2024:PHHC:128984

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH.

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CWP-22791-2024 (O&M).
Reserved on: 09.09.2024
Date of Decision: 24.09.2024.

SANTOSH GUPTA AND ANOTHER

... Petitioners

Versus

PERMANENT LOK ADALAT (PUBLIC UTILITY SERVICES) AND OTHERS

... Respondents

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

Argued by: Mr. I.P. Singh, Advocate,
for the petitioners.

VINOD S. BHARDWAJ, J. (ORAL)

1. Prayer in the present petition is for issuance of writ of certiorari to quash the impugned orders dated 16.02.2024 (Annexure P-1) and 23.08.2024 (Annexure P-3) passed by respondent No.1- the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh in Application No. 5 of 2023 as well as in the misc. application for revival and to set aside the sale

notice dated 21.08.2024, issued against the property of the petitioners by respondent No.2-Union Bank of India, Sector 47-C branch, Chandigarh.

<u>FACTS</u>

2. Briefly summarized, the facts of the present case are that Mitrabh Gupta (son of petitioner No.1-Santosh Gupta) had applied for a housing loan of Rs.30 lakhs from the respondent No.2-Bank which loan was sanctioned vide sanction letter dated 03.12.2019 for the purchase of the property bearing Flat No.17, First Floor, Onyxe Paraiso Housing Society, Patiala Road, Zirakpur, SAS Nagar (Mohali), Punjab in his name. Petitioner No.1 was also made a co-applicant in the said loan facility advanced by the respondent No.2-Bank, as per the latter's policy. The said loan facility was secured by creating mortgage of the above said property. The loan was repayable in 168 monthly installments of Rs.30,081/- each along with interest @ 8.20% per annum, as per the terms and conditions of the sanction letter.

3. Thereafter, Mitrabh Gupta and petitioner No.1 were informed by respondent No.2-Bank that the loan amount was required to be secured by way of an insurance from respondent No.3-India First Life Insurance Company Limited, by paying a one-time fixed premium of Rs.2,37,180/-. It was also stated that the loan would be re-paid by the Insurance Company, in case of any casualty and that there would be no liability on the family, as per the terms and conditions of the policy. The insurance proposal form was

then duly filled and submitted to the respondent No.2-Bank, in presence of agent of respondent No.3, along with other loan documents on 06.12.2019 coupled with a premium of Rs.2,37,180/- and a processing fee of Rs.11,800/-. The loan amount was thereafter disbursed by way of Demand Draft on 07.12.2019 and the sale deed of the flat was registered on 09.12.2019. Unfortunately, Mitrabh Gupta passed away from a heart attack on 10.05.2022, while the remainder of the payment period still remains.

4. Petitioner No.1 promptly informed respondents No. 2 and 3 about the death of her son Mitrabh Gupta and requested them to adjust the account as per the insurance policy, by issuing an NOC in this regard. However, the same was not done whereupon petitioner No.1 sent a legal notice dated 25.07.2022 to respondents No.2 and 3. Petitioner No.1 received a reply dated 01.09.2022 from the respondent-Bank wherein it was stated that the amount of insurance premium was refunded on 05.02.2020 itself and a letter dated 04.02.2020 was sent to Mitrabh Gupta to the effect that since the medical examination reports had not been sent, hence, the policy was rejected. The petitioners claimed that they never received any intimation from the respondents regarding submission of any medical examination reports or rejection of their policy by way of any written communication including the alleged letter dated 04.02.2020. The petitioners thus aggrieved approached the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh for settlement of the dispute by filing an application under Section 22-C of the Legal Services Authorities Act, 1987. Permanent Lok

Adalat vide its order dated 21.08.2023 directed the respondent-Bank to maintain status quo regarding the payment of EMI. The respondents filed an application for vacation of stay as well as seeking dismissal of the application in view of Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act, 2002').

5. Efforts were made for an amicable settlement of the dispute, as stipulated under Section 22-C of the Legal Services Authorities Act, 1987. It then proceeded to hear the matter on merits in exercise of its powers under Section 22-C (8) of the Legal Services Authorities Act, 1987.

