Valedictory Ceremony
16th Amity National Moot Court Competition
Sunday, 5th March, 2017
4.30 P.M.
I - 2 Moot Court Hall, Amity University Campus, Sector – 125, Noida
Tentative Programme

S.NO.	TIME	EVENT
1.	4.30 p.m. – 4.31 p.m.	National Anthem
2.	4.31 p.m. – 4.35 p.m.	Presentation of Sacred Tulsi Plant to the Dignitaries
3.	4:35 p.m. – 4.45 p.m.	**Address by Prof. (Dr.) Dilip Kumar Bandyopadhyay** Chairman, Amity Law Schools
4.	4.45 p.m. – 4.55 p.m.	**Address by Prof.(Dr.) Balvinder Shukla, Vice Chancellor, AUUP**
5.	4.55 p.m. – 5.05 p.m.	**Address by Guest of Honour, Hon'ble Mr. Justice Sanjeev Sachdeva, Judge, Delhi High Court**
6.	5.05 p.m. – 5.10 p.m.	**Few thoughts by Dr. Ashok K. Chauhan*** Founder President, Ritnand Balved Education Foundation (RBEF) & President, Amity Law School, Delhi.
7.	5.10 p.m. – 5.25 p.m.	**Address by Chief Guest, Hon'ble Ms. Justice Mukta Gupta, Judge, Delhi High Court**
8.	5.25 p.m. – 5.30 p.m.	Presentation of Mementoes to the Dignitaries
9.	5.30 p.m. – 5:50 p.m.	Distribution of Certificates and Prizes to the participating teams Presentation of the Student of the Year Awards
10.	5.50p.m.– 5:54 p.m.	16th ANMC Video Presentation by Harpreet Kalsi, Student Convener
11.	5:54 p.m. – 5:59 p.m.	Vote of thanks by Mr. Shaharyar Asaf Khan, Convener, ANMC
12.	5:59 pm - 6:00 p.m.	**National Anthem**
13.	6:00 p.m.	**High Tea**

*Subject to kind availability of Founder President

Inaugural Ceremony
16th Amity National Moot Court Competition
3rd March, 2017, Friday
4.30 P.M.
I-2 Moot Court Hall, Amity University Campus, Sector – 125, Noida
Tentative Schedule

S.NO.	TIME	EVENT
1.	4.30 p.m. - 4.31 p.m.	National Anthem
2.	4.31 p.m. – 4.35 p.m.	Invocation & Lighting of the Lamp
3.	4.35 p.m. – 4.40 p.m.	Presentation of the Sacred Tulsi Plant to Dignitaries
4.	4.40 p.m. – 4.50 p.m.	**Welcome address by Prof. (Dr.) Dilip Kumar Bandyopadhyay** Chairman, Amity Law Schools
5.	4. 50 p.m. – 5.00 p.m.	**Address by Prof. (Dr.) Balvinder Shukla, Vice Chancellor, AUUP**
6.	5.00 p.m. – 5.10 p.m.	**Address by Guest of Honour, Sh. Lalit Bhasin, Honorary President Amity Law School, Delhi**
7.	5.10 p.m. – 5.20 p.m.	**Address by Guest of Honour, Sh. A.S Chandhiok, Sr. Advocate, Supreme Court of India**
8.	5.20 p.m. – 5:30 p.m.	**Few thoughts by Dr. Ashok K. Chauhan*** Founder President, Ritnand Balved Education Foundation (RBEF) & President, Amity Law School, Delhi
9.	5.30 p.m. – 5.40 p.m.	**Address by Guest of Honour Sh. K.T.S Tulsi, Sr. Advocate and Member of Parliament, Rajya Sabha**
10.	5.55 p.m. – 6.10 p.m.	**Address by Chief Guest Hon'ble Mr. Justice Sunil Gaur, Judge, Delhi High Court**
11	6:10 pm – 6:15 p.m.	Felicitation of Guests with Presentation of Mementos
12.	6.15 p.m. – 6:20 pm	**Vote of Thanks by Dr. Sanjana Sharma, Convener ANMCC - 2017**
13.	6:20 pm	**High Tea**

*Subject to kind availability of Founder President

INDIAN SYMPOSIUM ON DISPUTE RESOLUTION, 2018

AMITY LAW SCHOOL, DELHI &
Peacekeeping And Conflict Resolution Team
(The PACT.)

Reading Material (Volume 3 of 4), curated by, Arjun Natarajan, Advisor – ISDR

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INDEX

CURATED BY:

Arjun Natarajan, Advocate | Accredited & Certified Mediator

(IIAM and IICA under the aegis of Ministry of Corporate Affairs – Government of India)

Founder & Publishing Editor of www.indianmediationlaw.wordpress.com

NOTE

*Para. 36.

*Paras. 38-40.

*Paras. 43-45.

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ANNEXURE V3/18

53. The lack of appropriate provisions relating to costs has resulted in a steady increase in malicious, vexatious, false, frivolous and speculative suits, apart from rendering Section 89 of the Code ineffective. Any attempt to reduce the pendency or encourage alternative dispute resolution processes or to streamline the civil justice system will fail in the absence of appropriate provisions relating to costs. There is therefore an urgent need for the legislature and the Law Commission of India to revisit the provisions relating to costs and compensatory costs contained in Sections 35 and 35-A of the Code.

Conclusion

54. In the result, we allow this appeal in part, set aside the order of the Division Bench and the learned Single Judge directing the appellant-plaintiff to file an affidavit undertaking to pay ₹25 lakhs to the respondent- defendants in the event of failure of the suit. Instead, we permit the respondent-defendants under Section 52 of the TP Act, to deal with or dispose of the suit property in the manner they deem fit, in spite of the pendency of the suit by the plaintiff, subject to their furnishing security to an extent of ₹3 lakhs to the satisfaction of the learned Single Judge.

(2010) 8 Supreme Court Cases 24

(BEFORE R.V. RAVEENDRAN AND J.M. PANCHAL, JJ.)

AFCONS INFRASTRUCTURE LIMITED
AND ANOTHER .. Appellants;

Versus

CHERIAN VARKEY CONSTRUCTION
COMPANY PRIVATE LIMITED
AND OTHERS .. Respondents.

Civil Appeal No. 6000 of 2010†, decided on July 26, 2010

A. Civil Procedure Code, 1908 — S. 89 and Or. 10 R. 1-A — Reference to ADR processes under — Preconditions, choice of ADR process and proper procedure — After completion of pleading, respondent filing application for arbitration (an adjudicatory ADR process) under S. 89 but appellant opposing the same — Reference of matter to arbitration in such situation by trial court, held, is erroneous — Reference to adjudicatory ADR processes (arbitration or conciliation) can be made only with consent of all parties — As appellant was not agreeing to arbitration, matter remanded to trial court for deciding upon appropriate non-adjudicatory ADR process — Legal Aid and ADR — Reference to ADR

B. Civil Procedure Code, 1908 — S. 89 and Or. 10 R. 1-A — Reference to ADR processes under — Appropriate stage, discussed — Present case (a money suit) distinguished from family disputes and matrimonial disputes with regard to stage for reference to ADR

† Arising out of SLP (C) No. 760 of 2007. From the Judgment and Order dated 11-10-2006 of the High Court of Kerala at Ernakulam in Civil Revision Petition No. 1219 of 2005

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The general scope of Section 89 CPC and the question whether the said section empowers the court to refer the parties to a suit to arbitration without the consent of both parties, arose for consideration in this appeal. The respondent filed a money suit against the appellant. In the said suit an order of attachment was made. Thereafter the respondents filed an application for arbitration which was opposed by the appellants by filing a counter. The trial court by a reasoned order referred the matter to arbitration though it was opposed by the appellants. The High Court by the impugned order upheld the order of the trial court.

Allowing the appeal, the Supreme Court

Held :

A civil court exercising power under Section 89 CPC cannot refer a suit to arbitration unless all the parties to the suit agree to such reference. If the reference is to arbitration or conciliation, the court has to record that the reference is by mutual consent. If the reference is to any other non-adjudicatory ADR process, the court should briefly record the same.

[Paras 49(*ii*), 44(*i*) and 44(*ii*)]

The trial court did not adopt the proper procedure while enforcing Section 89. Failure to invoke Section 89 suo motu after completion of pleadings and considering it only after an application under Section 89 was filed, is erroneous. Consequently, the orders of the trial court referring the matter to arbitration and of the High Court affirming the said reference are set aside. The trial court will now consider and decide upon a non-adjudicatory ADR process.

[Paras 49(*i*), 50, 47 and 48]

Sukanya Holdings (P) Ltd. v. *Jayesh H. Pandya*, (2003) 5 SCC 531, *distinguished* and *clarified*

The only practical way of reading Section 89 and Order 10 Rule 1-A is that after the pleadings are complete and after seeking admission/denials wherever required, and before framing issues, the court will have recourse to Section 89. Such recourse requires the court to consider and record the nature of the dispute, inform the parties about the five options available and take note of their preferences and then refer them to one of the alternative dispute resolution processes. But once evidence is commenced, the court will be reluctant to refer the matter to the ADR processes lest it becomes a tool for protracting the trial.

