

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04-10-2019

C O R A M

The Honourable Mr.Justice S.MANIKUMAR
and
The Honourable Mr.Justice R.SURESH KUMAR

Writ Petition No.15441 of 2017

1. E.K.Jayachandran

2. E.J.Latha Maheswari ... Petitioners

Vs

1. The Registrar

Debt Recovery Appellate Tribunal
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai, Chennai.

2. State Bank of India

Stressed Assets Recovery Branch,
Red Cross Building, II Floor,
No.32, Montieth Road,
Egmore, Chennai - 600 008.

Rep. by its City Case Officer. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for records relating to the order dated 02.12.2016 passed by the Debt Recovery Appellate Tribunal in A.I.R.No.40 of 2014 and quash the same and consequently direct the second respondent to refund the court free sum of Rs.20,505/- deposited by the petitioners.

For Petitioners ... Mr.A.Swaminathan

For Respondents ... Mr.G.Rajagopalan, ASG

Assisted by Mr.K.Makesh, ACGSC

for R1

Mr.R.Sugumaran for R2

O R D E R

This writ petition has been filed seeking for a prayer of issuance of writ of certiorarified mandamus, to call for the records relating to the order, dated 02.12.2016 passed

by the Debt Recovery Appellate Tribunal in A.I.R.No.40 of 2014 and to quash the same and consequently direct the second respondent to refund the Court fee of a sum of Rs.20,505/- deposited by the petitioners.

2. The necessary facts which give rise to filing this writ petition are as follows :

(i) That the writ petitioners seems to have borrowed loan from second respondent Bank and as the same has not been repaid, the Bank has filed O.A.No.190 of 2012 before the Debt Recovery Tribunal-II at Chennai. The said O.A., was allowed by DRT on 13.12.2013. Aggrieved over the same, the petitioners preferred appeal before the Debt Recovery Appellate Tribunal in A.I.R.No.40 of 2014.

(ii) As a condition precedent, since the appellant had to pay 50% of the amount / due determined by the DRT, before the Appellate Tribunal under Section 21 of the Recovery of Debt due to Banks and Financial Institutions Act, 1993 (herein after referred to as DRT Act) and the writ petitioners were not able to deposit the said amount, they seems to have sought for exemption for making that deposit before the DRAT, however the said request of the petitioners were rejected by DRAT. As against which, the petitioners filed a Civil Revision Petition in C.R.P.No.1099 of 2014.

(iii) In the said C.R.P.No.1099 of 2014, a Division Bench of this Court by order, dated 25.03.2014 referred the matter for settlement at the Lok Adalat / Bank Adalat scheduled to be conducted on 12.04.2014. The orders of the Division Bench, dated 25.03.2014 reads thus :

"In view of the submission made by the learned counsel for the petitioner and by the learned counsel for the respondent / Bank, the Registry is directed to post the matter before the Lok Adalat which is scheduled to be held on 12.04.2014.

2. In view of the reference being made by us to the Lok Adalat proceedings, there will be an order of interim stay as prayed for, till the adjudication is made either by the Lok Adalat or by this court."

(iv) Pursuant to the said reference to the Lok Adalat, a Bank Lok Adalat was held, before which, the matter was referred to, where a settlement has been reached between the petitioners and the second respondent Bank in respect of two separate accounts in the name of the petitioners and accordingly, a terms of settlement also has been entered and registered and by virtue of that, a certificate to that effect also had been given by the Bank on 29.04.2014, which reads thus :

"M/s. Jayachandran Enterprises : A/c
No.53021179660

Mrs Latha Maheshwari A/c No.53021190797
17/1, Narasier Street, Old Washermenpet,
Chennai - 21

This is to certify that the captioned
borrower has settled the outstandings
under Bank Adalat dated 28.03.2014 and
the above loan account is since closed
on 29.04.2014.

Assistant General Manager."

