

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**DATED THIS THE 7TH DAY OF FEBRUARY, 2020

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO.23519 OF 2018 (GM-RES)**BETWEEN:**

SRI. SOMASHEKARA REDDY
S/O LATE RAMA REDDY
AGED ABOUT 50 YEARS
PROPRIETOR OF
SUNLIGHT SOLAR TECHNOLOGY
SHOP NO.6, RAGHAVENDRASWAMY
TEMPLE COMPLEX, BAGEPALLI TOWN
BAGEPALLI TALUK, CHIKKABALLAPUR DISTRICT
R/O IVARAPALLI VILLAGE, YELLAMPALLI POST
BAGEPALLI TALUK-561207
CHIKKABALLAPUR DISTRICT

... PETITIONER

(BY SRI. ADINARAYAN, ADVOCATE)

AND:

SMT. G.S. GEETHA
W/O RAMESH
AGED ABOUT 40 YEARS
PROPRIETOR OF
SRI SAI SOLAR TECHNOLOGIES
NO.125, K.H.B. COLONY
BEHIND GOVT. MEDICAL HOSPITAL
GUDIBANDA, GUDIBANDA TALUK
CHIKKABALLAPUR DISTRICT-515271

... RESPONDENT

(VIDE ORDER DATED 3.12.2018, SERVICE HELD
SUFFICIENT IN R/O RESPONDENT)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO CALL FOR THE ENTIRE RECORDS IN C.C.NO.577/2013 ON THE FILE OF CIVIL JUDGE AND JMFC AT BAGEPALLI AND SET ASIDE THE COMPROMISE PETITION/APPLICATION FILED UNDER SECTION 147 OF N.I. ACT WHICH IS PRODUCED AT ANNEXURE-B AND ETC.

THIS WRIT PETITION COMING ON FOR **PRELIMINARY HEARING IN 'B' GROUP**, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioner is before this Court aggrieved by the order dated 7.06.2014 passed by the Civil Judge and JMFC, Bagepalli in C.C.No.577/2013 dismissing the application filed by the petitioner under Section 431 of Cr.P.C.
2. The respondent is served in the matter and unrepresented. On the last occasion, this Court had made it clear that if there is no representation on behalf of the respondents, the matter would be taken up and decided with the available records. Today also there is no representation on behalf of

the respondents. In view of the earlier order passed, the matter is taken up for hearing and disposal.

3. For the sake of convenience, the parties herein are referred to as per their rankings before the trial Court.
4. The petitioner/complainant had filed a private complaint against the respondent in PCR No.44/2013 which came to be registered as C.C.No.577/2013 for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'N.I. Act') before the Civil Judge and JMFC, Bagepalli. After taking cognizance, the Magistrate was pleased to issue summons to the respondent/accused. On service, respondent appeared through his counsel and obtained bail. Thereafter, the matter was posted for recordal of a plea of the accused. At that point of time, the accused came forward for settlement. Hence, the complainant and the accused

filed a memo requesting to refer the matter to Lok-Adalat, which came to be allowed.

5. Though the cheques, subject matter of the above complaint were valued at Rs.1,79,000/-, the accused having agreed to pay a sum of Rs.1,50,000/- as full and final settlement, the complainant agreed for the same. According to the terms of the compromise arrived at, the said amount was to be paid in two equal instalments payable on or before 7.12.2014 and 7.06.2015, respectively.
6. In furtherance of the above compromise, the complainant and the accused filed a compromise petition under Section 147 of the N.I.Act before the Lok-Adalat which was allowed, and the accused was directed to pay the agreed amount of Rs.1,50,000/- to the complainant in two equal instalments of Rs.75,000/- each payable on or before 7.12.2014 and 7.6.2015 respectively. It was one of the important terms of the compromise that if the

respondent failed to pay the said instalments within the stipulated period, the complainant was at liberty to recover the same as per the provisions of Section 431 of Cr.P.C.

