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CRP.No.2180 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.06.2023

DELIVERED ON : 28.02.2024

CORAM

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

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and

C.M.P.No.16536 of 2021

The Director,
M/s.Sugam Hospitals,
No.394, Tiruvottriyur High Road,
Tiruvottriyur,
Chennai – 600 019.

: Petitioner/Respondent

Vs.

Thiru.Raji

: Respondent/Petitioner

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the Order made in I.A.No.1 of 2021 in PLA (PUS) No.1 of 2021 dated 01.09.2021 on the file of the Permanent Lok Adalat for Public Utility Services, Tiruvallur District.

For Petitioner

: Mr.V.Balaji

For Respondent

: Mr.R.Karunakaran

ORDER

This Civil Revision Petition has been filed to set aside the Order passed by the Permanent Lok Adalat for Public Utility Services, Tiruvallur District in I.A.No.1 of 2021 in PLA (PUS) No.1 of 2021 dated 01.09.2021.



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2. It is the contention of the learned Counsel for the Revision Petitioner that the Permanent Lok Adalat has no discretion to decide the dispute. It can only act as mediator for amicable settlement between the parties, if both parties agree. The subject matter of the dispute before the Permanent Lok Adalat in PLA (PUS) No.1/2021 is with regard to the treatment of Petitioner. The Respondent herein underwent treatment with the Petitioner herein and was discharged on 08.01.2013. The Petition was filed before the Permanent Lok Adalat on 02.02.2021 after 8 years which is hopelessly barred by limitation. Despite that the Permanent Lok Adalat passed orders. Therefore, the Petitioner before the Lok Adalat was forced to file this Petition seeking to set aside the Order passed by the learned Chairman, Permanent Lok Adalat in I.A.No.1/2021 in PLA (PUS) No.1/2021 dated 01.09.2021. As per the National Legal Services Authority (Lok Adalat) Regulation, 2009, if a pre-litigation matter is not settled in the Lok Adalat, the parties may be advised to resort to other Alternative Dispute Resolution (ADR) techniques or to approach the Court of law and in appropriate cases, they may be advised about the availability of Legal Aid.



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3. The learned Counsel for the Revision Petitioner relied on the ruling reported in **2021 (5) CTC 335** in the case of ***Dr.Anbuchelvi Appulingam***

Vs. District Collector, Kancheepuram District. The relevant portion reads as follows:

“6.2. Then comes the Lok Adalat. It heard both the Plaintiff(Petitioner herein) and Purushotaman, between whom there is no dispute, and then proceeds very strangely to 'decree the Suit as prayed for". This indeed is startling.

7. ***LIC v. Suresh Kumar, 2011 (7) SCC 491***, the Hon'ble Supreme Court observed that: “It is needless to state that Permanent Lok Adalat has no jurisdiction or authority vested in it to decide any lis, as such, between the parties even where the attempt to arrive at an agreed Settlement between the parties has failed.”

4. The subject matter of the dispute attracts the Consumer Protection Act and the Consumer Forum constituted under the Consumer Protection Act. The aggrieved party shall approach the Court/Consumer Forum within two years from the alleged negligence or deficiency of service as per Consumer Protection Act, 1986. The learned Chairman, Permanent Lok Adalat failed to note Section 24 (A) of Consumer Protection Act prescribes two years limitation period for admission of a Complaint by the Consumer Forum.

5. Also, the learned Counsel for the Revision Petitioner invited the

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attention of this Court to the reported ruling of the Hon'ble Supreme Court in *State Bank of India Vs. B.S.Agricultural Industries reported in 2009*

(II) *CPJ 29 (SC)* wherein in paragraph 8, it has been held as follows:

“ It would be seen from the aforesaid provision that it is peremptory in nature and requires Consumer Forum to see before it admits the Complaint that it has been filed within two years from the date of accrual of cause of action.”

