Bhargavi Constructions vs Kothakapu Muthyam Reddy on 7 September, 2017

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.11345 OF 2017
(Arising out of S.L.P.(C) No.23605 of 2015)

Bharvagi Constructions & Anr. ….Appellant(s)

VERSUS

Kothakapu Muthyam
Reddy & Ors. …Respondent(s)

JUDGMENT

Abhay Manohar Sapre, J.

1) Leave granted.

2) This appeal is filed by the defendants against the final judgment and order dated 25.06.2015 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State Signature Not Verified of Andhra Pradesh in Appeal Suit No. 968 of 2013 Digitally signed by ASHA SUNDRIYAL Date: 2017.09.07 17:07:27 IST Reason: whereby the High Court allowed the appeal filed by the respondents herein with costs and set aside the order dated 24.07.2013 passed by the second Additional District Judge, Ranga Reddy District in I.A. No.894 of 2010 in O.S. No.107 of 2010.

3) In order to appreciate the short legal controversy involved in the appeal, it may not be necessary to set out the factual controversy involved in the case in detail and only narration of few facts to appreciate the legal question arising in the case would suffice for the disposal of this appeal.

4) On 07.05.2007, T. Jagat Singh (respondent No. 5 herein) filed a civil suit being O.S. No. 481 of 2007 against respondent Nos. 1 to 34 herein (defendant Nos. 1 to 33) in the Court of District Judge, Ranga Reddy District Court.

5) The suit was for specific performance of agreement of sale dated 28.12.1995 said to have been entered into between the parties in respect of agricultural land totally admeasuring AC. 51.29 guntas in (Sy.Nos. 262-274) situated at Pappalguda village of Rajendranagar Mandal, Ranga Reddy District (hereinafter referred to as the "suit land").

6) Originally, the plaintiff had filed suit only against defendant Nos. 1 to 9 but later on defendant Nos. 10 to 33 made an application for being joined as defendant Nos. 10 to 33 in the civil suit as according to them, they had an interest in the subject matter of the civil suit and also in its decision and, therefore, they were necessary parties to the suit. Their prayer was allowed. The defendants then contested the suit.

7) During the pendency of civil suit, on 22.08.2007, the parties (plaintiff and defendants) settled the matter in relation to the suit land and accordingly entered into written compromise.

8) A joint compromise petition signed by all the parties to the suit was accordingly filed before the Lok Adalat, which held its Lok Adalat sitting in the Court on 22.08.2007.

9) The members of the Lok Adalat before whom the suit was posted for its disposal in terms of the compromise petition filed by the parties perused the compromise petition and accepted the compromise petition finding it to be in order. An Award was accordingly passed on 22.08.2007 under Section 21 of the Legal Services Authorities Act, 1987 (hereinafter referred to as “the Act”) in terms of the compromise petition, which, in turn, disposed of the suit as having been compromised. (Annexure P-2).

10) On 14.11.2009, respondent Nos. 1 to 4 herein (who were original defendant Nos. 22 to 25 in Suit No. 481 of 2007) filed Civil Suit No. 107 of 2010 against the plaintiff and the remaining defendants of Civil Suit No. 481 of 2007. This suit was filed in the Court of II Additional District Judge, Ranga Reddy District at L.B.Nagar.

11) This suit was for a declaration that the award dated 22.08.2007 passed by the Lok Adalat in Civil Suit No. 481 of 2007 was obtained by the defendants of this suit by playing fraud/mis- representation on the plaintiffs and hence the Award dated 22.08.2007 be declared illegal, null and void and not binding on the plaintiffs.

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 plaintiffs.

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 & Anr. Vs. Jalour Singh & Ors., (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 underArticle 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.

19) Elaborating his submission, Mr. Dushyant Dave placed reliance on the law laid down by this Court in State of Punjab (supra) and contended that the issue urged by him no longer remains res integra and stands answered by this Court in appellant's favour.

20) It was his submission that the expression "barred by any law" occurring in clause (d) of Rule 11 of Order 7 not only includes any Act enacted by the legislature creating a “bar” but the expression “law” includes therein “judicial decision of the Supreme Court" also, which are binding on all the Courts in the Country by virtue of Article 141 of the Constitution of India.

21) In other words, his submission was that the expression “law” occurring in clause(d) of Rule 11 of Order 7 should be construed liberally so as to include therein not only any “Act" which is admittedly a “law” made by the legislature but also include therein a "a decision of Supreme Court ".

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 (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.

30) We also do not agree with the submissions of Mr. Adinarayana Rao, learned senior counsel for the respondents when he urged that firstly, the expression "law" occurring in clause(d) of Rule 11 Order 7 does not include the "judicial decisions" and clause (d) applies only to bar which is contained in “the Act” enacted by the Legislature; and Secondly, even if it is held to include the “judicial decisions”, yet the law laid down in the case of State of Punjab (supra) cannot be read to hold that the suit is barred. Both these submissions, in our view, have no merit.

31) Black's Law Dictionary (Ninth Edition) defines the expression "law". It says that “Law" includes the “judicial precedents" (see at page 962). Similarly, the expression "law” defined in Jowett’s Dictionary of English Law (Third Edition Volume-2, (pages 1304/1305) says that "law is derived from judicial precedents, legislation or from custom. When derived from

judicial precedents, it is called common law, equity, or admiralty, probate or ecclesiastical law according to the nature of the Courts by which it was originally enforced".

32) The question as to whether the expression "law" occurring in clause(d) of Rule 11 of Order 7 of the Code includes "judicial decisions of the Apex Court" came up for consideration before the Division Bench of the Allahabad High Court in Virender Kumar Dixit vs. State of U.P., 2014(9) ADJ 1506. The Division Bench dealt with the issue in detail in the context of several decisions on the subject and held in para 15 as under:

"15. Law includes not only legislative enactments but also judicial precedents. An authoritative judgment of the Courts including higher judiciary is also law."

