SUPREME COURT OF INDIA

Madhya Pradesh State Legal Services Authority

Vs.

Prateek Jain

C.A.No.8614 of 2014

(J.Chelameswar and A.K.Sikri JJ.)

10.09.2014

JUDGMENT

A.K. SIKRI, J.

1. Leave granted.

2. Madhya Pradesh State Legal Services Authority, the appellant herein, has filed the instant appeal challenging the propriety of orders dated February 27, 2012 passed by the High Court of Madhya Pradesh in Writ Petition No. 1519 of 2012, which was filed by one Rakesh Kumar Jain (respondent No.2 herein) impleading Prateek Jain (respondent No.1 herein) as the sole respondent. Essentially the lis was between respondent Nos. 1 and 2. Respondent No.1 had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'Act') against respondent No.2. Matter reached before the Additional Sessions Judge in the form of criminal appeal. During the pendency of the said appeal, the matter was settled between the parties. On their application, the matter was referred to Mega Lok Adalat. However, the concerned Presiding Officer in the Lok Adalat did not give his imprimatur to the said settlement in the absence of deposit made as per the direction given in the judgment of this Court in Damodar S. Prabhu v. Sayed Babalal H., (2010) 5 SCC 663. Against the order of Additional Sessions Judge, a writ petition was filed by respondent No.2 but the same is also dismissed by the High Court, accepting the view taken by the Additional Sessions Judge.

3. From the aforesaid, it would be clear that the matter in issue was between respondent Nos. 1 and 2. The appellant comes in picture only because the parties had approached the Mega Lok Adalat organised by the appellant. The reason for filing the present appeal is the apprehension of the appellant that if the settlement arrived at in the Lok Adalats are not accepted by the Courts, one of the essential function and duty of Legal Services Authority cast upon by the Legal Services Authorities Act, 1987 (hereinafter referred to as the '1987 Act') would be greatly prejudiced and, therefore, it is necessary to straighten the law on the subject matter. Acknowledging the significance of the issue involved, permission was granted to the appellant to file the special leave petition and notice was issued in the special leave petition on December 06, 2012. Operation of the impugned order of the High Court was also stayed in the following words:

4. In the meantime, having regard to the objects to be achieved by the provisions of the Legal Services Authorities Act, 1987, the operation of the order passed by the Lok Adalat-I, Gwalior, Madhya Pradesh, on 30th July, 2011, and that of the High Court impugned in this petition, shall remain stayed. Notice has been duly served upon both the respondents, but neither of them have put in appearance. Be that as it may, since we are concerned with the larger question raised in this appeal, we hard the learned counsel for the appellant in the absence of any representation on the part of the respondents.

5. With the aforesaid gist of the controversy involved, we now proceed to take note of the relevant facts in some detail.

6. As pointed out above, there was some dispute between respondent Nos. 1 and 2. Nature of the dispute is not reflected from the papers filed by the appellant. However, since it pertains to a complaint filed under Section 138 of the Act, one can safely infer that the complaint was filed because of dishonour of the cheque. It also appears from the record that this complaint was filed by respondent No.1 against respondent No.2 and had resulted in some conviction/adverse order against respondent No.2, though exact nature of the orders passed by the learned Magistrate is not on record. Be that as it may, respondent No.2 had filed the appeal against the order of the Magistrate in the Court of Additional Sessions Judge.

7. During the pendency of this appeal, a joint application was filed by both the parties stating that a compromise had taken place between them with mutual consent and they have reestablished their relationship and wanted to maintain the same cordial relation in future as well. On that basis it was stated in the application that respondent No.1 herein did not want to proceed against respondent No.2 and wanted the appeal to be disposed of on the basis of compromise by filing a compromise deed in the appeal. This application was filed under Section 147 of the Act which permits compounding of such offences. We would like to point out at this stage that on what terms the parties had settled the matter is not on record as compromise deed has not been filed.

8. When this application came up for hearing on July 30, 2011 before the learned appellate Court, counsel for both the parties requested that the matter be forwarded to the Mega Lok Adalat which was being organized on the same date. On this application, following order was passed by the learned Additional Sessions Judge:

> 30.07.2011
> xx xx xx

9. An application under section 147 Negotiation (sic) Instrument Act filed on behalf of both sides for compromise and request is made to direct the matter be taken up before the Lok Adalat organized today's date.

