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Case Comment: Canara Bank v G S Jayaram

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INTRODUCTION

This is a landmark judgment of the Supreme Court deciding whether Lok Adalats and Permanent Lok Adalats ('PLA') have adjudicatory powers or not, under the Legal Services Authority Act, 1987 ('LSA Act'). It explains the similarities as well as differences between Lok Adalat and PLAs by critically analyzing the legislative framework of the said Act. It also touches upon the issue of whether conciliation proceedings are mandatory or not.

PRELIMINARY DETAILS OF THE CASE

Case Title -	Canara Bank v G S Jayarama
Case No. -	Civil Appeal No. 3872 of 2022
Jurisdiction -	Civil Appellate Jurisdiction, Supreme Court of India

Case filed on -	31 st May 2021
The case was decided on -	19th May 2022
Judge(s)/ Coram -	Justice Dhananjaya Y. Chandrachud and Justice Pamidighantam Sri Narasimha

BACKGROUND OF THE CASE

This instant appeal arises from a judgment decided by the Division Bench of the High Court of Karnataka. The bench dismissed the writ appeal filed against the judgment of the single judge, in which the judge allowed the writ petition, and set aside an award of the PLA dated 19 November 2014. The Division Bench dismissed the writ appeal by the appellant and upheld the judgment of the Single Judge. The dispute arises from an application filed by the Syndicate Bank¹ on 31 December 2012 before the PLA at Mangalore under Section 22-C (1)² of the LSA Act. The application had been filed against the respondent and his guarantor, in regard to credit facilities in the value of Rs 2,40,583 availed by the respondent from the appellant. The appellant alleged that the amount of Rs 2,40,583 along with interest had become due on 1 October 2012, but the respondent had not repaid it, in spite of multiple notices and requests. Hence, the appellant prayed for the recovery of the amount with an interest rate of 15.75 percent and costs from the respondent and his guarantor.

Notice was issued by the PLA to the respondent on 10 January 2013, which was allegedly not claimed by the respondent. Hence, on 12 March 2013, the PLA held the service to be complete in respect of the respondent and adjourned the case to 6 June 2013 for reporting of settlement. Thereafter, allegedly on 22 August 2013, a counsel filed a memo of appearance on behalf of the respondent, and the matter was adjourned to allow the filing of Vakalat Nama and objections

¹ Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970, s 9

² Legal Services Authority Act, 1987, s 22C (1)

on behalf of the respondent. On 6 February 2014, another counsel is alleged to have filed a Vakalat Nama on behalf of the respondent, and the case was adjourned once again.

Since no one thereafter participated in the proceedings on behalf of the respondent, the appellant filed its final affidavit on 17 November 2014, when the PLA reserved the matter for its award. In its award dated 19 November 2014, the PLA noted that the respondent appeared through an advocate, but did not participate in the proceedings while his guarantor though served with notices did not participate in the proceedings. Further, it also noted that no conciliation was reported. Hence, the PLA allowed the application filed by the appellant based on the documentary evidence adduced by them and directed the respondent and his guarantor to pay the appellant an amount of Rs 2,40,583 with an interest rate of 9 percent till the date of realization. The appellant filed a petition for the execution of the award of the PLA before the Civil Judge and Judicial Magistrate First Class, Sullia, Dakshina Kannada.

While the appellant's execution petition was pending and upon the issuance of an arrest notice, the respondent filed a writ petition under Article 226 of the Constitution before the Karnataka High Court on 1 July 2019, for challenging the award of the PLA dated 19 November 2014. The Single Judge allowed the writ petition by a judgment dated 3 July 2019, without issuing notice to the appellant. While setting aside the award dated 19 November 2014, the Single Judge held:

"6. In view of the fact that the Lok Adalat (sic) has no adjudicatory function as per the [Legal Services Authorities Act, 1987], the impugned order dated 19.11.2014 is hereby quashed and set aside.