[Paras 24, 41, 45, 43(*a*) to 43(*d*)]

However, in family disputes or matrimonial cases the ideal stage for mediation will be immediately after service of notice on the respondent and *before* the respondent files objections/written statements. The reason being to avert the hostility which might further aggravate by the counter-allegations made in his or her written statement or objections. (Para 42)

C. **Civil Procedure Code, 1908 — S. 89 and Or. 10 R. 1-A — Interpretation — Anomalies and draftsman's errors — Practicable/proper interpretation, prescribed — Regarding first anomaly, merely describing nature of dispute in a sentence or two, held, would be sufficient for the requirement of S. 89(1) that the court should formulate or reformulate the terms of settlement — Secondly, interchanging the definitions of "judicial settlement" and "mediation" in Ss. 89(2)(c) and (d), held, would correct the draftsman's error — Interpretation of Statutes — Basic rules — Purposive construction — When a departure from literal rule of plain and ordinary meaning warranted — Rationale for, stated**

[Paras 9 to 19, 21, 25 and 44(iii)]

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D. **Interpretation of Statutes — Basic rules — Plain or ordinary meaning — When applicable (not as in present case), stated**

(Paras 20 and 21)

Salem Advocate Bar Assn. (II) v. *Union of India*, (2005) 6 SCC 344, *relied on*

Black's Law Dictionary, 7th Edn., pp. 1377 and 996, *referred to*

Salem Advocate Bar Assn. (I) v. *Union of India*, (2003) 1 SCC 49; *Salem Advocate Bar Assn. (II)* v. *Union of India*, (2005) 6 SCC 344, *relied on*

Salem Advocate Bar Assn. (II) v. *Union of India*, (2005) 6 SCC 344; *Shri Mandir Sita Ramji* v. *Lt. Governor of Delhi*, (1975) 4 SCC 298; *Tirath Singh* v. *Bachittar Singh*, AIR 1955 SC 830; *Shamrao V. Parulekar* v. *District Magistrate, Thana*, AIR 1952 SC 324 : 1952 Cri LJ 1503; *Molar Mal* v. *Kay Iron Works (P) Ltd.*, (2000) 4 SCC 285; *Mangin* v. *IRC*, 1971 AC 739 : (1971) 2 WLR 39 : (1971) 1 All ER 179 (PC); *Stock* v. *Frank Jones (Tipton) Ltd.*, (1978) 1 WLR 231 : (1978) 1 All ER 948 (HL), *relied on*

Maxwell: *Interpretation of Statutes* (12th Edn., p. 228); *Principles of Statutory Interpretation* (12th Edn. 2010, Lexis Nexis, p. 144), *referred to*

E. **Civil Procedure Code, 1908 — S. 89, Or. 10 R. 1-A and Or. 23 R. 3 — Procedure under S. 89 r/w Or. 10 R. 1-A, elaborated — ADR processes being a non-starter in many courts, such elaboration is necessary — Therefore, (1) detailed procedure of valid reference and choosing appropriate ADR process, (2) procedure if there is a settlement or if the reference failed, (3) procedure regarding civil court keeping track of matters referred so that non-adjudicatory ADR processes may be expedited, and (4) procedure regarding keeping or sending of original records, explained and elaborated — Arbitration and Conciliation Act, 1996 — Ss. 8, 11, 64, 36, 30 and 74 — Legal Services Authorities Act, 1987, S. 21**

Held :

The ADR processes in Section 89 are being referred to elaborately because Section 89 has been a non-starter with many courts. Though the process under Section 89 appears to be lengthy and complicated, in practice the process is simple: know the dispute; exclude "unfit" cases; ascertain consent for arbitration or conciliation; if there is no consent, select Lok Adalat for simple cases and mediation for all other cases, reserving reference to a Judge-assisted settlement only in exceptional or special cases.

[Paras 45, 43(*a*) to 43(*d*) and 44(*i*) to 44(*iii*)]

If the reference to the ADR process fails, on receipt of the report of the ADR forum, the court shall proceed with hearing of the suit. If there is a settlement, the court shall examine the settlement and make a decree in terms of it, keeping the principles of Order 23 Rule 3. If the settlement includes disputes which are not the subject-matter of the suit, the court may direct that the same will be governed by Section 74 of the Arbitration and Conciliation Act (if it is a conciliation settlement) or Section 21 of the Legal Services Authorities Act, 1987 (if it is a settlement by a Lok Adalat or by mediation which is a deemed Lok Adalat). If the settlement is through mediation and it relates not only to disputes which are the subject-matter of the suit, but also other disputes involving persons other than the parties to the suit, the court may adopt the principle underlying Order 23 Rule 3 CPC. [Paras 43(*h*), 40 and 43(*i*)]

If any term of the settlement is ex facie illegal or unenforceable, the court should draw the attention of parties thereto to avoid further litigations and disputes about executability. [Para 43(*j*)]

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If the Judge in charge of the case assists the parties and if settlement negotiations fail, he should not deal with the adjudication of the matter, to avoid apprehensions of bias and prejudice. It is therefore advisable to refer cases proposed for judicial settlement to another Judge. [Para 44(*iv*)]

If the court refers the matter to an ADR process (other than arbitration), it should keep track of the matter by fixing a hearing date for the ADR report. The period allotted for the ADR process can normally vary from a week to two months (which may be extended in exceptional cases, depending upon the availability of the alternative forum, the nature of case, etc.). Under no circumstances the court should allow the ADR process to become a tool in the hands of an unscrupulous litigant intent upon dragging on the proceedings. [Para 44(*v*)]

Normally the court should not send the original record of the case when referring the matter to an ADR forum. It should make available only copies of relevant papers to the ADR forum. (For this purpose, when pleadings are filed the court may insist upon filing of an extra copy). However if the case is referred to a court annexed mediation centre which is under the exclusive control and supervision of a judicial officer, the original file may be made available wherever necessary. [Para 44(*vi*)]

F. **Civil Procedure Code, 1908 — S. 89 and Or. 10 R. 1-A — Different ADR processes — Distinctive nature and procedural mode, examined — ADR processes, distinguished with reference to (1) as to whether consent of parties is required or the parties have to abide by court's discretionary order, (2) binding nature of ADR process (i.e. whether ADR process is adjudicatory or non-adjudicatory), and (3) whether case would go out of the stream of court permanently or come back to court (Paras 32 to 38)**

Salem Advocate Bar Assn. (I) v. *Union of India*, (2003) 1 SCC 49; *Salem Advocate Bar Assn. (II)* v. *Union of India*, (2005) 6 SCC 344; *Jagdish Chander* v. *Ramesh Chander*, (2007) 5 SCC 719, *relied on*

P. Anand Gajapathi Raju v. *P.V.G. Raju*, (2000) 4 SCC 539, *cited*

G. **Civil Procedure Code, 1908 — S. 89 and Or. 10 R. 1-A — Reference to ADR for proceeding under other statutory schemes, (1) categorised and (2) non-overriding effect of S. 89 and Or. 10 R. 1-A on such other schemes, clarified — Legal Aid and ADR — Legal Services Authorities Act, 1987 — S. 21 — Arbitration and Conciliation Act, 1996, S. 74**

H. **Civil Procedure Code, 1908 — S. 89 — Mandatory aspects — Held, consideration for reference of ADR process is mandatory, but not actual reference**

I. **Civil Procedure Code, 1908 — S. 89 — Applicability — Suitability for reference to ADR process — Categorised on the basis of nature of dispute/ case**

Held :

The object of Section 89 is that settlement should be attempted by adopting an appropriate ADR process. Neither Section 89 nor Order 10 Rule 1-A is intended to supersede or modify the provisions of the Arbitration and Conciliation Act or the Legal Services Authorities Act, 1987. Section 89 makes it clear that two of the ADR processes (i.e. arbitration and conciliation) will be governed by the AC Act, two others (i.e. Lok Adalat settlement and mediation)

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by the Legal Services Authorities Act, 1987 and the last of the ADR process by judicial settlement. (Para 29)

Having a hearing after completion of pleadings, to consider recourse to ADR process under Section 89, is mandatory. But actual reference to an ADR process in all cases is not mandatory. Where the case falls under an excluded category there need not be reference to ADR process. In all other cases reference to ADR process is a must. (Para 26)

The starting words of Section 89 clearly show that cases which are not suited for ADR process should not be referred under Section 89. Where the case is unsuited for reference to any of the ADR processes, the court will have to briefly record the reasons for not resorting to any of the settlement procedures prescribed under Section 89. (Para 26)

The following categories of cases are normally considered to be not suitable for ADR process having regard to their nature: (*i*) Representative suits under Order 1 Rule 8 CPC which involve public interest or interest of numerous persons who are not parties before the court. (In fact, even a compromise in such a suit is a difficult process requiring notice to the persons interested in the suit, before its acceptance). (*ii*) Disputes relating to election to public offices (as contrasted from disputes between two groups trying to get control over the management of societies, clubs, associations, etc.). (*iii*) Cases involving grant of authority by the court after enquiry, as for example, suits for grant of probate or letters of administration. (*iv*) Cases involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion, etc. (*v*) Cases requiring protection of courts, as for example, claims against minors, deities and mentally challenged and suits for declaration of title against the Government. (*vi*) Cases involving prosecution for criminal offences. (Para 27)

All other suits and cases of civil nature in particular the following categories of cases (whether pending in civil courts or other special tribunals/forums) are normally suitable for ADR processes:

(*i*) *All cases relating to trade, commerce and contracts*, including disputes arising out of contracts (including all money claims); disputes relating to specific performance; disputes between suppliers and customers; disputes between bankers and customers; disputes between developers/builders and customers; disputes between landlords and tenants/licensor and licensees; disputes between insurer and insured;

(*ii*) *All cases arising from strained or soured relationships*, including disputes relating to matrimonial causes, maintenance, custody of children; disputes relating to partition/division among family members/coparceners/co-owners; and disputes relating to partnership among partners.

(*iii*) *All cases where there is a need for continuation of the pre-existing relationship in spite of the disputes*, including disputes between neighbours (relating to easementary rights, encroachments, nuisance, etc.); (1) disputes between employers and employees; (2) disputes among members of societies/associations/apartment owners' associations;

(*iv*) *All cases relating to tortious liability*, including claims for compensation in motor accidents/other accidents; and

(*v*) *All consumer disputes*, including disputes where a trader/supplier/manufacturer/service provider is keen to maintain his business/professional reputation and credibility or product popularity.

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The above enumeration of "suitable" and "unsuitable" categorisation of cases is not intended to be exhaustive or rigid. They are illustrative, which can be subjected to just exceptions or additions by the court/tribunal exercising its jurisdiction/discretion in referring a dispute/case to an ADR process. (Para 28)

Appeal allowed SS-D/46520/CV

Advocates who appeared in this case :

Krishnan Venugopal, Senior Advocate [Anil K. Bhatnagar, Amit Dhingra and Manu Seshadri (for Dua Associates), Advocates] for the Appellants;

T.L.V. Iyer, Senior Advocate (V.J. Francis, Anupam Mishra, C.N. Sreekumar, P.R. Nayak and Dushyant Parashar, Advocates) for the Respondents.

