

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1841 OF 2022

Shrichand @ Chandanmal Sugnamal Panjwani,
Age:75 Years, Occu: Business,
R/o: Main Road, Nawapur, Tq. Nawapur,
Dist. Nandurbar

....Petitioner

Versus

1. Ahamed Ismayil Valodia
Age : 85 Years, Occu: Business,
R/o: R/o: Limdawadi, Nawapur,
Tq: Nawapur, Dist. Nandurbar.

2. Mohammed Ismayil Valodia
Age: 78 Years, Occu: Business,
R/o : Same as above.

3. Hakasa Ismayil Valodia
Age: 78 Years, Occu: Business,
R/o : Same as above.

...Respondents

AND

WRIT PETITION NO. 2940 OF 2022

Bharat Bhagwandas Prajapat
Age:53 Years, Occu: Business,
R/o: Shital Society, Nawapur, Tq. Nawapur,
Dist. Nandurbar

....Petitioner

Versus

1. Ahamed Ismayil Valodia
Age : 85 Years, Occu: Business,
R/o: R/o: Limdawadi, Nawapur,
Tq: Nawapur, Dist. Nandurbar.

2. Mohammed Ismayil Valodia
Age: 78 Years, Occu: Business,
R/o : Same as above.

3. Hakasa Ismayil Valodia
Age: 78 Years, Occu: Business,
R/o : Same as above.

...Respondents

AND
WRIT PETITION NO. 2945 OF 2022

Vasant Kikabhai Gohli,
Age:68 Years, Occu: Business,
R/o: Samshan Road, Near Shanti Medical,
Nawapur, Tq. Nawapur, Dist. Nandurbar
Versus
....Petitioner

1. Ahamed Ismayil Valodia
Age : 85 Years, Occu: Business,
R/o: R/o: Limdawadi, Nawapur,
Tq: Nawapur, Dist. Nandurbar.
2. Mohammed Ismayil Valodia
Age: 78 Years, Occu: Business,
R/o : Same as above.
3. Hakasa Ismayil Valodia
Age: 78 Years, Occu: Business,
R/o : Same as above.
...Respondents

Mr Sharad V. Natu, Advocate for Petitioners (In all matters)
Mr R.S. Wani, Advocate for Respondent Nos. 1 to 3 (In all matters)

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 5th DECEMBER, 2022
DELIVERED ON :8th DECEMBER, 2022

JUDGMENT :

1. The issue involved in the present petition is somewhat unique. Whether defendant in a suit for eviction filed under the provisions of the Maharashtra Rent Control Act, 1999, who compromises it before National Lok Adalat by inviting a decree can subsequently question executability of that decree?
2. The respondents/landlords filed Regular Civil Suit Nos. 31/2008, 32/2008 and 33/2008 respectively for possession of suit property against petitioners/tenants under the provisions of Maharashtra Rent Control Act 1999 ('the Rent Act'). During pendency of those suits, parties entered into compromise terms under which petitioners/tenants agreed for redevelopment of the property

and the respondents/landlord agreed to hand over shops admeasuring 240 sq.ft. in the redeveloped building within a period of one year from the date of demolition of old structures. Petitioners /tenants agreed to pay consideration amount of Rs.10,00,000/- to the respondents/landlords. On 9th December, 2017, the suit was decreed in terms of the compromise before the Lok Adalat.

3. As the Petitioners/tenants failed to hand over possession of their shops for demolition, respondents/landlord instituted execution proceedings bearing Regular Darkhast Nos.02/2018, 03/2018 and 04/2018 Execution applications were opposed by petitioners/tenants by raising various objections. In the execution proceedings, respondents/landlords filed applications for temporary possession of the premises for construction of new building, which came to be allowed by the executing court by order dated 18.02.2021 repelling the objections of petitioners/tenants.

4. Petitioners/tenants filed Civil Revision No. 04/2021 before the District Court challenging the order of executing court, which has been rejected by the District Court by order dated 22nd September, 2021. Aggrieved by the orders passed by the executing court and the District Court, petitioners have filed present petitions.