6. After submission of evidence by way of affidavits by all the parties, the matter came up for final hearing when the Permanent Lok Adalat, vide order dated 16.02.2024, disposed of the application by giving liberty to the petitioners/applicants to approach the appropriate forum for agitating the matter. The relevant part of the order is extracted hereunder:

> *"After hearing rival contentions and perusing the file carefully, it is clear that the person, who obtained the loan, is no more in this world and what transpired between the deceased and the insurance company or the respondent No.1 is not known to anybody. Whether the deceased was intimated or not, can only be ascertained if the detailed evidence is led and the parties are cross-examined at length, because it is necessary to find out the fault in the present matter. Intricate question of fact is involved.*

If the applicant is allowed to go to the proper forum then the matter can be taken to its logical end. No doubt, it has been submitted that the proceedings are pending before the DRT. The matter can also be agitated before the DRT itself and evidence can be lead.

The applicant is accordingly allowed to approach the relevant forum to agitate the matter regarding finding out the negligence of the party concerned i.e. regarding the failure of providing of the insurance policy. Since, it is a case of all concerned that the insurance policy remains to be done, the present matter stands disposed of while allowing the applicant to approach the relevant forum to agitate the matter as per law.

Any miscellaneous application, if pending, stands disposed of accordingly.

File be consigned to the record room."

7. Petitioner No.1 then filed an application dated 15.03.2024 under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal-II, Chandigarh (hereinafter referred to as 'DRT-II') which was registered as SA No. 187 of 2024. The matter was adjourned by the DRT-II from time to time for completion of pleadings but when the matter came up for hearing before the DRT-II, it was submitted on behalf of respondent-Bank that no proceedings on its behalf were pending before the Tribunal. Hence, the application by petitioner No.1 was dismissed as withdrawn from the DRT-II vide order dated 06.08.2024 availing liberty to approach the appropriate

forum in accordance with law. The relevant part of the order is extracted hereunder:-

> *"Learned counsel for the Applicant has made a statement at the bar that he wants to withdraw the present petition with the liberty to approach the appropriate Forum, since, no proceedings on behalf of the Respondent Bank are pending before the DRT, Chandigarh as stated in the order of PLA. In view of this, the SA is dismissed as withdrawn. Applicant would be at liberty to approach the appropriate Forum in case, it is permissible under the law. File be consigned to the record room after due compliance."*

8. The petitioners then approached the Permanent Lok Adalat again for seeking revival of the application that had been disposed of vide order dated 16.02.2024, along with an application seeking stay of the EMI loan during the pendency of the applications. In the meanwhile, respondent-Bank issued a sale notice dated 21.08.2024 to auction the property of the petitioners as well as to take its physical possession. The Permanent Lok Adalat vide order dated 23.08.2024, dismissed both the applications filed by the petitioners and declined to revive the application that had been disposed of vide order dated 16.02.2024. The operative part of the order is extracted hereunder:-

> *"This Court has perused the order passed by this Forum as well as by Debt RecoveryTribunal-2, Chandigarh. The conjoint reading of both the orders will not reveal that this Court had ever directed the applicant to approach the DRT,*

Chandigarh specifically or DRT, Chandigarh has observed in its order to approach this Court specifically.

This Court has observed that the applicant may approach the "relevant Forum" to agitate the matter regarding finding out the negligence of the party concerned i.e. regarding the failure of providing of the insurance policy. It was observed that voluminous evidence is required to be led to reach at the just conclusion. Since, this Court has summary jurisdiction, so the matter was disposed of with the observed as depicted above. t the cost of repetition, it is to be observed that this Court, never, specifically directed the applicant to approach the DRT, Chandigarh.

Similarly, when the applicant has approached DRT, the Presiding Officer has observed that the applicant to approach appropriate Forum, in case, it is permissible under the law. At its own, the applicant has approached the Forum of her choice.