Chronological list of cases cited ***on page(s)***

1. (2007) 5 SCC 719, *Jagdish Chander* v. *Ramesh Chander* 42*f*
2. (2005) 6 SCC 344, *Salem Advocate Bar Assn. (II)* v. *Union of India* 32*a-b*, 34*d-e*, 36*d*, 37*b*, 37*c*, 41*g-h*
3. (2003) 5 SCC 531, *Sukanya Holdings (P) Ltd.* v. *Jayesh H. Pandya* 30*e*, 47*g*, 47*g-h*, 48*c-d*, 48*d-e*
4. (2003) 1 SCC 49, *Salem Advocate Bar Assn. (I)* v. *Union of India* 32*a-b*, 41*b-c*, 41*d*
5. (2000) 4 SCC 539, *P. Anand Gajapathi Raju* v. *P.V.G. Raju* 42*e*
6. (2000) 4 SCC 285, *Molar Mal* v. *Kay Iron Works (P) Ltd.* 36*a*
7. (1978) 1 WLR 231 : (1978) 1 All ER 948 (HL), *Stock* v. *Frank Jones (Tipton) Ltd.* 36*g*
8. (1975) 4 SCC 298, *Shri Mandir Sita Ramji* v. *Lt. Governor of Delhi* 34*g*
9. 1971 AC 739 : (1971) 2 WLR 39 : (1971) 1 All ER 179 (PC), *Mangin* v. *IRC* 36*b-c*
10. AIR 1955 SC 830, *Tirath Singh* v. *Bachittar Singh* 35*f*
11. AIR 1952 SC 324 : 1952 Cri LJ 1503, *Shamrao V. Parulekar* v. *District Magistrate, Thana* 35*f*

The Judgment of the Court was delivered by

R.V. RAVEENDRAN, J.— Leave granted. The general scope of Section 89 of the Code of Civil Procedure, 1908 ("the Code", for short) and the question whether the said section empowers the court to refer the parties to a suit to arbitration without the consent of both parties, arise for consideration in this appeal.

2. The second respondent (Cochin Port Trust) entrusted the work of construction of certain bridges and roads to the appellants under an agreement dated 20-4-2001. The appellants sub-contracted a part of the said work to the first respondent under an agreement dated 1-8-2001. It is not in dispute that the agreement between the appellants and the first respondent did not contain any provision for reference of the disputes to arbitration.

3. The first respondent filed a suit against the appellants for recovery of ₹2,10,70,881 from the appellants and their assets and/or the amounts due to the appellants from the employer, with interest at 18% per annum. In the said suit an order of attachment was made on 15-9-2004 in regard to a sum of ₹2.25 crores. Thereafter in March 2005, the first respondent filed an application under Section 89 of the Code before the trial court praying that

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the court may formulate the terms of settlement and refer the matter to arbitration. The appellants filed a counter dated 24-10-2005 to the application submitting that they were not agreeable for referring the matter to arbitration or any of the other ADR processes under Section 89 of the Code.

4. In the meanwhile, the High Court of Kerala by the order dated 8-9-2005, allowed the appeal filed by the appellants against the order of attachment and raised the attachment granted by the trial court subject to certain conditions. While doing so, the High Court also directed the trial court to consider and dispose of the application filed by the first respondent under Section 89 of the Code.

5. The trial court heard the said application under Section 89. It recorded the fact that the first respondent (the plaintiff) was agreeable for arbitration and the appellants (Defendants 1 and 2) were not agreeable for arbitration. The trial court allowed the said application under Section 89 by a reasoned order dated 26-10-2005 and held that as the claim of the plaintiff in the suit related to a work contract, it was appropriate that the dispute should be settled by arbitration. It formulated sixteen issues and referred the matter to arbitration. The appellants filed a revision against the order of the trial court.

6. The High Court by the impugned order dated 11-10-2006 dismissed the revision petition holding that the apparent tenor of Section 89 of the Code permitted the court, in appropriate cases, to refer even unwilling parties to arbitration. The High Court also held that the concept of pre-existing arbitration agreement which was necessary for reference to arbitration under the provisions of the Arbitration and Conciliation Act, 1996 ("the AC Act", for short) was inapplicable to references under Section 89 of the Code, having regard to the decision in *Sukanya Holdings (P) Ltd.* v. *Jayesh H. Pandya*[1]. The said order is challenged in this appeal.

7. On the contentions urged, two questions arise for consideration:

(*i*) What is the procedure to be followed by a court in implementing Section 89 and Order 10 Rule 1-A of the Code?

(*ii*) Whether consent of all parties to the suit is necessary for reference to arbitration under Section 89 of the Code?

8. To find answers to the said questions, we have to analyse the object, purpose, scope and tenor of the said provisions. The said provisions are extracted below:

> "**89.** ***Settlement of disputes outside the court.***—(1) *Where it appears to the court that there exist elements of a settlement* which may be acceptable to the parties, the court shall *formulate the terms of settlement* and give them to the parties for their observations and after receiving the observations of the parties, the court may *reformulate the terms of a possible settlement* and refer the same for—
>
> (*a*) arbitration;
>
> (*b*) conciliation;

1 (2003) 5 SCC 531

(*c*) judicial settlement including settlement through Lok Adalat; or

(*d*) mediation.

(2) Where a dispute has been referred—

(*a*) for *arbitration or conciliation*, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(*b*) to *Lok Adalat*, the court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of Section 20 of the Legal Services Authorities Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(*c*) for *judicial settlement*, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authorities Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(*d*) for *mediation*, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed."

Order 10 Rule 1-A

"1-A. *Direction of the court to opt for any one mode of alternative dispute resolution.*—After recording the admissions and denials, the court shall direct the parties to the suit to opt either mode of the settlement outside the court as specified in sub-section (1) of Section 89. On the option of the parties, the court shall fix the date of appearance before such forum or authority as may be opted by the parties."

Order 10 Rule 1-B

"1-B. *Appearance before the conciliatory forum or authority.*—Where a suit is referred under Rule 1-A, the parties shall appear before such forum or authority for conciliation of the suit."

Order 10 Rule 1-C

"1-C. *Appearance before the court consequent to the failure of efforts of conciliation.*—Where a suit is referred under Rule 1-A and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the court and direct the parties to appear before the court on the date fixed by it."

9. If Section 89 is to be read and required to be implemented in its literal sense, it will be a trial Judge's nightmare. It puts the cart before the horse and lays down an impractical, if not impossible, procedure in sub-section (1). It has mixed up the definitions in sub-section (2). In spite of these defects, the object behind Section 89 is laudable and sound. Resort to alternative disputes resolution (for short "ADR") processes is necessary to give speedy and effective relief to the litigants and to reduce the pendency in and burden upon the courts. As ADR processes were not being resorted to with the desired frequency, Parliament thought it fit to introduce Section 89 and Rules 1-A to

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1-C in Order 10 in the Code, to ensure that ADR process was resorted to before the commencement of trial in suits.

10. In view of its laudable object, the validity of Section 89, with all its imperfections, was upheld in *Salem Advocate Bar Assn. (I)* v. *Union of India*[2] [for short *Salem Bar (I)*] but referred to a committee, as it was hoped that Section 89 could be implemented by ironing the creases. In *Salem Advocate Bar Assn. (II)* v. *Union of India*[3] [for short *Salem Bar (II)*], this Court applied the principle of purposive construction in an attempt to make it workable.

What is wrong with Section 89 of the Code?

11. The first anomaly is the mixing up of the definitions of "mediation" and "judicial settlement" under clauses (*c*) and (*d*) of sub-section (2) of Section 89 of the Code. Clause (*c*) says that for "judicial settlement", the court shall refer the same to a suitable institution or person who shall be deemed to be a Lok Adalat. Clause (*d*) provides that where the reference is to "mediation", the court shall effect a compromise between the parties by following such procedure as may be prescribed. It makes no sense to call a compromise effected by a court, as "mediation", as is done in clause (*d*). Nor does it make any sense to describe a reference made by a court to a suitable institution or person for arriving at a settlement as "judicial settlement", as is done in clause (*c*).

12. "Judicial settlement" is a term in vogue in USA referring to a settlement of a civil case with the help of a Judge who is not assigned to adjudicate upon the dispute. "Mediation" is also a well-known term and it refers to a method of non-binding dispute resolution with the assistance of a neutral third party who tries to help the disputing parties to arrive at a negotiated settlement. It is also a synonym of the term "conciliation". (See *Black's Law Dictionary*, 7th Edn., pp. 1377 and 996.)

13. When words are universally understood in a particular sense, and assigned a particular meaning in common parlance, the definitions of those words in Section 89 with interchanged meanings has led to confusion, complications and difficulties in implementation. The mix-up of definitions of the terms "judicial settlement" and "mediation" in Section 89 is apparently due to a clerical or typographical error in drafting, resulting in the two words being interchanged in clauses (*c*) and (*d*) of Section 89(2). If the word "mediation" in clause (*d*) and the words "judicial settlement" in clause (*c*) are interchanged, we find that the said clauses make perfect sense.

14. The second anomaly is that sub-section (1) of Section 89 imports the final stage of conciliation referred to in Section 73(1) of the AC Act into the pre-ADR reference stage under Section 89 of the Code. Sub-section (1) of Section 89 requires the court to formulate the terms of settlement and give them to the parties for their observation and then reformulate the terms of a

2 (2003) 1 SCC 49
3 (2005) 6 SCC 344

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possible settlement and then refer the same for any one of the ADR processes.

15. If sub-section (1) of Section 89 is to be literally followed, every trial Judge before framing issues, is required to ascertain whether there exist any elements of a settlement which may be acceptable to the parties, formulate the terms of settlement, give them to the parties for observations and then reformulate the terms of a possible settlement before referring it to arbitration, conciliation, judicial settlement, Lok Adalat or mediation. There is nothing that is left to be done by the alternative dispute resolution forum. If all these have to be done by the trial court before referring the parties to alternative dispute resolution processes, the court itself may as well proceed to record the settlement as nothing more is required to be done, as a Judge cannot do these unless he acts as a conciliator or mediator and holds detailed discussions and negotiations running into hours.

16. Section 73 of the AC Act shows that formulation and reformulation of the terms of settlement is a process carried out at the final stage of a conciliation process, when the settlement is being arrived at. What is required to be done at the final stage of conciliation by a conciliator is borrowed lock, stock and barrel into Section 89 and the court is wrongly required to formulate the terms of settlement and reformulate them at a stage *prior* to reference to an ADR process. This becomes evident by a comparison of the wording of the two provisions.

Section 73(1) of the Arbitration and Conciliation Act, 1996 relating to the final stage of settlement process in conciliation	*Section 89(1) of the Code of Civil Procedure relating to a stage before reference to an ADR process*
"73. *Settlement agreement.*—(1) When it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations."	"89. *Settlement of disputes outside the court.*—(1) Where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the court may reformulate the terms of a possible settlement and refer the same for— (*a*) arbitration; (*b*) conciliation; (*c*) judicial settlement including settlement through Lok Adalat; or (*d*) mediation."

17. Formulation and reformulation of the terms of settlement by the court is therefore wholly out of place at the stage of pre-ADR reference. It is not possible for courts to perform these acts at a preliminary hearing to decide whether a case should be referred to an ADR process and, if so, which ADR process.