7. The accused failed to pay the first instalment. Hence, the complainant filed Crl.Mis.No.367/2014 under Section 431 of Cr.P.C. for recovery of the amount and requested for issuance of a fine levy warrant (FLW) as against the accused. The learned Magistrate issued notice to the accused. On service, accused appeared through her counsel and filed objections. The Magistrate allowed the application and directed issuance of FLW against the accused. Before the same could be executed, the accused filed an application to recall the FLW which came to be recalled and Crl.Misc. NO.367/2014 was dismissed on 27.01.2018. The learned Magistrate for the said dismissal relied upon the Judgment of this Court in the case of **M/s Yash Investment Consultants –**

v- Mr.Kartik Ravichandar reported in (2017) 5 KLJ 409 and held that the petition is not maintainable since in terms of Section 21 of the Legal Services Authorities Act, 1987 ('LSA Act' for short), the award passed by Lok-Adalat based on a compromise has to be treated as a decree capable of execution by a Civil Court.

8. The complainant is before this Court contending that:

8.1. The complainant had believed that on such settlement, the complainant would be paid the valid dues even though the same is lesser than the amount due;

8.2. The accused has not adhered to the compromise, and therefore, the accused has abused the process of Court.

8.3. The complainant was under the bonafide belief that once the matter is referred to Lok-Adalat

and compromise is arrived at, the terms of the compromise would be adhered to;

8.4. If the amounts were not paid by the accused, the complainant would be in a position to recover the same by the issuance of FLW in terms of Section 431 of Cr.P.C.

9. The complainant is therefore before this Court seeking for:

9.1. Setting aside the order dated 7.06.2014 passed in C.C.No.577/2013 by the Lok-Adalat/Civil Judge and JMFC, Bagepalli by virtue of which the compromise was recorded and the offence compounded.

9.2. The complainant also seeks for restoring the complaint in C.C.No.577/2013 and permitting the complainant to contest the case on merits.

10. Heard Sri. Adinarayan, learned counsel for the petitioner/complainant, he reiterates the submissions made in the above writ petition and further submits that:

10.1. the complainant had agreed to the reference of the matter to the Lok-Adalat at the instance of the Court; else he would have filed a compromise in the criminal complaint itself which could have been enforced under Section 431 of Cr.P.C by the issuance of FLW.

10.2. It is only on account of furthering the aim and intent of the LSA Act, the complainant had agreed for reference to the Lok-Adalat and compromised the same before the Lok-Adalat.

10.3. If at all the complainant had been informed that the complainant could not enforce the compromise in terms of Section 431 of Cr.P.C., he would not have agreed for reference to Lok-Adalat and compromise the matter before the

Lok-Adalat at a lesser value than what was due.

10.4. No action on the part of the complainant could be found fault with, and the complainant should not be left worse off than what he was in the private complaint.

10.5. As a protection, the compromise recorded included a term permitting the complainant to recover the amounts in terms of Section 431 Cr.P.C. If the Lok-Adalat had then informed the complainant that the complainant would not be able to invoke Section 431 of Cr.P.C., the complainant might not have agreed to refer the matter of Lok-Adalat and have entered into a compromise.

10.6. The interpretation now sought to be given by the Magistrate that it can only be enforced as a Civil decree is of no avail to the complainant.

11. Having heard Sri. Adinarayan, the points that arise for determination by this Court are:

11.1. Whether a compromise arrived at before the Lok-Adalat in a criminal proceeding can only be enforced as a Civil decree or can it also be enforced in terms of the applicable provisions of Cr.P.C., more particularly Section 431 of Cr.P.C. thereof?

11.2. Can this Court or the Trial Court set-aside the compromise arrived at before the Lok-Adalat on account of a default of the accused and restore the complaint?

11.3. What order?

12. Before this Court adverts to the above points, the following provisions are required to be considered:

"Section 138 in The Negotiable Instruments Act, 1881:

138. Dishonour of cheque for insufficiency, etc., of funds in the account. —Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid,

either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for¹⁹ [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque,²⁰[within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.— For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.]

Section 147 in The Negotiable Instruments Act, 1881:

147. Offences to be compoundable. — Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable.

Section 431 in The Code Of Criminal Procedure, 1973:

431. Money ordered to be paid recoverable as fine. Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine: Provided that section 421 shall, in its application to an order under section 359, by virtue of this section, be construed as if in the proviso to sub- section (1) of section 421, after the words and figures" under section 357", the words and figures" or an order for payment of costs under section 359" had been inserted, E.- Suspension, remission and commutation of sentences

Section 21 in The Legal Services Authorities Act, 1987 :

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).]—1[(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.

