

Canara Bank Vs. G S Jayarama

Civil Appeal No. 3872 of 2022
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Full judgment text

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Dr Dhananjaya Y Chandrachud, J

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A Introduction

1 This appeal arises from a judgment dated 6 March 2021 of a Division Bench of the High Court of Karnataka. The Single Judge by a judgment dated 3 July 2019 allowed the writ petition¹ instituted by the respondent, and set aside an award of the Permanent Lok Adalat dated 19 November 2014. The Division Bench dismissed the writ appeal² by the appellant and upheld the judgment of the Single Judge.

2 The dispute arises from an application³ filed by the Syndicate Bank⁴ on 31 December 2012 before the Permanent Lok Adalat at Mangalore under Section 22-C(1) of the Legal Services Authorities Act 1987⁵. 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 Rs 2,40,583 with interest at the rate of 15.75 per cent and costs from the respondent and his guarantor.

3 Notice was issued by the Permanent Lok Adalat to the respondent on 10 January 2013, which was allegedly not claimed by the respondent. Hence, on 12 March 2013, the Permanent Lok Adalat 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 matter was adjourned to allow filing of vakalatnama and objections on behalf of the respondent. On 6 February 2014, another counsel is alleged to have filed a vakalatnama on behalf of the respondent, and the case was adjourned once again.

4 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 Permanent Lok Adalat reserved the matter for its award. In its award dated 19 November 2014, the Permanent Lok Adalat 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 Permanent Lok Adalat 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 interest at the rate of 9 per cent till the date of realization. The appellant filed a petition⁶ for execution of the award of the Permanent Lok Adalat before the Civil Judge and Judicial Magistrate First Class, Sullia, Dakshina Kannada.

5 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 Permanent Lok Adalat 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 award dated 19 November 2014, the Single Judge held:

"6. In view of the fact that the Lok Adalath (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."

6 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.

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

"9. The aforesaid provisions make it clear that in case the parties reach at 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 furnish a copy of the same to each of the parties concerned at the first instance 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 was 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."

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

B Submissions of Counsel

8 Mr Rajesh Kumar Gautam, learned counsel appearing on behalf of the appellant has made the following submissions:

(i) 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 India⁷ in as much as the High Court held that Permanent Lok Adalats have no adjudicatory function;

(ii) Sufficient opportunity was given to the respondent to participate in the conciliation proceedings;

(iii) If the parties fail to participate in the conciliation proceedings, the Permanent Lok Adalat has no option but to proceed to decide the dispute and pass an award under Section 22-C of the LSA Act;

(iv) Under Section 22-E of the LSA Act, an award passed by the Permanent Lok Adalat 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;

(v) The object and purpose behind introducing Chapter VI-A to the LSA Act would be frustrated if the Permanent Lok Adalat 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 Permanent Lok Adalat and after having appeared through an advocate on a previous occasion; and

(vi) The conclusion of the conciliation proceedings is not a condition precedent to the exercise of Permanent Lok Adalat's adjudicatory function if a party fails to appear for the conciliation proceedings.

9 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.

C Analysis

10 Two issues arise in the present appeal:

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

C.1 Legislative Framework of Legal Services Act 1987

11 To address these issues, it is important to understand the statutory framework of the LSA Act. Chapter VI of the LSA Act is titled "Lok Adalats". Section 198 provides the framework on the basis of which Lok Adalats are to be organised. Specifically, Section 19(5) provides that Lok Adalats shall have the jurisdiction to arrive at a compromise and settlement between the parties in respect of a matter: (i) pending before a court for which the Lok Adalat is organised; or (ii) not pending before a court for which the Lok Adalat is organised but falling within its jurisdiction. The proviso notes that the Lok Adalat shall have no jurisdiction in respect of a matter relating to an offence not compoundable under any law.

12 Section 209 outlines the type of cases whose cognisance can be taken by the Lok Adalats. Section 20(1) provides that when a case is pending before a court (in accordance with Section 19(5)(i)), the court can refer the case to a Lok Adalat for settlement if: (i) the parties agree; (ii) one party makes an application; or (iii) the court is satisfied that the matter is appropriate for a Lok Adalat. The proviso stipulates that in scenario (ii) and (iii), the court shall only make its decision after giving the parties a reasonable opportunity of being heard. Section 20(2) provides that when an Authority or a Committee organising a Lok Adalat receives an application (in accordance with Section 19(5)(ii)), it shall determine whether to refer it to the Lok Adalat.

