2008 before a learned Single Judge. When the matter reached hearing in the post-lunch session, an advocate attached to the office of the appellants' counsel submitted that the appeal was to be argued by his colleague Mrs. Sarita, that due to personal inconvenience she could not be present during that session, and that therefore the matter may be adjourned to the next day. The learned Single Judge rejected the request and dismissed the appeal. The operative portion of the order dated 19.8.2008 is extracted below:

"I see no reason why any further adjournment is to be in the appeal of 2005 when the parties are willfully abstaining from arriving at any settlement despite an award passed at the Adalath on agreement. In the result, I dismiss this appeal for default." (Emphasis supplied)

5. The very next day that is on 20.8.2008 an application was filed for restoration of the appeal supported by the affidavit of the counsel (Mrs. Saritha) giving the following reason for her absence at the post- lunch session on 19.8.2008:

"I am an advocate attached to the office of the counsel for the petitioner. I was entrusted to argue the aforementioned second appeal and I was prepared for the same since the matter was listed. The case was taken up as item no.504 in Court I-C in the afternoon session on 19.8.2008. I was present in the court in the forenoon session and unfortunately I developed severe ear pain and had to leave the court. I had entrusted my colleague to appear before the Hon'ble Court and requested a day's adjournment on account of this personal inconvenience and he had submitted the same."

The said application was dismissed by the learned Single Judge on 29.8.2008. The relevant portion of the said order is extracted below:

"The order passed on 25.5.2007 by the mediators show that the parties and already settled the dispute and they only wanted to file a memorandum of settlement before this Court to obtain orders disposing of the appeal refunding court fee and it is after having agreed to the terms as stated in the award that untenable and unreasonable contentions are advanced now and that too coming forward with a petition to restore the appeal when the appeal itself was dismissed for reason of absence of counsel. I see no reason to allow the MJC in the circumstances, so as to enable a cantankerous litigant to continue protracting the litigation even after an award is passed at the Adalat." (Emphasis supplied)

6. The said orders dated 19.8.2008 and 29.8.2008 of the High Court are challenged in these appeals by special leave. We have heard Sri P.Krishna Murthy, learned senior counsel for appellants and Sri C.S.Rajan, learned senior counsel for respondent.

7. It is unfortunate that the learned members of the Lok Adalat and the learned Single Judge totally lost sight of the purpose and scope of Lok Adalats. We may conveniently recall what this Court has said about the scope of Lok Adalats, (after referring to the relevant provisions of the Legal Services Authorities Act, 1987), in *State of Punjab vs. Jalour Singh* [2008 (2) SCC 660] :-

"8. It is evident from the said provisions that Lok Adalats have no adjudicatory or judicial functions. Their functions relate purely to conciliation. A Lok Adalat determines a reference on the basis of a compromise or settlement between the parties at its instance, and put its seal of confirmation by making an award in terms of the compromise or settlement. When the Lok Adalat is not able to arrive at a settlement or compromise, no award is made and the case record is returned to the court from which the reference was received, for disposal in accordance with law. No Lok

Adalat has the power to "hear" parties to adjudicate cases as a court does. It discusses the subject matter with the parties and persuades them to arrive at a just settlement. In their conciliatory role, the Lok Adalats are guided by principles of justice, equity, fair play. When the LSA Act refers to 'determination' by the Lok Adalat and 'award' by the Lok Adalat, the said Act does not contemplate nor require an adjudicatory judicial determination, but a non-adjudicatory determination based on a compromise or settlement, arrived at by the parties, with guidance and assistance from the Lok Adalat. The 'award' of the Lok Adalat does not mean any independent verdict or opinion arrived at by any decision making process. The making of the award is merely an administrative act of incorporating the terms of settlement or compromise agreed by parties in the presence of the Lok Adalat, in the form of an executable order under the signature and seal of the Lok Adalat.