5. Appearing for petitioners, Mr Natu, the learned counsel would submit that petitioners/tenants essentially have three objections to the execution proceedings. Firstly, the decree is a nullity as it has been repeatedly held that the decree passed on the basis of compromise without specifying any of the grounds under section 16 of the Rent Act, is not executable. In support of his first contention, Mr Natu has relied upon the following Judgments :-

- (i) ***Shrimathi Kaushalya Devi & Ors. Vs. Shri K.L. Bansal***
(1969) (1) SCC 59
- (ii) ***Abedali Khan s/o Rahemtal Khan Vs. Devidas s/o Dhonduji Poghe*** 2012 (1) Mh.L.J. 466
- (iii) ***Milkhi Ram Vs. Himachal Pradesh State Electricity Board***
(2021) 10 SCC 752
- (iv) ***Chiranjilal Shrilal Goenka Vs. Jasjit Singh and Ors.***
(1993) 2 SCC 507

6. The second objection of Mr Natu is that the compromise decree is in the nature of a contract as the compromise decree encompasses several mutual terms and obligations between the parties. He would therefore submit that the proper remedy for the respondents/landlords is to file suit for specific performance of that contract rather than seeking execution of the compromise decree.

7. The third objection of Mr Natu is that since the compromise terms are in nature of a contract, the same requires payment of requisite stamp duty as well as the registration. In the light of deficit stamp duty and non-registration of the instrument, the respondents/landlords cannot seek performance of terms and conditions of the compromise decree. In support of this contention, Mr. Natu would rely upon judgment of the Apex Court in **Ratan Lal Sharma Vs. Purshottam Harit**, (1974) 1 SCC 671.

8. Per contra, Mr Wani, the learned counsel appearing for respondent Nos. 1 to 3 would oppose the petition and support the orders passed by the executing court and the District Court. He would submit that the decree involved in the present proceedings is not a compromise decree within the meaning of Order XIII Rule 3(a) of the Code of Civil Procedure. He would submit that the suit has been decreed under the provisions of section 20 of the Legal Services Authorities Act, 1987. Relying upon the Judgment of the Supreme Court in **New Okhla Industrial Development Authority (NOIDA) Vs. Yanus and others** 2022

SCC Online 138, Mr Wani would contend that mere compromise arrived between the parties leading to an award passed by the Lok Adalat does not become a compromise decree. Mr Wani would therefore seek to question the proposition advanced by Mr Natu that compromise decree sans specification of ground under section 16 of the Rent Act, is non-executable. He would submit that since the decree involved in the present petitions is not a compromise decree, the Judgments cited by Mr Natu would have no application to the present case.

9. Mr Wani would further invite my attention to the conduct of petitioners/tenants in prosecuting their remedies. He would submit that after passing of the order dated 18.02.2021 by the executing court, petitioners filed review petitions seeking review of the orders passed by the executing court which fact is suppressed by petitioners in the present petitions. He would further submit that even after rejection of Civil Revision by the District Court on 22.09.2021, they filed review applications bearing No. 2/2021 on 12.10.2021 before the District Court and without disclosing that fact simultaneously filed the present writ petitions on 16.11.2021. That review applications have been dismissed by the District Court on 10.02.2022 which factum is also not brought on record by petitioners by filing any additional affidavit. Mr Wani would therefore urge for dismissal of petitions on account of petitioners not approaching this Court with clean hands.

10. Rival contentions of the parties now fall for my consideration.

11. There has been a hot contest between the parties on the first proposition of Mr. Natu about executability of the decrees. It is contended by Mr Natu that since the suit was for eviction of petitioners/tenants under the provisions of the Rent Act, it was mandatory to specify a specific ground under section 16 of the Act in the compromise decree for ordering their eviction. That in

absence of such a ground, the compromise decree becomes a nullity and cannot be executed. These contentions are premised on Judgment of the Supreme Court in case of **Shrimathi Kaushalya Devi** (supra) in which, it is held as under :-

The defendant filed a written statement denying these allegations. Appropriate issues were framed on April 4, 1956. On June 5, 1956, an application was filed by the plaintiff and the defendant that a compromise had been effected on the following terms :

“(a) Decree for ejectment be passed in favour of the plaintiff against the defendant, the decree will be executable after the 31st December, 1958, if the defendant does not give possession ill then.

(b) The standard rent of the premises be fixed at Rs.40/- per mensem, instead of Rs.50/- paid at present payable from the 1st July, 1956, till the defendant vacates the premises.

(c) The amount in deposit with this Court be paid to the plaintiff which will be adjusted between the parties. “

The High Court, on revision, held that the decree was a nullity as the order passed on the basis of the compromise did not indicate that any of the statutory grounds mentioned in Section 13 of the Act existed. In Bahadur Singh's case this court has held that the decree passed on the basis of an award was in contravention of Section 13(1) of the Act because the Court had passed the decree in terms of the award without satisfying itself that the ground of eviction existed. Bachawat, J., speaking for the court observed that “on the plain wording of Section 13(1) the Court was forbidden to pass the decree. The decree is a nullity and cannot be enforced in execution.” This court, accordingly, declared inter alia that “the decree in so far as it directs delivery of possession of the premises to the landlord is a nullity and cannot be executed.”

