

HIGH COURT LEGAL SERVICES COMMITTEE, CHENNAI

Lok Adalat-I organised by the High Court Legal Services Committee
Monday, the 18th day of April 2016

LOK ADALAT AWARD

(Chapter VI and u/s 21 of Legal Services Authorities Act, 1987)
Presided over by

The Hon'ble Mr.JUSTICE P.THANGAVEL (Retd.)
and

Members

Mr.T.Seemadurai
Mrs.Daniel Mary

S.A.No.1144 of 2004 and CMP.Nos.381 and 382 of 2014

This Second Appeal filed to set aside the Decree and
Judgments of both the courts below, allow this second appeal and
decree the suit.

1.Sherina Begum

2.Shakina Begum

3.Sheik Ahemed

4.Shaik Jinna

5.Manzur Imran

6.Minor Ashiba
Minor represented
by next friend
Sheik Jinna

Appellants/Plaintiffs
Vs.

1.K.K.No.98 Mettur Dam Fishermen
Co-operative Marketing Society
rep. by Secretary
Mettur Dam.

2.The Deputy Director,
Fisheries Development Project (Operation)
Coimbatore.

.. Respondents/Defendants
(Parties in person)

Second Appeal is filed under Section 100 CPC to set aside the Judgment and Decree dated 25.11.02 passed in AS5/2000 on the file of the Subordinate Judge, Mettur and appeal from the Judgment Decree dated 14.3.2000 in O.S.303 of 1991 on the file of the District Munsif Court Mettur.

This case came up for settlement before the Lok Adalat. Both the parties are present. Mr.M.Rajasekar, the learned counsel for the appellants 1 to 6 and the respondents 1 and 2 party-in-persons are present. After mutual discussion, negotiation, mediation and conciliation between both parties, they arrived at a compromise to settle the matter as follows:

TERMS OF SETTLEMENT

The appeal in S.A.No.1144 of 2004 pending on the file of the High Court, Madras and preferred against the judgment and decree passed by the learned Subordinate Judge, Mettur in A.S.No.5 of 2000 which was preferred against the judgment and decree passed by the learned District Munsif, Mettur in O.S.No.303 of 1991 has been referred to Lok Adalat for conciliation today.

2. Plaintiffs 1 to 4 in the original suit are the children of one late Thiru. M.H.Shaik Dastagir and 5th plaintiff is the husband of first plaintiff late Zeenath, who died leaving her children plaintiffs 6 & 7. The above said late Thiru. M.H.Shaik Dastagir who took tender to purchase fishes fished out from the Dam by Mettur Dam Fishermen Cooperative Marketing Society Ltd., Mettur Dam was successful bidder in the tender to purchase such fishes from the above said Dam from 01.04.1986 to 31.03.1987. As per Rules of the above said first defendant society, the tenderer late Thiru. M.H.Shaik Dastagir has to execute and register solvency certificate in favour of the society by him to confirm the tender and has also to execute a mortgage for the security amount. The mortgage is with regard to his property in favour of the first defendant society for the above said security amount.

3. Admittedly, the above said formalities were complied with by the tenderer late Thiru. M.H.Shaik Dastagir and started purchasing fishes from the first defendant society. It seems that the above said late Thiru. M.H.Shaik Dastagir failed to pay the value of the fishes purchased from the first defendant society and therefore, the first defendant society to whom the above said late Thiru. M.H.Shaik Dastagir executed a mortgage by deposit of title deeds has initiated proceeding to realise the above said amount by bringing the mortgaged property to sale as per the award passed in ARC.No.1 of 1986 on the file of the second defendant.

4. The award was passed by the second defendant on 29.12.1988 and property was brought to sale on 29.05.1991. Questioning the above said action taken by the defendants 1 to 2, the plaintiffs have come forward with this suit for declaration that the defendants have no right to bring the mortgage property to sale and in any event six-eighth share of the said property to sale and to realise the amount which was subject matter of ARC.No.1 of 1986 dated 29.12.1988 and for permanent injunction restraining the defendants 1 and 2 from selling six-eighth share of the scheduled property.