The proviso stipulates that it shall only make its determination after giving parties a reasonable opportunity of being heard. Section 20(3) indicates that when a case is referred to a Lok Adalat under Section 20(1) and (2), it shall proceed to dispose of the case and arrive at a compromise or settlement between the parties. Section 20(4) provides that in disposing of a case, the Lok Adalat shall be guided by the principles of justice, equity, fair play and other legal principles. In case the Lok Adalat is unable to reach a settlement between the parties and no award is made, it shall: (i) return the case to the court if it was received under Section 20(1) (in accordance with Section 20(5)), which shall resume hearing it from the stage where it was referred to the Lok Adalat (in accordance with Section 20(7)); or (ii) advise the parties to approach the court if it was received under Section 20(2) (in accordance with Section 20(6)).

13 Section 2110 stipulates that the awards of Lok Adalats shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court. These awards shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award. Further, when a settlement is arrived at by a Lok Adalat in a case referred to it under Section 20(1), the parties shall be refunded their court fee.

14 Section 22 outlines the powers of the Lok Adalats and Permanent Lok Adalats. Section 22 is extracted below:

"22. Powers of Lok Adalats.-(1) The Lok Adalat or Permanent Lok Adalat shall, for the purposes of holding any determination under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:-

- (a) the summoning and enforcing the attendance of any witness and examining him on oath;
- (b) the discovery and production of any document;
- (c) the reception of evidence on affidavits;
- (d) the requisitioning of any public record or document or copy of such record or document from any court or office; and

(e) such other matters as may be prescribed.

(2) Without prejudice to the generality of the powers contained in sub-section (1), every Lok Adalat or Permanent Lok Adalat shall have the requisite powers to specify its own procedure for the determination of any dispute coming before it.

(3) All proceedings before the Lok Adalat or Permanent Lok Adalat shall be deemed to be judicial proceedings within the meaning of Sections, 193, 219 and 228 of the Indian Penal Code (45 of 1860) and every Lok Adalat shall be deemed to be a civil court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)."

Sub-Section (1) of Section 22 stipulates that Lok Adalats and Permanent Lok Adalats shall have the same power as civil courts under the Civil Procedure Code 1908¹¹ for making their determination under the LSA Act. Sub-Section (2), without prejudice to sub-Section (1), provides the Lok Adalats and Permanent Lok Adalats with the power to specify their own procedure. Sub-Section (3) states that proceedings before the Lok Adalats and Permanent Lok Adalats shall be deemed to be judicial proceedings.

15 These provisions demonstrate that the power of the Lok Adalat is limited, even though it may have some powers of the civil courts and the proceedings before it have some trappings of a judicial proceeding. A Lok Adalat shall only attempt to reach a compromise or settlement between the parties whose case is before it. If a compromise or settlement is reached, the Lok Adalat shall issue it as its award, and the statute deems it to be equivalent to the decree of a court, against which no appeal shall lie. On the other hand, if it fails to reach a compromise or settlement, the Lok Adalat shall return the case to the court or advise the parties to approach the court.

16 On the other hand, Permanent Lok Adalats 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 Legal Services Authorities (Amendment) Act 2002¹². It is necessary to analyse the rationale for introducing such an institutional mechanism for resolving disputes when Lok Adalats constituted under Section 19 of the LSA Act were already in existence. The Statement of Objects and Reasons of the LSA Amendment Act reads as follows:

"(1) The Legal Services Authorities Act, 1987 was enacted to constitute legal services authorities for providing (sic) and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice were not denied to any citizen by reason of economic or other disabilities and to organise Lok Adalats to ensure that the operation of the legal system promoted justice on a basis of equal opportunity. The system of Lok Adalat, which is an innovative mechanism for alternate dispute resolution, has proved effective for resolving disputes in a spirit of conciliation outside the courts.

(2) However, the major drawback in the existing scheme of organisation of the Lok Adalats under Chapter VI of the said Act is that the system of Lok Adalats is mainly based on compromise or settlement between the parties. If the parties do not arrive at any compromise or settlement, the case is either returned to the court of law or the parties are advised to seek remedy in a court of law. This causes unnecessary delay in the dispensation of justice. If Lok Adalats are given power to decide the cases on merits in case parties fail to arrive at any compromise or settlement, this problem can be tackled to a great extent.

