

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3425 OF 2019

The Maharashtra State Electricity
Distribution Company Ltd.,
Sub Division-1, Shahganj,
Aurangabad, Tq. & Dist. Aurangabad,
Through Additional Executive Engineer PETITIONER

VERSUS

Badrinath Pema Rathod,
Age: 57 years, Occu: Service,
R/o: Plot No.48, Bhakti Nagar,
Pisadevi Road, Aurangabad RESPONDENT

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Mr A. S. Shelke, Advocate for petitioner;
Mr S. P. Koli, Advocate for respondent

CORAM : SMT. BHARATI DANGRE, J.

**Date of reserving the Judgment : 10th January, 2022
Date of pronouncing the Judgment : 14th January, 2022**

JUDGMENT :

1. By the present writ petition, the Maharashtra State Electricity Distribution Company Ltd. (MSEDCL), a licensee under the provisions of the Electricity Act, 2003 (hereinafter referred to as 'the 2003 Act'), question the legality of the award passed by the Permanent Lok Adalat, Aurangabad, in Prelitigation Application Dispute No.44/2018, under which the petitioner has

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been directed to issue regular bills to the applicant Shri. Badrinath Pema Rathod, who had instituted the said application. Further direction is issued to the applicant to clear the bills and on payment of the same, the petitioner is directed not to disconnect his electricity supply.

2. Heard the learned Counsel Shri. A. S. Shelke for the petitioner and the learned Counsel Shri. S. P. Koli for the respondent.

Rule. Rule is made returnable forthwith and heard finally by consent of the parties.

3. Before the merits of the award impugned can be appreciated, it is apposite to refer to the brief facts leading to the passing of the impugned award by the Permanent Lok Adalat.

Shri. Badrinath Pema Rathod, resident of Plot No. 48, Bhakti Nagar, Aurangabad, is the owner of the house property situated on the plot and is availing the electricity supply with the consumer number being allotted, for his residential house. On 06/12/2016, the Flying Squad, Jalna, checked his electricity meter, which was found to be tampered, installed a new meter. He was

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served with the assessment bill of Rs.9,490/-. The assessment was disputed by the respondent and he raised grievance with the petitioner. The Flying Squad, which had checked the meter, since noticed that the respondent was indulged in theft of electricity and an offence came to be registered against him under Section 135 of the 2003 Act. His existing meter was seized as per the prescribed process and a bill was issued to him as per assessment sheet.

4. The respondent being aggrieved by the action of the petitioner, filed an application under Section 22 (C) of the Legal Services Authorities Act, 1987 (hereinafter referred to as 'the 1987 Act'), which was made over to the Permanent Lok Adalat, Aurangabad, being registered as Prelitigation Application Dispute No.44/2018.

In the said application, he sought the relief of cancellation of the assessment bill issued to him, since it calculated the excess units. Pending hearing of the application, he sought directions to the authority, to issue regular bills to him and not to disconnect his electricity supply. He also prayed for compensation of Rs.10,000/- on account of the harassment faced by him at the

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instance of MSEDCL, Shahaganj Division, for mental harassment and economic loss.

The application was contested by the MSEDCL, by submitting that there is no valid, legal and existing cause of action to file the present application and since the application is not maintainable, it should be dismissed. It was specifically pleaded that the applicant was found guilty of theft of electricity and therefore, after removing the old meter, assessment bill was issued to him and a complaint has been lodged by invoking Section 135 of the 2003 Act. In view of the complaint being registered, it was submitted that the claim of cancellation of the electricity bill as per the assessment sheet, cannot be granted and the authority is not competent to direct cancellation of the electricity bill.

The documents in form of the complaint, assessment bill/sheet as well as the spot panchnama of the house of the applicant was also filed along with the written statement.

5. The Permanent Lok Adalat, constituted under the 1987 Act, proceeded with the application and on hearing the Counsel for the respective parties, recorded as under :-

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“3. When the crime under section 135 of Indian Electricity Act is registered against the applicant this Permanent Lok Adalat is not having jurisdiction to decide that point and cannot pass award to the effect the electricity bill issued by the opponent is illegal and arbitrarily and this fact has been admitted by both learned advocates of parties. So the applicant is not entitled for the relief in respect of assessment bill of Rs.9490/-.

