

Serial No. 32
Regular List.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) 169/2022
CrIM(559/2022) CrIM(611/2022) .

SYED TAJAMUL BASHIR.

...Petitioner (s)

Through: Mr. Mir Umar, Advocate.

VERSUS

MOHAMMAD AYOUB KHAN.

...Respondent(s)

Through: Mr. Tawheed Ahmad, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE.

ORDER
09-08-2024

1. Through the medium of the present petition, the petitioner has challenged Order dated 11th of September, 2021 passed by the Lok Adalat constituted in terms of the provisions of Legal Services Authority Act which was presided over by the learned Judicial Magistrate 1st Class, Magam, whereby the complaint of the petitioner filed under Section 138 of the Negotiable Instruments Act has been dismissed for want of prosecution.
2. Heard learned counsel for the parties and perused the record.
3. The only question that is required to be determined in this petition is as to whether Lok Adalat constituted under the Legal Services Authority Act has jurisdiction to dismiss a case in default for non-appearance of a party.

4. If we have a look at the provisions contained in the Legal Services Authority Act, Chapter VI of the said Act relates to Lok Adalats. Section 19 of the Act, which falls under Chapter VI, provides the mechanism for organizing a Lok Adalat. As per this provision, a Lok Adalat has to be organized either by the State Authority or by the District Authority or by the Supreme Court Legal Services Committee or by the High Court Legal Services Committee or by Taluk Legal Services Committee. The said provision also provides that a Lok Adalat shall consist of serving or retired Judicial Officer and other persons as its members.

5. Section 20 of the Act, which is relevant to the context, pertains to the cognizance of cases by the Lok Adalat and the same reads as under: -

“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 organizing 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 advise the parties to seek remedy in a court.

(7) Where the record of the case is 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). ”

6. From a perusal of the aforesaid provision, it is clear that when any case is referred to Lok Adalat, it has to be disposed of by the Lok Adalat by arriving at a compromise or settlement between the parties. As per sub-section (4) of Section 20 of the Act, the Lok Adalat has to be guided by the principles of justice, equity and fair play, while arriving at a compromise or settlement between the parties. As per sub-section (5) of Section 20 of the Act, if any compromise or settlement could be arrived at between the parties, the record of the case has to be returned by it to the Court, from which the reference has been received for disposal of the case in accordance with the law. As per sub-section (6) of Section 20 of the Act, if no award is made by the Lok Adalat on the basis of the compromise or settlement between the parties, the Lok Adalat has to advise the party to seek remedy in the Court, whereafter the Court has to proceed to deal with the case from the stage which was reached before such reference.

7. From an analysis of the provisions contained in Section 20 of the Act, which govern the manner in which a Lok Adalat has to function, there remains no manner of doubt that a Lok Adalat can pass an award only if the parties arrive at compromise or settlement. In case no such compromise or settlement is arrived at, the only option available with the Lok Adalat is to refer the case back to the concerned Court for its disposal under law. There is no power vested with the Lok Adalat to dismiss a case referred to it for non-prosecution, if a party fails to appear before it. Therefore, the impugned order dated 11th of September, 2021, whereby the Lok Adalat has dismissed the complaint of the petitioner, is without jurisdiction and, as such, is not sustainable under law.

8. For the foregoing reasons, the present petition is allowed and the impugned order dated 11th of September, 2021 is set aside. The complaint filed by the petitioner before the concerned Court shall be taken up for further proceedings for its disposal in accordance with law, from the stage which had reached at the time of its reference to the Lok Adalat.

9. **Disposed of.**

10. A copy of this order be sent to the learned Judicial Magistrate 1st Class, Magam, for compliance.

(Sanjay Dhar)
Judge

SRINAGAR
09-08-2024
Showkat Khan