(v) Thus the matter has been completely settled in the Lok Adalat, pursuant to the reference made in this regard by the Division Bench as referred to above, therefore the said development had been brought to the notice of the Division Bench on 17.06.2014 when the C.R.P.No.1099 of 2014 was taken up for further hearing. The Division Bench after having taken note of the said settlement, as the matter has been completely settled between the parties before the Lok Adalat, has passed the following order :

"Both the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent-Bank would submit that this civil revision petition has become infructuous in view of the fact that the matter has been settled before the Lok Adalat. They have also produced a copy of the letter received from the first respondent-Bank No.SARB/MBL/11308 dated 29.4.2014 certifying that the petitioner herein has settled the amount outstanding to the first respondent-Bank under Bank Adalat dated 28.3.2014 and that the loan account is since closed on 29.4.2014. The said submission of the learned counsel on either side is recorded. The

letter of the first respondent-Bank dated 29.4.2014 is also taken on file. With regard to the refund of court fee sought for by the learned counsel for the petitioner, it is submitted that the settlement has been effected before the Lok Adalat and the petitioner is entitled to the same, for which the petitioner may file a petition before the appropriate forum and the same shall be considered and necessary orders be passed for refund of the court fee.

2. The Civil Revision Petition is closed with the above observations. No costs. Consequently, connection miscellaneous petition is also closed."

(vi) It is to be noted that, at the time of filing A.I.R.No.40 of 2014 before the DRAT, a Court fee of a sum of Rs.20,505/- was paid by the petitioners by way of Demand Draft taken in favour of the first respondent at DRAT and only in that context, the said observation / direction was given by the Division Bench in the CRP in the order referred to above, dated 17.06.2014.

(vii) Pursuant to the said directive / observation made by the Division Bench in the CRP referred to above, the petitioners seems to have filed a memo for refund of Court fee before the first respondent / DRAT in A.I.R.No.40 of 2014.

(viii) It is to be noted that, the said memo was filed some time in July 2014, where, on 11.08.2014, the second respondent Bank filed a full satisfaction memo, where it has stated as follows :

"The Applicant submits that as the entire amount is settled by the Defendants, its obliged the Applicant Bank to hand over the original documents to them, hence the present full satisfaction memo is being filed by the Applicant Bank to return the original documents pertaining to the O.A, schedule mentioned property which were filed before this Hon'ble Court along with the Proof Affidavit and the same were marked in Ex.A13-A-15.

Therefore it is humbly prayed that this Hon'ble Tribunal may be pleased to record the full satisfaction memo and

return the original title deeds pertaining to the O.A schedule mentioned property in Ex.A-13 to Ex.A-15 and thereby render justice.
Dated at Chennai on this 11th day of August 2014."

(ix) Therefore based on which, the petitioners expected an order from the DRAT, certifying that the petitioners are entitled to get back the Court fee paid on the appeal to the DRAT, however, they have been served with the order, dated 02.12.2016 of the DRAT along with the communication, dated 28.12.2016.

(x) In the said order, dated 02.12.2016, the DRAT, after having extracted the direction / observation made by the Division Bench of this Court in the said CRP, by its order, dated 17.06.2014, has passed the following order :

"Considering the aforesaid facts and circumstances, Registry is directed to take up the matter with legal services authority for refund. Because DRAT has no powers / provision for such refund. AIR 40/2014 is disposed as settled before Lok-Adalat."

(xi) Aggrieved over the said order passed by the DRAT, dated 02.12.2016 on the memo for refund of Court fee filed by the petitioners, this writ petition has been filed with the aforesaid prayer.

3. We have heard Mr.A.Swaminathan, learned counsel appearing for the petitioners and Mr.R.Sugumaran, learned counsel appearing for the second respondent.

4. During the hearing, in order to assist the Court, we requested the learned Additional Solicitor General, Govt. of India (South), Mr.G.Rajagopalan to appear before this Court. Accordingly, he appeared and made submissions after getting instructions from the Central Government, therefore he has also been heard accordingly.

5. The issue to be decided in this writ petition is, as to whether the Debt Recovery Appellate Tribunal under DRT Act is not empowered to pass orders or giving certification for refund of court fee if the appeal filed before the DRAT is settled out of Court, especially before the Lok Adalat in the context of the provisions of the Legal Services Authorities Act, 1997 (herein after referred to as "LA

Act").

6. In the impugned order, the DRAT has directed its Registrar, the first respondent, to refer the matter to the Legal Services Authority for refund of the court fee, as the DRAT has no power / provision for such refund.