18. If the reference is to be made to arbitration, the terms of settlement formulated by the court will be of no use, as what is referred to arbitration is the dispute and not the terms of settlement; and the arbitrator will adjudicate upon the dispute and give his decision by way of award. If the reference is to conciliation/mediation/Lok Adalat, then drawing up the terms of the settlement or reformulating them is the job of the conciliator or the mediator or the Lok Adalat, after going through the entire process of conciliation/mediation. Thus, the terms of settlement drawn up by the court will be totally useless in any subsequent ADR process. Why then the courts should be burdened with the onerous and virtually impossible, but redundant, task of formulating the terms of settlement at pre-reference stage?

19. It will not be possible for a court to formulate the terms of the settlement, unless the Judge discusses the matter in detail with both parties. The court formulating the terms of settlement merely on the basis of pleadings is neither feasible nor possible. The requirement that the court should formulate the terms of settlement is therefore a great hindrance to courts in implementing Section 89 of the Code. This Court therefore diluted this anomaly in *Salem Bar (II)*[3] by equating the "terms of settlement" to a "summary of disputes" meaning thereby that the court is only required to formulate a "summary of disputes" and not "terms of settlement".

How should Section 89 be interpreted?

20. The principles of statutory interpretation are well settled. Where the words of the statute are clear and unambiguous, the provision should be given its plain and normal meaning, without adding or rejecting any words. Departure from the literal rule, by making structural changes or substituting words in a clear statutory provision, under the guise of interpretation will pose a great risk as the changes may not be what the legislature intended or desired. Legislative wisdom cannot be replaced by the Judge's views. As observed by this Court in a somewhat different context:

> "6. ... When a procedure is prescribed by the legislature, it is not for the court to substitute a different one according to its notion of justice. When the legislature has spoken, the judges cannot afford to be wiser."

(See *Shri Mandir Sita Ramji* v. *Lt. Governor of Delhi*[4], SCC p. 301, para 6.)

21. There is however an exception to this general rule. Where the words used in the statutory provision are vague and ambiguous or where the plain and normal meaning of its words or grammatical construction thereof would lead to confusion, absurdity, repugnancy with other provisions, the courts

3 *Salem Advocate Bar Assn. (II)* v. *Union of India*, (2005) 6 SCC 344

4 (1975) 4 SCC 298

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may, instead of adopting the plain and grammatical construction, use the interpretative tools to set right the situation, by adding or omitting or substituting the words in the statute. When faced with an apparently defective provision in a statute, courts prefer to assume that the draftsman had committed a mistake rather than concluding that the legislature has deliberately introduced an absurd or irrational statutory provision. Departure from the literal rule of plain and straight reading can however be only in exceptional cases, where the anomalies make the literal compliance with a provision impossible, or absurd or so impractical as to defeat the very object of the provision. We may also mention purposive interpretation to avoid absurdity and irrationality is more readily and easily employed in relation to procedural provisions than with reference to substantive provisions.

21.1. Maxwell on *Interpretation of Statutes* (12th Edn., p. 228), under the caption "modification of the language to meet the intention" in the chapter dealing with "Exceptional Construction" states the position succinctly:

> "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used."

This Court in *Tirath Singh* v. *Bachittar Singh*[5] approved and adopted the said approach.

21.2. In *Shamrao V. Parulekar* v. *District Magistrate, Thana*[6] this Court reiterated the principle from *Maxwell*: (AIR p. 327, para 12)

> "*12.* ... if one construction will lead to an absurdity while another will give effect to what common sense would show was obviously intended, the construction which would defeat the ends of the Act must be rejected even if the same words used in the same section, and even the same sentence, have to be construed differently. Indeed, the law goes so far as to require the courts sometimes even to modify the grammatical and ordinary sense of the words if by doing so absurdity and inconsistency can be avoided."

5 AIR 1955 SC 830

6 AIR 1952 SC 324 : 1952 Cri LJ 1503

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21.3. In *Molar Mal* v. *Kay Iron Works (P) Ltd.*[7] this Court while reiterating that courts will have to follow the rule of literal construction, which enjoins the court to take the words as used by the legislature and to give it the meaning which naturally implies, held that there is an exception to that rule. This Court observed: (SCC p. 295, para 12)

> "*12.* ... That exception comes into play when application of literal construction of the words in the statute leads to absurdity, inconsistency or when it is shown that the legal context in which the words are used or by reading the statute as a whole, it requires a different meaning."

21.4. In *Mangin* v. *IRC*[8] the Privy Council held: (AC p. 746 E)

> "... the object of the construction of a statute being to ascertain the will of the legislature it may be presumed that neither injustice nor absurdity was intended. If therefore a literal interpretation would produce such a result, and the language admits of an interpretation which would avoid it, then such an interpretation may be adopted."

21.5. A classic example of correcting an error committed by the draftsman in legislative drafting is the substitution of the words "defendant's witnesses" by this Court for the words "plaintiff's witnesses" occurring in Order 7 Rule 14(4) of the Code, in *Salem Bar (II)*[3]. We extract below the relevant portion of the said decision: (SCC pp. 368-69, para 35)

> "*35.* Order 7 relates to the production of documents by the plaintiff whereas Order 8 relates to production of documents by the defendant. Under Order 8 Rule 1-A(4) a document not produced by the defendant can be confronted to the plaintiff's witness during cross-examination. Similarly, the plaintiff can also confront the defendant's witness with a document during cross-examination. By mistake, instead of 'defendant's witnesses', the words 'plaintiff's witnesses' have been mentioned in Order 7 Rule 14(4). To avoid any confusion, we direct that till the legislature corrects the mistake, the words 'plaintiff's witnesses', would be read as 'defendant's witnesses' in Order 7 Rule 14(4). We, however, hope that the mistake would be expeditiously corrected by the legislature."

21.6. Justice G.P. Singh extracts four conditions that should be present to justify departure from the plain words of the statute, in his treatise *Principles of Statutory Interpretation* (12th Edn., 2010, Lexis Nexis, p. 144) from the decision of the House of Lords in *Stock* v. *Frank Jones (Tipton) Ltd.*[9]: (WLR p. 237 F-G)

> "... a court would only be justified in departing from the plain words of the statute when it is satisfied that: (*1*) there is clear and gross balance of anomaly; (*2*) Parliament, the legislative promoters and the draftsman could not have envisaged such anomaly, could not have been prepared to

7 (2000) 4 SCC 285

8 1971 AC 739 : (1971) 2 WLR 39 : (1971) 1 All ER 179 (PC)

3 *Salem Advocate Bar Assn. (II)* v. *Union of India*, (2005) 6 SCC 344

9 (1978) 1 WLR 231 : (1978) 1 All ER 948 (HL)

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accept it in the interest of a supervening legislative objective; (*3*) the anomaly can be obviated without detriment to such legislative objective; (*4*) the language of the statute is susceptible of the modification required to obviate the anomaly."

22. All the aforesaid four conditions justifying departure from the literal rule, exist with reference to Section 89 of the Code. Therefore, in *Salem Bar (II)*[3], by judicial interpretation the entire process of formulating the terms of settlement, giving them to the parties for their observation and reformulating the terms of a possible settlement after receiving the observations, contained in sub-section (1) of Section 89, is excluded or done away with by stating that the said provision merely requires formulating a summary of disputes. Further, this Court in *Salem Bar (II)*[3] SCC p. 381, para 65, adopted the following definition of "mediation" suggested in the model mediation rules, in spite of a different definition in Section 89(2)(*d*):

> "Settlement by 'mediation' means the process by which a mediator appointed by parties or by the court, as the case may be, mediates the dispute between the parties to the suit by the application of the provisions of the Mediation Rules, 2003 in Part II, and in particular, by facilitating discussion between parties directly or by communicating with each other through the mediator, by assisting parties in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, generating options in an attempt to solve the dispute and emphasising that it is the parties' own responsibility for making decisions which affect them."

23. All over the country the courts have been referring cases under Section 89 to mediation by assuming and understanding "mediation" to mean a dispute resolution process by negotiated settlement with the assistance of a neutral third party. Judicial settlement is understood as referring to a compromise entered by the parties with the assistance of the court adjudicating the matter, or another Judge to whom the court had referred the dispute.

24. Section 89 has to be read with Rule 1-A of Order 10 which requires the court to direct the parties to opt for any of the five modes of alternative dispute resolution processes and on their option refer the matter. The said Rule does not require the court to either formulate the terms of settlement or make available such terms of settlement to the parties to reformulate the terms of a possible settlement after receiving the observations of the parties. Therefore the only practical way of reading Section 89 and Order 10 Rule 1-A is that after the pleadings are complete and after seeking admission/denials wherever required, and before framing issues, the court will have recourse to Section 89 of the Code. Such recourse requires the court to consider and record the nature of the dispute, inform the parties about the five options available and take note of their preferences and then refer them to one of the alternative dispute resolution processes.

3 *Salem Advocate Bar Assn. (II)* v. *Union of India*, (2005) 6 SCC 344

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25. In view of the foregoing, it has to be concluded that proper interpretation of Section 89 of the Code requires two changes from a plain and literal reading of the section. Firstly, it is not necessary for the court, before referring the parties to an ADR process to formulate or reformulate the terms of a possible settlement. It is sufficient if the court merely describes the nature of dispute (in a sentence or two) and makes the reference. Secondly, the definitions of "judicial settlement" and "mediation" in clauses (*c*) and (*d*) of Section 89(2) shall have to be interchanged to correct the draftsman's error. Clauses (*c*) and (*d*) of Section 89(2) of the Code will read as under when the two terms are interchanged:

> (*c*) for "mediation", the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authorities Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;
>
> (*d*) for "judicial settlement", the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

The above changes made by interpretative process shall remain in force till the legislature corrects the mistakes, so that Section 89 is not rendered meaningless and infructuous.

Whether the reference to ADR process is mandatory?

26. Section 89 starts with the words "where it appears to the court that there exist elements of a settlement". This clearly shows that cases which are not suited for ADR process should not be referred under Section 89 of the Code. The court has to form an opinion that a case is one that is capable of being referred to and settled through ADR process. Having regard to the tenor of the provisions of Rule 1-A of Order 10 of the Code, the civil court should *invariably* refer cases to ADR process. Only in certain recognised excluded categories of cases, it may choose not to refer to an ADR process. Where the case is unsuited for reference to any of the ADR processes, the court will have to briefly record the reasons for not resorting to any of the settlement procedures prescribed under Section 89 of the Code. Therefore, having a hearing after completion of pleadings, to consider recourse to ADR process under Section 89 of the Code, is mandatory. But actual reference to an ADR process in all cases is not mandatory. Where the case falls under an excluded category there need not be reference to ADR process. In all other cases reference to ADR process is a must.