4. The applicant sought another relief that the opponent to accept further regular bill till decision of this case and not to disconnect his electric supply. The opponent has not challenged this relief of applicant in its W.S. The applicant has alleged that he has not committed theft as alleged. According to him, false case is filed against him. The grievance of applicant has to be decided in the criminal case. That case will take it's own time. Till then if further bills of consumption is not deposited the opponent may disconnect the electric supply of applicant. Under such circumstance this Permanent Lok Adalat has jurisdiction to give necessary direction. So we pass following award.”

Resultantly, it directed as under :-

Award

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- “1. Application is partly allowed.*
- 2. The opponent to issue further regular bills excluding the amount of assessment bill. The applicant to pay these bills. If applicant pays these bills then opponent shall not disconnect electric supply of opponent.*
- 3. Both parties to bear their costs.”*

6. The aforesaid award is impugned in the petition and argument advanced in respect of the same is to the effect that the members of the Permanent Lok Adalat have exceeded the powers vested in them under the provisions of the 1987 Act. It is submitted that the Act do not empower the Permanent Lok Adalat to entertain theft cases covered under Section 135 of the Electricity Act, 2003 and particularly, when the provisions contained in the 2003 Act in form of Section 154 (1) (b), provide for non-obstante clause and stipulate that, notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under Section 135 to 140 shall be triable only by the Special Court within whose jurisdiction the offence is been committed. The submission advanced is, that it is open for the licensee to restore supply of electricity only after deposit of the assessed amount or electricity charges, in accordance with the

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provisions of 2003 Act. In the wake of the aforesaid, it is argued that the direction of the Permanent Lok Adalat to connect electricity supply to the respondent, is contrary to the provisions of Section 135 of the 2003 Act.

The learned Counsel for the petitioner also submitted that in the wake of Section 22 (C) (8) of the 1987 Act, where the parties fail to reach at an agreement under sub-section (7), the Permanent Lok Adalat, if the dispute does not relate to any offence, decide the dispute; admittedly, since the respondent is facing prosecution under Section 135 of the 2003 Act, the Permanent Lok Adalat do not have jurisdiction to entertain the complaint filed under Section 22 (C) of the 1987 Act. It is the submission of the learned Counsel that the Permanent Lok Adalat lack the jurisdiction to entertain the complaint filed by the applicant, and therefore, the directions issued to the petitioner to connect the electricity and issue fresh assessment bills, travel beyond its power.

7. Per contra, the learned Counsel for the respondent would support the impugned award and submit that the order has been passed after going through the entire record placed before the Authority in the Prelitigation Dispute Application. It is further

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argued that the applicant has not indulged in any theft and the case filed against him, is false and in any case his guilt will be determined in the criminal proceedings, but it will take it's own time, but rightly the Permanent Lok Adalat had directed the petitioner, MSEDCL, to issue further bills and if bills are not paid, liberty is granted to disconnect his electricity supply. It is sought to be argued that the directions issued by the Permanent Lok Adalat do justice to him and by relying upon provisions of Section 22(C)(1) of the 1987 Act, which confer jurisdiction of the Permanent Lok Adalat to deal with a matter relating to an offence which is compoundable in law, the submission is, that the Permanent Lok Adalat was perfectly within it's power to issue the aforesaid direction.

The learned Counsel would also strongly submits that the 1987 Act was enacted to constitute Legal Services Authorities for providing legal services to the weaker section of the society, to ensure that the justice do not elude them, by reason of their economic or other disabilities and since object of establishment of Permanent Lok Adalat is to ensure and promote justice by affording equal opportunities, the impugned award, has rightly rendered justice to him.

The learned Counsel also place reliance upon his affidavit-in-reply filed on record on 06/10/2021, opposing the petition and in support of his stand, that the writ petition deserves a dismissal.

8. The facts not being in dispute, the question that arise for determination in the present writ petition is, whether the Permanent Lok Adalat possess jurisdiction to resolve a dispute of the present nature, where the applicant is accused of theft of electricity and is liable for prosecution under the provisions of the 2003 Act, and whether the claim raising dispute about the assessment, can be adjudicated by the Permanent Lok Adalat in absence of the mechanism of conciliation being resorted to.