7. In this context, it is to be noted that, the DRT Act provides for application to be filed before the Debt Recovery Tribunal under Section 19, where sub-section 3B of Section 19 as amended with effect from 01.09.2016 reads thus :

"[(3B)] If any application filed before the Tribunal for recovery of any debt is settled prior to the commencement of the hearing before that Tribunal or at any stage of the proceedings before the final order is passed, the applicant may be granted refund to the fees paid by him at such rates as may be prescribed.]"

8. Admittedly there is no similar provision available under Section 20 of the DRT Act, as Section 20 of that Act enables the aggrieved party to prefer an Appeal before the Debt Recovery Appellate Tribunal.

9. Under Section 21 of the said Act, whenever appeal is preferred by any person from whom the amount of debt is due to Bank or a financial institution, such an appeal shall not be entertained by Appellate Tribunal, unless such person has deposited with the Appellate Tribunal 50% of the amount of debt so due from him.

10. Only in view of the said mandatory provision under Section 21 of the DRT Act, it became obligatory on the part of the petitioners to pay 50% of the due as determined by the DRT in the O.A as a condition precedent along with the appeal and since that was not able to be paid by them, they sought for exemption and when that exemption was rejected, it triggered them to approach this Court to file the Civil Revision Petition referred to above, where the matter has been referred by this Court to the Lok Adalat for settlement.

11. Before the Lok Adalat, the matter has been settled fully and a full settlement memo also had been filed by the Bank before the Debt Recovery Appellate Tribunal and

recording the same through the impugned order, the appeal has been closed. Thus, before the Debt Recovery Appellate Tribunal, the matter was not heard on merits not even for a single hearing and before which since the matter has been settled, the petitioners after getting observation and direction from this Court in the said CRP, as referred to above, had approached the DRAT by filing memo for refund of court fee, which was negated by the DRAT through the impugned order on the ground of want of power / provision.

12. No doubt, as that of sub-section 3B of Section 19, there is no similar provision available under Section 20 of the DRT Act. Therefore initially we thought that such omission, disabling the parties to get refund of court fee if the appeal is disposed or settled out of court / Lok Adalat under Section 20 of the Act, may be a casus omissus.

13. However after hearing Mr.G.Rajagopalan, learned Additional Solicitor General appearing for the Central Government, it was clarified that, it is not a casus omissus, it is a legislative intend not to have such a provision at the appellate stage under the DRT Act. Then we were anxious to know the stand of the Central Government as to whether any amendment proposal is with the Central Government to suitably amend the relevant provision of the DRT Act, for which, the learned Additional Solicitor General, having receipt of the written communication from Government of India, Ministry of Finance, dated 20.11.2017, has placed the same before this Court for consideration and the content of the said communication of the Central Government, Ministry of Finance, in the said letter, reads thus :

"I am directed to refer to the above mentioned matter and your letter dated 14.11.2017 wherein it has been mentioned that the captioned Writ Petition has been filed by the Petitioner challenging the order of DRAT, Chennai wherein it was refused to refund the Court fee after the case was settled in Lok Adalat.

On going through the order dated 13.11.2017 it is observed that it has been directed by the Court to ascertain from the government as to whether there is any proposal before the central government to amend the law / rules to enable the parties get refund of the court fee paid in DRAT, if the matter is

settled in Lok Adalat.

It is informed that at present no such proposal to amend the laws / rules to enable the parties get refund of the court fee paid in DRAT, if the matter is settled in Lok Adalat is under consideration of the Government. It is requested that this fact may be informed to the Hon'ble Court on the next date of hearing, i.e., 23.11.2017.

Yours faithfully

(V.V.S.Kharayat)

Under Secretary to the Govt. of
India"

14. Thus it become clear, in view of the non-availability of similar provision as that of sub-section 3B of Section 19, at Section 20, enabling the parties to get refund of court fee in case the matter is settled out of court / Lok Adalat at the appeal stage, we have to explore the legal position as to whether the DRAT can refuse to entertain the plea of refund of court fee for want of specific provision under Section 20 of the DRT Act as similar to that of Section 19(3B)

15. The Legal Services Authorities Act, 1987, (LA Act) has been enacted with the avowed object for providing 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.

16. Under the LA Act, Section 21 reads thus :

"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."