27. The following categories of cases are normally considered to be not suitable for ADR process having regard to their nature:

> (*i*) Representative suits under Order 1 Rule 8 CPC which involve public interest or interest of numerous persons who are not parties before the court. (In fact, even a compromise in such a suit is a difficult process requiring notice to the persons interested in the suit, before its acceptance).

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(*ii*) Disputes relating to election to public offices (as contrasted from disputes between two groups trying to get control over the management of societies, clubs, association, etc.).

(*iii*) Cases involving grant of authority by the court after enquiry, as for example, suits for grant of probate or letters of administration.

(*iv*) Cases involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion, etc.

(*v*) Cases requiring protection of courts, as for example, claims against minors, deities and mentally challenged and suits for declaration of title against the Government.

(*vi*) Cases involving prosecution for criminal offences.

28. All other suits and cases of civil nature in particular the following categories of cases (whether pending in civil courts or other special tribunals/forums) are normally suitable for ADR processes:

(*i*) *All cases relating to trade, commerce and contracts*, including

- disputes arising out of contracts (including all money claims);
- disputes relating to specific performance;
- disputes between suppliers and customers;
- disputes between bankers and customers;
- disputes between developers/builders and customers;
- disputes between landlords and tenants/licensor and licensees;
- disputes between insurer and insured;

(*ii*) *All cases arising from strained or soured relationships*, including

- disputes relating to matrimonial causes, maintenance, custody of children;
- disputes relating to partition/division among family members/ coparceners/co-owners; and
- disputes relating to partnership among partners.

(*iii*) *All cases where there is a need for continuation of the pre-existing relationship in spite of the disputes*, including

- disputes between neighbours (relating to easementary rights, encroachments, nuisance, etc.);
- disputes between employers and employees;
- disputes among members of societies/associations/apartment owners' associations;

(*iv*) *All cases relating to tortious liability*, including

- claims for compensation in motor accidents/other accidents; and

(*v*) *All consumer disputes*, including

- disputes where a trader/supplier/manufacturer/service provider is keen to maintain his business/professional reputation and credibility or product popularity.

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The above enumeration of "suitable" and "unsuitable" categorisation of cases is not intended to be exhaustive or rigid. They are illustrative, which can be subjected to just exceptions or additions by the court/tribunal exercising its jurisdiction/discretion in referring a dispute/case to an ADR process.

How to decide the appropriate ADR process under Section 89?

29. Section 89 refers to five types of ADR procedures, made up of one adjudicatory process (arbitration) and four negotiatory (non-adjudicatory) processes—conciliation, mediation, judicial settlement and Lok Adalat settlement. The object of Section 89 of the Code is that settlement should be attempted by adopting an appropriate ADR process before the case proceeds to trial. Neither Section 89 nor Rule 1-A of Order 10 of the Code is intended to supersede or modify the provisions of the Arbitration and Conciliation Act, 1996 or the Legal Services Authorities Act, 1987. On the other hand, Section 89 of the Code makes it clear that two of the ADR processes—arbitration and conciliation, will be governed by the provisions of the AC Act and the two other ADR processes—Lok Adalat settlement and mediation (see amended definition in para 25 above), will be governed by the Legal Services Authorities Act. As for the last of the ADR processes—judicial settlement (see amended definition in para 25 above), Section 89 makes it clear that it is not governed by any enactment and the court will follow such procedure as may be prescribed (by appropriate rules).

30. Rule 1-A of Order 10 requires the court to give the option to the parties, to choose any of the ADR processes. This does not mean an individual option, but a joint option or consensus about the choice of the ADR process. On the other hand, Section 89 vests the choice of reference to the court. There is of course no inconsistency. Section 89 of the Code gives the jurisdiction to refer to ADR process and Rules 1-A to 1-C of Order 10 lay down the manner in which the said jurisdiction is to be exercised. The scheme is that the court explains the choices available regarding ADR process to the parties, permits them to opt for a process by consensus, and if there is no consensus, proceeds to choose the process.

31. Let us next consider which of the ADR processes require mutual consent of the parties and which of them do not require the consent of parties.

Arbitration

32. Arbitration is an adjudicatory dispute resolution process by a private forum, governed by the provisions of the AC Act. The said Act makes it clear that there can be reference to arbitration only if there is an "arbitration agreement" between the parties. If there was a pre-existing arbitration agreement between the parties, in all probability, even before the suit reaches the stage governed by Order 10 of the Code, the matter would have stood referred to arbitration either by invoking Section 8 or Section 11 of the AC Act, and there would be no need to have recourse to arbitration under Section 89 of the Code. Section 89 therefore presupposes that there is no pre-existing arbitration agreement.

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33. Even if there was no pre-existing arbitration agreement, the parties to the suit can agree for arbitration when the choice of ADR processes is offered to them by the court under Section 89 of the Code. Such agreement can be by means of a joint memo or joint application or a joint affidavit before the court, or by record of the agreement by the court in the order-sheet signed by the parties. Once there is such an agreement in writing signed by parties, the matter can be referred to arbitration under Section 89 of the Code; and on such reference, the provisions of the AC Act will apply to the arbitration, and as noticed in *Salem Bar (I)*[2], the case will go outside the stream of the court permanently and will not come back to the court.

34. If there is no agreement between the parties for reference to arbitration, the court cannot refer the matter to arbitration under Section 89 of the Code. This is evident from the provisions of the AC Act. A court has no power, authority or jurisdiction to refer unwilling parties to arbitration, if there is no arbitration agreement. This Court has consistently held that though Section 89 of the Code mandates reference to ADR processes, reference to arbitration under Section 89 of the Code could only be with the consent of both sides and not otherwise.

34.1. In *Salem Bar (I)*[2] this Court held: (SCC p. 55, paras 9-10)

> "9. It is quite obvious that the reason why Section 89 has been inserted is to try and see that all the cases which are filed in court need not necessarily be decided by the court itself. Keeping in mind the law's delays and the limited number of Judges which are available, it has now become imperative that resort should be had to alternative dispute resolution mechanism with a view to bring to an end litigation between the parties at an early date. The alternative dispute resolution (ADR) mechanism as contemplated by Section 89 is arbitration or conciliation or judicial settlement including settlement through Lok Adalat or mediation...
>
> *10. ...* ***If the parties agree to arbitration****, then the provisions of the Arbitration and Conciliation Act, 1996 will apply and that case will go outside the stream of the court* but resorting to conciliation or judicial settlement or mediation with a view to settle the dispute would not ipso facto take the case outside the judicial system. All that this means is that effort has to be made to bring about an amicable settlement between the parties but if conciliation or mediation or judicial settlement is not possible, despite efforts being made, the case will ultimately go to trial."
>
> (emphasis supplied)

34.2. In *Salem Bar (II)*[3] this Court held: (SCC p. 376, paras 54-56)

> "54. Some doubt as to a possible conflict has been expressed in view of use of the word 'may' in Section 89 when it stipulates that 'the court

2 *Salem Advocate Bar Assn. (I)* v. *Union of India*, (2003) 1 SCC 49

3 *Salem Advocate Bar Assn. (II)* v. *Union of India*, (2005) 6 SCC 344

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may reformulate the terms of a possible settlement and refer the same for' and use of the word 'shall' in Order 10 Rule 1-A when it states that *'the court shall direct the parties to the suit to opt either mode of the settlement outside the court as specified in sub-section (1) of Section 89'.*

55. The intention of the legislature behind enacting Section 89 is that where it appears to the court that there exists an element of a settlement which may be acceptable to the parties, they, at the instance of the court, shall be made to apply their mind so as to opt for one or the other of the four ADR methods mentioned in the section and if the parties do not agree, the court shall refer them to one or the other of the said modes. Section 89 uses both the words 'shall' and 'may' whereas Order 10 Rule 1-A uses the word 'shall' but on harmonious reading of these provisions it becomes clear that the use of the word 'may' in Section 89 only governs the aspect of reformulation of the terms of a possible settlement and its reference to one of the ADR methods. There is no conflict. It is evident that what is referred to *one of the ADR modes is the dispute which is summarised in the terms of settlement formulated or reformulated in terms of Section 89.*

56. One of the modes to which the dispute can be referred is 'arbitration'. Section 89(2) provides that where a dispute has been referred for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act') shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of the 1996 Act. Section 8 of the 1996 Act deals with the power to refer parties to arbitration where there is arbitration agreement. As held in *P. Anand Gajapathi Raju* v. *P.V.G. Raju*[10] the 1996 Act governs a case where arbitration is agreed upon before or pending a suit by all the parties. The 1996 Act, however, does not contemplate a situation as in Section 89 of the Code where the court asks the parties to choose one or other ADRs including arbitration and the parties choose arbitration as their option. *Of course, the parties have to agree for arbitration.*" (emphasis supplied)

34.3. The position was reiterated by this Court in *Jagdish Chander* v. *Ramesh Chander*[11] thus: (SCC p. 726, para 10)

"*10.* ... It should not also be overlooked that even though Section 89 mandates courts to refer pending suits to any of the several alternative dispute resolution processes mentioned therein, *there cannot be a reference to arbitration even under Section 89 CPC, unless there is a mutual consent of all parties, for such reference.*" (emphasis supplied)

34.4. Therefore, where there is no pre-existing arbitration agreement between the parties, the consent of all the parties to the suit will be necessary, for referring the subject-matter of the suit to arbitration under Section 89 of the Code.

10 (2000) 4 SCC 539
11 (2007) 5 SCC 719

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Conciliation

35. Conciliation is a non-adjudicatory ADR process, which is also governed by the provisions of the AC Act. There can be a valid reference to conciliation only if both parties to the dispute agree to have negotiations with the help of a third party or third parties either by an agreement or by the process of invitation and acceptance provided in Section 62 of the AC Act followed by appointment of conciliator(s) as provided in Section 64 of the AC Act. If both parties do not agree for conciliation, there can be no "conciliation". As a consequence, as in the case of arbitration, the court cannot refer the parties to conciliation under Section 89, in the absence of consent by all parties. As contrasted from arbitration, when a matter is referred to conciliation, the matter does not go out of the stream of the court process permanently. If there is no settlement, the matter is returned to the court for framing issues and proceeding with the trial.