8. When a case is referred to the Lok Adalat for settlement, two courses are open to it : (a) if a compromise or a settlement is arrived at between the parties, to make an award, incorporating such compromise or settlement (which when signed by the parties and countersigned by the members of the Lok Adalat, has the force of a decree); or (b) if there is no compromise or settlement, to return the record with a failure report to the court. There can be no third hybrid order by the Lok Adalat containing directions to the parties by way of final decision, with a further direction to the parties to settle the case in terms of such directions. In fact, there cannot be an 'award' when there is no settlement. Nor can there be any 'directions' by the Lok Adalat determining the rights/obligations/title of parties, when there is no settlement. The settlement should precede the award and not vice versa. When the Lok Adalat records the minutes of a proceeding referring to certain terms and directs the parties to draw a compromise deed or a memorandum of settlement and file it before the court, it means that there is no final or concluded settlement and the Lok Adalat is only making tentative suggestions for settlement; and such a proceeding recorded by the Lok Adalat, even if it is termed as an 'award', is not an 'award of the Lok Adalat'.

9. Although the members of Lok Adalats have been doing a commendable job, sometime they tend to act as Judges, forgetting that while functioning as members of Lok Adalats, they are only statutory conciliators and have no judicial role. Any overbearing attitude on their part, or any attempt by them to pressurize or coerce parties to settle matters before the Lok Adalat (by implying that if the litigant does not agree for settlement before the Lok Adalat, his case will be prejudiced when heard in court), will bring disrepute to Lok Adalats as an alternative dispute resolution process (for short 'ADR process') and will also tend to bring down the trust and confidence of the public in the Judiciary.

10. In this case the proceedings dated 25.5.2007 is termed as an 'award'. It is also described as an 'order' and 'directs' the appellant to vacate certain buildings on or before 31.7.2007 and further directs that on such surrender, another portion shall belong to the appellants. Such an 'award' could have been made by the Lok Adalat only when there was a final settlement between the parties. The procedure adopted by the Lok Adalat on 25.5.2007, was clearly erroneous and illegal. The learned counsel for the respondent stated that the Lok Adalat followed the said procedure of passing an 'Award' dated 25.5.2007 and directing parties to file a compromise in the court, only to enable the appellants to get refund of court fee. We fail to understand how the question of refund of court fee

can have any bearing on the compliance with the statutory requirements relating to a settlement and award by a Lok Adalat.

11. Such strange orders by Lok Adalats are the result of lack of appropriate rules or guidelines. Thousands of Lok Adalats are held all over the country every year. Many members of Lok Adalats are not judicially trained. There is no fixed procedure for the Lok Adalats and each Adalat adopts its own procedure. Different formats are used by different Lok Adalats when they settle the matters and make awards. We have come across Lok Adalats passing `orders', issuing `directions' and even granting declaratory relief, which are purely in the realm of courts or specified Tribunals, that too when there is no settlement. As an award of a Lok Adalat is an executable decree, it is necessary for the Lok Adalats to have an uniform procedure, prescribed Registers and standardized formats of awards and

permanent record of the awards, to avoid misuse or abuse of the ADR process. We suggest that the National Legal Services Authority as the apex body, should issue uniform guidelines for the effective functioning of the Lok Adalats. The principles underlying following provisions in the Arbitration and Conciliation Act, 1996 relating to conciliators, may also be treated as guidelines to members of Lok Adalats, till uniform guidelines are issued: section 67 relating to role of conciliators; section 75 relating to confidentiality; and section 86 relating to admissibility of evidence in other proceedings.

12. Lok Adalats should also desist from the temptation of finding fault with any particular litigant, or making a record of the conduct of any litigant during the negotiations, in their failure report submitted to the court, lest it should prejudice the mind of the court while hearing the case. For instance, the observation in the failure report dated 3.4.2008 of the Lok Adalat in this case (extracted in para 3 above) that there is no chance of settlement on account of the "nature of demands made by the appellants", implied that such demands by the appellant were unreasonable. This apparently affected the mind of the learned Single Judge who assumed that the appellants were cantankerous, when the second appeal and application for restoration came up for hearing before the court.