*7. Accordingly, the writ petition is disposed of with a liberty to the respondent to take recourse to such remedy as may be available to them under the law."*³

Relying upon the judgment of the Single Judge of Karnataka High Court dated 3 July 2019, the appellant's execution petition was dismissed on 22 July 2019. The appellant alleges that this is when they became aware of the Single Judge's judgment, and thereafter filed a writ appeal.

³ G.S. Jayarama v Syndicate Bank (2019) SCC OnLine Kar 3539.

By its impugned judgment dated 6 March 2021, the Division Bench of the Karnataka High Court dismissed the writ appeal. While dismissing it, the Division Bench held:

“9. The aforesaid provisions make it clear that in case the parties reach an agreement on the settlement of the dispute they shall sign the settlement agreement and the Permanent Lok Adalat shall pass an award in terms thereof and it is only after where the parties fail to reach at an agreement under sub-Section (7), the Permanent Lok Adalat can pass an award keeping in view the facts and circumstances of the case. In the present case, no such procedure was followed at all. There were no conciliation proceedings between the parties. As they did not appear, the question of signing the agreement does not arise. The Lok Adalat could not have acted as a regular civil Court in adjudicating the proceedings. Therefore, the learned Single Judge was justified in allowing the writ petition. This Court finds no reason to interfere with the order passed by the learned Single Judge.”⁴

Thus, the Division Bench dismissed the writ appeal on two grounds: first, that the procedure for conciliation under Section 22-C⁵ of the LSA Act was not followed, and hence, the award under Section 22-C (8) was a nullity; and second, the PLA could not have acted as a regular civil court in adjudicating the proceedings.

ARGUMENTS OF PARTIES

Appellant

The learned counsel appearing on behalf of the appellant (Canara Bank) had made the following submissions:

- The impugned judgement is contrary to the provisions contained in Chapter VI-A of the LSA Act and the decision of this Court in *Bar Council of India v Union of India*⁶ in as much as the High Court held that PLAs have no adjudicatory function;
- Sufficient opportunity was given to the respondent to participate in the conciliation proceedings;

⁴ *Canara Bank v G.S. Jayarama* (2021) Civil Appeal No. 3872/2022

⁵ Legal Services Authority Act, 1987, s 22C

⁶ *Bar Council of India v Union of India* (2012) Writ Petition (Civil) No. 666/2002

- If the parties fail to participate in the conciliation proceedings, the PLA has no option but to proceed to decide the dispute and pass an award under Section 22-C of the LSA Act;
- Under Section 22-E⁷ of the LSA Act, “an award passed by the PLA is deemed to be a decree of a civil court and such award is final and cannot be called into question in any original suit, application or execution proceedings”
- The object and purpose behind introducing Chapter VI-A to the LSA Act would be frustrated if the PLA is denied the power of adjudicating a dispute if a party deliberately avoids appearing and participating in the conciliation proceedings, even after receipt of notice from the PLA and after having appeared through an advocate on a previous occasion; and
- The conclusion of the conciliation proceedings is not a condition precedent to the exercise of PLA’s adjudicatory function if a party fails to appear for the conciliation proceedings.

Respondent

Notice was served upon the respondent by the usual mode of service as well as Dasti. While an AD card duly signed by the respondent was received by the Supreme Court’s Registry, no one entered an appearance on behalf of the respondent.

ISSUES

- Whether under Section 22-C of the LSA Act conciliation proceedings are mandatory; and
- Whether the Permanent Lok Adalats have adjudicatory functions under the LSA Act.

PROVISIONS INVOLVED

- Chapter VI (Lok Adalats), Sections 19 to 22⁸, The Legal Service Authorities Act, 1987

⁷ Legal Services Authority Act, 1987, s 22E

⁸ Legal Services Authority Act, 1987, ss 19-22

- Chapter VI- A (Pre-Litigation Conciliation and Settlement), Sections 22 A to 22 D⁹, The Legal Service Authorities Act, 1987.