13. It is also required to advert to the decision rendered by this Court in **Yash's** case (supra), and the decision of the Hon'ble Apex Court in the case of **K.N.Govindan Kutty Menon -v- C.D.Shaji** reported in **AIR 2012 SC 719**. Yash's case relied upon **Govindan Kutty's** case.

14. In **Govindan Kutty's** case, the question that arose before the Hon'ble Apex Court is, as stated in paragraph 2 therein, which reads as under:

" 2) This appeal raises an important question as to the interpretation of Section 21 of the Legal Services Authorities Act, 1987 (in short 'the Act'). The question posed for consideration is that when a criminal case filed under Section 138 of the Negotiable Instruments Act, 1881 referred to by the Magistrate Court to Lok Adalat is settled by the parties and an award is passed recording the settlement, can it be considered as a decree of a civil court and thus executable?"

15. The facts and finding in **Govindan Kutty's** case were as under:

15.1. The complainant therein had filed a complaint before the Judicial First Class Magistrate, Ernakulam under Section 138 of N.I. Act which was referred to the Ernakulam Legal Services Authority to try for a settlement between the parties in the Lok-Adalat, which was so settled and an award was passed thereon as per which the accused was to pay Rs.6,000/-, on that day the accused paid Rs.500/-, the balance of Rs.5,500/- was to be paid in five equal instalments of Rs.1,100/- p.m. on or before 10th day of every month starting from June 2009. In default, it was agreed that the balance amount due from the accused could be recovered in a lump sum.

15.2. As the accused did not make payment of the amounts agreed, the complainant filed Execution Petition before the Prl. Munsiff, Ernakulam for the execution of the award.

15.3. The Prl. Munsiff, Ernakulam dismissed the petition holding that the award passed by the Lok-Adalat on reference from the Magistrate Court cannot be construed as a decree executable by a Civil Court.

15.4. It is this order of refusal by the Prl.Munsiff to execute the award as a decree which was challenged by the complainant before the High Court, which was dismissed.

15.5. Hence, the complainant approached the Hon'ble Apex Court by way of Special Leave Petition.

15.6. The Apex Court considered the objects of the LSA Act, the purpose of referring to the Lok-Adalats, settlement thereof as an alternative system of Administration of justice, etc., and by referring to Section 21 of the LSA Act as reproduced hereinabove held that there was a deeming provision for an award of the Lok-

Adalat to be treated as a decree of the Civil Court. Hence, the Hon'ble Apex Court referred to various decisions held that even if a matter was referred to Lok-Adalat by a Criminal Court under Section 138 of N.I.Act, by virtue of the deeming provision under Section 21 of LSA Act, the award passed by the Lok-Adalat based on a compromise was to be treated as a decree capable of execution by a Civil Court.

15.7. Thus, the question raised by the Hon'ble Apex Court was answered by holding that the Execution Court cannot refuse to execute the award passed by the Lok-Adalat even in a criminal proceeding like that under Section 138 of N.I.Act.

16. The said decision in **Govindan Kutty's case** does not in any manner relate to or restrict the invocation of Section 431 of Cr.P.C. There was no issue raised before the Hon'ble Apex Court as regards if the

complainant who had settled the matter before the Lok-Adalat could on default invoke Section 431 of Cr.P.C or not in respect of a compromise arrived at in the Lok-Adalat.

17. This Court in **Yash's case (supra)** relied upon the Judgment of the Hon'ble Apex Court in **Govindan Kutty's case (supra)** and held that since the Hon'ble Apex Court has held that the award in respect of proceedings under Section 138 passed by the Lok-Adalat can be enforced as a Civil decree, no FLW or NBW could be issued in respect of such compromise/award.

18. It would also be of some value to refer to the award passed by the Lok-Adalat in that matter (**Yash's case supra**) terms of the compromise arrived at in that matter before the Lok-Adalat which is hereunder reproduced for easy reference:

" Complaint present.

Accused present.