17. Therefore the award of the Lok Adalat shall be deemed to be a Civil Court decree for all purposes and if the award is made by a Lok Adalat, it shall be binding on all the parties and once award is passed by the Lok Adalat, in a case referred to under sub-section (1) of Section 20, the court fee paid in such case shall be refunded in the manner provided under the Court Fee Act, 1890.

18. It is further to be noted that, the very basis of referring a dispute to the Lok Adalat germane to Section 89 of the Code of Civil Procedure, where Section 89(2)(b) reads thus :

"(2) Where a dispute has been referred

.....

(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 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat."

19. Therefore, under the procedure contemplated under Section 89 CPC, especially under Section 89(2)(b), if any matter is referred by the Court for Lok Adalat, which is in accordance with the provisions of sub-section (1) of Section 20 of the LA Act.

20. Here in the case in hand, this Court by order, dated 25.03.2014 in C.R.P.No.1099 of 2014, referred the matter to the Lok Adalat, therefore such reference can be construed only as a reference under Section 20(1) of the LA Act. If the issue referred under Section 20(1) of the LA Act is decided or settled in the Lok Adalat, court fee in such case shall be refunded, of course in the manner provided under Court Fees Act, 1870.

21. If we look at the inter-play between all these provisions in those three Acts, namely DRT Act, LA Act and the provisions of CPC, there would be yet another grey area to be decided as to whether the refund of court fee shall be made on the basis of the Central Act 7 of 1870, i.e., Court Fees Act, 1870 or Tamil Nadu Court Fees and Suit

Valuation Act or DRT Act.

22. In order to throw some light on these aspects, some of the decisions of this Court and also other High Courts can be usefully referred to.

23. Almost a similar case came up for consideration before this Court in C.M.P.No.21215 of 2014 in O.S.A.No.179 of 2004, in the matter of Parvathi and another v. Punjab National Bank, rep by its Branch Manager, K.K.Nagar Branch, Chennai & others, reported in 2006 (1) MLJ 173. The question in the said application relates to refund of court fee in the appeal, which was amicably settled between the parties before the Lok Adalat.

24. A Division Bench of this Court, after having taken note of the import of Section 21 of the LA Act, viz-a-viz Sections 13, 14 and 15 of Court Fees Act, 1870 has given the following findings :

"8. What is sought to be emphasized by us is that the Court Fees Act, 1870 contains substantive provision regarding refund of court fee and the manner in which the court fee is to be refunded, Sections 13, 14 and 15 clearly indicate that where a person is entitled to refund of the court fee, a certificate to that effect is required to be issued by the Court. The question whether the person would be entitled to refund of the court fee is a substantial law as contained in Sections 13, 14 and 15. The common procedural law contemplated in all such provisions is to the effect that if the Court is satisfied that the person is entitled to refund of court fees, a certificate to that effect is required to be issued and thereafter the person would get refund from the Collector by producing such certificate.

9. Section 21 of the Legal Services Authorities Act contains the substantive provision regarding refund of court fees in respect of the matters settled in Lok Adalat and the procedural aspect has been indicated by laying down that it shall be so refunded in the manner provided under the Court Fees Act, 1870. In other

words, where a settlement has been arrived at before the Lok Adalat in a case referred to under Section 21, the court fee paid is required to be refunded. For the aforesaid purpose the Court is required to issue a certificate for refund of the court fee. Such certificate is as contemplated in Sections 13, 14 and 15 of the Court Fees Act, 1870. The fact that there is no provision in the Tamil Nadu Court Fees and Suit Valuation Act or Madras High Court Fees Rules regarding refund of court fee in an appeal settled out of court is of no consequence because such court fee is refundable not because of any provision contained in the State Act or the Rules of the Court Fees Act, 1870, but because of the specific provision contained in Section 21 of the Legal Services Authorities Act.

10. As a matter of fact, it cannot be said that there is any conflict between the provisions contained in the Legal Services Authorities Act and the Tamil Nadu Court Fees and Suit Valuation Act or the Madras High Court Fees Rules, 1956. There is no specific provision contained in the State Act or the High Court Rules and the provision contained in the Legal Services Authorities Act can be construed as an additional provision and not a contradictory provision. In the sense, there is no real conflict between the provisions.

