

Krishnakumari Vs. Venugopal

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Court : Kerala

Decided On : Dec-14-2004

Reported in : 2005(2)KLT185

Judge : K. Padmanabhan Nair, J.

Acts : Family Courts Act - Sections 5, 6, 9, and 20(4); Legal Services Authority Act, 1987 - Sections 19, 20(1), 20(3), 20(3)(1), 20(3)(2) and 20(4); Hindu Marriage Act - Sections 13(B); [Constitution of India](#) - Articles 226 and 227

Appeal No. : W.P. No. 28032 of 2003

Appellant : Krishnakumari

Respondent : Venugopal

Advocate for Def. : V. Giri, Adv.

Advocate for Pet/Ap. : C. Rajendran and; Zerene Linda Mitchel, Adv.

Judgement :

K. Padmanabhan Nair, J.

1. The plaintiff in O.S. No. 340 of 1998 on the file of Family Court, Kollam is the petitioner in this Writ Petition. The Writ Petition is filed by the petitioner for quashing Ext.PI decision rendered by the Lok Adalat organised by the Taluk Legal

Services Committee in Lok Adalat Case No. O.S.340/98 and in M.C.547 of 1998 on the file of Family Court, Kollam.

2. The petitioner filed O.S. No. 340 of 1998 before the Family Court, Kollam for realisation of an amount of Rs. 1,74,850/- with 12% interest and also for recovery of future maintenance at the rate of Rs. 750/- each for her children. The children were impleaded as plaintiffs 2 and 3 in the suit. The respondent married the petitioner on 19.1.1995. Two children are born to them in that wedlock. The relationship between the petitioner and the respondent became strained. According to the petitioner, the respondent used to manhandle her and on 30.8.1998 he left the petitioner and the children and thereafter he did not come back. It is also alleged that the respondent took away the gold ornaments given to the petitioner by her parents at the time of marriage and sold the same. It was alleged that utilising the sale proceeds, the respondent purchased property in his name in the year 1997. It is also alleged that the petitioner gave an amount of Rs. 25,000/- to the respondent for the purpose of starting the construction of a building in the property so purchased. That amount was appropriated by the respondent. Hence the suit for recovery of Rs. 1,74,850/- with 12% interest and also for recovery of future maintenance at the rate of Rs. 750/- each for the children.

3. The respondent filed O.P.(H.M.A.) No. 69 of 1999 against the petitioner before the Family Court for restitution of conjugal rights.

4. In the meanwhile, the petitioner along with her minor children filed M.C. No. 547 of 1998 before the Family Court, Kollam claiming maintenance.

5. It is averred that while the above stated cases were pending before the Family Court, an Adalat was held by the Taluk Legal Services Committee under Section 19 of the Legal Services Authority Act on 26.11.1999. The Lok Adalat was presided over by the Judge, Family Court. It is averred that the three cases were taken up in the Adalat and O.P.(H.M.A.) No. 69 of 1999, O.S. No. 340 of 1998 and M.C. No. 547 of 1998 were disposed of as if the parties have arrived at a settlement. It is averred that the respondent did not act in terms of the compromise. But, he filed a petition for custody of the minor children before the Family Court, Kollam as O.P. (G & W) No. 558 of 2001.

6. The petitioner filed I.A. No. 1880 of 2002 in O.S. No. 340 of 1998 for setting aside the award passed by the Lok Adalat. She had filed CrI.M.P. No. 779 of 2002 in M.C. No. 547 of 1998 for setting aside that judgment also. It was averred that the decision of the Lok Adalat was arrived at the instance of the respondent by misrepresenting and misleading the petitioner. It is further averred that she was denied the right to claim the amount claimed in O.S. No. 340 of 1998. It is further averred that though the parties had agreed to file a petition under Section 13B of the Hindu Marriage Act, no such petition was filed and the respondent is not complying with the terms of the award. It is further averred that the award passed by the Lok Adalat is incapable of being enforced and the terms and conditions incorporated are impracticable. Hence the prayer to set aside Ext.P1 award passed by the Lok Adalat held on 26.11.1999.

7. The respondent filed counter affidavit denying the allegations levelled against him. It is contended that the Writ Petition is not maintainable. The allegations that he took away the gold ornaments of the petitioner, sold the same and utilising that amount property was purchased in his name were denied. The averment that the amount of Rs. 25,000/- given to him by the petitioner was appropriated by him was also denied. According to the respondent, he was always ready and willing to perform his obligations under the compromise, but the same could not be given effect only due to the fault of the petitioner. So, he prayed for a dismissal of the Writ Petition.