It can be safely concluded that this Court cannot entertain the matter again, because it has already been observed that voluminous evidence is required to be led.

Resultantly, the present application stands disposed of having been dismissed.

The application for revival is not allowed and the question of interim relief, in the manner of staying on the EMI of the loan does not arise.

These papers be tagged with the main file and file be consigned to the record room."

9. Hence, the present petition.

10. Learned counsel for the petitioners relies upon the judgment of Hon'ble Supreme Court in the matter of ***Canara Bank v. G.S. Jayarama,***

(2022) 7 SCC 776 to argue that the Permanent Lok Adalat could not have refused to exercise its adjudicatory powers under Section 22-C (8) of the Legal Services Authorities Act, 1987 while deciding the dispute between the parties. Learned counsel also relied upon the judgment of Hon'ble Supreme Court in the matter of ***D. Srinivas v. SBI Life Insurance Co. Ltd., (2018) 3 SCC 653*** to argue that insurance contract being a contract of utmost good faith, is a two-way door and there was an inordinate delay in communicating the rejection of insurance claim to the petitioners herein and that there is a clear presumption of the acceptance of the proposal in favour of the proposer. He thus prays that the writ petition be allowed in terms of the above said judgments.

11. No other argument has been raised.

12. I have heard learned Counsel for the petitioners and have gone through the documents appended along with the present petition as well as the judgments that have been cited.

13. As far as the reliance placed by the learned Counsel for the petitioners on the judgment of Hon'ble Supreme Court in ***Canara Bank (supra)*** is concerned, the same is misconceived since the legal issue that was under consideration before the Hon'ble Supreme Court in the above case was whether the conciliation proceedings under Section 22-C of the Legal Services Authorities Act, 1987 were mandatory and whether the Permanent Lok Adalat could act as a regular civil court while exercising its adjudicatory powers or not. The Hon'ble Supreme Court, in fact, held that

conciliation proceedings are mandatory before exercise of adjudicatory function under Section 22-C (8) of the Legal Services Authorities Act, 1987. It can thus exercise such powers, as are conferred upon it, for adjudication, including powers of summoning witnesses and evidence, as prescribed under Section 22 of the Legal Services Authorities Act, 1987. Its powers as a Civil Court are thus circumscribed for the domain and circumstances in which it can be **exercised** and at the same time specifies in Section 22-D that the Permanent Lok Adalat (Public Utility Services) is not bound by the Code of Civil Procedure and the Evidence Act.

14. The moot question which arises for examination is as to what is the nature of jurisdiction exercised by the Permanent Lok Adalat (Public Utility Services), and the extent to which adjudication over complex issues should be undertaken.

15. In this backdrop, it is essential to keep in mind the prime objective for establishment of the Permanent Lok Adalat's. Primarily, the Permanent Lok Adalat (Public Utility Services) were created to resolve the disputes at a pre-litigation stage, an intent which is well reflected from the procedural steps required to be exhausted before an adjudication is done. Section 22-C (4) to (7) of the Legal Services Authorities Act, 1987, primarily mandate all efforts for amicable settlement of the dispute and to enter adjudication only after conciliation has failed. Hence, an informal settlement of disputes procedure has been prescribed, and even though one may argue that allowing the Permanent Lok Adalat's to decide complex legal and factual

issues would allow more expeditious and cost effective platform for adjudication of complex issues, however, on a practical side, such an approach may lead to injustice not only in compromising complex legal principles but also in flawed final conclusion since it does not provide complete opportunity, as are available in traditional Civil Courts, to establish and prove its case. Irrespective of who the victim of a short-cut-procedure is, the rule of law and its majesty are the first casualty. Much often, the matters are likely to be sent to the Civil Courts but in the said process, precious judicial time of Courts and the litigant gets consumed in a futile judicial exercise, thus eroding faith of citizens in the ability of judicial process to dispense justice. It is in the said circumstances that it is always advisable that such an exercise be undertaken at the initial stages itself.

