

07.05.2015
22.
as

F.M.A. 782 of 2014
With
C.A.N.9135 of 2012.
High Court Legal Services
Committee & Anr.
Versus
ICICI Bank Ltd. & Ors.

Mr. Indranil Chakraborty.
...for the Appellants.

Mr. Amitava Das,
Mr. Amitava Mitra,
Ms. Dolon Dasgupta.
...for the Respondent
Nos.1 to 3.

Heard the learned Counsel appearing for the appellant as well as Mr. Das,
learned Counsel appearing for the respondent Nos.1 to 3.

The background on which the appeal came up before this Court is in brief
as under :

The respondent/writ petitioner borrowed about 5 lacs of amount for
construction of a residential house, from the respondent Bank. Property was
secured towards the loan. Subsequently, when he defaulted in payment of
instalments and the loan amount became over due after treating the account as
non-performing asset, the respondent Bank initiated proceeding under Section
13 of the Securitisation and Reconstruction of Financial Assets and Enforcement
of Security Interest Act. The Bank initiated proceeding for recovery of the
amount, which came to be challenged before this Court under Article 226 of the
Constitution of India, wherein the writ petitioner alleging arbitrary and illegal

action on the part of the bank in initiating proceeding under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act or so also sought the intervention of the Court seeking reference of the dispute between the Bank and the writ petitioner for settlement before Lok Adalat.

In that context, the learned Single Judge after referring to various provisions of Legal Services Authority Act, specially Sections 19 and 20 of the Act opined that a matter which needs invocation of extraordinary jurisdiction of a High Court under Article 226 of the Constitution of India cannot be referred to Lok Adalat since the Legal Services Act refers to civil, criminal and revenue matters alone to the Lok Adalat. This opinion of the learned Single Judge was taken exception to by High Court Legal Services Committee since matters pending before the High Court, i.e., writ petitions filed under Article 226 of the Constitution could not be referred to Lok Adalat. According to the appellant's stand, except the matters exempted from reference before Lok Adalat, irrespective of nature of the litigation, if they are pending before any Court of Law could be sent for settlement before the Lok Adalat.

Coming to Sections 19 and 20, which read as under:-

“[19. Organisation of Lok Adalats.— (1) Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluk Legal Services Committee may organise Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.

(2) Every Lok Adalat organisaed for an area shall consist of such number of –

- (a) serving or retired judicial officers; and***
- (b) other persons,***

of the area as may be specified by the State Authority or the District Authority or the Supreme Court Legal Services Committee or the High Court Legal Services Committee, or as the case may be, the Taluk Legal Services Committee, organising such Lok Adalat.

(3) The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats organised by the Supreme Court Legal Services Committee shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India.

(4) The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats other than referred to in sub-section (3) shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(5) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of—

- (i) any case pending before; or*
- (ii) any matter which is falling within the jurisdiction of, and is not brought before,*

any court for which the Lok Adalat is organised:

Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.]

[20. Cognizance of cases by Lok Adalats.—(1) Where in any case referred to in clause (1) of sub-section (5) of section 19—

- (i) (a) the parties thereof agree; or*
(b) one of the parties thereof makes an application to the court, for referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such settlement; or

(ii) the court is satisfied that the matter is an appropriate one to be taken the court shall refer the case to the Lok Adalat, the court shall refer the case to the Lok Adalat :

Provided that no case shall be referred to the Lok Adalat under sub-clause (b) of clause (1) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties.

(2) Notwithstanding anything contained in any other law for the time being in force, the Authority or Committee organising the Lok Adalat under sub-section (1) of section 19 may, on receipt of an application from any one of the parties to any matter referred to in clause (ii) of sub-section (5) of section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination :

Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.

(3) Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

(4) Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.

(5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub-section (1) for disposal in accordance with law.

(6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advise the parties to seek remedy in a court.

(7) Where the record of the case is returned under sub-section (5) to the court, such court shall proceed to deal with such case from the stage which was reached before such reference under sub-section (1).]”

Reading of these two provisions, it is clear that there is no restriction or classification so far as the nature of the matter to be referred to the Lok Adalat for settlement as long as those are not excluded like non-compoundable offences or issues relating to vires of a statute. In that context with the establishment of Legal Services Authority, which is now manned by the Courts in stead of State, it becomes an obligation on the part of the Court to see the aims and objects of the Act are implemented in right perspective instead of restricting the application of the enactment. That apart, with the amendment of Civil Procedure Code by insert of Section 89 of Code of Civil Procedure, alternative dispute mechanism has to be undertaken by Courts of Law and it becomes an obligation on the part of the Court to see whether there is possibility of settlement through any of the modes of alternative dispute resolution mechanism, if an issue of settlement is in existence. So far as this High Court in its writ jurisdiction is concerned, it is needless to mention that Civil Procedure Code applies to writ proceeding as per Rule 53 of Calcutta High Court Appellate Side Rules as far as possible.

In the light of the above discussion, we are of the opinion that the interim direction of this Court is the correct view and the appeal is allowed. We make it clear that a writ petition need not be filed only for seeking a relief of direction referring the matter to Lok Adalat. This is so, in the light of express provision under the Legal Services Act that a pre-litigation Lok Adalat is possible even before commencing of litigation or initiation of a litigation in the Court of Law and the party who intends to have the dispute settled without approaching the Court of Law can always appear before the Legal Services Authority with an application asking for pre-litigation Adalat.

Accordingly, both the appeal and the application are disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the appearing parties upon compliance of necessary formalities.

(Manjula Chellur, Chief, Justice)

(Joymalya Bagchi J.)