5. The trial court dismissed the suit and in appeal, the appeal was also dismissed by confirming the judgment and decree of the learned District Munsif. The present second appeal has been filed challenging the above said judgment and decree passed by the learned Subordinate Judge in A.S.No.5 of 2000.

6. Both sides represent that the matter has been settled amicably and the General Body of the first defendant had already passed a resolution on 24.10.2014 to receive a sum of Rs.7,61,342-57/- towards full quit of the amount due to the first defendant society from the plaintiffs on behalf of late Thiru. M.H.Shaik Dastagir who was successful bidder in the bidding. Admittedly, the said resolution passed by the General Body of the first defendant have been communicated to the second defendant who has to get approval for the above said resolution from the Commissioner of Fisheries, Chennai.

7. The plaintiffs assisted by counsel and the defendants assisted by counsel agreed to the above said resolution and also represents that the above said resolution may be treated as compromise arrived at between both the parties subject to approval by the Commissioner of Fisheries, Chennai. The second defendant represented that she may be given time till 25.11.2014 to get approval and produce such approval before Lok Adalat to record a compromise for the amount mentioned above. The plaintiffs have also agreed to bring demand draft in the name of "President, K.K.No.98, Mettur Dam Fishermen Cooperative Marketing Society Ltd., Mettur" on that date without fail.

8. In the next hearing, it was brought to the notice of the Lok Adalat by the learned counsel appearing for the respondents that there are mistakes in the resolution passed by the General Body convened by the first respondent as described hereunder.

(i) There is omission of the word "js;Sgo" in the resolution.

(ii) The calculation of interest and the amount resolved to be written off from the appellants by the first respondent is wrongly mentioned and an audit is going on to arrive at a correct amount of interest, even though a part of resolution says that the appellants should pay the price of fish purchased from the Society to the extent of Rs.7,61,342.57/-. A demand draft has been drawn on Lakshmi Vilas Bank, Mettur Dam Branch bearing No.332369 dated 10.11.2014 in the name of first respondent as agreed by both parties and produced before Lok Adalat for being given to the first respondent/Society.

9. At the instance of both the parties and as per the resolution passed by the General Body of first respondent, the Lok Adalat has given direction already to the appellants to take demand draft for Rs.7,61,342.57/- in the name of the first respondent for being handedover to the first respondent at the time of passing of award which was expected to be passed on 25.11.2014. In view of the mistake crept in the resolution passed by the General Body, award could not be passed finally even though both the parties are present before Lok Adalat on 25.11.2014. Hence the demand draft produced by the appellants before the Lok Adalat could not be handedover to the first respondent/Society and hence, ordered to be kept in a sealed cover in the office of the Lok Adalat of High Court Legal Services Committee, Chennai.

10. In view of the fact that the entire matter has been settled and award has to be passed in terms of the above said compromise, the mistakes crept in the resolution passed by the General Body of the first respondent has to be rectified by means of the resolution of rectification by General Body after it is being considered in the meeting of Directors of the first respondent / Society according to respondents 1 and 2. It seems that audit party has also to give the correct rate of interest to be written off as per the resolution already passed to be written off. It is made clear that the General Body has already accepted to receive a sum of Rs.7,61,342.57/- only from the appellants after giving up all accrued interests in dispute between both the parties before passing of the above said resolution.

11. In the said circumstances, in the light of the representation made on both sides, the respondents are directed to get the audit report with regard to mistake in calculation of interest in ten days and convene the General Body meeting within fifteen days after the period of ten days mentioned above to correct the resolution already passed with regard to the above said mistakes.

12. The first defendant / first respondent society has convened the meeting to carryout necessary corrections on 05.02.2015 and then it was found out that the calculation of quantum of interest is not correctly placed before the Board of Directors as per the information furnished to the Board by the Auditor of the Society. Therefore, credited rate and quantum of interest has been placed before the meeting of the Board of Directors of the first respondent on 16.04.2015 and a resolution was passed by the Board of Directors to receive principal amount of Rs.7,61,342.57/- and to wipe of the total interest payable by the appellant to the first respondent Society. The resolution was recorded in writing and true copy of the above said proceedings was produced before the Lok Adalat for consideration.