16. Noticing the larger possibility of comparative inconvenience and disadvantage, the Hon'ble Supreme Court examined the issues of Public Utility Services that may be examined by the Permanent Lok Adalats. It would thus be relevant to refer to the judgment in the matter of ***Bar Council of India Vs. Union of India, reported as (2012) 8 SCC 243***, wherein the Hon'ble Supreme Court observed that jurisdiction of the Permanent Lok Adalat (Public Utility Services) is not meant to adjudicate complex questions of law and fact. The relevant extract thereof reads thus:-

> *"22. Chapter VI-A inserted by the 2002 Amendment Act in the 1987 Act, as its title suggests, provides for pre-litigation conciliation and settlement procedure. The disputes relating to public utility service like transport service for carriage of*

> *passengers or goods by air, road or water or postal, telegraph or telephone service or supply of power, light or water or public conservancy system or sanitation or service in hospital or dispensary or insurance service, etc., in the very scheme of things deserve to be settled expeditiously. Prolonged dispute in respect of the above matters between the service provider and an aggrieved party may result in irretrievable damage to either party to the dispute. Today, with increasing number of cases, the judicial courts are not able to cope with the heavy burden of inflow of cases and the matters coming before them. The disputes in relation to public utility service need urgent attention with focus on their resolution at the threshold by conciliation and settlement and if for any reason such effort fails, then to have such disputes adjudicated through an appropriate mechanism as early as may be possible. With large population in the country and many public utility services being provided by various service providers, the disputes in relation to these services are not infrequent between the service providers and common man. Slow motion procedures in the judicial courts are not conducive for adjudication of disputes relating to public utility service.".*

17. Similar views were also expressed in the matter of ***InterGlobe Aviation Ltd. v. N. Satchidanand, (2011) 7 SCC 463***. The extract thereof reads thus:-

> ***"27.*** *The nature of proceedings before the Permanent Lok Adalat is initially a conciliation which is non-adjudicatory in nature. Only if the parties fail to reach an agreement by*

conciliation, the Permanent Lok Adalat mutates into an adjudicatory body, by deciding the dispute. In short, the procedure adopted by the Permanent Lok Adalats is what is popularly known as "CON-ARB" (that is, "conciliation-cum-arbitration") in the United States, where the parties can approach a neutral third party or authority for conciliation and if the conciliation fails, authorise such neutral third party or authority to decide the dispute itself, such decision being final and binding. The concept of "CON-ARB" before a Permanent Lok Adalat is completely different from the concept of judicial adjudication by the courts governed by the Code of Civil Procedure. The Permanent Lok Adalat not being a "court", the provision in the contract relating to exclusivity of jurisdiction of courts at Delhi will not apply."

18. The above judgments unequivocally and consistently hold that the Permanent Lok Adalat's are not meant for adjudication of complex legal issues.

19. Along with the same, the Hon'ble Supreme Court also examined whether proceedings before the Permanent Lok Adalat's are summary in nature or not. The aforesaid findings have also been recorded and reiterated by the Hon'ble Supreme Court in the matter of ***Inter Globe Aviation Ltd. Vs. N Sachitanand (supra)*** which is extracted as under:-

"68. There can be no doubt that the respondent, like any other passenger was forced to sit in a narrow seat for eleven hours, underwent considerable physical hardship and agony on account of

the delay. But, it was not as a consequence of any deficiency in service, negligence or want of facilitation by the appellant. Consumer Fora and Permanent Lok Adalats cannot award compensation merely because there was inconvenience or hardship or on grounds of sympathy. What is relevant is whether there was any cause of action for claiming damages, that is, whether there was any deficiency in service or whether there was any negligence in providing facilitation. If the delay was due to reasons beyond the control of the airline and if the appellant and its crew have acted reasonably and in a bona fide manner, the appellant cannot be made liable to pay damages even if there has been some inconvenience or hardship to a passenger on account of the delay.