13. We may now turn to the role of courts with reference to Lok Adalats. Lok Adalats is an alternative dispute resolution mechanism. Having regard to section 89 of Code of Civil Procedure, it is the duty of court to ensure that parties have recourse to the Alternative Dispute Resolution (for short `ADR') processes and to encourage litigants to settle their disputes in an amicable manner. But there should be no pressure, force, coercion or threat to the litigants to settle disputes against their wishes. Judges also require some training in selecting and referring cases to Lok Adalats or other ADR processes. Mechanical reference to unsuited mode of ADR process may well be counter productive. A plaintiff who comes to court alleging unlawful encroachment by a neighbour may well ask what kind of settlement he should have with an encroacher in a Lok Adalat. He cannot obviously be asked to sacrifice a part of his land for purposes of amicable settlement thereby perpetuating the illegality of an encroachment. A plaintiff alleging fraud and forgery of documents against a defendant may well ask what settlement he can have with a fraudster or forger through

ADR process as any settlement may mean yielding to or accepting fraud or forgery.

14. When a case is to be heard and decided on merits by a court, the conduct of the party before the Lok Adalat or other ADR fora, howsoever stubborn or unreasonable, is totally irrelevant. A court should not permit any prejudice to creep into its judicial mind, on account of what it perceives as unreasonable conduct of a litigant before the Lok Adalat. Nor can its judgment be 'affected' by the cantankerous conduct of a litigant. It cannot carry 'ill-will' against a litigant, because he did not settle his case. It is needless to remind the oath of office, which a Judge takes when assuming office. He is required to perform his duties without fear or favour, affection or ill-will. Any settlement before the Lok Adalat should be voluntary. No party can be punished for failing to reach the settlement before the Lok Adalat. Section 20(5) of the Act statutorily recognizes the right of a party whose case is not settled before the Lok Adalat to have his case continued before the court and have a decision on merits. Any admission made, any tentative agreement reached, or any concession made during the negotiation process before the Lok Adalat cannot be used either in favour of a party or against a party when the matter comes back to the court on failure of the settlement process. To deny hearing to a party on the ground that his behaviour before the Lok Adalat was cantankerous or unreasonable would amount to denial of justice. When deciding a matter on merits of a case, if a court carries any prejudice against a party on account of his conduct before an ADR forum, it will violate the inviolable guarantee against prejudice or bias in decision making process. Such conduct can neither be permitted nor be tolerated and requires to be strongly deprecated. Every Judge should constantly guard against prejudice, bias and prejudging, in whatever form. Judges should not only be unbiased, but seem to be unbiased. Judiciary can serve the nation only on the trust, faith and confidence of the public in its impartiality and integrity.

15. When a counsel who is ready in the pre-lunch session, seeks accommodation in the post-lunch session on the ground of a sudden illness or physical ailment, the court cannot refuse a short accommodation and dismiss the appeal on the ground that his client was cantankerous and unreasonable before the Lok Adalat. The two issues have no relation to each other and such dismissal can only be attributed to prejudice. The observation by the High Court that the parties having arrived at a settlement before the Lok Adalat, could not refuse to file a compromise petition in court, is also erroneous. If there was a final settlement before the Lok Adalat, there would have been an award and there was no need for the matter to come before the court for further hearing. If parties state that before the Lok Adalat that they will enter into an agreement and file it before the court, it only means that there was only a tentative settlement before the Lok Adalat.

16. In view of the above, the appeals are allowed. The impugned orders of the High Court are set aside. The second appeal is restored to the file of the High Court for being disposed of on merits in accordance with law. We request the Hon. Chief Justice to assign the appeal to some other learned Judge of the High Court. Whatever is stated above is not intended to be a reflection on the judicial integrity of the learned Judge, nor intended to impute any personal prejudice or bias.