10. In view of the facts mentioned in the application, for abrogation of the compromise application, the matter be taken up today before the concerned bench of Lok-Adalat. When the matter was placed before the Lok Adalat, the Presiding Officer refused to act upon the settlement recorded between the parties on the ground that the accused person had not deposited 15% amount of the cheque for compounding of matter at the appeal stage as per The Guidelines contained in the judgment of this Court in the case of Damodar S. Prabhu (supra). The exact order passed is reproduced below: 30.07.2011 The matter produced before the bench of Lok Adalat No.1.

11. Appellant along with Shri N.S. Yadav, Advocate.

12. Non-Applicant along with Shri Mohan Babu Mangal Advocate.

13. The instant matter is related to the appeal filed against the conviction order passed

under Section 138 of Negotiation (sic) of Instrument Act, wherein, both parties, being appeared along with their counsels, while filing application for compromise, have requested to mitigate the matter. But, the defendant/accused has not deposited 15 percent amount of cheque for mitigation of matter at the appeal stage according to the guide lines of judgment dated 3.5.2010 passed in Criminal Appeal No. 963/2010 in the matter of Damodar M. Prabhu Vs. Sayyad Baba Lal passed by the Hon'ble Supreme Court, in the District Legal Services Authority, due to said reason, it is not lawful to grant permission of mitigation of the matter to both sides. Hence, the compromise application is hereby dismissed.

14. The matter be returned back to the Regular Court for abrogation in accordance with law. It is this order which was challenged by respondent No.2 by filing a writ petition under Article 227 of the Constitution of India. The High Court has dismissed the said writ petition stating that the judgment of this Court in Damodar S. Prabhu (supra) is binding on the subordinate Courts under Article 141 of the Constitution and, therefore, the subordinate Court had not committed any legal error.

15. The Guidelines in the form of directions given in the aforesaid judgment read as under:

> THE GUIDELINES (I) In the circumstances, it is proposed as follows:
>
> (a) That directions can be given that the Writ of Summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.
>
> (b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at the subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.
>
> (c) Similarly, if the application for compounding is made before the Sessions

Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount."

16. The question of consideration in the aforesaid backdrop is as to whether directions/guidelines given by this Court in the aforesaid judgment are inapplicable in cases which are resolved/settled in Lok Adalats.

17. What was argued before us by the learned counsel for the appellant was that these guidelines containing the schedule of costs should not be made applicable to the settlements which are arrived at in the Lok Adalats inasmuch as provision for imposition of such costs would run contrary to the very purpose of Lok Adalats constituted under Section 19 of the 1987 Act. It was emphasized that Lok Adalats were constituted to promote the resolution of disputes pending before Court by amicable settlement between the parties and in order to reduce the pendency of cases before the Courts, including appellate Courts. Learned counsel also referred to the judgment of this Court in K.N. Govindan Kutty Menon v. C.D. Shaji, (2012) 2 SCC 51, wherein it is held that a compromise or settlement arrived at before the Lok Adalat and award passed pursuant thereto is to be treated as decree of civil Court by virtue of deeming provision contained in Section 21 and Section 2(aaa) and (c) of the 1987 Act. The Court held that even a settlement of a case under Setion 138 of the Act and Lok Adalat award passed pursuant thereto would be a decree executable under the Code of Civil Procedure, 1908. The position in this behalf is summed up in para 26 of the said judgment, which reads as under:

26. From the above discussion, the following propositions emerge:

(1) In view of the unambiguous language of Section 21 of the Act, every award of the Lok Adalat shall be deemed to be a decree of a civil court and as such it is executable by that court.

(2) The Act does not make out any such distinction between the reference made by a civil court and a criminal court.

(3) There is no restriction on the power of the Lok Adalat to pass an award based on the compromise arrived at between the parties in respect of cases referred to by various courts (both civil and criminal), tribunals, Family Court, Rent Control Court, Consumer Redressal Forum, Motor Accidents Claims Tribunal and other forums of similar nature.

