

CWP No.11542 of 2015

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.11542 of 2015
Date of decision:05.08.2016**

Vijay Pal Verma

...Petitioner

Versus

Permanent Lok Adalat and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Ramandeep Singh, Advocate,
for the petitioner.

Mr. Suvir Sehgal, Sr. Standing Counsel, with
Mr. Jaiveer Chandail, Advocate, and
Mr. Daman Dhir, Advocate, for UT Administration.

Mr. Deepak Sharma, Advocate,
for respondent No.2.

Rakesh Kumar Jain, J.

This order shall dispose of five petitions bearing CWP Nos.11542 and 806 of 2015, 179, 806, 2120 and 2126 of 2016 as the question involved in all the petitions is common. However, for the sake of convenience, the facts are being extracted from CWP No.11542 of 2015.

This petition is directed against the order of the Permanent Lok Adalat (Public Utility Services), Union Territory, Chandigarh (hereinafter referred to as the "Lok Adalat") by which an application filed by the petitioner under Section 22C(1) of the Legal Services Authorities Act, 1987 (hereinafter referred to as the "Act") has been considered on merits and dismissed.

Learned counsel for the petitioner although advanced

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arguments on merits of the case, but the larger issue raised by him is about the fallacy in the exercise of jurisdiction by the Lok Adalat while deciding the case of the petitioner. It is submitted that before deciding the case on merits by invoking Section 22C(8) of the Act, the Lok Adalat has to follow the provisions of Sections 22C(3) to (7) of the Act, to which it has not adverted to before exercising its jurisdiction under Section 22C(8) of the Act.

Similar is the grievance of the petitioner in other connected cases which are filed by the Union Territory, Chandigarh.

Counsel for the petitioner has relied upon a decision of the Supreme Court in the case of **United India Insurance Co. Ltd. vs. Ajay Sinha and another**, 2009(1) R.C.R. (Civil) 726 and two judgments of this Court in the cases of **Reliance General Insurance Company Limited vs. Vijay Kumar and another**, 2012(1) PLR 794 and **Tata Teleservices Ltd. vs. Kulwinder Singh and another**, 2015(4) PLR 790, which has been upheld by the Division Bench of this Court in the case of **Tata Teleservices Limited vs. Kulwinder Singh and another**, 2015(4) L.A.R. 194.

In this case, counsel for the Union Territory, Chandigarh has also supported the argument raised by the petitioner that the Lok Adalat shall not immediately embark upon on its adjudicatory role rather it has to first resort to its conciliatory role and if it is found that the parties are not accepting the terms put to them of a possible compromise/conciliation, the Lok Adalat then may resort to its jurisdiction of deciding the lis between the parties on the basis of evidence.

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Section 22C of the Act categorically provides that the application under Section 22C(1) can be filed only before the dispute is brought to the Court, meaning thereby it would not be maintainable if the same dispute is pending between the parties in the Court. It further provides that the Lok Adalat shall not decide any case in which the issue is relating to an offence which is not compoundable under any law. It further provides that it would also stay keep away its hands to interfere in the matter in which it has no pecuniary jurisdiction. However, once an application is maintainable, it has to be dealt with by the Lok Adalat in terms of the provisions of Section 22C(3) onwards in which Sections 22C (4) and (5) provide for conducting the conciliation proceedings and if it is found that there exists elements of a settlement in the conciliation proceedings, which may be acceptable to the parties, it is the duty of the Lok Adalat to formulate the terms of a possible settlement of the dispute and in case the settlement is successful, then the Lok Adalat shall pass the award and furnish a copy thereof to each of the parties. A careful reading of Sections 22C (3) to (6) provides a mechanism of deciding the lis between the parties by way of conciliation which has to be followed by the Lok Adalat religiously before it takes over an avatar of a Court to decide the lis between the parties on the basis of evidence led by them. It is needless to mention that the Lok Adalat is required to reflect in its day to day proceedings about compliance of Sections 22C(3) to (7) of the Act and it is also expected of the parties appearing before the Lok Adalat to ask for conciliation proceedings before having their case adjudicated on merits. It

is also pertinent to mention that since the award/order of the Lok Adalat, which has to deal with the issues pertaining to the public utility services, defined in Section 22A(b) of the Act, is not appealable, therefore, a larger number of writ petitions are being filed in this Court against the award/orders of the Lok Adalat which are decided on merits in terms of Section 22C(8) of the Act and generally the issues are being raised about non-compliance of the provisions contained in Sections 22C(3) to (7) of the Act. It may also be mentioned here that with the advent of alternative disputes resolution mechanism, Section 89 has been added as Part V (Special Proceedings) in the Code of Civil Procedure, 1908 (hereinafter referred to as the "CPC"), in which powers have been given to the Court to formulate the terms of settlement if it appears to it that there exists elements of a settlement which may be acceptable to the parties and after receiving the observations of the parties, the Court may re-formulate the terms of a possible settlement and refer the same for arbitration, conciliation, judicial settlement including settlement through Lok Adalat or mediation. Thus, an effort is more on resolving the dispute between the parties by resorting to the alternative disputes resolution mechanism than the use of adjudicatory process in which the parties litigate for several years in appeals filed before various forums.