13. It is relevant to point out that the demand draft taken for Rs.7,61,342.57 drawn on Lakshmi Vilas Bank, Mettur Dam Branch No.332369 dated 10.11.2014 in the name of the first respondent by the plaintiff/appellant was produced before the Lok Adalat and the same was ordered to be kept in the office of the Lok Adalat in sealed cover as mentioned above. Since the Demand Draft taken as mentioned above has to be renewed to retain its validity the same was handed over to the appellant/plaintiff with direction to renew and produce before the Lok Adalat in the next hearing. Accordingly the Demand Draft was renewed for the aforesaid amount with receipt No.332628 dated 03.02.2015 and the same which was produced before the Lok Adalat was ordered to be kept in sealed cover in the office of Lok Adalat. It was brought to the notice of the Lok Adalat at that stage, the matter has to be referred to the Commissioner of Fisheries, Chennai, who in turn has to refer the matter to the Government of Tamilnadu for waiver of interest of Rs.43,76,331.55/-. Since the order of Government waiving of above said interest has not been received by the Commissioner of Fisheries, Chennai due to Administrative reasons and since the Board of Directors of the first respondent/Society has passed a resolution authorising Mr.M.Chinakannan, President of the first respondent/Society to receive the Demand Draft without prejudice its right in this appeal and without prejudice to the decision to be taken by the Government of Tamil Nadu, the Demand Draft referred to above has been handed over to President Thiru.Chinnakannan with direction to encash the said Demand Draft within the stipulated time and to deposit the amount in anyone of the Nationalized Bank till the need ceases. It is also directed that the first respondent/Society is at liberty to utilise above said amount as it pleases after recording compromise finally. The appellants and the respondents have produced the Government Order (MS) No.55 dated 28.03.2016 before the Lok Adalat today, wherein the Government of Tamil Nadu has

waived interest of Rs.43,76,331.55 by accepting the recommendation made by the Commissioner of Fisheries, Chennai by issuing the above said Government Order. The Government of Tamil Nadu has given the seal of approval for the compromise arrived at between the appellant and the respondents before the Lok Adalat. The Commissioner of Fisheries has sent a letter dated 05.04.2016 along with the Government order referred to above to the second defendant/second respondent for necessary action in this record.

14. In view of the compromise arrived at between both parties, the Lok Adalat hereby declare and decree that the appellants/plaintiffs shall pay a sum of Rs.7,61,342.57 towards full quit of the claim of the first respondent/first defendant society, since the Government of Tamilnadu by its Government Order have waived the entire interest of Rs.43,76,331.55 on the recommendation made by the Commissioner of Fisheries, Chennai. Since a sum of Rs.7,61,342.57 has already been paid by the appellants/plaintiffs by means of demand draft through Lok Adalat no amount is due to the first respondent/first defendant society or to any other authority from the appellants/plaintiffs in connection with the above said proceedings initiated by the Fisheries Department. The plaintiffs / Appellants are entitled to the reliefs sought for in this suit and accordingly reliefs sought for is granted.

15. It was brought to the notice of the Lok Adalat that the appellants /plaintiffs have produced documents which are marked as Ex.A1 and A10 before the Competent Court and they want return of the above said documents. The respondent/defendants have no objection for returning the above said documents to the appellant/plaintiffs.

16. The plaintiffs are at liberty to move the Competent Court for return of the above said documents. It is also brought to the notice of the Lok Adalat that unnumbered document has been produced by the appellants/plaintiffs to the defendants 1 and 2. It was admitted by the second defendant / respondents that the unnumbered document is available in the department and he has no objection to hand over the above said unnumbered documents. Therefore, the first appellant Sherina Begum is directed to approach the second defendant/respondent for return of the unnumbered document and the said department is directed to handed over above said document to the party approaching them for return. The first defendant/respondent society is directed as agreed and accordingly directed to cancel the mortgage created in their favour by the M.H.Shaik Dastagir. Both parties agree to pay and also to receive the cost ordered by the Trial

Court as well as first appellate court by the plaintiff to the first respondent. No order as to costs in this second appeal. Consequently connected miscellaneous petitions are closed.

