



THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Extraordinary Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W.P.(C) No. 30 of 2023

Harish Chandra Rai, Aged about 52 years,
Son of late Aita Man Rai,
Resident of Wok, Omchu GPU
P.O. Wok, P.S. Jorethang,
District Namchi, Sikkim
Pin Code- 737121

*Presently officiating as
Assistant Director, Block Administrative Office,
BAC, Chongrang – Tashiding P.S.
Gyalshing District, West Sikkim
Pin Code - 737111*

..... Petitioner

versus

Radha Devi Subba, aged about 46 years
Wife of Shri Harish Chandra Rai,
Resident of Rinchenpong,
P.O. Rinchenpong
P.S. Kaluk, Soreng District, West Sikkim
Pin Code - 737111

..... Respondent

Application under Article 226 of the Constitution of India

Appearance:

Mr. Prasun Adhikari, Advocate with Mr. Raj Kumar Chettri, Advocate
for the petitioner.

ORDER (oral)

30th August, 2023

Mr. Prasun Adhikari, learned counsel for the
petitioner, by way of this writ petition, seeks to challenge the
Award dated 6.12.2014 passed by the Taluk Lok Adalat, West at



Gyalshing, which was passed after the parties thereto entered upon a compromise.

(2) The compromise was to the effect that the petitioner was required to pay a sum of Rs.5000/- to the respondent, his wife, as monthly maintenance w.e.f. January 2015. It was to be deducted from the salary of the opposite party, i.e., the petitioner, by the concerned office. Clause 2 of the compromise entered between them provided for enhancement of the sum of Rs.5000/- by 15% every year to be made applicable from the month of January every year. The petitioner was also to take care of the school expenditure of their minor child till completion of her studies. Other expenses were to be borne by both the parties. On the minor child reaching the age of majority, the parties were to make necessary documents and initiate registration proceedings of the land of the petitioner in her name. The Award is dated 6.12.2014.

(3) Mr. Prasun Adhikari vehemently submits that clause 2 of the Award which mandates that the sum of Rs.5000/- payable as maintenance to the respondent shall be enhanced by 15% every year, is against the petitioner's right to life and therefore, it must be necessarily interfered with by way of this writ petition. It is also submitted that there was no written compromise deed executed. It is alleged that the Award was passed hastily on the repeated insistence of the respondent to



sign the same. It is also argued that the petitioner never engaged any legal counsel for any assistance. The learned counsel also submitted that the petitioner had been suffering from mental agony and tension during the proceeding and therefore, he was constrained to sign the Award without appropriately understanding the adverse implication it would have. He had made several attempts to come to an amicable and a suitable resolution regarding the enhancement of the monthly maintenance but the respondent did not show any concern to resolve it. Therefore, the petitioner approached the District Legal Services Authority, South Sikkim and filed a case on 10.8.2022 which was withdrawn on 8.9.2022. It is submitted that the petitioner has been suffering due to him agreeing to the 15% enhancement of monthly maintenance. It is also stated that the respondent has initiated Family Court Criminal (Execution) Case against the petitioner under section 128 Cr.P.C. read with section 18 of the Family Courts Act, 1984 in which the respondent has claimed a sum of Rs.1,50,748/- as due amount of monthly maintenance from January 2019 to February 2023. It is also stated that 25.8.2023 was fixed as the date for payment. Further, it is stated that Civil Execution Case No.1 of 2018 was also preferred by the respondent. The petitioner also pleads extreme hardship.



(4) The judgment of the Hon'ble Supreme Court in ***Bhargavi Constructions & Anr. Vs. Kothakapu Muthyam Reddy & ors.***¹ was cited to impress upon this Court that this is a case which needs to be interfered with.

(5) A perusal of the judgment makes it clear that although it is open for the writ court to examine a challenge to the award of the Lok Adalat under Article 226 or/and 227 of the Constitution of India, it is only on very limited grounds that such challenge needs to be entertained.

(6) The Award has been passed admittedly after a compromise between the petitioner and the respondent who were husband and wife, for maintenance of the wife and minor child. It was entered in the year 2014. There is, therefore, gross delay and laches. Besides, maintenance of wife and child cannot be a threat to petitioner's right to life. It cannot be a ground as suggested by the Supreme Court to entertain a writ petition of this nature. It is also clear that the other grounds taken by the petitioner are all afterthoughts as those issues would be known to the petitioner at the time of the settlement. Admittedly, at the relevant time or immediately after the passing of the Award the petitioner did not challenge the Award on those grounds made out now. Permitting the petitioner to reopen the Award at this

¹ (2018) 13 SCC 480



stage would defeat the purpose for which the Lok Adalat has passed the Award after a compromise between the parties under the Legal Services Authorities Act, 1987.

(7) Accordingly, this writ petition is dismissed and disposed of as also the Interlocutory Application.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes/No**
Internet : **Yes/No**

bp