Further, the cases which arise in relation to public utility services such as Mahanagar Telephone Nigam Limited, Delhi Vidyut Board, etc. need to be settled urgently so that people get justice without delay even at pre-litigation stage and thus most of the petty cases which ought not to go in the regular courts would be settled at the pre-litigation stage itself which would result in reducing the workload of the regular courts to a great extent. It is, therefore, proposed to amend the Legal Services Authorities Act, 1987 to set up Permanent Lok Adalats for providing compulsory pre-litigative mechanism for conciliation and settlement of cases relating to public utility services."

The Statement of Objects and Reasons indicates that Chapter VI-A was introduced to the LSA Act to primarily create alternative dispute resolution bodies, in the form of Permanent Lok Adalats, to decide disputes on merits if the parties fail to arrive at a compromise or settlement.

17 Section 22-B of the LSA Act provides for the establishment of Permanent Lok Adalats. Section 22-B stipulates thus:

"22-B. Establishment of Permanent Lok Adalats.- (1) Notwithstanding anything contained in Section 19, the Central Authority or, as the case may be, every State Authority shall, by notification, establish Permanent Lok Adalats at such places and for exercising such jurisdiction in respect of one or more public utility services and for such areas as may be specified in the notification.

(2) Every Permanent Lok Adalat established for an area notified under sub-section (1) shall consist of-

(a) a person who is, or has been, a district Judge or additional district Judge or has held judicial office higher in rank than that of a district Judge, shall be the Chairman of the Permanent Lok Adalat; and

(b) two other persons having adequate experience in public utility service to be nominated by the Central Government or, as the case may be, the State Government on the recommendation of the Central Authority or, as the case may be, the State Authority,

appointed by the Central Authority or, as the case may be, the State Authority, establishing such Permanent Lok Adalat and the other terms and conditions of the appointment of the Chairman and other persons referred to in clause (b) shall be such as may be prescribed by the Central Government."

Sub-Section (1) of Section 22-B stipulates that the Central or State Authority under the LSA Act shall establish Permanent Lok Adalats in respect of one or more public utility services (defined under Section 22-A(b)13) and for specific areas. Sub-Section (2) provides the membership of the Permanent Lok Adalat to be appointed by the Central or State Authority, which shall include: (i) its Chairperson, who is a person who is, or has been, a District Judge or an Additional District Judge or has held judicial office higher in rank than that of a District Judge; and (ii) two other persons who have adequate experience in the public utility services, to be nominated by Central or State Government on the recommendation of Central or State Authority, as the case maybe.

18 Section 22-C of the LSA Act stipulates the instances in which Permanent Lok Adalats can take cognisance of cases. Section 22-C provides as follows:

"22-C. Cognizance of cases by Permanent Lok Adalat.- (1) Any party to a dispute may, before the dispute is brought before any court, make an application to the Permanent Lok Adalat for the settlement of dispute:

Provided that the Permanent Lok Adalat shall not have jurisdiction in respect of any matter relating to an offence not compoundable under any law:

Provided further that the Permanent Lok Adalat shall also not have jurisdiction in the matter where the value of the property in dispute exceeds ten lakh rupees:

Provided also that the Central Government, may, by notification, increase the limit of ten lakh rupees specified in the second proviso in consultation with the Central Authority.

(2) After an application is made under sub-section (1) to the Permanent Lok Adalat, no party to that application shall invoke jurisdiction of any court in the same dispute.

(3) Where an application is made to a Permanent Lok Adalat under sub-section (1), it-

(a) shall direct each party to the application to file before it a written statement, stating therein the facts and nature of dispute under the application, points or issues in such dispute and grounds relied in support of, or in opposition to, such points or issues, as the case may be, and such party may supplement such statement with any document and other evidence which such party deems appropriate in proof of such facts and grounds and shall send a copy of such statement together with a copy of such document and other evidence, if any, to each of the parties to the application;

(b) may require any party to the application to file additional statement before it at any stage of the conciliation proceedings;

(c) shall communicate any document or statement received by it from any party to the application to the other party, to enable such other party to present reply thereto.

(4) When statement, additional statement and reply, if any, have been filed under sub-section (3), to the satisfaction of the Permanent Lok Adalat, it shall conduct conciliation proceedings between the parties to the application in such manner as it thinks appropriate taking into account the circumstances of the dispute.