(4) Even if a matter is referred by a criminal court under Section 138 of the Negotiable Instruments Act, 1881 and by virtue of the deeming provisions, the award passed by the Lok Adalat based on a compromise has to be treated as a decree capable of execution by a civil court. Taking sustenance from the aforesaid dicta, the submission of learned counsel for the appellant was that even the proceedings under Section 138 of the Act were governed by the Code of Criminal Procedure, 1973, such an award was executable as a decree of the civil Court under the Code of Civil Procedure, 1908. The submission, therefore, was that once award of the Lok Adalat is given the effect of the decree and attaches this kind of sanctity behind it, it should be carved out as an exception to 'The Guidelines' framed by this Court in Damodar S. Prabhu's case (supra).

18. We have considered the aforesaid submission of the learned counsel with utmost intensity of thought. It appears to be of substance in the first blush when this submission is to be considered in the context of the purpose and objective with which Lok Adalats have been constituted under Section 19 of the 1987 Act. No doubt, the manifest objective is to have speedy resolution of the disputes through these Lok Adalats, with added advantage of cutting the cost of litigation and avoiding further appeals. The advent of the 1987 Act gave a statutory status to Lok Adalats, pursuant to the constitutional mandate in Article 39-A of the Constitution of India, contains various provisions of settlement of disputes through Lok Adalat. It is an Act to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organize Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity. In fact, the concept of Lok Adalat is an innovative Indian contribution to the world jurisprudence. It is a new form of the justice dispensation system and has largely succeeded in providing a supplementary forum to the victims for settlement of their disputes. This system is based on Gandhian principles. It is one

of the components of Alternate Dispute Resolution systems specifically provided in Section 89 of the Code of Civil Procedure, 1908 as well. It has proved to be a very effective alternative to litigation. Lok Adalats have been created to restore access to remedies and protections and alleviate the institutional burden of the millions of petty cases clogging the regular courts. It offers the aggrieved claimant whose case would otherwise sit in the regular courts for decades, at least some compensation now. The Presiding Judge of a Lok Adalat is an experienced adjudicator with a documented record of public service and has legal acumen. Experience has shown that not only huge number of cases are settled through Lok Adalats, this system has definite advantages, some of which are listed below:

(a) speedy justice and saving from the lengthy court procedures;

(b) justice at no cost;

(c) solving problems of backlog cases; and

(d) maintenance of cordial relations.

Thus, it cannot be doubted that Lok Adalats are serving an important public purpose.

Having said so, it needs to be examined as to whether in the given case it becomes derogatory to the movement of the Lok Adalats if the costs amounting to 15% of the cheque amount, as per the guidelines contained in Damodar S. Prabhu (supra), is insisted? However, before discussing this central issue, we would like to analyse the events of the present case, as that would be of help to answer the pivotal issue raised before us.

19. As pointed out above while taking note of the factual details of the case, it was not a situation where the Court persuaded the parties to use the medium of Lok Adalat for the settlement of their dispute. On the contrary, the parties had already settled the matter between themselves before hand and filed the application in this behalf before the learned Additional Sessions Judge on July 30, 2011 with a request which the matter be taken up before the Lok Adalat that was being organized on the same date. It is clear from the order passed by the learned Additional Sessions Judge on July 30,

2011, which is already extracted above.

20. In the first instance, we do not understand as to why the matter was sent to Lok Adalat when the parties had settled the matter between themselves and application to this effect was filed in the Court. In such a situation, the Court could have passed the order itself, instead of relegating the matter to the Lok Adalat. We have ourselves highlighted the importance and significance of the Institution of Lok Adalat. We would be failing in our duty if we do not mention that, of late, there is some criticism as well which, inter alia, relates to the manner in which cases are posted before the Lok Adalats. We have to devise the methods to ensure that faith in the system is maintained as in the holistic terms access to justice is achieved through this system. We, therefore, deprecate this tendency of referring even those matters to the Lok Adalat which have already been settled. This tendency of sending settled matters to the Lok Adalats just to inflate the figures of decision/settlement therein for statistical purposes is not a healthy practice. We are also not oblivious of the criticism from the lawyers, intelligentsia and general public in adopting this kind of methodology for window dressing and showing lucrative outcome of particular Lok Adalats.