11. Even though the levy of court fee other than the court fee payable in Supreme Court is a matter coming within the State List, the provisions regarding refund of court fee as contemplated under Section 21 of the Legal Services Authorities Act, 1987 cannot be considered as directly impinging upon the State law. The main intention of the Legal Services Authorities Act is to encourage amicable settlement of disputes through

the medium of Lok Adalats. In pith and substance the provision does not purport to be a law on payment of court fees within the States. Reference to refund in the manner provided under the Court Fees Act, 1870 is only a compendious and convenient manner of procedure to be adopted. However, it cannot be said that the provisions contained in Section 21 of the Act impinge in any manner upon any provision of the Tamil Nadu Court Fees and Suit Valuation Act."

25. The said decision in Parvathi's case has been followed by yet another Division Bench in Karnataka Bank Limited, Madurai Branch, rep by its Branch Manager, Madurai v. Chairman / Principal District Judge, District Legal Services Authority, Madurai reported in 2009 (3) MLJ 846, where the Division Bench has held as follows :

"2. The question relates to refund of Court fee on account of the fact that the suit in O.S.No.31 of 2006 was settled during Lok Adalat. The prayer in the writ petition is to refund of full court fee. The learned single Judge observed that since in the Lok Adalat order it has been indicated that the plaintiff would be entitled to refund of half of the court fee, the claim made in the writ petition for refund of full court fee was not maintainable. It is of course true that the learned single Judge was technically correct in observing that in the order of the Lok Adalat, it has been indicated about the refund 50% of Court fee and therefore, the writ petition was not maintainable. In normal course, the remedy of the present appellant would have been to file a fresh application seeking for a direction regarding refund of full court fee before the Lok Adalat authorities for rectifying the order passed in the Lok Adalat. However, as it is well known, the High Court, in exercise of jurisdiction under Article 226 of the Constitution of India, obviously on an

appeal against the order passed in the writ petition, must always endeavour to render substantial justice rather than sticking to the technicalities. By a Division Bench judgment in Parvathi v. Punjab National Bank (2006) 1 MLJ 173, it has been held that once the matter is settled through Lok Adalat, the litigant is entitled to refund of the full court fee. It is of course true that subsequently the learned single Judge of this Court has raised certain doubt and had observed that 50% of the court fee would be refundable. However, in view of the subsequent amendment of the relevant provisions contained under Section 69-A of the Tamil Nadu Court Fees and Suit Valuation Act, there is no further doubt that when the matter is settled in Lok Adalat, the full court fee is refundable. As a matter of fact, such amendment in Court Fees Act must be taken to be declarative provisions. Obviously in recognition of the decision already rendered in Parvathi v. Punjab National Bank (supra), it has to be applied to all proceedings of past, present or future.

3. Under such circumstances, we feel that instead of driving the present appellant to file further application before the Legal Services Authority to rectify the order, in the interest of justice, a direction is hereby given to the respondent to take necessary steps to refund full Court fee to the present appellant." सत्यमेव जयते

26. In yet another Division Bench decision reported in 2014 (6) CTC 252, in the matter of A.Gnanaselvan v. B.A.Xavier (Died), the Court had taken a view, in that case that, under the Tamil Nadu Court Fees and Suit Valuation Act, 1955 (herein after referred to as "the TN Court Fees Act"), though there had been no provision for refund of Court Fee for the matter settled out of Court at the appellate stage, as that was possible only at the Court of first instance, i.e., at the original stage, however, the Division Bench on the basis of "ex gratia and misericordia

do mini regis" ('by favour" and "by the mercy of our Lord the King"), had given direction to the Government to consider the application to be filed by the parties for refund of Court fee at the appeal stage.

27. In that Division Bench Judgment, it is very pertinent to be noted that, the Division Bench though took the view not to accept the plea of the appellant therein for refunding of Court fee at the appellate stage, in the absence of a provision in Tamil Nadu Court Fees Act, has, however observed that, if at all settlement is taken place under ADR Mechanism, i.e., Alternative Dispute Resolution Mechanism under Section 89 of the Code of Civil Procedure, 1908, the Division Bench would have taken a different view. It is evident from the following observation made by the Division Bench :

"5... We are, thus, unable to accede to the prayer of the learned Counsel for the Appellant. This is not also a settlement under ADR Mechanism under Section 89 of the Code of Civil Procedure, 1908, which would have enable us to grant benefit to the Appellant under Section 69-A of the Act. We can only sympathise with the Appellant."