The other three ADR processes

36*. If the parties are not agreeable for either arbitration or conciliation, both of which require consent of all parties, the court has to consider which of the other three ADR processes (Lok Adalat, mediation and judicial settlement) which do not require the consent of parties for reference, is suitable and appropriate and refer the parties to such ADR process. If mediation process is not available (for want of a mediation centre or qualified mediators), necessarily the court will have to choose between reference to Lok Adalat or judicial settlement. If the facility of mediation is available, then the choice becomes wider. If the suit is complicated or lengthy, mediation will be the recognised choice. If the suit is not complicated and the disputes are easily sortable or could be settled by applying clear-cut legal principles, Lok Adalat will be the preferred choice. If the court feels that a suggestion or guidance by a Judge would be appropriate, it can refer it to another Judge for dispute resolution. The court has to use its discretion in choosing the ADR process judiciously, keeping in view the nature of disputes, interests of parties and expedition in dispute resolution.

Whether the settlement in an ADR process is binding in itself?

37. When the court refers the matter to arbitration under Section 89 of the Act, as already noticed, the case goes out of the stream of the court and becomes an independent proceeding before the Arbitral Tribunal. Arbitration being an adjudicatory process, it always ends in a decision. There is also no question of failure of the ADR process or the matter being returned to the court with a failure report. The award of the arbitrators is binding on the parties and is executable/enforceable as if a decree of a court, having regard to Section 36 of the AC Act. If any settlement is reached in the arbitration proceedings, then the award passed by the Arbitral Tribunal on such settlement, will also be binding and executable/enforceable as if a decree of a court, under Section 30 of the AC Act.

* **Ed.**: Para 36 corrected vide Official Corrigendum No. F.3/Ed.B.J./112/2010 dated 4-10-2010.

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38. The other four ADR processes are non-adjudicatory and the case does not go out of the stream of the court when a reference is made to such a non-adjudicatory ADR forum. The court retains its control and jurisdiction over the case, even when the matter is before the ADR forum. When a matter is settled through conciliation, the settlement agreement is enforceable as if it is a decree of the court having regard to Section 74 read with Section 30 of the AC Act. Similarly, when a settlement takes place before the Lok Adalat, the Lok Adalat award is also deemed to be a decree of the civil court and executable as such under Section 21 of the Legal Services Authorities Act, 1987. Though the settlement agreement in a conciliation or a settlement award of a Lok Adalat may not require the seal of approval of the court for its enforcement when they are made in a direct reference by parties without the intervention of court, the position will be different if they are made on a reference by a court in a pending suit/proceedings. As the court continues to retain control and jurisdiction over the cases which it refers to conciliations, or Lok Adalats, the settlement agreement in conciliation or the Lok Adalat award will have to be placed before the court for recording it and disposal in its terms.

39. Where the reference is to a neutral third party ("mediation" as defined above) on a court reference, though it will be deemed to be reference to Lok Adalat, as the court retains its control and jurisdiction over the matter, the mediation settlement will have to be placed before the court for recording the settlement and disposal. Where the matter is referred to another Judge and settlement is arrived at before him, such settlement agreement will also have to be placed before the court which referred the matter and that court will make a decree in terms of it.

40. Whenever such settlements reached before non-adjudicatory ADR fora are placed before the court, the court should apply the principles of Order 23 Rule 3 of the Code and make a decree/order in terms of the settlement, in regard to the subject-matter of the suit/proceeding. In regard to matters/disputes which are not the subject-matter of the suit/proceedings, the court will have to direct that the settlement shall be governed by Section 74 of the AC Act (in respect of conciliation settlements) or Section 21 of the Legal Services Authorities Act, 1987 (in respect of settlements by a Lok Adalat or a mediator). Only then such settlements will be effective.

Summation

41. Having regard to the provisions of Section 89 and Rule 1-A of Order 10, the stage at which the court should explore whether the matter should be referred to ADR processes, is after the pleadings are complete, and before framing the issues, when the matter is taken up for preliminary hearing for examination of parties under Order 10 of the Code. However, if for any reason, the court had missed the opportunity to consider and refer the matter to ADR processes under Section 89 before framing issues, nothing prevents the court from resorting to Section 89 even after framing issues. But

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once evidence is commenced, the court will be reluctant to refer the matter to the ADR processes lest it becomes a tool for protracting the trial.

42. Though in civil suits, the appropriate stage for considering reference to ADR processes is after the completion of pleadings, in family disputes or matrimonial cases, the position can be slightly different. In those cases, the relationship becomes hostile on account of the various allegations in the petition against the spouse. The hostility will be further aggravated by the counter-allegations made by the respondent in his or her written statement or objections. Therefore, as far as Family Courts are concerned, the ideal stage for mediation will be immediately after service of respondent and *before* the respondent files objections/written statements. Be that as it may.

43*. We may summarise the procedure to be adopted by a court under Section 89 of the Code as under:

(*a*) When the pleadings are complete, before framing issues, the court shall fix a preliminary hearing for appearance of parties. The court should acquaint itself with the facts of the case and the nature of the dispute between the parties.

(*b*) The court should first consider whether the case falls under any of the category of the cases which are required to be tried by courts and not fit to be referred to any ADR processes. If it finds that the case falls under any excluded category, it should record a brief order referring to the nature of the case and why it is not fit for reference to ADR processes. It will then proceed with the framing of issues and trial.

(*c*) In other cases (that is, in cases which can be referred to ADR processes) the court should explain the choice of five ADR processes to the parties to enable them to exercise their option.

(*d*) The court should first ascertain whether the parties are willing for arbitration. The court should inform the parties that arbitration is an adjudicatory process by a chosen private forum and reference to arbitration will permanently take the suit outside the ambit of the court. The parties should also be informed that the cost of arbitration will have to be borne by them. Only if both parties agree for arbitration, and also agree upon the arbitrator, the matter should be referred to arbitration.

(*e*) If the parties are not agreeable for arbitration, the court should ascertain whether the parties are agreeable for reference to conciliation which will be governed by the provisions of the AC Act. If all the parties agree for reference to conciliation and agree upon the conciliator(s), the court can refer the matter to conciliation in accordance with Section 64 of the AC Act.

(*f*) If the parties are not agreeable for arbitration and conciliation, which is likely to happen in most of the cases for want of consensus, the court should, keeping in view the preferences/options of parties, refer the

* **Ed.**: Para 43 corrected vide Official Corrigenda Nos. F.3/Ed.B.J./87/2010 dated 27-8-2010 and F.3/Ed.B.J./112/2010 dated 4-10-2010, respectively.

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matter to any one of the other three ADR processes: (*a*) Lok Adalat; (*b*) mediation by a neutral third-party facilitator or mediator; and (*c*) a judicial settlement, where a Judge assists the parties to arrive at a settlement.

(*g*) If the case is simple which may be completed in a single sitting, or cases relating to a matter where the legal principles are clearly settled and there is no personal animosity between the parties (as in the case of motor accident claims), the court may refer the matter to Lok Adalat. In case where the questions are complicated or cases which may require several rounds of negotiations, the court may refer the matter to mediation. Where the facility of mediation is not available or where the parties opt for the guidance of a Judge to arrive at a settlement, the court may refer the matter to another Judge for attempting settlement.

(*h*) If the reference to the ADR process fails, on receipt of the report of the ADR forum, the court shall proceed with hearing of the suit. If there is a settlement, the court shall examine the settlement and make a decree in terms of it, keeping the principles of Order 23 Rule 3 of the Code in mind.

(*i*) If the settlement includes disputes which are not the subject-matter of the suit, the court may direct that the same will be governed by Section 74 of the AC Act (if it is a conciliation settlement) or Section 21 of the Legal Services Authorities Act, 1987 (if it is a settlement by a Lok Adalat or by mediation which is a deemed Lok Adalat). If the settlement is through mediation and it relates not only to disputes which are the subject-matter of the suit, but also other disputes involving persons other than the parties to the suit, the court may adopt the principle underlying Order 23 Rule 3 of the Code. This will be necessary as many settlement agreements deal with not only the disputes which are the subject-matter of the suit or proceeding in which the reference is made, but also other disputes which are not the subject-matter of the suit.

(*j*) If any term of the settlement is ex facie illegal or unenforceable, the court should draw the attention of parties thereto to avoid further litigations and disputes about executability.

44. The court should also bear in mind the following consequential aspects, while giving effect to Section 89 of the Code:

(*i*) If the reference is to arbitration or conciliation, the court has to record that the reference is by mutual consent. Nothing further need be stated in the order-sheet.

(*ii*) If the reference is to any other ADR process, the court should briefly record that having regard to the nature of dispute, the case deserves to be referred to Lok Adalat, or mediation or judicial settlement, as the case may be. There is no need for an elaborate order for making the reference.

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(*iii*) The requirement in Section 89(1) that the court should formulate or reformulate the terms of settlement would only mean that the court has to briefly refer to the nature of dispute and decide upon the appropriate ADR process.

(*iv*) If the Judge in charge of the case assists the parties and if settlement negotiations fail, he should not deal with the adjudication of the matter, to avoid apprehensions of bias and prejudice. It is therefore advisable to refer cases proposed for judicial settlement to another Judge.

(*v*) If the court refers the matter to an ADR process (other than arbitration), it should keep track of the matter by fixing a hearing date for the ADR report. The period allotted for the ADR process can normally vary from a week to two months (which may be extended in exceptional cases, depending upon the availability of the alternative forum, the nature of case, etc.). Under no circumstances the court should allow the ADR process to become a tool in the hands of an unscrupulous litigant intent upon dragging on the proceedings.

(*vi*) Normally the court should not send the original record of the case when referring the matter to an ADR forum. It should make available only copies of relevant papers to the ADR forum. (For this purpose, when pleadings are filed the court may insist upon filing of an extra copy). However if the case is referred to a court annexed mediation centre which is under the exclusive control and supervision of a judicial officer, the original file may be made available wherever necessary.

45. The procedure and consequential aspects referred to in the earlier two paragraphs are intended to be general guidelines subject to such changes as the court concerned may deem fit with reference to the special circumstances of a case. We have referred to the procedure and process rather elaborately as we find that Section 89 has been a non-starter with many courts. Though the process under Section 89 appears to be lengthy and complicated, in practice the process is simple: know the dispute; exclude "unfit" cases; ascertain consent for arbitration or conciliation; if there is no consent, select Lok Adalat for simple cases and mediation for all other cases, reserving reference to a Judge-assisted settlement only in exceptional or special cases.