(5) The Permanent Lok Adalat shall, during conduct of conciliation proceedings under sub-section (4), assist the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner.

(6) It shall be the duty of every party to the application to cooperate in good faith with the Permanent Lok Adalat in conciliation of the dispute relating to the application and to comply with the direction of the Permanent Lok Adalat to produce evidence and other related documents before it.

(7) When a Permanent Lok Adalat, in the aforesaid conciliation proceedings, is of opinion that there exist elements of settlement in such proceedings which may be acceptable to the parties, it may formulate the terms of a possible settlement of the dispute and give to the parties concerned for their observations and in case the parties reach at 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 furnish a copy of the same to each of the parties concerned.

(8) Where the parties fail to reach at an agreement under sub-section (7), the Permanent Lok Adalat shall, if the dispute does not relate to any offence, decide the dispute."

Sub-Section (1) of Section 22-C provides that any party to a dispute (covered under the jurisdiction of the Permanent Lok Adalat in accordance with Section 22-B) can approach the Permanent Lok Adalat before approaching a court. The proviso notes two exceptions to this: (i) the dispute shall not be in respect of any matter relating to an offence not compoundable under any law; and (ii) the value of the property in dispute shall not exceed Rs 10 lakhs. However, the third proviso stipulates that the Central Government may, in consultation with the Central Authority, increase this amount through a notification. Indeed, by a notification dated 20 March 2015¹⁴ this amount has been since raised to Rs 1 crore. Under sub-Section (2), once an application is made to the Permanent Lok Adalat under sub-Section (1) in respect of a dispute, no court shall have jurisdiction over it.

In accordance with sub-Section (3), once the Permanent Lok Adalat receives an application under sub-Section (1), it can direct both parties to file detailed submission outlining their factual submissions, issues raised and arguments advanced. To support their submissions, the parties will be permitted to attach documentary evidence. Further, the Permanent Lok Adalat can direct the parties to file additional submissions. It shall also communicate any submissions or documents received by one party to the other, in order to enable them to respond.

Once the procedure under sub-Section (3) is completed, the Permanent Lok Adalat, in accordance with sub-Section (4), shall conduct conciliation proceedings between parties in a manner it sees fit keeping in mind the nature of the dispute. During the conciliation proceedings under sub-Section (4), sub-Section (5) imposes a duty on the Permanent Lok Adalat to assist the parties in reaching an amicable resolution to their dispute in an independent and impartial manner. On the other hand, sub-Section (6) imposes a duty on the parties to cooperate with the Permanent Lok Adalat in good faith and produce any evidence/documents required for the resolution of the dispute.

Sub-Section (7) empowers the Permanent Lok Adalat, when it is of the opinion that a settlement exists between the parties, to formulate the terms of such settlement and present it to the parties. If the parties are agreeable to the terms of the settlement, the Permanent Lok Adalat shall pass an award incorporating those terms and provide a copy to each party. Finally, if the parties fail to reach an agreement under sub-Section (7), the Permanent Lok Adalat can decide the dispute on merits under sub-Section (8), if the dispute does not relate to any offence.

19 Section 22-D¹⁵ stipulates that while conducting conciliation proceedings or deciding the dispute on its merits, the Permanent Lok Adalat shall "be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice" and shall not be bound by the CPC and the Indian Evidence Act 1872.

20 Section 22-E relates to the award of the Permanent Lok Adalat, and provides that:

"22-E. Award of Permanent Lok Adalat to be final.-(1) Every award of the Permanent Lok Adalat under this Act made either on merit or in terms of a settlement agreement shall be final and binding on all the parties thereto and on persons claiming under them.

(2) Every award of the Permanent Lok Adalat under this Act shall be deemed to be a decree of a civil court.

(3) The award made by the Permanent Lok Adalat under this Act shall be by a majority of the persons constituting the Permanent Lok Adalat.

(4) Every award made by the Permanent Lok Adalat under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding.

(5) The Permanent Lok Adalat may transmit any award made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court."