CASES REFERRED

- Bar Council of India v Union of India¹⁰.
- United India Assurance Co. Ltd. v Ajay Sinha & Ors¹¹.
- M/S Interglobe Aviation Ltd v N Satchidanand¹².
- Life Insurance Corporation of India v Suresh Kumar¹³.
- State of Punjab & Anr v Jalour Singh & Ors¹⁴.
- Estate Officer v Colonel HV Mankotia¹⁵.

JUDGMENT

The Single Judge of the Karnataka High Court observed that the PLA has no adjudicatory function. This finding of the Single Judge was upheld by the Division Bench in its impugned judgement where it observed that the PLA cannot act as a regular civil court in adjudicating the dispute between the parties. Based on the analysis of the LSA Act and precedents of the Supreme Court, such an understanding was found to be clearly incorrect. Therefore, SC held that these observations of the Single Judge and Division Bench were incorrect. The Division Bench in its impugned judgement also noted that the PLA failed to follow the mandatory conciliation proceedings in the present case. This observation is correct since the award of the PLA does not indicate any attempt made by it to propose terms of settlement to the parties and their rejection. It states that once the respondent and his guarantor did not appear, it adjudicated the dispute on merits in favour of the respondent. For the reasons mentioned earlier in this judgment, the PLA could not have done so. Therefore, on this point only, SC agreed to uphold the final judgment of the Division Bench setting aside the award of the PLA.

⁹ Legal Services Authority Act, 1987, ss 22A-22D

¹⁰ Bar Council of India (n 6)

¹¹ *United India Assurance Co. Ltd. v Ajay Sinha & Ors.*, (2008) Civil Appeal No. 17758/2006

¹² *M/S Interglobe Aviation Ltd v N Satchidanand* (2011) Civil Appeal No. 4925/2011

¹³ *Life Insurance Corporation of India v Suresh Kumar* (2011) 7 SCC 491

¹⁴ *State of Punjab & Anr. v Jalour Singh & Ors.*, Appeal (Civil) No. 522/2008

¹⁵ *Estate Officer v Colonel HV Mankotia* (2021) Civil Appeal No. 6223/2021

Consequently, it was held that the observations of the Division Bench in the impugned judgment in respect of the adjudicatory powers of the PLAs were incorrect while upholding its ultimate conclusion since the PLA failed to follow the mandatory conciliation proceedings in the present case.

ANALYSIS

Legislative Framework of LSA Act

In this judgment, Hon able J. Chandrachud in order to answer the issues critically analyzed the legislative framework of the LSA Act. Chapter VI of the Act is titled 'Lok Adalats' and has provisions regarding the organization, powers, award, etc. of Lok Adalats. On the other hand, PLAs are constituted under Chapter VI-A of the LSA Act titled 'Pre-Litigation Conciliation and Settlement'. The chapter was added to the LSA Act by The LSA (Amendment) Act 2002¹⁶. It contains provisions regarding the organization, cognizance of cases, powers, awards, etc. of PLAs. The survey of the provisions of the LSA Act indicates that there are similarities between Lok Adalats and PLAs:

- they can both attempt conciliation proceedings with the parties before them, and can pass awards recording the terms of settlement agreed upon by the parties (Section 20(3) and 22-C(7))¹⁷;
- in doing so, they are both "bound by principles of justice, equity, fair play and other legal principles"¹⁸ (Section 20(4) and 22-D)¹⁹; and
- their awards, "deemed to be decrees of courts, will be final and cannot be challenged in an appeal"²⁰ (Section 21 and 22-E)²¹. Yet, despite these similarities, there are crucial differences under the statute.

