IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

260

CWP-7946-2023
Date of decision: 07.05.2024

GURDIP SINGH

......Petitioner

VERSUS

PERMANENT LOK ADALAT, LUDHIANA AND ANOTHER

.......Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present: - Mr. Avinit Avasthi, Advocate and
Ms. Kriti Avasthi, Advocate
for the petitioner.

Respondent No.2-Ex-parte.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present writ petition is to the Award dated 14.02.2022 passed by the Permanent Lok Adalat (Public Utility Services), Ludhiana in Application No. 249 dated 20.05.2019.

2. Briefly summarized the facts of the present case are that the respondent-applicant-Bank had moved an application under Section 22-C of the Legal Services Authorities Act, 1987 against the petitioner-Gurdip Singh averring that he had received two agricultural loans, one of Rs. 4 lakh and another of Rs. 10 lakhs from the Bank under the categories OD limit and KCC limit respectively. In lieu of the receipt of such loans, Gurdip Singh

had executed various loans documents. Kuldip Singh stood guarantor and executed guarantee deed. As per the agreement such loan was repayable alongwith the agreed rate of interest, however, the borrower Gurdip Singh did not adhere to the financial discipline and committed default in repayment of loan amount and interest. The account was declared as a Non-performing Assets (NPA) on 31.12.2017. As on the said date there was a balance of Rs. 22,03,911.74/- i.e. Rs. 6,49,380/- in AGOD Limited and Rs.15,54,531.74/- in KCC limit including interest applied up to 25.04.2019. The borrower admitted such arrears of loan towards him vide balance confirmation letters dated 07.01.2017, however, despite repeated requests, the loan amount was not repaid. The application was accordingly submitted before the Permanent Lok Adalat seeking recovery of the said amount.

3. The borrower is stated to have failed to appear before the Permanent Lok Adalat whereafter ex-parte proceedings were intimated. It was specifically noticed that by the Permanent Lok Adalat that conciliation could not be held in their absence. The terms of settlement were however framed in their absence to the effect as to whether the borrower and guarantor are ready to settle the outstanding amount by paying a sum of Rs.20 lacs in lump sum.

4. The respondent-Bank led its evidence and on the basis where of the award was passed whereby the borrower and the guarantor were directed to pay the sum of Rs. 22,03,911.74/- alongwith interest @ 9% per annum from the date of filing of the application till its actual realization. The liability of the borrower and the guarantor was held to be joint as well as

several. It was further directed that in the event the awarded amount is not recovered from the respondents, the same shall be recoverable by way of sale of mortgaged property. Hence, the present writ petition.

5. Notice in the present case was issued. As per the office report submitted for 22.08.2023 , the service had already been effected, however, the respondent-Bank did not appear. The matter was accordingly adjourned for today to enable appearance and filing of reply, if any, by the respondent-Bank. Even on resumed hearing, no one has entered appearance on behalf of the Bank. The respondent is accordingly ordered to be proceeded against ex-parte.

6. Counsel for the petitioner has argued that the award passed by the Permanent Lok Adalat (Public Utility Services), Ludhiana is bad and liable to be set aside for the following reasons:-

i) That the application essentially was in the nature of seeking recovery of the outstanding arrears of the loan amount alongwith interest. Since the petitioner was not a service provider, he does not fall in the definition of ‘Public Utility Service’, hence, proceedings for recovery of outstanding loan amount could not have been initiated by way of a recovery application before the Permanent Lok Adalat (Public Utility Services), Ludhiana under Section 22-C of the Legal Services Authorities Act, 1987. The remedy, if any, was available to the petitioner in the form of taking appropriate recourse under the SARFAESI Act, 2002 or before the Civil Court, as the case may be.

ii) Secondly, it is submitted that as per the judgment of the

Hon'ble Supreme Court in the matter of ***"Canara Bank versus G.S. Jayarama"*** reported as ***(2022) 7 SCC 776,*** the terms of settlement are required to be sent to the address of the other party who has opted not to appear in the proceedings as a sufficient compliance of the mandatory procedure under Section 22C (4) to (7) of the Legal Services Authorities Act, 1987. He submits that terms of possible settlement were never sent to the petitioner and were only recorded in the proceedings of the Permanent Lok Adalat. The same is thus not a mandatory compliance of the mandate of Legal Services Authorities Act, 1987 as explained by the Hon'ble Supreme Court in the judgment of ***Canara Bank (supra).***

7. I have heard learned counsel appearing on behalf of the petitioner and have gone through the substantitive provision as also the document available on record.