Sub-Section (1) of Section 22-E stipulates that the award of the Permanent Lok Adalat, whether arising out of a settlement agreement or after deciding the merits of the dispute, shall be final and binding on all parties and any persons claiming under them. Sub-Section (2) provides that the award of the Permanent Lok Adalat shall be deemed to be a decree of a civil court. Sub-Section (3) provides that every award of the Permanent Lok Adalat shall be decided by a majority of its constituent members. Sub-Section (4) reiterates that the award shall be final and shall not be called in question in any original suit, application or execution proceeding. Finally, sub-Section (5) stipulates that the Permanent Lok Adalat may transmit an award made by it to a civil court having local jurisdiction, and such civil court shall execute the order as if it were a decree made by that court.

21 The above survey of the provisions of the LSA Act indicates that there are similarities between Lok Adalats and Permanent Lok Adalats: (i) 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)); (ii) in doing so, they are both bound by principles of justice, equity, fair play and other legal principles (Section 20(4) and 22-D); and (iii) their awards, deemed to be decrees of courts, will be final and cannot be challenged in an appeal (Section 21 and 22-E). Yet, despite these similarities, there are crucial differences under the statute.

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

(i) Parties can approach Permanent Lok Adalats directly under Section 22-C(1), while Lok Adalats are sent their cases by courts where the dispute is pending (under Section 20(1)) or by the Authority or Committee organising the Lok Adalat under Section 19(1) after they receive it from the parties (under Section 20(2)). Indeed, an application made to the Permanent Lok Adalat ousts the jurisdiction of a civil court (under Section 22-C(2));

(ii) Permanent Lok Adalats can direct the parties to submit written submissions, replies, evidence and documents (Section 22-C(3));

(iii) Other than attempting conciliation with parties, the Permanent Lok Adalats can also decide a dispute on its merits if the settlement fails (Section-C(7)); and

(iv) Permanent Lok Adalats can transmit an award made to a civil court having local jurisdiction, and such civil court shall execute the order as if it were a decree made by that court (Section 22-E(5)).

The entrustment of wider powers to the Permanent Lok Adalat is supported by its membership, comprising of a District Judge or Additional District Judge or someone who has held judicial office higher in rank than that of a District Judge (as compared to only judicial officers in Lok Adalats).

C.2 Mandatory nature of conciliation proceedings

23 We must now address the first issue, i.e., whether the conciliation proceedings before the Permanent Lok Adalats are mandatory before it can decide a dispute on its merits.

24 This issue is clearly resolved from a bare reading of Section 22-C. Section 22-C provides a step-by-step scheme on how a matter is to proceed before the Permanent Lok Adalat. The first step is the filing of the application which ousts the jurisdiction of other civil courts, in accordance with sub-Sections (1) and (2). The second step is the parties filing requisite submissions and documents before the Permanent Lok Adalat, in accordance with sub-Section (3). On the completion of the third step to its satisfaction, the Permanent Lok Adalat can move to the fourth step of attempting conciliation between the parties, in accordance with sub-Sections (4), (5) and (6).

Subsequently, in the fifth step in accordance with sub-Section (7), the Permanent Lok Adalat has to draw up terms of settlement on the basis of the conciliation proceedings, and propose them to the parties. If the

parties agree, the Permanent Lok Adalat has to pass an award on the basis of the agreed upon terms of settlement. Only if the parties fail to reach an agreement on the fifth step, can the Permanent Lok Adalat proceed to the final step and decide the dispute on its merits.

25 Such an interpretation is also supported by the decision of a two-Judge Bench of this Court in Bar Council of India (supra), where the constitutionality of Chapter VI-A of the LSA Act was upheld. Speaking for the Bench, Justice R M Lodha highlighted that the Permanent Lok Adalats would proceed to adjudication of a dispute on its merits only after attempting and failing to generate a settlement between the parties:

"22. Chapter VI-A inserted by the 2002 Amendment Act in the 1987 Act, as its title suggests, provides for pre-litigation conciliation and settlement procedure...The disputes in relation to public utility service need urgent attention with focus on their resolution at the threshold by conciliation and settlement and if for any reason such effort fails, then to have such disputes adjudicated through an appropriate mechanism as early as may be possible...

23. The Statement of Objects and Reasons itself spells out the salient features of Chapter VI-A. By bringing in this law, the litigation concerning public utility service is sought to be nipped in the bud by first affording the parties to such dispute an opportunity to settle their dispute through the endeavours of the Permanent Lok Adalat and if such effort fails then to have the dispute between the parties adjudicated through the decision of the Permanent Lok Adalat...

[...]