Sd/-

1.Sherina Begum

Sd/-

2.Shakina Begum

Sd/-

3.Sheik Ahemed

Sd/-

4.Shaik Jinna

Sd/-

5.Manzur Imran

Sd/-

6.Minor Ashiba
Minor represented
by next friend
Sheik Jinna

Sd/-

Counsel for the Appellants

Sd/-

1. K.K.No.98 Meeter Dam Fishermen
Co-operative Marketing Society
rep. by Secretary
Mettur Dam.

Sd/-

2. The Deputy Director,
Fisheries Development Project (Operation)
Coimbatore.

Sd/-

Judge

Sd/-

Member

Sd/-

Member

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Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To: The parties/Advocate concerned

Copy to:

1. The Subordinate Judge,
Mettur, Salem District.

2. The District Munsif,
Mettur

3. The Secretary,
High Court Legal Services Committee,
Chennai.

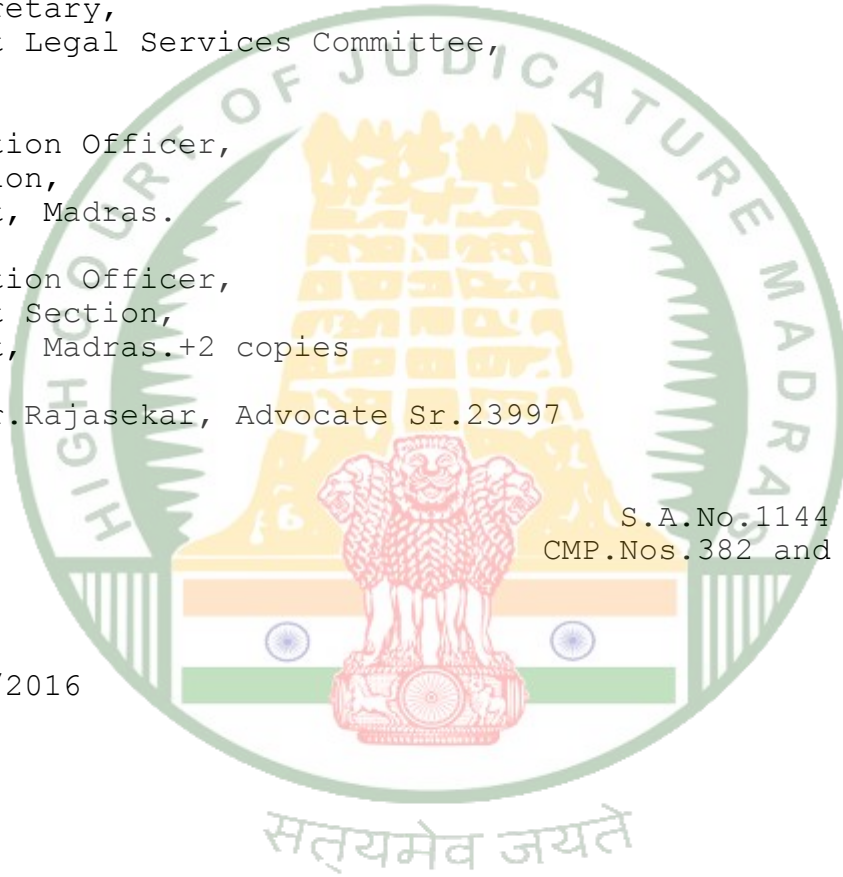
4. The Section Officer,
V.R. Section,
High Court, Madras.

5. The Section Officer,
Lok Adalat Section,
High Court, Madras. +2 copies

+1cc to Mr. Rajasekar, Advocate Sr. 23997

S.A.No. 1144 of 2004 and
CMP.Nos. 382 and 383 of 2014

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srg 22/04/2016



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