8. The respondent raised a contention that the Writ Petition is not maintainable. It is contended that the award passed by the Lok Adalat is neither appealable nor revisable as it is a decision arrived as per the terms of agreement entered into between the rival parties in front of a committee constituted under the Legal Services Authorities Act. It is contended that such an award shall not be interfered in a proceedings under Articles 226 and 227 of the Constitution. It is averred that apart from filing a petition before the Family Court, the petitioner did not adduce any evidence to substantiate the fraud or misrepresentation alleged against the respondent. It is contended that Ext.P1 decision taken by the Family Court rejecting the petitions filed by the petitioner to set aside the decisions in the suit as well as the maintenance proceedings is perfectly correct and does not call for any

interference. So, he prayed for dismissal of the Writ Petition.

9. The learned counsel appearing for the petitioner submitted that a mere perusal of Ext.P1 award passed by the Lok Adalat itself is sufficient to hold that the award passed is vague, without any meaning and without giving any final solution to the matter in controversy. It is submitted that the fact that a clause is added to the award that no claim for enhancement of the maintenance to the minors can be made itself is sufficient to hold that the award is illegal, void and liable to be set aside. In *Moni Mathai and Ors. v. Federal Bank Ltd.* (2003 (1) KLT SN 71 = (2003 (1) KLJ 406) this Court found that though there is a bar for filing an appeal against the order, if there is patent illegality High Court can interfere with the award under Articles 226 and 227 of the [Constitution of India](#). It is also well settled position of law that there is delay in approaching this Court also is not a ground to refuse relief to a litigant in appropriate cases.

10. The petitioner as well as the respondent are teachers by profession. The respondent married the petitioner on 19.1.1995. Two children are born to them in the wedlock. According to the petitioner, from 30.8.1998 onwards they are living separately. The petitioner filed O.S. No. 340 of 1998 before the Family Court, Kollam for realisation of an amount of Rs. 1,74,850/- with 12% interest. The petitioner also filed M.C. No. 547 of 1997 claiming maintenance for herself and her minor-children. In the meanwhile the respondent filed O.P. (H.M.A.) No. 69 of 1999 against the petitioner for restitution of conjugal rights. Ext.P1 award purports to settle all the three cases. The relevant portion of the award reads as follows:--

'It is decreed/ordered that parties agree that in full and final settlement of all the claims including maintenance and expenses for the marriage of female child, the defendant agree to pay Rs. 300/- each p.m. to the minor children from 26.11.1998 and the defendant will dispose off his 25 cents and with the sale proceeds will purchase another plot in the name of minor children in consultation with the plaintiff or her counsel. Maintenance fixed is not revisable. All other matters will be settled. Parties who agree to file joint petition for divorce. The property will be disposed off within six months'.

A reading of the award shows that so far as M.C. No. 547 of 1998 is concerned, the respondent-defendant had agreed to pay Rs. 300/- per mensem each to the two minor children as maintenance as well as the marriage expense of the daughter with effect from 26.11.1998. It is also agreed that the rate of maintenance fixed is not revisable. The award further provides that 'all other matters will be settled'. So, going by the wording of the award it is clear that there is absolutely no settlement of the issues arose for consideration in O.S. No. 340 of 1998. The plaintiff may abandon the claim or withdraw the same. There is absolutely nothing in Ext.P1 award to show that the plaintiff in O.S. No. 340 of 1998 had either abandoned or withdrew her claim. There is nothing in the award to show that the defendant had admitted for passing of a decree in favour of the plaintiff. On the other hand, the compromise arrived was that the dispute arose for consideration in that suit will be settled on a future date. In Ext.P1 award there is absolutely no mention about the final order to be passed in O.P.(H.M.A.) No. 69 of 1999. Whether that O.P. was dismissed or allowed is not discernible from a reading of the award. It only shows that the parties had agreed to file a joint petition for divorce.