26. It is necessary to bear in mind that the disputes relating to public utility services have been entrusted to Permanent Lok Adalats only if the process of conciliation and settlement fails. The emphasis is on settlement in respect of disputes concerning public utility services through the medium of Permanent Lok Adalat. It is for this reason that sub-section (1) of Section 22-C states in no unambiguous terms that any party to a dispute may before the dispute is brought before any court make an application to the Permanent Lok Adalat for settlement of dispute.

Thus, settlement of dispute between the parties in matters of public utility services is the main theme. However, where despite the endeavours and efforts of the Permanent Lok Adalat the settlement between the parties is not through and the parties are required to have their dispute determined and adjudicated, to avoid delay in adjudication of disputes relating to public utility services, Parliament has intervened and conferred power of adjudication upon the Permanent Lok Adalat."

26 The appellant's argument, however, is that if the opposite party does not appear before the Permanent Lok Adalat, it can dispense with the conciliation proceedings and straightaway adjudicate the dispute under Section 22-C(8). We are unable to accept this submission. Even if the opposite party does not appear, the Permanent Lok Adalat is still bound to follow the step-by-step procedure laid down by Section 22-C. Under Section 22-C(3), it would require the party before it to file their submissions and documents, and make the best efforts to communicate them to the opposite party for their response. If it is satisfied that no response is forthcoming from the absent opposite party, the Permanent Lok Adalat shall still attempt to settle the dispute through settlement under Section 22-C(4).

It is important to remember that Section 22-C(5) imposes a duty upon the Permanent Lok Adalat to be independent and impartial in attempting to amicably settle the dispute, while Section 22-C(6) imposes a duty upon the party present before the Permanent Lok Adalat to cooperate in good faith and assist the Permanent Lok Adalat. Thereafter, the Permanent Lok Adalat, based on the materials before it, shall propose terms of settlement and communicate them to both parties, regardless of whether they participated in the proceedings.

If the party present before the Permanent Lok Adalat does not agree or if the absent party does not respond in a sufficient period of time, only then can the Permanent Lok Adalat adjudicate the dispute on its merits under Section 22-C(8). Keeping in mind the principles enshrined in Section 22-D, the Permanent Lok Adalat shall once again notify the absent party of its decision to adjudicate the dispute on its merits, in case it wishes to join the proceedings at that stage.

27 Section 22-C(8) 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 Permanent Lok Adalats 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 which 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, we hold that conciliation proceedings under Section 22-C of the LSA Act are mandatory in nature.

C.3 Whether Permanent Lok Adalat has adjudicatory functions

28 The second issue which is in contention before this Court is whether the Permanent Lok Adalat has any adjudicatory function. As highlighted in the Objects and Reasons accompanying the LSA Amendment Act, its introduction led to the creation of two different types of Lok Adalats. The first is a Lok Adalat constituted under Section 19 of the LSA Act, having no adjudicatory power, which can only conduct conciliatory proceedings. The second is a Permanent Lok Adalat, established under Section 22-B(1) 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.

The scheme of the LSA Act makes clear the distinction between the two types of Lok Adalats. Section 20 of the LSA Act provides that the Lok Adalat shall aim to arrive at a compromise or settlement between the parties. If no such compromise or settlement is arrived at, then the record of the case is returned to the court from which the Lok Adalat had received the reference. The court would then proceed to adjudicate the dispute.

On the other hand, Section 22-C of the LSA Act provides that a party to a dispute, prior to bringing a dispute before the court, i.e., at the pre-litigation stage, can make an application to a Permanent Lok Adalat for the settlement of a dispute. The Permanent Lok Adalat would first conduct conciliation proceedings and attempt to reach an amicable settlement of the dispute. However, if the parties fail to reach an agreement, it shall decide the dispute, as long as the dispute does not relate to an offence. Section 22-D further indicates that the Permanent Lok Adalat is empowered to decide the dispute between the parties on merits.

29 In *United India Assurance Co. Ltd. v. Ajay Sinha & Ors.*¹⁶, this Court held that the Permanent Lok Adalat performs an adjudicatory role if the conciliation between the parties fails. Elucidating on the power of the Permanent Lok Adalat, this Court observed as follows:

"25. Chapter VI-A stands independently. Whereas the heading of the Chapter talks of pre-litigation, conciliation and settlement, Section 22-C(8) of the Act speaks of determination. It creates another adjudicatory authority, the decision of which by a legal fiction would be a decision of a civil court. It has the right to decide a case. The term "decide" means to determine; to form a definite opinion; to render judgment. (See *Advanced Law Lexicon*, 3rd Edn., 2005 at p. 1253.) Any award made by the Permanent Lok Adalat is executable as a decree. No appeal thereagainst shall lie.