33) This very issue was again considered by the Gujarat High Court (Single Bench) in the case of Hermes Marines Limited vs. Capeshore Maritime Partners F.Z.C. & Anr. (unreported decision in Civil Application (OJ) No.144 of 2016 in Admiralty Suit No.10 of 2016 decided on 22.04.2016). The learned Single Judge examined the issue and relying upon the decision of the Allahabad High Court quoted supra held in Para 53 as under:

"53. In the light of the above discussion, in the considered view of this Court, it cannot be said that the term "barred by any law" occurring in clause (d) of Rule 11 of Order 7 of the Code, ought to be read to mean only the law codified in a legislative enactment and not the law laid down by the Courts in judicial precedents. The judicial precedent of the Supreme Court in Liverpool & London Steamship Protection and Indemnity Association vs. M.V. Sea Success, 2004(9) SCC 512 has been followed by the decision of the Division Bench in Croft Sales & Distribution Ltd. vs. M.V. Basil, 2011(2) GLR 1027. It is, therefore, the law as of today, which is that the Geneva Convention of 1999 cannot be made applicable to a contract that does not involve public law character. Such a contract would not give rise to a maritime claim. As discussed earlier, the word 'law' as occurring in Order 7 Rule 11(d) would also mean judicial precedent. If the judicial precedent bars any action that would be the law."

34) Similarly, this very issue was again examined by the Bombay High Court (Single Judge) in Shahid s. Sarkar & Ors. Vs. Usha Ramrao Bhojane, 2017 SCC OnLine Bom 3440. The learned Judge placed reliance on the decisions of the Allahabad High Court in Virender Kumar Dixit vs. State of U.P.

(Supra) and the Gujarat High Court in Hermes Marines Limited (supra) and held as under:

"18…….The law laid down by the highest court of a State as well as the Supreme Court, is the law. In fact, Article 141 of the Constitution of India categorically states that the law declared by the Supreme Court shall be binding on all Courts within the territories of India. There is nothing even in the C.P.C. to restrict the meaning of the words "barred by any law" to mean only codified law or statute law as sought to be contended by Mr. Patil. In the view that I have taken, I am supported by a decision of the Gujarat High Court in the case of Hermes Marines Ltd..……....." "19. One must also not lose sight of the purpose and intention behind Order VII Rule 11(d). The intention appears to be that when the suit appears from the statement in the plaint to be barred by any law, the Courts will not unnecessarily protract the litigation and proceed with the hearing of the suit. The purpose clearly appears to be to ensure that where a Defendant is able to establish that the Plaint

ought to be rejected on any of the grounds set out in the said Rule, the Court would be duty bound to do so, so as to save expenses, achieve expedition and avoid the court's resources being used up on cases which will serve no useful purpose. A litigation, which in the opinion of the court, is doomed to fail would not further be allowed to be used as a device to harass a Defendant……..."

35) Similarly, issue was again examined by the High Court of Jharkhand(Single Judge) in Mira Sinha & Ors. Vs. State of Jharkhand & Ors., 2015 SCC OnLine Jhar.4377. The learned Judge, in paragraph 7 held as under:

"7. In the background of the law laid down by the Hon'ble Supreme Court, it is apparent that Order VII Rule 11(d) C.P.C. application is maintainable only when the suit is barred by any law. The expression "law" included in Rule 11(d) includes Law of Limitation and, it would also include the law declared by the Hon'ble Supreme Court……"

36) We are in agreement with the view taken by Allahabad, Gujarat, Bombay and Jharkhand High Courts in the aforementioned four decisions which, in our opinion, is the proper interpretation of the expression "law" occurring in clause (d) of Rule 11 of Order 7 of the Code. This answers the first submission of the learned counsel for the respondents against the respondents.

37) So far as the second submission of learned counsel for the respondents is concerned, it also has no merit. In our view, the decision rendered in the case of State of Punjab (supra) is by the larger Bench (Three Judge) and is, therefore, binding on us. No efforts were made and rightly to contend that the said decision needs reconsideration on the issue in question. That apart, when this Court has laid

down a particular remedy to follow for challenging the award of Lok Adalat then in our view, the same is required to be followed by the litigant in letter and spirit as provided therein for adjudication of his grievance in the first instance. The reason being that it is a law of the land under Article 141 of the Constitution of India (see - M. Nagaraj & Ors. Vs. U.O.I. & Ors. 2006 (8) SCC 212). It is then for the writ court to decide as to what orders need to be passed on the facts arising in the case. 38) In the light of foregoing discussion, we cannot concur with the reasoning and the conclusion arrived at by the High Court.

39) As a result, the appeal succeeds and is allowed. Impugned order is set aside and that of the order passed by the Trial Court is restored. As a consequence, the application filed by the appellants (defendants) under Order 7 Rule 11 (d) of the Code is allowed resulting in rejection of the plaint.

40) We, however, make it clear that the respondents (plaintiffs) would be at liberty to challenge the legality and correctness of the award dated 22.08.2007 passed by the Lok Adalat by filing the writ petition under Article 226 or/and 227 of the Constitution in the High Court in accordance with law.

41) We also make it clear that we have not examined the merits of case of either parties which is the subject matter of the suit and hence the writ court, in the event of writ petition

being filed, would decide the writ petition strictly in accordance with law without being influenced by any of our observations.

…….....J. [R.K. AGRAWAL]

…..…….....J. [ABHAY MANOHAR SAPRE]

New Delhi;

September 07, 2017