20. The said proposition finds reiteration in the matter of ***Bar Council of India Vs Union of India, reported as (2012) 8 SCC 243***. The relevant extract thereof reads thus:-

> *"23. The Statement of Objects and Reasons itself spells out the salient features of Chapter VI-A. By bringing in this law, the litigation concerning public utility service is sought to be nipped in the bud by first affording the parties to such dispute an opportunity to settle their dispute through the endeavours of the Permanent Lok Adalat and if such effort fails then to have the dispute between the parties adjudicated through the decision of the Permanent Lok Adalat. The mechanism provided in Chapter VI-A enables a party to a dispute relating to public utility service to approach the Permanent Lok Adalat for the settlement of dispute before the dispute is brought before any court."*

21. It is thus well established that even though the Permanent Lok Adalat's have adjudicatory powers, however, its scope is not equal to the breadth of power exercised by the Civil Courts. It has repeatedly been asked not to adjudicate complex legal and factual aspects. Hence, if the Permanent Lok Adalat's form an opinion that the matter brought before it involves complex issues to be determined, it cannot be said to have abdicated its adjudicatory power. Rather, it is an act reflecting an appropriate judicial restraint and to confer its judicial powers when a complex subject is brought before it. However, it is also to be kept in mind that the proceedings before the Permanent Lok Adalat under the Legal Services Authorities Act, 1987 are essentially summary in nature. Whether even complex questions requiring declaration and fostering liability under intricately disputed questions of facts can be examined by the Permanent Lok Adalat (Public Utility Services) was not a subject matter of consideration before the Hon'ble Supreme Court in the matter of ***Canara Bank (supra)***.

22. Hon'ble Supreme Court in the matter of ***IFB Agro Industries Ltd. v. SICGIL India Ltd., (2023) 4 SCC 209*** dealt with the scope of summary nature of rectification proceedings of the National Company Law Tribunal under Section 59 of the Companies Act, 2013, in detail. The relevant part of the judgment is extracted hereunder:

> ***1.*** *The short question for our consideration in this appeal relates to the scope of the rectificatory jurisdiction of the National Company Law Tribunal under Section 59 of the Companies Act, 2013 (hereinafter referred to as "the 2013*

Act"). In this context, we are called upon to determine the appropriate forum for adjudication and determination of violations of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 [hereinafter referred to as "the SEBI (SAST) Regulations"], and the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 [hereinafter referred to as "the SEBI (PIT) Regulations"], framed under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "the SEBI Act"). We have answered both the questions.

2. *On the first issue, following the decision of this Court in* ***Ammonia Supplies Corpn. (P) Ltd. v. Modern Plastic Containers (P) Ltd. (1998) 7 SCC 105****, <u>we have held that the rectificatory jurisdiction under Section 59 of the 2013 Act is summary in nature and not intended to be exercised where there are contested facts and disputed questions.On the second issue, we have held that transactions falling within the jurisdiction of Regulatory bodies created under a statute must necessarily be subjected to their ex-ante scrutiny, enquiry and adjudication. We have, therefore, rejected the contention that the National Company Law Tribunal under Section 59 exercises a parallel jurisdiction with the Securities and Exchange Board of India (hereinafter referred to as "SEBI" or "the Board") for addressing violations of the Regulations framed under the SEBI Act</u>.*

(emphasis supplied)

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21. *The scope and ambit of Section 155 of the 1956 Act, as it then existed, fell for consideration in a decision of this Court in*

***Ammonia Supplies**. The application for rectification in **Ammonia case** was filed under Section 155, and it was submitted that the scope for rectification under Section 155 is enlarged in comparison with the position as it were under Section 38 of the 1913 Act. Rejecting the argument, this Court in **Ammonia** held that the jurisdiction exercised by the court for rectification of the register of members is essentially limited. The comparative analysis in **Ammonia** assumes importance as a similar submission is made before us by Mr Chidambaram that the scope and jurisdiction of the Tribunal under Section 59 of the 2013 Act is wide when compared with Section 111-A of the 1956 Act as amended in 1996.*