Conclusion

46. Coming back to this case, we may refer to the decision in *Sukanya Holdings*[1] relied upon by the respondents, to contend that for a reference to arbitration under Section 89 of the Code, consent of parties is not required. The High Court assumed that *Sukanya Holdings*[1] has held that Section 89 enables the civil court to refer a case to arbitration even in the absence of an arbitration agreement. *Sukanya Holdings*[1] does not lay down any such proposition. In that decision, this Court was considering the question as to whether an application under Section 8 of the AC Act could be maintained

1 *Sukanya Holdings (P) Ltd.* v. *Jayesh H. Pandya*, (2003) 5 SCC 531

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even where a part of the subject-matter of the suit was not covered by an arbitration agreement. The only observations in the decision relating to Section 89 are as under: (SCC p. 536, para 18)

> "*18.* Reliance was placed on Section 89 CPC in support of the argument that the matter should have been referred to arbitration. In our view, Section 89 CPC cannot be resorted to for interpreting Section 8 of the Act as it stands on a different footing and it would be applicable even in cases where there is no arbitration agreement for referring the dispute for arbitration. Further, for that purpose, the court has to apply its mind to the condition contemplated under Section 89 CPC and even if application under Section 8 of the Act is rejected, the court is required to follow the procedure prescribed under the said section."

47. The observations only mean that even when there is no existing arbitration agreement enabling filing of an application under Section 8 of the Act, there can be a reference under Section 89 to arbitration if parties agree to arbitration. The observations in *Sukanya Holdings*[1] do not assist the first respondent as they were made in the context of considering a question as to whether Section 89 of the Code could be invoked for seeking a reference under Section 8 of the AC Act in a suit, where only a part of the subject-matter of the suit was covered by arbitration agreement and other parts were not covered by arbitration agreement.

48. The first respondent next contended that the effect of the decision in *Sukanya Holdings*[1] is that Section 89 CPC would be applicable even in cases where there is no arbitration agreement for referring the dispute to arbitration. There can be no dispute in regard to the said proposition as Section 89 deals, not only with arbitration but also four other modes of non-adjudicatory resolution processes and existence of an arbitration agreement is not a condition precedent for exercising power under Section 89 of the Code in regard to the said four ADR processes.

49. In the light of the above discussion, we answer the questions as follows:

> (*i*) The trial court did not adopt the proper procedure while enforcing Section 89 of the Code. Failure to invoke Section 89 suo motu after completion of pleadings and considering it only after an application under Section 89 was filed, is erroneous.
>
> (*ii*) A civil court exercising power under Section 89 of the Code cannot refer a suit to arbitration unless all the parties to the suit agree for such reference.

50. Consequently, this appeal is allowed and the order of the trial court referring the matter to arbitration and the order of the High Court affirming the said reference are set aside. The trial court will now consider and decide upon a non-adjudicatory ADR process.

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1 *Sukanya Holdings (P) Ltd.* v. *Jayesh H. Pandya*, (2003) 5 SCC 531 •

NOTE

*Sections 21 and 22 of The Legal Services Authorities Act, 1987.

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(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 advice 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).]

21. Award of Lok Adalat.—[1][(1) Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of section 20, the court-free paid in such case shall be refunded in the manner provided under the Court Fees Act, 1870 (7 of 1870).]

(2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.

22. Powers of [2][Lok Adalat or Permanent Lok Adalat].—(1) The [2][Lok Adalat or Permanent Lok Adalat] shall, for the purposes of holding any determination under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—

(a) the summoning and enforcing the attendance of any witness and examining him on oath;

(b) the discovery and production of any document;

(c) the reception of evidence on affidavits;

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1. Subs. by Act 59 of 1994, sec. 16, for sub-section (1) (w.e.f. 29-10-1994).
2. Subs. by Act 37 of 2002, sec. 3, for "Lok Adalat" (w.e.f. 11-6-2002).

(d) the requisitioning of any public record or document or copy of such record or document from any court or office; and

(e) such other matters as may be prescribed.

(2) Without prejudice to the generality of the powers contained in sub-section (1), every [1][Lok Adalat or Permanent Lok Adalat] shall have the requisite powers to specify its own procedure for the determination of any dispute coming before it.

(3) All proceedings before a [1][Lok Adalat or Permanent Lok Adalat] shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code (45 of 1860) and every [1][Lok Adalat or Permanent Lok Adalat] shall be deemed to be a civil court for the purpose of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

COMMENTS

Every Lok Adalat has been vested with the powers of a civil court under the Code of Civil Procedure. Lok Adalat is empowered to summon and enforce the attendance of any witness, to discover and produce any document, to receive evidence on affidavits, to requisite any public record or document or copy of such record or document from any court or office.

[2][*CHAPTER VIA*

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,

and includes any service which the Central Government or the State Government, as the case may be, may, in the public interest, by notification, declare to be a public utility service for the purposes of this Chapter.

22B. 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

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1. Subs. by Act 37 of 2002, sec. 3, for "Lok Adalat" (w.e.f. 11-6-2002).

2. Chapter VIA (containing sections 22A to 22E) ins. by Act 37 of 2002, sec. 4 (w.e.f. 11-6-2002).

NOTE

*Order XXIII Rule 3 of The Code of Civil Procedure, 1908.

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subject-matter or the claim is the same in the earlier suit or in the present suits. Where, however, the earlier suit was only for an injunction to restrain the defendants from further committing the offending Acts and the present suits are based on the consequences of the illegal acts of the defendants, the claim put forward in the earlier suits is entirely different from the claim put forward in the present suits and the subject-matter and the cause of action are also different. If the earlier suit is withdrawn, the contention that the present suits are hit by Order 2, rule 2 of Civil Procedure Code would not be available to the defendants, since rule 1 of Order 23 comes into play and if the bar under Order 23, rule 14 is not applicable, the maintainability of the present suit cannot be doubted; *Secretary K.S.E.B.* v. *M.V. Abraham*, AIR 2007 Ker 12.

3. Compromise of suit.—Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise [1][in writing and signed by the parties], or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith [2][so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit]:

[3][Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]

[4][*Explanation.*—An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.]

HIGH COURT AMENDMENTS

Allahabad.—In Order XXIII, in rule 3,—

(i) between the words 'or compromise' and 'or where', insert the words, 'in writing duly signed by the parties' and between the words 'subject-matter of the suit' and the words 'the Court', insert the words 'and obtained an instrument in writing duly signed by the plaintiff'.

(ii) at the end of the rule, insert the following proviso and *Explanation*, namely:—

"Provided that the provisions of this rule shall not apply to or in any way affect the provisions of Order XXXIV, rules 3, 5 and 8.

Explanation.—The expressions, 'agreement' and 'compromise', include a joint statement of the parties concerned or their counsel recorded by the Court, and the expression 'instrument' includes a statement of the plaintiff or his counsel recorded by the Court."

[*Vide* Notification No. 155/Alld-87, dated 31st August, 1974.]

[Ed.—This amendment relates to rule 3 prior to its amendment made by Central Act 104 of 1976, sec. 74 (w.e.f. 1-2-1977).]

Delhi.—Same as in Punjab.

Himachal Pradesh.—Same as in Punjab.

Karnataka.—In Order XXIII,—

(i) re-number rule 3 as sub-rule (1) thereof

(ii) after sub-rule (1) as so renumbered, insert the following sub-rule, namely:—

"(2) Where any such agreement or compromise as is referred to in sub-rule (1) is placed before the Court by a party suing or defending in a representative capacity

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1. Ins. by Act 104 of 1976, sec. 74(iii)(a) (w.e.f. 1-2-1977).
2. Subs. by Act 104 of 1976, sec. 74(iii)(b), for "so far it relates to the suit" (w.e.f. 1-2-1977).
3. Ins. by Act 104 of 1976, sec. 74(iv) (w.e.f. 1-2-1977).
4. Ins. by Act 104 of 1976, sec. 74(v) (w.e.f. 1-2-1977).

NOTE

*Para. 12.

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retirement, has no application in the present case. Those decisions are in relation to resignation and voluntary retirement and are based on the legal proposition that unless the employee is relieved of his duty, after acceptance of offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end. In the case of reversion, the said principle has no application and, thus, cases on that aspect have no relevance in the present case.

17. For the aforesaid reasons, the appeal is partly allowed. The order of reversion imposing a condition that the appellant shall forfeit permanently his chances for promotion to the officers' cadre is set aside and it is directed that he shall forfeit his chances for promotion to the officers' cadre only for a period of two years from the date of the order of reversion.

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(BEFORE K.G. BALAKRISHNAN, C.J. AND G.P. MATHUR AND R.V. RAVEENDRAN, JJ.)

STATE OF PUNJAB AND ANOTHER .. Appellants;

Versus

JALOUR SINGH AND OTHERS .. Respondents.

Civil Appeal No. 522 of 2008†, decided on January 18, 2008

A. Legal Aid — Lok Adalats — Jurisdiction, powers and functions of Lok Adalat — Nature and scope — Meaning of words "award" and "determination" used in context of Lok Adalat in Ss. 19 to 22, Legal Services Authorities Act, 1987 — Held, Lok Adalats have no adjudicatory or judicial functions — Their functions relate purely to conciliation and must be based on compromise or settlement between the parties — Lok Adalat cannot enter into an adversarial adjudication akin to a court of law — Lok Adalat "award" not based on a compromise or settlement would be void — In case no compromise or settlement can be arrived at, case record must be returned to the court from which it was received, for disposal by the said court in accordance with law — Civil Procedure Code, 1908 — S. 89 — Legal Services Authorities Act, 1987 — Ss. 19 to 22 — Alternate Dispute Resolution — Conciliation

Allowing the appeal, the Supreme Court

Held :

Lok Adalats have no adjudicatory or judicial functions. Their functions relate purely to conciliation. A Lok Adalat determines a reference on the basis of a compromise or settlement between the parties at its instance, and puts its seal of confirmation by making an award in terms of the compromise or settlement. When the Lok Adalat is not able to arrive at a settlement or compromise, no award is made and the case record is returned to the court from which the reference was received, for disposal in accordance with law. No Lok Adalat has the power to "hear" parties to adjudicate cases as a court does. It discusses the