¹⁶ Legal Services Authority (Amendment) Act, 2002

¹⁷ Legal Services Authority Act, 1987, ss 20(3)- 22C (7)

¹⁸ Legal Services Authority Act, 1987, s 20

¹⁹ Legal Services Authority Act, 1987, ss 20(4)-22D

²⁰ Legal Services Authority Act, 1987, s 21

²¹ Legal Services Authority Act, 1987, ss 21-22E

While the jurisdiction of the PLA is limited to disputes regarding public utility services, crucially, its powers are wider than the Lok Adalat in many respects:

- Parties can approach PLAs directly under Section 22-C (1)²², while Lok Adalats are sent their cases by courts where the dispute is pending (under Section 20(1))²³ or by the Authority or Committee organizing the Lok Adalat under Section 19(1)²⁴ after they receive it from the parties (under Section 20(2))²⁵. Indeed, an application made to the PLA ousts the jurisdiction of a civil court (under Section 22-C (2))²⁶;
- PLAs can direct the parties to submit written submissions, replies, evidence, and documents (Section 22-C (3))²⁷;
- Other than attempting conciliation with parties, the PLAs can also decide a dispute on its merits if the settlement fails (Section-C (7))²⁸.

Mandatory nature of Conciliation proceedings

Section 22-C (8)²⁹ is amply clear that it only comes into effect once an agreement under Section 22-C (7) has failed. The corollary of this is that the proposed terms of settlement under Section 22-C (7), and the conciliation proceedings preceding it, are mandatory. If PLAs are allowed to bypass this step just because a party is absent, it would be tantamount to deciding disputes on their merit ex parte and issuing awards that will be final, binding, and will be deemed to be decrees of civil courts. This was simply not the intention of the Parliament when it introduced the LSA Amendment Act. Its main goal was still the conciliation and settlement of disputes in relation to public utilities, with a decision on merits always being the last resort. Therefore, the court held that conciliation proceedings under Section 22-C of the LSA Act are mandatory in nature.

²² Legal Services Authority Act, 1987, s 22C (1)

²³ Legal Services Authority Act, 1987, s 20(1)

²⁴ Legal Services Authority Act, 1987, s 19(1)

²⁵ Legal Services Authority Act, 1987, s 20(2)

²⁶ Legal Services Authority Act, 1987, s 22C (2)

²⁷ Legal Services Authority Act, 1987, s 22C (3)

²⁸ Legal Services Authority Act, 1987, s 22C (7)

²⁹ Legal Services Authority Act, 1987, s 22C (8)

Whether PLA has adjudicatory functions

A Lok Adalat constituted under Section 19³⁰ of the LSA Act, has no adjudicatory power, which can only conduct conciliatory proceedings. The second is a PLA, established under Section 22-B (1)³¹ of the LSA Act in respect of public utility services, which can carry out both conciliatory and adjudicatory functions, subject to the procedure to be followed under Section 22-C of the LSA Act. In *United India Assurance Co. Ltd. v Ajay Sinha & Ors.*³², this Court held that the “PLA performs an adjudicatory role if the conciliation between the parties fails.” Likewise, in *Inter Globe Aviation v N Satchidanand*³³, this Court observed that “the PLA’s role mutates from that of a conciliatory body to an adjudicatory body, if the parties fail to reach an agreement, where it can decide the dispute between the parties.” In the Bar Council of India, this Court held that “the power of the PLA to adjudicate disputes at a pre-litigation stage in terms of Section 22-C (8) is constitutional.”³⁴

CONCLUSION

The judgment distinguishes the powers and functions of Lok Adalats and Permanent Lok Adalats (PLAs) established under the Legal Services Authority Act, 1987 by critically examining the Legislative framework of the Act. Thus, reducing the confusion between the functions, procedures, etc. Thus, providing clarity. It also highlights the fact that although PLAs have adjudicatory powers, they cannot exercise them until the procedure established by the law is followed. This in turn will substantially stop the practice of such ex Parte awards given by PLAs and will enforce the already set out procedure in the Act. Thus, providing transparency and enforcing rules of ‘Natural Justice’.

³⁰ Legal Services Authority Act, 1987, s 19

³¹ Legal Services Authority Act, 1987, s 22B (1)

³² *United India Assurance Co. Ltd.* (n 11)

³³ *M/S Interglobe Aviation Ltd.* (n 12)

³⁴ Legal Services Authority Act, 1987, s 22C (8)