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THE HIGH COURT OF MADHYA PRADESH
MP No.3914/2019
Mohar Singh Vs. Gajendra Singh

Gwalior, Dated :02/12/2019

Shri K.S. Tomar, Senior Advocate with Shri J.S. Kaurava,
Advocate for petitioner.

Shri Prabhakar Kushwaha, Advocate for respondent.

This petition under Article 227 of the Constitution of India has been filed against the order dated 27/6/2019 passed by 14th Civil Judge, Class-I, Gwalior in MJC No.70/2018 arising out of Civil Suit No.60A/2016 X 18, by which the execution proceedings have been dropped.

2. The necessary facts for disposal of the present petition in short are that the suit for specific performance of contract and permanent injunction was filed by the petitioner against the respondent. It appears that during the pendency of the suit, the matter was referred to the Mediator before whom the matter was compromised and it was agreed by the respondent that within a period of one year he would execute a sale deed in favour of petitioner and he also admitted the agreement to sell. It was also mentioned by the Mediator that in case if the sale deed is not executed, then the petitioner shall have a right to get the same executed by execution of the order. Accordingly, a report was given that the mediation proceedings have succeeded. It appears

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that no compromise decree was passed and later on, as the respondent did not execute the sale deed, therefore, the petitioner filed the execution proceedings. By order dated 27/6/2019 passed by the 14th Civil Judge, Class-I, Gwalior passed in Execution Case No.70/2018 held that the proceedings taken before the Mediator are not executable and it appears that in the light of the mediation proceedings, no further action was taken before the Civil Court and accordingly, the execution was dismissed being not executable.

3. Challenging the order passed by the court below, it is submitted by the counsel for the petitioner that since the matter was sent to Mediator and both the parties had decided to resolve their dispute and it was agreed by the respondent that he shall execute the sale deed within a period of one year, failing which a liberty was given to the petitioner to initiate execution proceedings and accordingly, the Executing Court committed a glaring mistake in rejecting the execution proceedings.

4. It is further submitted that during the pendency of this petition an application for compromise was filed and the said compromise has been duly verified by the Principal Registrar of this Court and according to that compromise, the respondent once again agreed to execute the sale deed within a period of one year,

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failing which the petitioner shall have a right to get the sale deed executed by following due procedure of law.

5. Heard learned counsel for the petitioner.
6. The moot question for consideration is that:-

Whether the Mediator was appointed under the provisions of Legal Services Authorities Act or not and whether the Mediator can be treated at par with Lok-Adalat or not?

7. The word “Lok-Adalat” has been defined under Section 2 (d) of the Legal Services Authorities Act, 1987. The Mediator cannot be said to be at par with the Lok-Adalat. On the contrary, it appears that the Mediator is appointed under Section 89 of CPC, which reads as under:-

"89. Settlement of disputes outside the Court

(1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for—

- (a) arbitration;
- (b) conciliation;
- (c) judicial settlement including settlement

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through Lok Adalat; or
(d) mediation.

(2) Where a dispute has been referred—

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed."

8. Section 89 (2) (c) of CPC speaks about judicial settlement, whereas Section 89 (2) (d) of CPC speaks about mediation. In the present case, it is not the case of the petitioner that by referring the matter to the Mediator the Civil Court had sent the matter for judicial settlement. Under these circumstances, in the considered

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opinion of this Court, Section 89 (2) (d) of CPC would apply, which speaks about the mediation. However, it is further provided that the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed. It is not the claim of the petitioner that after the talks were declared successful by the Mediator, any further action was taken by the petitioner before the Civil Court. Accordingly, this Court is of the considered opinion that the Executing Court did not commit any mistake by holding that since the order passed by the Mediator is not executable, therefore, the execution proceedings are not maintainable.

9. It is next contended by the counsel for the petitioner that since the parties have also filed an application for compromise before this Court and the compromise has been duly verified by the Principal Registrar of this Court, therefore, a compromise decree may be passed in the light of the compromise arrived at between the parties.

10. Heard learned counsel for the petitioner.

11. This petition has been filed under Article 227 of the Constitution of India and this Court is merely exercising its supervisory power to find out that whether the order passed by the

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Executing Court is in accordance with law or not. There is nothing on record to show that after the mediation proceedings were declared successful, whether any further order was passed by the Civil Court or not. Under these circumstances, while exercising power under Article 227 of the Constitution of India, this Court is of the considered opinion that a compromise decree cannot be passed in favour of the parties. Under these circumstances, this Court is of the considered opinion that no case is made out warranting interference in the matter.

12. The petition fails and is hereby **dismissed**.

Arun*

(G.S. Ahluwalia)
Judge