11. The compromise stated to have been entered into between the parties in the maintenance case is more vague. The respondent had agreed to pay an amount of Rs. 300/- per mensem to both children with effect from 26.11.1998. As per the terms of settlement, that amount is 'full and final settlement of all the claims including maintenance and expenses for the marriage of female child'. Further, going by the terms of the settlement the quantum of monthly maintenance payable is not revisable at all. How can the mother enter into such a settlement, which appears to be highly detrimental to the interest of the minors, is also not discernible from the award. The respondent had agreed to dispose of his 25 cents and purchase another plot in the name of minor children in consultation with the petitioner or her counsel. What will happen if the respondent fails to dispose of his property and purchase another property is not stated in the award. Above all, the terms of settlement was that the disputes between the petitioner and respondent will be settled on a future date. So, the only settlement entered into between the parties as per the award is that they will settle their disputes in future. Infact, a perusal of the award shows that there was absolutely no application of mind by the

Members of the Lok Adalat. A printed form is used. Even the unnecessary words printed in the form were not struck off. The award does not show whether it was referred to the Lok Adalat under Sub-section (a) or (b) of Section 20(1)(i) or Section 20(1)(ii) of the Act. In Moni Mathai's case (*supra*), this Court had observed that the Lok Adalat shall not take advantage of ignorance of a party and close their eyes to the legal effect of the terms of settlement.

12. The two cases settled were pending before the Family Court. The Family Courts Act was brought with a very special and laudable object. The Family Courts were set up mainly for the settlement of family disputes, where emphasis should be laid on conciliation and achieving socially desirable results. Section 5 of the Family Courts Act confers power on the State Government to provide, by rules, for the association with a Family Court with the institutions or organisations engaged in social welfare or the representatives thereof; persons professionally engaged in promoting the welfare of the family; persons working in the field of social welfare; etc. The Kerala Government had issued notification approving the lists of organisations for association with Family Courts. Section 6 gives power to the State Government to appoint counsellors to assist the Family Court. Counselling centres have been established and Counsellors have been appointed to the Family Courts. Section 9 of the Family Courts Act makes it obligatory on the part of the Family Court to make every endeavour in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement. So, unlike the proceedings before a Civil Court, the proceedings before the Family Court are governed by the provisions of the Family Courts Act and sufficient safeguards are provided in the Act itself to protect the interest of all concerned. There are provisions in the Family Court Act to make every effort to settle the matter with the help of Counsellors and other organisations. When such cases are considered by the Lok Adalat, the decisions arrived at also must be in consistent with the provisions contained in Section 9 of the Family Courts Act. A reading of the award shows that the award is not in conformity with the provisions of the Family Courts Act.

13. Section 20(3) of the Legal Services Authorities Act, 1987 provides that the Lok Adalat shall proceed to dispose of the case or matter referred under Sub-section (1) or (2) and arrive at a compromise or settlement between the parties. Sub-section (4) of Section 20 is important. It reads as follows:--

'(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'.

So, in view of the provisions contained in Sub-section (4) of Section 20, the settlement arrived at shall be guided by principles of justice, equity, fair play and other legal principles.

14. Chapter VI of Kerala State Legal Services Authority Regulations deals with constitution of Lok Adalat. Regulation 29 deals with composition of Lok Adalat. Regulation 30 deals with the power of the Secretary/Chairman of the Legal Services Authority to summon records and responsibility for its safe custody. Regulation 31 deals with the functioning of the Lok Adalat. Regulation 33 deals with the procedure for effecting compromise or settlement at Lok Adalat. Regulation 34 is very relevant. It reads as follows:--

'34. Award to be categorical and lucid. (1) Every Award of the Lok Adalat shall be categorical and lucid and shall be written in the regional language used in the local Courts or in English'.

15. The terms of the award passed by the Lok Adalat extracted above shows that it does not satisfy any of the provisions of the Act or Regulations and principles of natural justice. It is to be noted that Lok Adalats are constituted under the Legal Services Authorities Act. The Lok Adalats are not meant to bring down the pendency of cases somehow. The Lok Adalats are bound to follow the principles of natural justice, equity, fair play and other legal principles. If the disputes are not really settled, it will impair image of the Legal Services Authority and will affect its credibility. The public will lose their faith and confidence in the system itself. The terms of Ext.P1 are not specific and capable of being executed. It was passed in

violation of the principles of natural justice. So, I have no other option but to set aside the award and direct the Family Court to take O.S. No. 340 of 1998 and M.C. No. 547 of 1998 back to file and dispose of those cases afresh in accordance with law.

In the result, the Writ Petition is allowed. The orders passed by the Family Court rejecting I.A. No. 1880 of 2002 filed by the petitioner to set aside the award and to restore O.S. No. 340 of 1998 back to file and the order passed by the same Court in Crl.M.P. No. 779 of 2002 to set aside the award and to restore M.C. No. 547 of 1998 back to file are hereby set aside. I.A. No. 1880 of 2002 in O.S.340 of 1998 and Crl.M.P. No. 779 of 2002 in M.C.547 of 1999 are allowed. The Family Court is directed to take O.S.340 of 1998 and M.C.547 of 1998 back to file and dispose of those cases in accordance with law.

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