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Court : Kerala

Decided On : Jul-27-2006

Reported in : AIR2007Ker31; 2006(3)KLT717

Judge : Kurian Joseph, J.

Acts : Legal Services Authorities Act, 1987 - Sections 19(1), 19(2), 19(5), 20, 20(1), 20(5) and 21; Court Fees Act, 1870; Code of Civil Procedure (CPC) - Sections 6, 38, 39 and 39(3)

Appeal No. : C.R.P. No. 580 of 2004

Appellant : Thomas

Respondent : Florance

Advocate for Def. : G. Sreekumar (Chelur), Adv.

Advocate for Pet/Ap. : P. Vijaya Bhanu and; Tony Mathew, Advs.

Disposition : Appeal dismissed

Judgement :
ORDER

Kurian Joseph, J.

1. Award of the Lok Adalat is to be treated as a decree of the civil court. Which is the civil court to execute decree is the question to be considered in this case. The revision petitioner is the defendant in O.S.1469/98 on the file of the Principal Munsiff Court, Thrissur. Respondent is the plaintiff. The suit pertains to partition. Reference was made under Section 20 of the Legal Services Authorities Act, 1987 and the Lok Adalat organised by the Taluk Legal Services Authority, Thrissur settled the matter and passed an award dated 5.11.1999. The petitioner undertook to pay an amount of Rs. 260000/-within a period of six months from the date of the award with 12% interest. Since the petitioner failed to pay the amount in time, the respondent took up the matter in execution before the Munsiff Court, Thrissur. In the process, order dated 20.3.2004 in E.P.1394/01 in O.S. 1469/98 was passed for proclamation and sale of the attached property.

2. The main contention taken by the learned Counsel appearing for the petitioner is that the decree amount being Rs. 260000/- with interest, the Munsiff Court, Thrissur lacked pecuniary jurisdiction to entertain the execution petition. Yet another contention is that it is not necessary to proceed with the whole extent of property since the decree can be satisfied by proceeding against part of the property.

3. Section 6 of the Civil Procedure Code deals with the pecuniary jurisdiction which reads as follows:

6. Pecuniary jurisdiction: Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

S.38 of the Code provides that 'A decree may be executed either by the Court which passed it. or by the Court to which it is sent for execution.' Section 39 deals with the transfer of the decree to a court of competent jurisdiction. Section 39 (3) reads as follows:

(3) For the purposes of this section, a Court shall be deemed to be a Court of competent jurisdiction if, at the time of making the application for the transfer of

decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.

At the outset, it has to be noticed that the valuation for the purpose of court fee as shown in the plaint is Rs. 85000/- and hence there cannot be any dispute that the Munsiff Court has pecuniary jurisdiction to try the suit. It is also to be noted that the jurisdiction is to be taken note of only for the purpose of adjudication and not for execution. It is the contention of the petitioner that once a matter is referred to Lok Adalat, and Lok Adalat passes an award, it has to be deemed to be a decree of civil court or an order of any other court, as the case may be. It is submitted that though the reference is made by the Munsiff Court, once the Lok Adalat passes the award for payment of an amount of Rs. 2,60,000/- with interest, for the purposes of jurisdiction as far as execution of the decree is concerned, it has to be treated as a decree passed by the Subordinate Judges Court.

4. Section 20 of the Legal Services Authorities Act, 1987 deals with cognizance of cases by Lok Adalat, which reads as follows:

20. Cognizance of cases by Lok Adalats.:

(1) Where in any 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 advice the parties to seek remedy in a court.

(7) Where the record of the case js 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).

S.21 deals with award of the Lok Adalat which reads as follows:

21. Award of Lok Adalat-

(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 (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.

It can be seen from Section 20 (5) that in case Lok Adalat is not in a position to pass an award on the ground that no compromise or settlement could be arrived at between the parties, the record of the case should be returned to the court which referred the case to the Adalat and that court has to proceed with the suit from the stage at the time of reference. There cannot be any dispute that had there been no settlement before the Lok Adalat as in the instant case, the matter would have been sent back to the Munsiff Court, Thrissur. Had the plaintiff and defendant entered into the same compromise agreeing for settlement of the dispute on payment of Rs. 260000/- with interest before the Munsiff Court, on failure to comply with the terms of the compromise, execution would have been maintained only before the Munsiff Court. That apart, when the Lok Adalat settles the case and passes an award in respect of a case pending on the file of the court which referred the matter to the Adalat, the suit is struck off from the file of that court only. Thus it is fairly clear that under the deeming provision under Section 21 of the Legal Services Authorities Act, 1987, the decree of a civil court has to be taken as the decree of the civil court which referred the case to the Lok Adalat.

5. An ancillary issue in this regard to be considered is with regard to the execution of the award passed by the Lok Adalat in a matter not referred to it by the civil court. Section 19 (5) of the Legal Services Authorities Act, 1987 reads as follows:-

(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.

Then the question is as to where the decree is to be executed. In case the value is indicated in the dispute raised by the parties before the Lok Adalat, there is no difficulty. If it is a matter where the Munsiff Court could have adjudicated, the award passed by the Lok Adalat shall be treated to be a decree executable before the Munsiff Court. Needless to say that if it was a matter which could have been adjudicated by the Sub Court going by the valuation indicated in the dispute raised before the Adalat, then the award passed by the Lok Adalat will have to be treated as a decree to be executed by the Sub Court. In case the parties before the Lok Adalat do not furnish any indication as to the valuation, the matter will have to be governed by the relief granted to the parties. If the amount granted in the award passed by the Lok Adalat is within the pecuniary jurisdiction of the Munsiff Court for the purpose of filing the suit, the execution shall be before the Munsiff Court and if not, before the Sub Court. The territorial jurisdiction is to be determined as per Section 19 (5)(ii), with reference to the Court for which the Adalat is organised. Which would have been the court of competent jurisdiction that would have entertained the matter for trial had the matter been not settled is though the principle, since the parties have settled the matter in the Adalath organised for a court/courts, the territorial jurisdiction shall also be governed accordingly.

6. In the above circumstances, there is no merit in the contention regarding the jurisdiction of the Munsiff Court, Thrissur in proceeding with the execution of the award passed by the Lok Adalat. The contention that it is not necessary to proceed against the whole property for recovery of the amount is a matter to be considered by the execution court. It is made clear that before proceeding with the matter further, the contention raised by the petitioner in the objection to the execution petition on this aspect will be considered by the execution court. Subject to the above direction, this Civil Revision Petition is dismissed.

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