9. In order to appreciate the submission of the respective Counsel, it would be necessary to refer to the scheme of the enactment viz. Legal Services Authorities Act, 1987, which is enacted to constitute the Legal Services Authority to provide free and competent services to the weaker section of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability and to organise Lok Adalats to secure that the operation of legal system promotes justice on a basis of equal opportunity. The said enactment, which

is brought into force to give effect to Article 39-A of the Constitution, aims at ensuring justice through Lok Adalats, in a summery way and through the process of arbitration and settlement between the parties, which in turn, would enable expeditious disposal of the cases with lesser burden being shouldered by the litigants.

The Act provide for constitution of Lok Adalats and Section 2(d) defines “Lok Adalat” means a Lok Adalat organized under Chapter VI. Chapter VI of the said Act provide for organization of Lok Adalats and Section 22 set out the powers of Lok Adalat and Permanent Lok Adalat, which shall be akin to the powers vested in a Civil Court under the Code of Civil Procedure. Sub-section (2) of Section 22 prescribe that, 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 it’s own procedure for determination of any dispute coming before it.

Chapter VI-A came to be inserted in the Act w.e.f. 11/06/2002 and it provide for Pre-litigation, Conciliation and Settlement. Section 22 (A) is the definition clause for purposes of

Section 22 and define “Permanent Lok Adalat” as a Permanent Lok Adalat established under sub-section (1) of Section 22 (B). Section 22 (B) prescribe for establishment of Permanent Lok Adalat, which shall be done by the State authority, by issuance of a notification 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.

At this juncture, it is necessary to reproduce the definition of public utility as defined in sub-clause (b) of Section 22(A), which reads thus :-

“(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, in the public interest, by notification, declare to be a public utility service for the purposes of this Chapter.”

Section 22(C) permit the Permanent Lok Adalat to take cognizance of cases, when any party to a dispute, before the dispute is brought before any Court, and make an application to it for settlement of the dispute. The said provision is appended with the proviso, which read thus :

“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 property in dispute exceeds 10 lakh rupees”.

An embargo is created by sub-section 2 of Section 22(C), upon the party to invoke jurisdiction of any Court, in respect of which, an application has been made under sub-section (1) to the Permanent Lok Adalat.

10. The procedure to be followed by the Permanent Lok Adalat to deal with the dispute made over to it, is set out in sub-section (3) of Section 22 (C), which contemplate filing of an application, filing of written statement, determination of points or issues in such dispute. Sub-section (4) contemplate conduct of conciliation proceedings between the parties to the application, in the manner

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as it deem appropriate, taking into account the circumstances of the dispute. Sub-section (5) prescribe that the Permanent Lok Adalat shall, during conduct of conciliation proceedings, assist the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner. Sub-section (7) take the process further and provide that when a Permanent Lok Adalat, in the conciliation proceedings is of the opinion that, there exists 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 in case the parties reach at an agreement, they shall sign a settlement agreement and then the Permanent Lok Adalat shall pass an award in terms thereof. Sub-section (8), however, restricts the power of the Permanent Lok Adalat in the following realm :

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

Section 22(E) accord finality to the award of the Permanent Lok Adalat, by prescribing that every award of the Permanent Lok Adalat under this Act, made either on merit or in terms of

settlement agreement shall be final and binding on all the parties thereto, and on persons claiming under them and shall be deemed to be a decree of Civil Court.

11. It is in the backdrop of the said statutory scheme, the argument advanced on behalf of the petitioner deserve consideration.

Section 22(C) determine the jurisdiction of the Permanent Lok Adalat and it adumbrate that the Permanent Lok Adalat shall exercise jurisdiction in respect of any matter relating to an offence, which is compoundable under any law. To that extent, at first blush, the exercise of jurisdiction of the Permanent Lok Adalat in the impugned order appear to be justified since the offence under the Electricity Act are compoundable. However, when the procedure to be adopted by the Permanent Lok Adalat in determining the dispute before it is carefully perused, it is manifest that the exercise of powers by the Permanent Lok Adalat is in form of Pre-litigation, Conciliation and Settlement, and therefore, it is imperative for the Permanent Lok Adalat to make an endeavour to initiate conciliation proceedings before it assume the role of an adjudicating authority. The scheme contained in