21. Be that as it may, reverting to the facts of the present case, we find that when the case had been settled between the parties and application in this behalf was made before the Court, it cannot be denied that had the Court passed the compouding order on this application under Section 147 of the Act, as per the rigours of Damodar S. Prabhu (supra), 15% f the cheque amount had to be necessarily deposited by the accused person (respondent No.2). If we hold that such a cost is not to be paid when the matter is sent to the Lok Adalat, this route would be generally resorted to, to bypass the applicability of the directions contained in Damodar S. Prabhu (supra). Such a situation cannot be countenanced.

22. The purpose of laying down the guidelines in Damodar S. Prabhu (supra) is explained in the said judgment itself. The Court in that case was concerned with the stage of the case when compounding of offence under Section 147 of the Act is to be permitted. To put it otherwise, the question was as to whether such a compounding can be only at the trial Court stage or it is permissible even at the appellate stage. It was noted that even before the insertion of Section 147 of the Act, by way of amendment in the year 2002, some High Courts had permitted the compounding of offence contemplated by Section 138 of the Act during the later stages of litigation. This was

so done by this Court also in O.P. Dholakia v. State of Haryana, (2000) 1 SCC 672 and in some other cases which were noticed by the Bench. From these judgments the Court concluded that the compounding of offence at later stages of litigation in cheque bounding cases was held to be permissible.

23. While holding so, the Court also took note of the phenomena which was widely prevalent in the manner in which cases under Section 138 of the Act proceed in this country. It noticed that there was a tendency on the part of the accused persons to drag on these proceedings and resort to settlement process only at a stage when the accused persons were driven to wall. It is for this reason that most of the complaints filed result in compromise or settlement before the final judgment on the one side and even in those cases where judgment is pronounced and conviction is recorded, such cases are settled at appellate stage. This was so noted in para 13 of the judgment, which reads as under:

> 13. It is quite obvious that with respect to the offence of dishonour of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect. There is also some support for the apprehensions raised by the learned Attorney General that a majority of cheque bounce cases are indeed being compromised or settled by way of compounding, albeit during the later stages of litigation thereby contributing to undue delay in justice-delivery. The problem herein is with the tendency of litigants to belatedly choose compounding as a means to resolve their dispute. Further more, the writen submissions filed on behalf of the learned Attorney General have stressed on the fact that unlike Section 320 of the CrPC, Section 147 of the Negotiable Instruments Act provides no explicit guidance as to what stage compounding can or cannot be done and whether compounding can be done at the instance of the complainant or with the leave of the court. As mentioned earlier, the learned Attorney General's submission is that in the absence of statutory guidance, parties are choosing compounding as a method of last resort instead of opting for it as soon as the Magistrates take cognizance of the complaints. One explanation for such behaviour could be that the accused persons are willing to take the chance of progressing through the various stages of litigation and then choose the route of settlement only when no other route remains. While such behaviour may be viewed as rational from the viewpoint of litigants, the hard facts are that the undue delay in opting for compounding contributes to the

arrears pending before the courts at various levels. If the accused is willing to settle or compromise by way of compounding of the offence at a later stage of litigation, it is generally indicative of some merit in the complainant's case. In such cases it would be desirable if parties choose compounding during the earlier stages of litigation. If however, the accused has a valid defence such as a mistake, forgery or coercion among other grounds, then the matter can be litigated through the specified forums. This particular tendency had prompted the Court to accept the submission of the Attorney General to frame guidelines for a graded scheme of imposing costs on parties who unduly delay compounding of the offence inasmuch as such a requirement of deposit of the costs will act as a deterrent for delayed composition since free and easy compounding of offences at any stage, however belated, was given incentive to the drawer of the cheque to delay settling of cases for years. For this reason, the Court framed the guidelines permitting compounding with the imposition of varying costs depending upon the stage at which the settlement took place in a particular case.