28. In a almost similar situation, a Division Bench of Kerala High Court, after having given its anxious considerations has given a findings, which can usefully be referred to herein in the matter of S.Manilal Panicker v. Titto Abraham reported in 2012 AIR (Ker) 51. The following passage of the said Judgment of the Kerala Division Bench is relevant :

"11. We are of the view that it is not necessary for the State Government to amend the Kerala Court Fees act particularly Section 69 thereof for a plaintiff who has paid court fee either in part or in full on the plaint or the appellant who has paid court fee either impart or in full on the memorandum of appeal to get a refund of the court fee in terms of Section 21 of the L.S.A Act in cases where the dispute has been settled before the Lok Adalat on a reference by the civil court either on

the original side or on the appellant side. With due respect, we are of the view that John Arthur's case which has attempted to distinguish Vasudevan and Aboobeker does not lay down the law correctly and we overrule the same. Incidentally, we notice here a recent decision by another learned Judge (Justice Thomas P. Joseph) of this Court in Thomas v. State of Kerala - 2011 (34) KLT 256 wherein it has been held that the direction by the Lok Adalat to refund 1/10th court fee paid is to be complied with by the civil court when the case has been settled before the Lok Adalat consequent on a reference to it by the civil court. We hold that Vasudevan, Aboobeker and Thomas lay down the correct principles of law governing the matter. Accordingly, we hold that Section 69 of the Kerala Court Fees Act together with its proviso will have application only when the matter is pending before the civil court and not after it has been referred to the Lok Adalat for settlement unless the matter comes back to the referring Court without a settlement. Where the dispute is settled before the Lok Adalat upon a reference either under Section 20 of the LSA or under Section 89 C.P.C, it is Section 21 of the L.S.A Act which will govern the question regarding refund of court fee and the entire court fee will have to be refunded in the manner provided under Section 16 of the Central Court Fees Act. It is pertinent to notice that in matters referred to the Lok Adalat the remittance of court fee is not made at the Lok Adalat but at the court which has referred the matter. That is presumably why Section 16 of the Central Court Fees Act provides for a certificate from the Court authorising the party to receive back from the Collector the full court fee already paid. On production of the said certificate before the Collector, the

Collector will issue the necessary cheque or authorization entitling the party to get a refund of the court fee already paid from the Treasury concerned. If what has been paid is only part of the court fee payable, the party who has paid that part will also be entitled to refund of the said part and will also be exempted from remitting the balance court fee. Accordingly we hold that the appellant in this case who has already remitted one-third of the court fee is entitled to a certificate in terms of Section 16 of the Central Court Fees Act if an application is made in that behalf and he need not pay the balance court fee payable on the memorandum of appeal."

29. If we look at the provisions of these Acts, i.e., DRT Act, LA Act, Central Court Fee Act as well as the provisions, especially Section 89, of CPC, it has thus become an uncontroverted legal position that, the entitlement of the parties to get refund of the Court fee, it may be 50% or full Court fee as has been provided for under the concerned Court Fee Act, has been recognised, upheld and reiterated by almost all the decisions, especially in the context where, the lis is settled between the parties by way of Alternative Dispute Resolution Mechanism. The legislative intent on the Legal Services Authority Act is to provide equal opportunity to every litigant who may be a poor or economically weaker and it is also in the direction to encourage the litigants to settle the matters through ADR Mechanism, thereby a speedy justice could be ensured and the finality could be obtained as no appeal can be permitted against the settlement / award passed under ADR mechanism and also the burdening of Courts in deciding the issues by consuming considerable judicial time could be avoided, and for all these reasons, the LA Act encourages more and more litigation to be decided through ADR method.

30. That is the reason why, the Parliament thought it fit to have an explicit provision under Section 21 of the LA Act making it mandatory that, if the issue is settled under Lok Adalat and an award is passed, the parties are entitled to get refund of the court fee in the manner provided under the Court Fees Act, 1870.