6. The learned Counsel for the Revision Petitioner invited the attention of this Court to the reported ruling of the Hon'ble Supreme Court in the case of *BSNL Vs. State of Jharkhand reported in 2008 (3) J.L.J.R 513* wherein it has been held that *“In our considered opinion, Permanent Lok Adalat has no jurisdiction to directly invoke the Provision of Sub-section (8) of Section 22-C and decide the dispute on merit against the will of the party.”*

7. The learned Counsel for the Revision Petitioner invited the attention of this Court to the reported ruling of the Hon'ble Supreme Court in the case of *State Bank of India Vs. State of Jharkhand reported in 2009 (2) J.L.J.R 684* wherein it has been held that *“If both the parties given consent that Permanent Lok Adalat may decide the dispute on merits, then only Permanent Lok Adalat shall exercise powers under Sub*



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Section (8) of Section 22-C of the Act, 1987, but if one of the parties is refusing for adjudication, on merits, of the dispute by Permanent Lok Adalat, it shall not decide the dispute on merits”

8. Therefore, he seeks to set aside the Order passed by the learned Chairman, Permanent Lok Adalat in I.A.No.1/2021 in PLA (PUS) No.1/2021 dated 01.09.2021.

9. The learned Counsel for the Respondent vehemently objected to the line of argument of the learned Counsel for the Petitioner stating that the Respondent in I.A.No.1/2021 in PLA(PUS) No.1/2021 had rushed to this Court before the learned Chairman, Permanent Lok Adalat passed appropriate Orders. When one of the parties to the dispute is not willing, automatically the Permanent Lok Adalat will pass appropriate Orders in the light of the National Legal Services Authority Act. The learned Chairman, Permanent Lok Adalat, Thiruvallur passed the appropriate Orders in the light of the National Legal Services Authority Act. Against which, the Respondent in I.A.No.1/2021 had approached this Court and the same is not maintainable. Therefore, this Petition under Article 227 of Constitution of India is to be set aside.



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10. Point for Consideration

***Whether the Order passed in I.A.No.1 of 2021 in
Permanent Lok Adalat (PUS) No.1 of 2021 dated 01.09.2021
is to be set aside?***

11. Heard the learned Counsel for the Petitioner and the learned Counsel for the Respondent. Perused the documents which are available on record.

12. On perusal of the typed set of papers, it is found that the rulings cited by the learned Counsel for the Revision Petitioner is found acceptable in the light of the fact in dispute before the learned Chairman, Permanent Lok Adalat, Tiruvallur. As stated by the learned Counsel for the Revision Petitioner, as per the Act and Rules governing Hospitals, they maintain their record only for a period of three years. Whereas the Hospital Authorities were taken by surprise after filing of Petition before the Permanent Lok Adalat after 8 years from the date of discharge of the patient.



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13. If actually the Respondent in this case was affected either by medical negligence or deficiency of services, naturally, he ought to have approached the Consumer Forum as per the Consumer Protection Act. The Respondent had not done so. He had invoked the Legal Services Authority Act, without invoking the Consumer Protection Act, that too, after 8 years of taking treatment and getting discharged from the hospital. In view of such enormous delay the hospital may not have the relevant records for the relevant period of time and may not be in a position to defend the case initiated by the Respondent herein.

14. In the light of the aforesaid rulings cited by the learned Counsel for the Petitioner, the submission made by the learned Counsel for the Revision Petitioner is found justified. Entertaining an application which has all the character of the Consumer Dispute by the Permanent Lok Adalat, Tiruvallur is found to attract invocation of Article 227 of Constitution of India.

15. In the light of the above discussion, the Order passed by the learned Chairman, Permanent Lok Adalat in I.A.No.1/2021 in PLA (PUS)



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No.1/2021 dated 01.09.2021 is to be set aside as perverse. The point for consideration is answered in favour of the Petitioner and against the Respondent.

16. The arguments of the learned Counsel for the Respondent that the Petitioner had approached this Court with hurry, without waiting for the learned Chairman, Permanent Lok Adalat to pass appropriate Orders in the light of the Legal Services Authorities Act is also rejected.

In the result, this ***Civil Revision Petition is allowed.*** The Order passed by the learned Chairman, Permanent Lok Adalat in I.A.No.1/2021 in PLA (PUS) No.1/2021 dated 01.09.2021 is set aside.

28.02.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order

dh

To

The Permanent Lok Adalat
for Public Utility Services,
Tiruvallur District.



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SATHI KUMAR SUKUMARA KURUP, J.

dh

Pre-delivery judgment made in

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