After formulating The Guidelines, which are already extracted above, the Court made very pertinent observations in para 17 of the said judgment which would have bearing in the present case. Thus, we reproduce the same below:

17. We are also conscious of the view that the judicial endorsement of the above quoted guidelines could be seen as an act of judicial law-making and therefore an intrusion into the legislative domain. It must be kept in mind that Section 147 of the Act does not carry any guidance on how to proceed with the compounding of offences under the Act. We have already explained that the scheme contemplated under Section 320 of the CrPC cannot be followed in the strict sense. In view of the legislative vacuum, we see no hurdle to the endorsement of some suggestions which have been designed to discourage litigants from unduly delaying the composition of the offence in cases involving Section 138 of the Act. The graded scheme for imposing costs is a means to encourage compounding at an early stage of litigation. In the status quo, valuable time of the Court is spent on the trial of these cases and the parties are not liable to pay any Court fee since the proceedings are governed by the Code of Criminal Procedure, even though the impact of the offence is largely confined to the private parties. Even though the imposition of costs by the

competent court is a matter of discretion, the scale of costs has been suggested in the interest of uniformity. The competent Court can of course reduce the costs with regard to the specific facts and circumstances of a case, while recording reasons in writing for such variance. Bona fide litigants should of course contest the proceedings to their logical end. Even in the past, this Court has used its power to do complete justice under Article 142 of the Constitution to frame guidelines in relation to subject-matter where there was a legislative vacuum. It is clear from the reading of the aforesaid para that the Court made it clear that framing of the said guidelines did not amount to judicial legislation. In the opinion of the Court, since Section 147 of the Act did not carry any guidance on how to proceed with compounding of the offences under the Act and Section 320 of the Code of Criminal Procedure, 1973 could not be followed in strict sense in respect of offences pertaining to Section 138 of the Act, there was a legislative vacuum which prompted the Court to frame those guidelines to achieve the following objectives:

(i) to discourage litigants from unduly delaying the composition of offences in cases involving Section 138 of the Act;

(ii) it would result in encouraging compounding at an early stage of litigation saving valuable time of the Court which is spent on the trial of such cases; and

(iii) even though imposition of costs by the competent Court is a matter of discretion, the scale of cost had been suggested to attain uniformity.

24. At the same time, the Court also made it abundantly clear that the concerned Court would be at liberty to reduce the costs with regard to specific facts and circumstances of a case, while recording reasons in writing for such variance.

25. What follows from the above is that normally costs as specified in the guidelines laid down in the said judgment has to be imposed on the accused persons while permitting compounding. There can be departure therefrom in a particular case, for good reasons to be recorded in writing by the concerned Court. It is for this reason that the Court mentioned three objectives which were sought to be achieved by framing those guidelines, as taken note of above. It is thus manifestly the framing of Guidelines in this judgment was also to achieve a particular public purpose. Here

comes the issue for consideration as to whether these guidelines are to be given a go by when a case is decided/settled in the Lok Adalat? Our answer is that it may not be necessarily so and a proper balance can be struck taking care of both the situations.

26. Having regard thereto, we are of the opinion that even when a case is decided in Lok Adalat, the requirement of following the guidelines contained in Damodar S. Prabhu (supra) should normally not be dispensed with. However, if there is a special/specific reason to deviate therefrom, the Court is not remediless as Damodar S. Prabhu (supra) itself has given discretion to the concerned Court to reduce the costs with regard to specific facts and circumstances of the case, while recording reasons in writing about such variance. Therefore, in those matters where the case has to be decided/settled in the Lok Adalat, if the Court finds that it is a result of positive attitude of the parties, in such appropriate cases, the Court can always reduce the costs by imposing minimal costs or even waive the same. For that, it would be for the parties, particularly the accused person, to make out a plausible case for the waiver/reduction of costs and to convince the concerned Court about the same. This course of action, according to us, would strike a balance between the two competing but equally important interests, namely, achieving the objectives delineated in Damodar S. Prabhu (supra) on the one hand and the public interest which is sought to be achieved by encouraging settlements/resolution of case through Lok Adalats.

27. Having straightened the position in the manner above, insofar as the present case is concerned, as we find that the parties had already settled the matter and the purpose of going to the Lok Adalat was only to have a rubber stamp of the Lok Adalat in the form of its imprimatur thereto, we do not find any error in the impugned judgment, though we are giving our own reasons in support of the conclusion arrived at by the High Court in dismissing the writ petition filed by respondent No.2, while straightening the approach that should be followed henceforth in such matters coming before the Lok Adalats.

28. The appeal stands disposed of in the aforesaid terms.