The complainant and accused have submitted that in the intervention of the conciliators they have amicably settled the matter for Rs.5,00,00,000/- towards total cheque amount of Rs.5,00,00,000/- (Five crores).

Both the parties jointly filed joint memo by stating that they have settled the matter for Rs.5,00,00,000/-

Both parties have been duly represented by learned respective counsels.

As the parties have settled the matter, office to refer the case before Lok-adalat for orders on 05.11.2016.

As the matter has been settled between the parties today the accused released on self-bond for Rs.50,00,000/-.

Office to take bond."

19. Subsequent to the said award in that case, the accused did not make payment of the amount but handed over fresh cheques which cheques came to be dishonoured. Hence, the complainant therein once again approached the Magistrate for re-opening the cases which were already disposed of wherein the Magistrate had ordered for issuance of FLW on

such reopening. Hence, this Court held that once the compromise was arrived at before the Lok-adalat on account of the deeming provision, the said award was capable of execution by a Civil Court and therefore, the matter could not be reopened. Hence, this Court set-aside the FLW issued in such reopened criminal complaints and granted liberty to the complainant therein to execute the award passed by the Lok-adalat in the said cases.

20. In the present case, the order passed by the learned Magistrate is reproduced as under:

" The compromise petition filed by both the parties under Section 147 of Negotiable Instruments Act is hereby allowed.

The accused is hereby directed to pay amount of Rs.1,50,000/- to the complainant in two equal instalments of Rs.75,000/- each to be payable on or before 7.12.2014 and 7.6.2015.

*In the event of the accused failed to pay the above said instalments within stipulated period, **the complainant is at liberty to recover the same as per provisions of Section 431 of Cr.P.C. along with cost.***

In view of the compromise between the parties, the accused is acquitted for the offence punishable under Section 138 of Negotiable Instruments Act and the case is disposed off before mega lok adalath.

The bail bond of the accused shall stands cancelled. "

21. In the present case, though the matter was compromised before the Lok-Adalat and an award passed thereon, it was also agreed between the parties that in the event of the accused failing to make payment of the instalments within the stipulated period, the complainant was at liberty to recover the same as per the provisions of Section 431 of Cr.P.C. along with costs.

22. From the extracts of the compromise and the award passed in **Yash's case (supra)** and comparing the same to the present case, it is seen that there is no such reservation of liberty to the complainant to invoke the provisions of Section 431 of Cr.P.C. in **Yash's case**, but, however, in the present case, there is such liberty reserved. It has specifically been agreed between the parties that the complainant can proceed under Section 431 Cr.P.C. in the event of the accused committing default in payment.
23. The very object and purpose of the LSA Act and creation of Lok-Adalat is to facilitate easy and fast settlement/resolution of disputes. Resolving of dispute does not only mean an agreement to settle the dispute but a complete finality as regards the dispute being achieved.
24. During criminal proceedings under Section 138 of N.I.Act, if the accused were to dishonestly state that

the accused was agreeable for reference to Lok-Adalat, in furtherance of which the matter was referred to Lok-Adalat and a compromise being arrived at on certain terms in a dishonest manner. In that the accused even at that time knowing fully well that the accused would not adhere to the terms of compromise and thereafter the accused not performing his obligation would take up the contention that the only methodology available to the complainant is execution of the compromise arrived at in the Lok-adalat as a civil decree, thereby the accused would have successfully avoided a criminal prosecution, frustrated the complainant and left the complainant with no possibility or lesser possibility of recovering of the monies due to him, as he would have had under Section 138 of N.I.Act.

25. While encouraging settlement through Lok-Adalat, it is also required that the interest of the parties are protected and no one misuses or abuses the process

Lok-Adalat to harass the other or take undue advantage over the other. The integrity and efficacy of the proceedings before the Lok-Adalath are therefore to be maintained.

26. Proceedings under Section 138 of N.I.Act having been initiated and the compromise arrived at being in nature of compounding the offence, in the event of the terms of compromise involving executory terms, it would be required that it is executed and the terms agreed are enforced in terms of the Criminal Procedure Code since the proceedings were initiated under the Criminal Procedure Code. It is impermissible for the accused to contend that since the matter has been resolved or settled before the Lok-Adalat, the only option available to the complainant is enforcing the settlement by way of a execution of the award passed by the Lok-Adalat as a civil decree in accordance with Section 21 of LSA Act, more so, when the parties have agreed that on

default the complainant can enforce the same in terms of Section 431 of Cr.P.C.