12. This Court in **Abedali Khan s/o Rahemtali Khan** (supra) has also expounded similar proposition in para No. 21 of the Judgment wherein it is held as under :-

20. Order 23, Rule 3 of the code of civil Procedure is a procedural law, enabling the compromise beyond the subject-matter of the suit. However, the Maharashtra Rent Control Act is a special statute wherein section 16 deals with the grounds of eviction and entitlement of the possession under specific grounds. Undoubtedly, the substantive Act will have priority over the procedural law. Therefore, by harmonious interpretation a balance between the procedural law. And statutory provisions under the Maharashtra Rent control act can be achieved.

21. **Unless one of the grounds available under section 16 is taken up, pleaded or shown to the Court at the time of compromise and unless it is mentioned in the compromise, the decree based on such compromise will not be executable** Landlord and tenant may enter into compromise, where tenant is ready to vacate the premises. Court is satisfied about it as the parties before the Court mutually agree, though any ground for eviction or vacating the rented premises, which is available under section 16 of the Maharashtra Rent Control Act is not mentioned in the compromise, the compromise can be materialised if the tenant vacates the premises voluntarily. However, the obstacle in the execution will arise if premises is not vacated.

22. **Thus, while submitting the terms of the compromise, it is mandatory that at least one of the grounds for eviction which is available under section 16 of the Maharashtra Rent control Act ought to have been mentioned in the compromise purshis** or there should be a clear indication of such ground which might have been pleaded either in the plaint by landlord or in the written statement if the landlord is a defendant. **Thereafter, it is the duty of the Court while recording the compromise, to satisfy itself that any ground under section 16 ought to have been mentioned in the compromise and then accept it.**

(emphasis supplied)

13. Present petitions involve decrees directing eviction of petitioners/tenants from the tenanted premises. The compromise decrees would have been clearly inexecutable as the decrees do not specify any of the grounds of eviction under section 16 of the Rent Act. However, closer scrutiny of the terms of compromise entered into between the parties would indicate that the same does not contemplate eviction of petitioners/tenants from the suit premises. All that is envisaged is redevelopment of the old structure and allotment of shops in the new building admeasing 240 sq.ft. upon payment of Rs.10,00,000/- by the tenants to the landlords. The compromise terms therefore do not contemplate or envisage tenants' eviction. In my view therefore, absence of any specific ground for eviction under section 16 of the Rent Act would not render the decrees either nullity or non-executable.

14. In this regard, Mr Wani has rightly drawn distinction between a compromise decree under the provisions of Order 23 Rule 3(a) of the Code and award made by the Lok Adalat under the provisions of Legal Services Authorities Act,1987 on the basis of settlement arrived at between the parties. In this regard, it would be relevant to refer to provisions of sub sections (1) to (3) of section 20 as well as section 21 of the Act of 1987 which reads thus,

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 as 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 incorporate 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 of matter and arrive at a compromise or settlement between the parties.

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.

15. Thus, under section 21 of the Act of 1987, every award of Lok Adalat becomes a decree of Civil Court binding on both the parties to the dispute. The distinction between a compromise decree under the provisions of Order 23 Rule 3(a) of the Code and decree under section 20 and 21 of the Act of 1987 has been discussed by the Apex Court in ***New Okhla Industrial Development Authority*** (supra) and it is held in para Nos. 53 and 54 as under :-

53. The Award passed by the Lok Adalat in itself without anything more is to be treated by the deeming fiction to be a decree. It is not a case where a compromise is arrived at under Order XXIII of the civil Procedure Code, 1908, between the parties and the court is expected to look into the compromise and satisfy itself that it is lawful before it assumes efficacy by virtue of Section 21. Without anything more, the award passed by Lok Adalat becomes a decree. The enhancement of the compensation is determined purely on the basis of compromise which is arrived at and not as a result of any decision of a 'Court' as defined in the Act.