8. A perusal of the same, it is evident that the application in question was for recovery of the defaulting amount of the loan advanced by the respondent-Bank of India to the petitioner herein. Section 22-A (b) defines 'Public Utility Services' which reads thus:-

> ***Section 22A (b) in The Legal Services Authorities Act, 1987***
>
> Xx xxx xxx xxx xxx xxx xxx
>
> *"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."

9. Hence, only the banking services and financial services are subject matter of jurisdiction of the Permanent Lok Adalat (Public Utility Services). The petitioner, against whom such proceedings are instituted is thus required to be providing such service to the applicant who has come before the Permanent Lok Adalat.

10. In the present case, the service provider who has come before the Court is the Bank and the inherent character of the application was for seeking recovery of the outstanding loan amount. The petitioner not being a service provider to the Applicant-Bank, the proceedings for recovery of the outstanding loan/ could not have been instituted before the Permanent Lok Adalat.

11. Further, it has also remain undisputed that the mandatory procedure as laid down by the Hon'ble Supreme Court of India in the matter of ***Canara Bank (supra) has not been followed.*** The extract thereof reads thus:-

36. The appellant's argument, however, is that if the opposite party does not appear before the Permanent Lok

Adalat, it can dispense with the conciliation proceedings and straightaway adjudicate the dispute under Section 22-C(8). We are unable to accept this submission. Even if the opposite party does not appear, the Permanent Lok Adalat is still bound to follow the step-by-step procedure laid down by Section 22-C. Under Section 22-C(3), it would require the party before it to file their submissions and documents, and make the best efforts to communicate them to the opposite party for their response. If it is satisfied that no response is forthcoming from the absent opposite party, the Permanent Lok Adalat shall still attempt to settle the dispute through settlement under Section 22-C(4). It is important to remember that Section 22-C(5) imposes a duty upon the Permanent Lok Adalat to be independent and impartial in attempting to amicably settle the dispute, while Section 22-C(6) imposes a duty upon the party present before the Permanent Lok Adalat to cooperate in good faith and assist the Permanent Lok Adalat. Thereafter, the Permanent Lok Adalat, based on the materials before it, shall propose terms of settlement and communicate them to both parties, regardless of whether they participated in the proceedings. If the party present before the Permanent Lok Adalat does not agree or if the absent party does not respond in a sufficient period of time, only then can the Permanent Lok Adalat adjudicate the dispute on its merits under Section 22-C(8). Keeping in mind the principles enshrined in Section 22-D, the Permanent Lok Adalat shall once again notify the absent party of its decision to adjudicate the dispute on its merits, in case it wishes to join the proceedings at that stage.

37. Section 22-C(8) is amply clear that it only comes into effect once an agreement under Section 22-C(7) has failed. The corollary of this is that the proposed terms of settlement under Section 22-C(7), and the conciliation proceedings preceding it, *are mandatory. If Permanent Lok Adalats are allowed to bypass this step just because a party is absent, it would be tantamount to deciding disputes on their merit ex parte and issuing awards which will be final, binding and will be deemed to be decrees of civil courts. This was simply not the intention of Parliament when it introduced the LSA Amendment Act. Its main goal was still the conciliation and settlement of disputes in relation to public utilities, with a decision on merits always being the last resort. Therefore, we hold that conciliation proceedings under Section 22-C of the LSA Act are mandatory in nature.*

12. In view of the reasons given above, I find that the Permanent Lok Adalat, (Public Utility Services), Ludhiana committed an error of jurisdiction and disregarded the mandatory provisions of the Legal Services Authorities Act, 1987 before passing the impugned award. The said illegality is incurable and renders the award bad in law and liable to be set aside.

13. The present appeal is accordingly allowed and Award dated 14.02.2022 passed by the Permanent Lok Adalat (Public Utility Services), Ludhiana in Application No. 249 dated 20.05.2019 is set aside.

(VINOD S. BHARDWAJ)

MAY 07, 2024 **JUDGE**

Vishal Sharma

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