Chapter VI-A contemplate that the Permanent Lok Adalat shall conduct conciliation and assist the parties in their attempt to reach at an amicable settlement of the dispute in an independent and impartial manner. While upholding the validity of Chapter VI-A, which was introduced by the 2002 amendment, the Hon'ble Apex Court, in case of **Bar Council of India Vs. Union of India, 2012 (5) SCC 494**, has emphasized it's authority in the following words :-

“22. 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, the Parliament has intervened and conferred power of adjudication upon the Permanent Lok Adalat. Can the power conferred on Permanent Lok Adalats to adjudicate the disputes between the parties concerning public utility service upto 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.”

12. While entrusting the resolution of dispute to the Lok Adalats at the pre-litigation stage, the emphasis is on conciliation and settlement. Perusal of the impugned order, however, reveal that the Permanent Lok Adalat has completely missed on the said aspect. The authority has proceeded to adjudicate the grievance of the applicant, being conscious of the fact that an offence is registered under Section 135 of the Electricity Act against the applicant and the Permanent Lok Adalat is not having jurisdiction to decide that point and cannot pass award to the effect that the electricity bill issued by the Distribution Company is illegal and arbitrary, and therefore, the applicant is not entitled for relief in respect of assessment bill levied on him to the tune of R.9,490/-.

Being conscious of the aforesaid position that the relief sought cannot be granted, the authority, however, granted relief on the pretext that the accusation faced by the accused about theft of the electricity, shall be decided in criminal case, but since it will consume sometime, however, till then, if further bills of consumption are not deposited, the Company may disconnect the electricity supply and therefore, the direction is issued.

13. The above direction in the award, is blemished on two counts; the Permanent Lok Adalat has failed to conduct conciliation proceedings, which was duty bound to conduct and it is only, if at the end of the conciliation, if an agreement is arrived at between the parties resulting into settlement of the dispute, it is within the powers of the Permanent Lok Adalat to pass an award. However, when the parties fail to reach at an agreement on attempting conciliation, the Permanent Lok Adalat shall proceed to decide the dispute, if the dispute does not relate to any offence.

The impugned award lies in the teeth of sub-section (8) of Section 22(C), as the dispute raised by the applicant before the Permanent Lok Adalat, clearly relate to an offence punishable under the Electricity Act. The award passed by the Permanent Lok Adalat, therefore, failed to adhere to the principal underlined Chapter VI-A of the Legal Services Authorities Act, 1987, which provides for establishment of the Permanent Lok Adalat for exercising jurisdiction in respect of public utility services, by way of Pre-litigation, Conciliation and Settlement. In utter ignorance of spirit of constitution of the Permanent Lok Adalat, the award has been passed, which has issued the directions to the Company to issue further regular bills excluding amount of assessment bill,

which is the bone of contention between the parties, since it is the submission of the Distribution Company that, the applicant is guilty of theft of electricity and therefore, after removing he meter, the assessment bill has been given to him, which he has failed to pay. Being guilty of theft of electricity, an offence is also registered against the applicant.

The Permanent Lok Adalat has ignored that the assessment order which has been passed, is in the wake of Section 126 of the Electricity Act, 2003, which reads thus :-

“Section 126: Assessment. --- (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

[(3) The person, on whom an order has been served under sub- section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.]

(4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

[(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.]

(6) The assessment under this section shall be made at a rate equal to [twice] the tariff rates applicable for the relevant category of services specified in sub-section (5).

14. The said section in the Electricity Act is complete Code and empower the Company to assess the consumer, who is indulging in unauthorized use of electricity. Part XIV of the Electricity Act provide for offences and penalties and Section 135 is a provision, which impose penalty for theft of electricity and the related provision for unauthorised usage of electricity, is set out as under :-

***“135. Theft of electricity.- (1) Whoever, dishonestly
.....***

(e) uses electricity for the purpose other than for which usage of electricity was authorised, so as to obstruct or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or both.”