54. An Award passed by the Lok Adalat is not a compromise decree. An Award passed by the Lok Adalat without anything more, is to be treated as a decree *inter alia*. We would approve the view of the learned Single Judge of the Kerala High Court in P.T. Thomas (supra). An award unless it is successfully questioned in appropriate proceedings, becomes unalterable and non-violable. In the case of a compromise falling under Order XXIII Code of Civil Procedure, it becomes a duty of the Court to apply its mind to the terms of the compromise. Without anything more, the mere compromise arrived at between the parties does not have the imprimatur of the Court. It becomes a compromise decree only when the procedures in the Code are undergone.

16. Thus, as held in ***New Okhla Industrial Development Authority*** (supra), the award made by Lok Adalat does not become a compromise decree under Order 23 of the Code. This would make it further apparent that mere absence of specification of a ground for eviction under section 16 of the Act of 1999 would not render a decree passed under the provisions of the Act of 1987 inexecutable.

17. ***Chiranjilal Shrilal Goenka*** (supra) is relied upon by Mr. Natu in

support of proposition that a decree passed by the Court without jurisdiction is *coram non judice*. The judgment, in my view, has no application to the present case, as I have already arrived at a conclusion that mere absence of specification of ground of eviction in the award passed under the provisions of Act of 1987 would not render such decree a nullity.

18. The decision in **Milghi Ram** (supra) relied upon by Mr Natu deals with the issue of lack of jurisdiction of Civil Court to entertain a suit structured on provisions of the Industrial Disputes Act, 1987 and it holds that a decree passed by the Civil Court without jurisdiction is a nullity. For the same reasons as discussed in the preceding paragraphs, the judgment in **Milghi Ram** (supra) will have no application to the present case.

19. I therefore hold that the awards dated 09.12.2017 passed by the Lok Adalat under the provisions of the Act of 1987, which are deemed to be decrees, are not nullity and are fully executable. The first objection of Mr Natu is accordingly repelled.

20. The second objection of Mr Natu is that the compromise terms resulting into a decree amounts to the execution of the fresh contract warranting suit for specific performance in place of execution. This objection, I must say, is stated only to be rejected. I have already arrived at a conclusion that the decree passed by the Lok Adalat under the provisions of the Act of 1987 is executable. By no stretch of imagination, it can be construed to mean a fresh contract being executed between the parties. Therefore, there is no question of making the respondents/landlord file another suit for specific performance of the terms and conditions of the settlement based upon which the Lok Adalat has passed the decrees. Therefore, second objection of Mr Natu deserve to be summarily rejected.

21. The third objection of non-payment of stamp duty and non-registration of the decree is again completely misconceived. Settlement recorded by Lok Adalat having binding force of decree would not need payment of stamp duty or registration. The judgment of Supreme Court in **Ratan Lal Sharma** (Supra) relied upon by Mr. Natu is about registration of an Award passed under the Arbitration Act requiring compulsory registration under Section 17 of the Registration Act. The judgment has therefore no application to the facts of this case.

22. Coming to the conduct of petitioners/tenants, I must observe that the same is not free from blemish. They have adopted simultaneous remedies of seeking review of the order passed by the District Court rejecting Civil Revision Applications as well as filing present petitions challenging the very same order. Though Mr. Natu has drawn my attention to para No. 12 of the petitions to contend that the factum of filing of such review application is disclosed in the petition, he has no answer to the query as to how petitioners could exercise simultaneous remedies at the same time. After the review was rejected on 10.02.2022, petitioners did not bother to bring that fact on record.

23. Apart from the conduct about the manner in which remedies are sought, the overall conduct of petitioners/tenants after execution of the compromise terms is clearly condemnable. Petitioners after agreeing to the terms of settlement, took a *volte face* and did not hand over possession of the premises making the landlord to file execution proceedings. In the execution proceedings, they have raised all sort of baseless objections to frustrate execution of the decrees. Their conduct in branding the decrees as contracts requiring payment of stamp duty/registration and insistence on filing of separate suits for specific performance is indicative of the obstructive attitude in somehow preventing the respondents/landlords from enjoying fruits of the decrees. For such conduct,

petitioners are required to be saddled with the costs while dismissing the present petitions.

24. The writ petitions are accordingly dismissed. Each of the petitioners is directed to pay costs of Rs.25,000/- (Rupees Twenty Five Thousand Only) to the respondents/landlords within a period of four weeks from today.

[SANDEEP V. MARNE, J.]

25. At this stage, Mr Natu, learned counsel appearing for petitioners requests for continuation of interim relief. Considering the nature of findings recorded by this Court, the request for continuation of interim relief is rejected.

[SANDEEP V. MARNE, J.]

mta