27. This Court, in the circumstances, is of the considered opinion that the complainant who settles the matter before the Lok-Adalat can either seek to execute the settlement as a decree before a Civil Court or proceed against the defaulting accused as per the applicable provisions of the Cr.P.C. The manner of exercise of the option could depend on the terms contained in the compromise entered into before the Lok-Adalat. If there is a term agreed that the complainant can enforce the compromise on default by resorting to Section 431 of Cr.P.C., the complainant would be well within his right to do so. If there is no such term agreed, then the award passed by the Lok-Adalat can only be enforced as a Civil decree in terms of Section 21 of LSA Act.
28. Merely because the settlement was arrived at before the Lok-Adalat, it cannot be contended that the

criminal proceedings have been converted into civil proceedings revoking the right of the complainant to enforce his or her rights in terms of the applicable criminal law. The dispute which was referred to the Lok-Adalat was one which was being adjudicated in a criminal proceeding, if not for the existence of that pending Criminal proceeding, there would have been nothing to refer to the Lok-Adalat.

29. The Lok-adalat system is a *sui generis* system which has been adopted in our country, more so with an intention to facilitate settlement of matters by employing Alternative Disputes Resolution System. The Lok-Adalat system is sanctified by the LSA Act. Though Lok-Adalat is constituted under the LSA Act, the LSA Act does not in actuality provide for the specific jurisdiction of the Lok-Adalat, except to state that any matter pending before any court can be referred to Lok-Adalat in order to explore the possibility of a settlement between the parties. Lok-

Adalat can, therefore, entertain any proceeding pending before a court exercising civil or criminal jurisdiction. Therefore, I am of the considered opinion that the Lok-Adalat is a reflection of the matter which is referred to it, i.e., to say that when a civil matter is referred to Lok-Adalat, it exercises jurisdiction of a Civil Court. If Criminal matter is referred to Lok-Adalat, it exercises the jurisdiction of a Criminal Court insofar as settlement and or compounding of offences is concerned. The Lok-Adalat would not have any power to sentence a party. In essence, it can be said that Lok-Adalat, is an alter ego of a Court referring the matter to it, therefore, I am of the considered view that the Lok-Adalat would be in a position to record the settlement in terms of what has been arrived at by including the methodology of implementation of the settlement under the applicable substantive and procedural civil or criminal law. In criminal cases by allowing the parties to resort to the proceedings for

execution of the settlement in terms of the Cr.P.C. including that under Section 431 of Cr.P.C.

30. It cannot be disputed that if a compromise had been arrived at dehors the Lok-Adalat proceedings, the provisions of Section 431 of Cr.P.C, would have been applicable. Therefore, the finding of the Magistrate that since the settlement had been arrived at in Lok-Adalat proceedings and therefore, Section 431 of Cr.P.C. was not available is not sustainable.
31. In view of the above discussion the questions raised are answered as under

31.1. Depending on the terms of a compromise arrived at before the Lok-Adalat it can be enforced as a Civil decree or in terms of the applicable provisions of Cr.P.C., including that under Section 431 of Cr.P.C. if so provided in the compromise.

31.2. In the event of a default of a compromise arrived at before the Lok-Adalat this Court or the Trial Court can on an application made by the Complainant set-aside the compromise arrived at before the

Lok-Adalat, restore the complaint on its file and proceed with the complaint or enforce the compromise as per the terms of the compromise including by issuance of an FLW under Section 431 of the Cr.P.C.

32. In view of the above, the order dated 7.6.2014 passed by the Civil Judge and JMFC, Bagepalli in C.C.No.577/2013 is set-aside, and C.C.No.577/2013 is restored to file. The Civil Judge and JMFC, Bagepalli is directed to consider the petition filed by the petitioner under Section 431 of Cr.PC., afresh after issuing notice to the accused-respondent within a period of six months from the date of receipt of the certified copy of this order.

**Sd/-
JUDGE**

In