In order to facilitate a quick reading of Section 22C of the Act and Section 89 of the CPC, both the provisions are reproduced as under:-

22C. 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, 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 the 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 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.”

“Part V

SPECIAL PROCEEDINGS

89. Settlement of disputes outside the Court.- (1) Where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observation of the parties, the court may reformulate the terms of a possible settlement and refer the same for-

- (a) arbitration;
- (b) conciliation
- (c) judicial settlement including settlement through Lok Adalat; or
- (d) mediation.

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- (2) Where a dispute had been referred-
- (a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act.
 - (b) to Lok Adalat, the court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;
 - (c) for judicial settlement, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;
 - (d) for mediation, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.”

In **United India Insurance Co. Ltd.'s case (supra)**, it has been held by the Supreme Court that the Lok Adalat has a dual role of conciliator and adjudicator and it must not give an impression to any of the disputants that it has adjudicatory role from the very beginning.

In the case of **Bar Council of India vs. Union of India**, 2012(4) R.C.R. (Civil) 262, the Supreme Court upheld the provisions of Section 22-A to 22-D as contained in Chapter VI-A of the Act and also held that if no appeal is provided against the award of the Lok Adalat, the aggrieved party can approach the High Court under its supervisory and

extraordinary jurisdiction under Articles 226 and 227 of the Constitution.

At this stage, I would like to add that since there is no provision of appeal provided in the Act against the award passed by the Lok Adalat under Sections 22C (7) and (8) of the Act and the only remedy provided is to invoke extraordinary jurisdiction of this Court under Article 226/227 of the Constitution, it is all the more reason for the Lok Adalat to deal with the application filed before it first as a conciliator and then as an adjudicator. The another factor for providing conciliation proceedings before the adjudicatory role to be exercised by the Lok Adalat is that the Lok Adalat was conceived in order to provide succor to a litigant, who has no financial capacity to take recourse to the regular Courts, by deciding their disputes by way of a settlement on the basis of conciliation which is found to be more expeditious and cost-effective.

In the case of **National Insurance Company Ltd. vs. Om Parkash**, 2012(4) Law Herald 3310, this Court had observed that the Lok Adalat did not record in its *zimni* orders that it had, at any stage, formed an opinion that there existed elements of a settlement which could be acceptable to the parties nor the terms of such possible settlement of dispute were formulated and given to the parties for their consideration and without complying with these requirements, the case was decided on merits, as a consequence thereof, the order of the Lok Adalat was set aside and remanded back to it.

Is it not the wastage of time of the Lok Adalat and of the High Court if the cases are remanded back to the Lok Adalat on this issue alone

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and is it not an unnecessary burden upon the poor litigant who takes up his remedy of approaching the Lok Adalat knowing fully well that the decision of the Lok Adalat on that dispute shall be final and binding upon the parties and the applicant would not have any right of appeal as it is provided only in case of a decision rendered by the regular Civil Court in which the unsuccessful party can file an appeal under Section 96 of the CPC for re-appreciation of evidence by the higher Court?

This unnecessary litigation can easily be avoided if the Lok Adalat, dealing with an application filed under Section 22C of the Act, is sensitized to comply with the provisions of Section 22C(3) to (7) of the Act and reflect the said proceedings meticulously in its *zimni* orders so that in case of failure of conciliation and adjudication on merits by the Lok Adalat in terms of Section 22C(8) of the Act, the High Court, dealing with the order/award of the Lok Adalat, may concentrate only on the issue decided on merits on the appreciation of evidence as in the writ petition again, the party aggrieved against the award of the Lok Adalat used to challenge the award of the Lok Adalat not only on the legal grounds but also on the grounds of misreading and mis-appreciation of evidence.

Thus, I need not to delve more into it as the question, which I am deciding herein, has already been decided by the other Courts as well but it is high time that the Lok Adalat(s) in the States of Punjab, Haryana and Union Territory, Chandigarh are to be advised by way of this judicial pronouncement to seriously resort to the conciliation proceedings before becoming an adjudicator on merits.

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Thus, keeping in view the aforesaid discussion, the present writ petition are hereby allowed, award of the Lok Adalat is set aside and the cases are remanded back to the Lok Adalat to decide it again, strictly in accordance with law, as I have discussed here-in-above, i.e. resorting to its role of a conciliator before becoming an adjudicator. The parties are directed to appear before the Lok Adalat on 05.09.2016.

The Registry of this Court is also directed to circulate copy of this order to all the Lok Adalat(s) in the States of Punjab, Haryana and Union Territory, Chandigarh, for compliance.

August 05, 2016
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned:	Yes/No
Whether Reportable:	Yes/No