The decision of the Permanent Lok Adalat is final and binding on the parties. Whereas on the one hand, keeping in view the parliamentary intent, settlement of all disputes through negotiation, conciliation, mediation, Lok Adalat and judicial settlement are required to be encouraged, it is equally well settled that where the jurisdiction of a court is sought to be taken away, the statutory provisions deserve strict construction. A balance is thus required to be struck. A court of law can be created under a statute. It must have the requisite infrastructure therefor. Independence and impartiality of Tribunal being a part of human right is required to be taken into consideration for construction of such a provision. When a court is created, the incumbents must be eligible to determine the lis.

[...]

...the Permanent Lok Adalat does not simply adopt the role of an arbitrator whose award could be the subject-matter of challenge but also the role of an adjudicator. Parliament has given the authority to the Permanent Lok Adalat to decide the matter. It has an adjudicating role to play."

Likewise, in *Inter Globe Aviation v. N Satchidanand*¹⁷, this Court observed that the Permanent Lok Adalat'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.

30 In *Bar Council of India* (supra), this Court held that the power of the Permanent Lok Adalat to adjudicate disputes at a pre-litigation stage in terms of Section 22-C(8) is constitutional. This Court observed thus:

"26. It is necessary to bear in mind that the disputes relating to public utility services have been entrusted to Permanent Lok Adalats only if the process of conciliation and settlement fails. The emphasis is on settlement in respect of disputes concerning public utility services through the medium of Permanent Lok Adalat. It is for this reason that sub-section (1) of Section 22-C states in no unambiguous terms that any party to a dispute may before the dispute is brought before any court make an application to the Permanent Lok Adalat for settlement of dispute. Thus, settlement of dispute between the parties in matters of public utility services is the main theme. However, where despite the endeavours and efforts of the Permanent Lok Adalat the settlement between the parties is not through and the parties are required to have their dispute determined and adjudicated, to avoid delay in adjudication of disputes relating to public utility services, Parliament has intervened and conferred power of adjudication upon the Permanent Lok Adalat.

27. Can the power conferred on Permanent Lok Adalats to adjudicate the disputes between the parties concerning public utility service up to a specific pecuniary limit, if they do not relate to any offence, as provided under Section 22-C(8), be said to be unconstitutional and irrational? We think not. It is settled law that an authority empowered to adjudicate the disputes between the parties and act as a tribunal may not necessarily have all the trappings of the court. What is essential is that it must be a creature of statute and should adjudicate the dispute between the parties before it after giving reasonable opportunity to them consistent with the principles of fair play and natural justice.

It is not a constitutional right of any person to have the dispute adjudicated by means of a court only. Chapter VI-A has been enacted to provide for an institutional mechanism, through the establishment of Permanent Lok Adalats for settlement of disputes concerning public utility service before the matter is brought to the court and in the event of failure to reach any settlement, empowering the Permanent Lok Adalat to adjudicate such dispute if it does not relate to any offence."

31 We reiterate that the powers of the Lok Adalat constituted under Section 19 of the LSA Act are to be distinguished from the nature of powers granted to a Permanent Lok Adalat established under Section 22-B of the LSA Act. It is in the context of interpreting the jurisdiction of Lok Adalats constituted under Section 19 of the LSA Act, that this Court has held that the Lok Adalat cannot perform any adjudicatory function in terms of Section 20 of the LSA Act¹⁸.

D Conclusion

32 The Single Judge of the Karnataka High Court in the order dated 3 July 2019 observed that the Permanent Lok Adalat has no adjudicatory function. This finding of the Single Judge was upheld by the Division Bench of the Karnataka High Court in its impugned judgement dated 6 March 2021 where it observed that the Permanent Lok Adalat cannot act as a regular civil court in adjudicating the dispute between the parties. Based on our analysis of the LSA Act and precedents of this Court, such an understanding is clearly incorrect. Therefore, we hold that these observations of the Single Judge and Division Bench of the Karnataka High Court were incorrect.

