IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision : 13th of February, 2023

CWP No.9165 of 2020
CWP No.10952 of 2020
CWP No.20260 of 2020
CWP No.20262 of 2020
CWP No.20268 of 2020
CWP No.20276 of 2020
CWP No.20285 of 2020
CWP No.20286 of 2020
CWP No.20291 of 2020
CWP No.20338 of 2020
CWP No.20351 of 2020
CWP No.20353 of 2020
CWP No.20362 of 2020

Sahara Credit Cooperative Society Ltd and another ....Petitioners

Versus

Haryana State Legal Services Authority and others ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. D.C. Mittal, Advocate
for the petitioners.

Mr. Aywan Singh, Asstt. Advocate General, Haryana.

Mr. Sumit Sangwan, Advocate
for respondent No.3.

Mr. Kuldeep Sheoran, Advocate
for respondent No.3 (CWP-20286-2020).

Mr. Shubhkaraman S. Gill, Advcocate for
Mr. Kshitij Sharma, Advocate
for respondent No.3 (CWP-9165, 10952, 20268,
20351 and 20285 of 2020)

<u>PANKAJ JAIN, J.</u>

In these writ petitions challenge is to the order dated 24th of

February, 2020 passed by respondent No.2.

2. On 6th of April, 2021, this Court passed the following order :-

> "This matter is being taken up for hearing through video conferencing due to the outbreak of pandemic, COVID-19.
>
> It is brought to my notice that amount in question in terms of order dated 30.07.2020 and subsequent orders passed in CWP-10952-2020, earlier stood deposited in CWP Nos.10952 and 9165 of 2020. Cheques in rest of the cases have since been deposited with the office of respondent no.2 on 22.03.2021.
>
> Learned counsel for the respondents pray for some time to verify the same.
>
> At request adjourned to 19.07.2021.
>
> Fresh notice to respondent no.3 in CWP Nos. 20260 and 20362 of 2020, be issued for the date fixed.
>
> A photocopy of this order be placed on the files of above mentioned connected cases."

3. Counsel for the respondents are *ad idem* that the amounts have been paid.

4. Petitioner claims to be a Cooperative Society registered under the provisions of Multi-State Co-operative Societies Act, 2002. It has been claimed that the petitioner-Society accepts amounts by way of deposits by floating various schemes. The members of the Society subscribe to the same and deposit the amount. Private respondents are the persons who became members of the Society and subscribed to the schemes of the petitioner-Society by depositing various amounts. As per the scheme on maturity a specific amount was to be paid.

However, private respondents instead of making application for processing/disbursal of maturity amount filed application with respondent No.2 under Section 22(C) of the Legal Services Authority Act, 1987 claiming disbursal of the amount along with interest. On the application filed by private respondents, respondent-Permanent Lok Adalat has passed Award directing the petitioner to pay maturity amount along with interest at the rate of 12% per annum from the date of maturity till its realization. Further to pay Rs.25,000/- along with interest @ 12% from the date of filing of filing of petition on account of physical and mental agony and monetary loss suffered by the applicant and further to pay an amount of Rs.5,500/- as litigation charges.

5. Counsel for the petitioners has raised two-fold submission before this Court. At the outset the jurisdiction of Lok Adalat itself has been challenged claiming that the petitioner-Society has not indulged in any banking activity and thus Lok Adalat ought not have entertained the application filed by the private respondents. The second contention raised by counsel representing the petitioner-Society is that either the Lok Adalat could have granted interest over the maturity amounts or should have awarded Rs.25,000/- costs on account of physical and mental agony and monetary loss suffered by the applicant. It has been asserted that both reliefs ought not have

been granted.

6. I have heard counsel for the parties and have gone through records of the case.

7. Legal Services Authority Act, 1987 was enacted as an act to constitute legal services authorities to provide free and competent services to the weak sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organize Lok Adalats to secure that the operation of the legal system promotes justice on the basis of equal opportunity.

8. Chapter VI-A was inserted by Act No.37 of 2002 with an objective to set up permanent Lok Adalats for providing compulsory pre-litigative mechanism for conditions and settlement of cases relating to public utility services. The system of Lok Adalat was stated to be an innovative mechanism for alternative dispute resolution which has proved effective for resolving disputes in a spirit of conciliation outside the Court. The salient features of proposed insertion of Chapter VIA were spelled out as under :-

> PRE-LITIGATION CONCILIATION AND SETTLEMENT
>
> 22A. Definitions.—In this Chapter and for the purposes of sections 22 and 23, unless the context otherwise requires,—
>
> (*a*) "Permanent Lok Adalat" means a Permanent Lok Adalat established under sub-section (1) of section 22B;
>
> (*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,
(vii) Housing and Estates
(viii) Banking and Financial

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Government of Haryana vide Notification dated 19th of May, 2009 included 'banking and financial' as one of the public utility service. The word 'banking' has not been defined under the 1987 Act but has been defined under the Banking Regulation Act, 1949. Section 5(b) of the same defines 'banking' as under :-

"xxxx

(b) "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise;

xxxx"

10. It is admitted case of the petitioner-Society that it has been accepting deposits of money from its members which is repayable on maturity. It is also not disputed that any person interested in

subscribing to the deposit schemes of the Society can avail benefit thereof by depositing the amount and on such deposit he automatically becomes member of the Society. So the petitioner-Society is engaged in accepting deposits of money from public at large and promises repayment of those monies on maturity. Thus, the contention raised by counsel for the petitioners that the activity of the petitioner-Society does not amount to banking and thus the Permanent Lok Adalat was not vested with the jurisdiction to entertain the application sans merit and is hereby rejected.

11. Coming on to the second contention raised by counsel for the petitioner w.r.t. overlapping of the relief, this Court does not find any infirmity in the order passed by the Permanent Lok Adalat. Following two reliefs have been granted :-

> "i. To pay maturity amount and other benefits on the basis of documents Ex.P1 to P4 along with interest at the rate of Rs. 12% p.a. from the date of maturity till its realisation.
>
> ii. To pay Rs.25,000/- alongwith interest @12% from the date of filing of petition on account of physical and mental agony and monetary loss suffered by the applicant due to act and conduct of the respondents."

12. So far as the first relief is concerned the same is penal in nature as the petitioner retained amount beyond maturity date unauthorizedly and so far as the grant of Rs.25,000/- as costs is concerned, the same is compensatory owing to mental agony suffered

by the private respondents and for the reason that they were coerced by the petitioner-Society. The concept of compensatory relief payable to the applicant and penalty imposed upon respondent on the doctrine of penal action is recognized under law. Reference can be made to Five Judges' Decision rendered in the case of **Central Bank of India vs. Ravindra and others, (2002) 1 SCC 367** wherein the Apex Court held that 'penal interest' has to be distinguished from 'interest'. Penal interest is an extraordinary liability incurred by a debtor on account of him being a wrong-doer by having committed the wrong of not making the payment when it should have been made, in favour of the person wronged and it is neither related with nor limited to the damages suffered. Thus, while liability to pay interest is founded on the doctrine of compensation, penal interest is a penalty founded on the doctrine of penal action. Though the Apex Court cautioned that the penal interest cannot be permitted to be capitalized. Thus, no fault can be found with the Award passed by the Permanent Lok Adalat.

13. Resultantly, all writ petitions filed by the petitioners are hereby dismissed.

14. A copy of this order be kept on the files of other connected cases.

February 13, 2023 **(PANKAJ JAIN)**
Dpr **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No