The aforesaid provision make an act of consumption or use of electricity in an unauthorized manner an offence. The first proviso to Section 22(C)(1) of the 1987 Act, provide that the Permanent Lok Adalat shall not have jurisdiction in respect of any matter relating to an offence not compoundable under any law. Admittedly, the act of the applicant amounts to an offence under

Section 135 of the 2003 Act, but the proviso to Section 22(C) direct that, if the matter relate to the offence, which is not compoundable, then the Permanent Lok Adalat will have no jurisdiction. Section 152 of the Electricity Act provide for compounding of offences and the theft of electricity is a compoundable offence and therefore, the Lok Adalat will have jurisdiction to entertain an application in respect of an offence, which is compoundable. However, by further referring to the scheme contained in Section 22(C), it is apparent that where the conciliation failed between the parties and no settlement is arrived at, in that contingency, the Permanent Lok Adalat cannot proceed further to adjudicate dispute between the parties on merits, if the dispute relate to any offence. A distinction is made between the two clauses of Section 22 (C), being the first proviso appended to sub-section (1) of Section 22 (C), and between sub-section 8 of Section 22 (C), which imply the term “if the dispute does not relate to any offence”. It is in this case, the Permanent Lok Adalat shall not adjudicate the dispute. Meaningfully read, it convey that, where a dispute brought before the Permanent Lok Adalat amounts to an offence, which is compoundable one, which can be entertained by the Permanent Lok Adalat for the purpose of

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effecting a conciliation and settlement, but if the conciliation fail, then it is not within the power of the Permanent Lok Adalat to adjudicate the matter on merits, if it relate to an offence, despite the offence being compoundable. The irresistible conclusion, is that on a conciliation or settlement being not arrived at during the proceedings before the Permanent Lok Adalat, if the dispute relates to any offence, then the Permanent Lok Adalat can neither pass an award, in absence of a settlement being arrived at, nor it can adjudicate the said dispute and will have to stop there.

15. In the light of the aforesaid statutory scheme, when the application preferred by the respondent before the Permanent Lok Adalat related to an incident, which resulted in registration of an offence in the Electricity Act, the Permanent Lok Adalat had entertained the dispute for the purpose of conciliation and settlement, but did not attempt any conciliation and in it's absence, proceeded to adjudicate the dispute, despite a bar being imposed under sub-section (8) of Section 22 (C). The Permanent Lok Adalat has, thus, clearly fallen into an error in adjudicating the dispute instituted by the applicant on it's merits, when it could not effect the conciliation/settlement between the parties. The said order, therefore, cannot be sustained.

In recording the above findings, I am fortified by the two decisions relied upon by the learned Counsel for the petitioner. The decision of Allahabad High Court, in case of M/s. Torrent Power Ltd. vs. The State of U.P., thr. Secretary and others, in Civil Misc. Writ Petition No.41139/2012, and another decision of the Punjab and Haryana High Court, in case of **Dakshin Haryana Bijli Vitran Nigam Ltd. & anr. vs. Permanent Lok Adalat, Public Utility Services, Gurgaon and another**, delivered on 09/02/2016, which has construed the provisions of the Indian Electricity Act as juxtaposed against powers of the Permanent Lok Adalat under the 1987 Act.

The Punjab and Haryana High Court in somehow of similar facts has recorded as under :-

“Since the petitioners have alleged that respondent No.2 was found committing theft by cutting in incoming 2/C PVC wire by which the meter was bye-passed, therefore, the only remedy available with respondent No.2 was to approach Special Court, constituted under [Section 153](#) of 2003 Act, who would have acted in terms of [Section 154](#) of 2003 Act, but in so far as the jurisdiction of the Lok Adalat (PUS) is concerned, it illegally and erroneously exercised as held by this

Court in Punjab State Power Corporation's case (supra). Judgment relied upon by respondent No.3 in Dakshin Haryana Bijli Vitran Nigam's case (supra) is not on the issue involved and thus inapplicable.

Thus, in view of the facts and circumstances, present petition is allowed and the order dated 24.7.2013 passed by the Lok Adalat (PUS), Gurgaon is set aside. Respondent No.2, may, if so advised, seek her remedy under the provisions of 2003 Act.”

In the wake of the above discussion, the impugned order passed cannot be sustained and is set aside, Rule is made absolute in the writ petition.

(SMT. BHARATI DANGRE, J.)

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