33 At the same time, the Division Bench in its impugned judgement also noted that the Permanent Lok Adalat failed to follow the mandatory conciliation proceedings in the present case. This observation is correct since the award of the Permanent Lok Adalat 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 Permanent Lok Adalat could not have done so. Therefore, on this point only, we uphold the final judgment of the Division Bench setting aside the award dated 19 November 2014 of the Permanent Lok Adalat.

34 Consequently, we hold that the observations of the Division Bench in the impugned judgment in respect of the adjudicatory powers of the Permanent Lok Adalats were incorrect, while upholding its ultimate conclusion since the Permanent Lok Adalat failed to follow the mandatory conciliation proceedings in the present case. We make it clear that we have not made any observations on the merits of the dispute between the parties, and all rights and contentions of the parties are kept open.

35 In the circumstances of the case, there shall be no order as to costs.

36 Pending application(s), if any, stand disposed of.

1 Writ Petition No 27778 of 2019 (GM-RES)

2 Writ Appeal No 514 of 2020 (GM-RES)

3 PLD No 69 of 2013

4 With effect from 1 April 2020, it has since been merged with the appellant through a notification dated 4 March 2020 issued by the Central Government in consultation with Reserve Bank of India in exercise of its powers under Section 9 of Banking Companies (Acquisition & Transfer of Undertakings) Act 1970. Hence, it is also referred to as "appellant" in this judgment.

5 "LSA Act"

6 Ex No 9 of 2019

7 (2012) 8 SCC 243 ("Bar Council of India")

8 "19. Organisation of Lok Adalats.-(1) Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluk Legal Services Committee may organise Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.

(2) Every Lok Adalat organised for an area shall consist of such number of-

(a) serving or retired judicial officers; and

(b) other persons,

of the area as may be specified by the State Authority or the District Authority or the Supreme Court Legal Services Committee or the High Court Legal Services Committee, or, as the case may be, the Taluk Legal Services Committee, organising such Lok Adalat.

(3) The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats organised by the Supreme Court Legal Services Committee shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India.

(4) The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats other than referred to in sub-section (3) shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(5) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of-

(i) any case pending before; or

(ii) any matter which is falling within the jurisdiction of, and is not brought before,

any court for which the Lok Adalat is organised:

Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law."

9 "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 organising 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)."

10 "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).

(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."

11 "CPC"

12 Act 37 of 2002 ("LSA Amendment Act")

13 "22-A. Definitions.-In this Chapter and for the purposes of Sections 22 and 23, unless the context otherwise requires,-

[...]

(b) "public utility service" means any-

(i) transport service for the carriage of passengers or goods by air, road or water; or

(ii) postal, telegraph or telephone service; or

(iii) supply of power, light or water to the public by any establishment; or

(iv) system of public conservancy or sanitation; or

(v) service in hospital or dispensary; or

(vi) insurance service, and includes any service which the Central Government or the State Government, as the case may be, may, in the public interest, by notification, declare to be a public utility service for the purposes of this Chapter."

14 "Noti. No. S.O. 803(E), dated March 20, 2015.-In exercise of the powers conferred by the third proviso to sub-section (1) of Section 22-C of the Legal Services Authorities Act, 1987 (39 of 1987) and in supersession of the Government of India, Ministry of Law and Justice (Department of Legal Affairs), Notification Number S.O. 2083(E), dated the 15th September, 2011, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii), dated the 15th September, 2011, the Central Government, in consultation with the Central Authority, hereby increases the limit of the value of the property in dispute for the purpose of determining the jurisdiction of Permanent Lok Adalat to "one crore rupees" with effect from the date of publication of this notification in the Official Gazette."

15 "22-D. Procedure of Permanent Lok Adalat.-The Permanent Lok Adalat shall, while conducting conciliation proceedings or deciding a dispute on merit under this Act, be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice, and shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) and the Indian Evidence Act, 1872 (1 of 1872)."

16 (2008) 7 SCC 454

17 (2011) 7 SCC 463, paragraph 27

18 Life Insurance Corporation of India v. Suresh Kumar (2011) 7 SCC 491; State of Punjab v. Jalour Singh & Ors. (2008) 2 SCC 660; Estate Officer v. Colonel HV Mankotia (2021) SCC OnLine SC 898; and New Okhla Industrial Development Authority v. Yunus and Ors. (2022) SCC OnLine SC 138

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