31. Two Division Bench Judgments of this Court, i.e., Parvathi's case and Karnataka Bank's case has made the position further clear that, there could be no conflict between the Court Fees Act of the State concerned and the LA Act. Moreover in the Division Bench Judgment of this Court in Gnanaselvan's case, the Division Bench even though has held that, under the Tamil Nadu Court Fees Act, there is no provision available for refund of court fee at the appeal stage, still, by applying the principle of "ex gratia and misericordia do mini regis" had given direction to the party to approach the authority with a further direction to the authority to consider and decide the refund of court fee on the basis of "by favour and by the mercy of our Lord the King".

32. In the very same Judgment, the Division bench also held that, if that was the settlement under ADR Mechanism under Section 89 of the Code of Civil Procedure, then the benefit of refund of court fee could have been given.

33. Section 89(2) (b) of CPC also makes it clear that, once the Court referred the matter to Lok Adalat under sub-section (1) of Section 20 of LA Act, all other provisions of that Act shall apply in respect of the disputes so referred to the Lok Adalat.

34. When that being so, the provision under Section 21 (1), enabling the party to get refund of Court fee, since also part of the provisions of LA Act, shall definitely be made available to the parties to invoke. Further Section 25 of the LA Act reads thus :

"25. Act to have overriding effect - The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

35. It is having an overriding effect on all other inconsistent provisions available in any legislation, thereby, the non-availability of an enabling provision under Section 20 of the DRT Act, at the appellate stage as that of sub-section 3B of Section 19 of that DRT Act, taking away the right and entitlement of parties before the DRAT under the DRT Act to get back or to get refund of court fee paid by them at the appeal stage, if the lis at

the appeal stage having been referred for settlement by the Court of law under Section 20 of the LA Act and settled in Lok Adalat, by such non-availability of explicit provision in Section 20 of DRT Act cannot take away the party's right, since that right is an inbuilt right as Section 21 of the LA Act will have a overriding effect on the DRT Act also in so far as it relates to the refund of the Court fee at the appellate stage is concerned.

36. Here in the case in hand, the issue was referred for settlement before the Lok Adalat by the orders of this Court in the CRP

referred to above by invoking sub-section (1) of Section 20 of the LA Act. Accordingly before the Lok Adalat / Bank Adalat, the issue has been settled between the parties and a full settlement memo has been filed by the Bank before the DRAT. In response to the memo filed by the petitioners before the DRAT, of course pursuant to the directive / liberty given by this Court while disposing the CRP by order, dated 17.06.2014, the DRAT should have passed orders giving direction or certification enabling the first respondent, as in whose favour, the Court fee has been paid by the petitioners by way of Demand Draft, to refund the same.

37. Therefore this Court is of the considered view that, the order impugned driving the party to approach the Legal Services Authority once again, can only be construed as abdication of its power to exercise, as the court fee has been paid by the petitioners only to the DRAT in the name of the first respondent. Therefore the regular certification procedure enabling the parties to approach the Collector to get back the court fee, like any other cases, may not arise in this case, as the refund has to be made only by the DRAT, i.e., the first respondent.

38. Therefore this Court has no hesitation to hold that, the impugned order refusing to exercise the power available or cast upon them, by the DRAT, is unsustainable and accordingly, it requires interference from this Court.

39. For all these reasons discussed above, this Court is inclined to dispose of this writ petition with the following direction :

"That the impugned order is set aside.
The matter is remitted back to the first respondent / Tribunal, i.e., DRAT, Chennai for passing appropriate orders by way of direction / certification to

the first respondent to refund the court fee paid by the petitioners in A.I.R.No.40 of 2014 on the file of the said DRAT and such order shall be passed as early as possible preferably within a period of two months from the date of receipt of a copy of this order."

With these directions, this writ petition is ordered accordingly. No costs.

Sd/-

Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

tsvn

To

1. The Registrar
Debt Recovery Appellate Tribunal
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai, Chennai.
2. The City Case Officer
State Bank of India
Stressed Assets Recovery Branch,
Red Cross Building, II Floor,
No.32, Montieth Road,
Egmore, Chennai - 600 008.

+1cc to Mr.A.Swaminathan , Advocate SR.No. 85558

W.P.No.15441 of 2017

kk

A.SK(05/11/2019)

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