***22.** The relevant portion of the judgment in **Ammonia** is as under : (SCC pp. 119-22, paras 26-28 & 31)*

"26. … There could be no doubt any question raised within the peripheral field of rectification, it is the court under Section 155 alone which would have exclusive jurisdiction. However, the question raised does not rest here. In case any claim is based on some seriously disputed civil rights or title, denial of any transaction or any other basic facts which may be the foundation to claim a right to be a member and if the court feels such claim does not constitute to be a rectification but instead seeking adjudication of basic pillar some such facts falling outside the rectification, its discretion to send a party to seek his relief before the civil court first for the adjudication of such facts, it cannot be said such right of the court to have been taken away merely on account of the deletion of the aforesaid proviso. Otherwise under the garb of rectification one may lay claim of many such contentious issues for adjudication not falling under it. Thus in other words, the court under it has

> *discretion to find whether the dispute raised is really for rectification or is of such a nature that unless decided first it would not come within the purview of rectification. The word "rectification" itself connotes some error which has crept in requiring correction. Error would only mean everything as required under the law has been done yet by some mistake the name is either omitted or wrongly recorded in the Register of the company. …*
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> ***
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> *27. In other words, in order to qualify for rectification, every procedure as prescribed under the Companies Act before recording the name in the Register of the company has to be stated to have been complied with by the applicant…. The Court has to examine on the facts of each case whether an application is for rectification or something else. So field or peripheral jurisdiction of the court under it would be what comes under rectification, not projected claims under the garb of rectification. So far exercising of power for rectification within its field there could be no doubt the Court as referred under Section 155 read with Section 2(11) and Section 10, it is the Company Court alone has exclusive jurisdiction. … But this does not mean by interpreting such court having exclusive jurisdiction to include within it what is not covered under it, merely because it is cloaked under the nomenclature rectification does not mean the court cannot see the substance after removing the cloak.*
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> *xxx xxx xxx*

24. *The decision in* ***Ammonia*** *was followed by this Court even after the deletion of Section 155 and insertion of Section 111-A. This Court in* ***Standard Chartered Bank v. Andhra Bank Financial Services Ltd. (2006) 6 SCC 94*** *and* ***Jai Mahal***

> ***Hotels (P) Ltd. v. Devraj Singh (2016) 1 SCC 423 : (2016) 1 SCC (Civ) 354]*** *, held that even though Section 111(7) of the 1956 Act seemingly enlarges the power of CLB, the power of rectification continues to remain summary in nature and if any seriously disputed questions arise, the Company Court should relegate the parties to a forum which is more appropriate for investigation and adjudication of such disputed questions.*
>
> *(emphasis supplied)*

23. As can be gleaned from the observations of Hon'ble Supreme Court in the precedent judgments, the adjudicatory powers of the Permanent Lok Adalat (Public Utility Services) are summary in nature and not intended to be exercised where there are contested facts and disputed questions.

24. Now, adverting to the facts of the present case, the issue which has been culled out is whether any relationship of insurer and insured existed between the parties; whether the insurance liability can still be fastened even when the premium stands returned; whether a denial of communication about rejection of insurance notwithstanding refund of premium to the account, can be accepted as a sufficient cause and insurance company/bank be held liable to repay the balance installments even if there is a gap of more than 02 years in receipt of the premium back and between time of death. Various other ancillary issues also arise for determination before a final adjudication may be done.

25. Given the nature of issues involved, it can be concluded that since the abovesaid questions are complex questions of fact and law requiring

voluminous evidence to answer the question, the Permanent Lok Adalat should not have adjudicated on the said dispute in summary proceedings.

26. I find that there is no illegality, impropriety or mis-appreciation of law and facts in the order of Permanent Lok Adalat and that it is not a fit case for this court to exercise its powers under Article 226 of the Constitution of India and to direct the Permanent Lok Adalat (Public Utility Services), to decide the matter.

27. Accordingly, the present petition is **dismissed** and the impugned orders dated 23.08.2024 (Annexure P-3) and 16.02.2024 (Annexure P-1), passed by respondent No.1- Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh in Application No. 5 of 2023 are hereby **affirmed**.

September 24, 2024 **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

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