† Arising out of SLP (C) No. 3847 of 2005. From the Final Judgment and Order dated 26-2-2003 of the High Court of Punjab and Haryana at Chandigarh in CRP No. 970 of 2004

subject-matter with the parties and persuades them to arrive at a just settlement. In their conciliatory role, the Lok Adalats are guided by the principles of justice, equity and fair play. When the LSA Act refers to "determination" by the Lok Adalat and "award" by the Lok Adalat, the said Act does not contemplate nor require an adjudicatory judicial determination, but a non-adjudicatory determination based on a compromise or settlement, arrived at by the parties, with guidance and assistance from the Lok Adalat. The "award" of the Lok Adalat does not mean any independent verdict or opinion arrived at by any decision-making process. The making of the award is merely an administrative act of incorporating the terms of settlement or compromise agreed by parties in the presence of the Lok Adalat, in the form of an executable order under the signature and seal of the Lok Adalat. (Para 8)

Many sitting or retired Judges, while participating in the Lok Adalats as members, tend to conduct the Lok Adalats like courts, by hearing parties, and imposing their views as to what is just and equitable, on the parties. Sometimes they get carried away and proceed to pass orders on merits, as in this case, even though there is no consensus or settlement. Such acts, instead of fostering alternative dispute resolution through the Lok Adalats, will drive the litigants away from the Lok Adalats. The Lok Adalats should resist their temptation to play the part of judges and constantly strive to function as conciliators. The endeavour and effort of the Lok Adalats should be to guide and persuade the parties, with reference to principles of justice, equity and fair play to compromise and settle the dispute by explaining the pros and cons, strengths and weaknesses, advantages and disadvantages of their respective claims. (Para 9)

The order of the Lok Adalat in this case (extracted in para 3), shows that it assumed a judicial role, heard parties, ignored the absence of consensus, and increased the compensation to an extent it considered just and reasonable, by a reasoned order which is adjudicatory in nature. It arrogated to itself the appellate powers of the High Court and "allowed" the appeal and "directed" the respondents in the appeal to pay the enhanced compensation of Rs 62,200 within two months. The order of the Lok Adalat was not passed by consent of parties or in pursuance of any compromise or settlement between the parties. Such an order is not an award of the Lok Adalat. Being contrary to law and beyond the power and jurisdiction of the Lok Adalat, it is void in the eye of the law. (Para 10)

B. **Legal Aid — Lok Adalats — Proper award of Lok Adalat (one based on compromise and settlement between parties) — Finality of — Remedy against — Normally a proper Lok Adalat award is final and binding and becomes executable like a civil court decree, and no appeal lies thereagainst — However, a Lok Adalat award can be challenged on very limited grounds under Arts. 226/227 of the Constitution — Legal Services Authorities Act, 1987 — S. 20 — Constitution of India — Arts. 226 and 227**

C. **Legal Aid — Lok Adalats — Improper "award" of Lok Adalat (one not based on compromise and settlement between parties) — Non-finality of — Remedy against — Award itself permitting parties to approach court in appeal in case of disagreement with award — Such an award not being a Lok Adalat award proper, cannot be challenged under Art. 227 of the Constitution — In such a situation, court concerned should hear and dispose of the appeal on merits — Legal Services Authorities Act, 1987 — S. 20 — Constitution of India — Arts. 226 and 227 — Alternate Dispute Resolution — Conciliation**

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Where an award is made by the Lok Adalat in terms of a settlement arrived at between the parties (which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court, and no appeal lies against it to any court. If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and/or Article 227 of the Constitution, that too on very limited grounds. But where no compromise or settlement is signed by the parties and the order of the Lok Adalat does not refer to any settlement, but directs the respondent to either make payment if it agrees to the order, or approach the High Court for disposal of appeal on merits, if it does not agree, is not an award of the Lok Adalat. The question of challenging such an order in a petition under Article 227 does not arise. In such a situation, the High Court ought to hear and dispose of the appeal on merits. (Para 12)

D-D/37274/CLR

Advocates who appeared in this case :
Pahul Malik and Rohit Wlacha (for Ajay Pal) Advocates, for the Appellants;
Neeraj Kr. Jain and Ugra Shankar Prasad, Advocates, for the Respondents.

The Judgment of the Court was delivered by

K.G. BALAKRISHNAN, C.J.— Delay condoned. Leave granted. Heard the learned counsel.

2. Respondents 1 and 2 herein, the husband and son of one Amarjit Kaur who died in a motor accident involving a Punjab Roadways bus, filed a claim petition before the Motor Accidents Claims Tribunal, Faridkot. As against the compensation of Rs 5 lakhs claimed, the Tribunal, on 1-12-1998 awarded a compensation of Rs 1,44,000. Not being satisfied with the quantum of compensation, Respondents 1 and 2 filed FAO No. 1549 of 1999 before the Punjab and Haryana High Court. The said appeal was referred to the Lok Adalat organised by the High Court, for settlement.

3. The High Court Lok Adalat took up the case on 3-8-2001. The parties were not present. Their counsel were present. After hearing them the Lok Adalat passed the following order:

"*FAO No. 1549 of 1999*

After hearing counsel for the parties, *we propose to increase the amount of compensation*, which is considered just and reasonable in this case.

The accident took place on March 4, 1997. Amarjit Kaur, aged about 32 years, died in the accident. Her husband and minor son claimed compensation. The Tribunal granted Rs 1,44,000 along with 12 per cent per annum interest. Feeling dissatisfied, they are in appeal.

The deceased was doing household work and also looking after some cattle and selling milk. The Tribunal fixed earning capacity at Rs 900 and dependency at Rs 600. Applying multiplier of 15, compensation was worked out at Rs 1,08,000. To this a sum of Rs 28,253 on account of medical expenses, Rs 2147 towards incidental charges and Rs 5600 towards hospital charges were allowed. We are of the opinion that the

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earning capacity of the household wife has been determined on the lower side. An ordinary labourer gets Rs 1200 per mensem and at the lowest at least Rs 1200 should have been determined as the earning capacity of the deceased and dependency of the claimants at Rs 800. The multiplier of 15 applied in this case is also on the lower side. Since the deceased was aged 32 years, as per the Schedule attached to the Motor Vehicles Act, multiplier should have been 17. Thus, compensation worked out at Rs 1,63,200 (Rs 800 x 12 x 17). To this a sum of Rs 7000 is added i.e. Rs 2000 towards funeral expenses and Rs 5000 towards loss of consortium, payable to the husband, making total compensation payable at Rs 1,70,200. The Tribunal under this head allowed compensation of Rs 1,08,000 i.e. under this head the claimants would get Rs 62,200 over and above that amount. The compensation granted under other heads is considered just and reasonable.

Thus, while allowing the appeal, we grant compensation of Rs 62,200 over and above the amount awarded by the Tribunal to the appellants, who would share it equally. On this amount they will get interest at the rate of 12 per cent per annum from the date of filing of the claim petition i.e. July 28, 1997, till payment. *Two months' time is allowed to the respondents to make the payment.*

If the parties object to the proposed order as above, they may move the High Court within two months for disposal of the appeal on merits according to law.

Copies of the order be supplied to the counsel for the parties."

(emphasis supplied)

4. Punjab Roadways (the second appellant herein) filed an application dated 15-1-2002 (CM No. 13988-CII of 2002 in FAO No. 1549 of 1999) to set aside order dated 3-8-2001 passed by the Lok Adalat, as it was passed without their consent. The said application was rejected by a learned Single Judge by a short order dated 11-9-2002 on the ground that such objections were not maintainable or entertainable, having regard to its decision in *Charanjit Kaur* v. *Balwant Singh* (CM No. 13988-CII of 2002 in FAO No. 1827 of 1999 decided on 30-7-2002) and other cases. In *Charanjit Kaur* the learned Single Judge had held that an order passed by the Lok Adalat can be challenged only by a petition under Article 227 of the Constitution, as all proceedings before the Lok Adalat are deemed to be judicial proceedings and the Lok Adalat is deemed to be a civil court under Section 22(3) of the Legal Services Authorities Act, 1987.

5. The appellants, therefore, filed a petition under Article 227 of the Constitution (Civil Revision Petition No. 970 of 2004) challenging the order dated 3-8-2001 of the Lok Adalat. The said petition was rejected by another Single Judge of the High Court by the following order dated 26-2-2003:

"The instant petition has been filed under Article 227 of the Constitution seeking necessary directions quashing the order dated 3-8-2001 passed by the Lok Adalat enhancing the compensation in

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favour of the respondent claimants to the tune of Rs 62,200. The order of the Lok Adalat specifically indicated that if the parties were not satisfied, they could file objections within a period of two months for the disposal of the appeal on merits in accordance with law. The petitioner State had filed objections which were dismissed on 11-9-2002 *and the order of the Lok Adalat dated 3-8-2001 had attained finality.*

Now the instant petition has been filed against challenging the order of the Lok Adalat dated 3-8-2001. *Nothing has been pointed out showing that such a petition under Article 227 of the Constitution is maintainable.* Apart from the fact that the Lok Adalat has granted time for filing the objections and the objections have been dismissed, the meagre increase in the amount of compensation does not warrant any interference.

In view of the above, the petition is dismissed being not maintainable." (emphasis supplied)

The said order is under challenge in this appeal by special leave.

6. We are rather dismayed at the manner in which the entire matter has been dealt with, undermining the very purpose and object of the Lok Adalats. At every stage the Lok Adalat and the High Court have acted in a manner contrary to law.

7. A reference to relevant provisions will be of some assistance, before examination of the issues involved. Section 19 of the Legal Services Authorities Act, 1987 ("the LSA Act", for short) provides for organisation of the Lok Adalats. Section 19(5)(*i*) of the LSA Act provides that 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 any case pending before any court for which the Lok Adalat is organised. Section 20 relates to cognizance of cases by the Lok Adalats. Sub-section (1) refers to the Lok Adalats taking cognizance of cases referred to by courts and sub-section (2) refers to the Lok Adalats taking cognizance of matters at pre-litigation stage. The relevant portions of other sub-sections of Section 20, relating to cases referred by courts, are extracted below:

"20. (3) Where any case is referred to a Lok Adalat under sub-section (1) ... the Lok Adalat shall proceed to dispose of the case ... *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.

* * *

(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)."

(emphasis supplied)

8. It is evident from the said provisions that the Lok Adalats have no adjudicatory or judicial functions. Their functions relate purely to conciliation. A Lok Adalat determines a reference on the basis of a compromise or settlement between the parties at its instance, and puts its seal of confirmation by making an award in terms of the compromise or settlement. When the Lok Adalat is not able to arrive at a settlement or compromise, no award is made and the case record is returned to the court from which the reference was received, for disposal in accordance with law. No Lok Adalat has the power to "hear" parties to adjudicate cases as a court does. It discusses the subject-matter with the parties and persuades them to arrive at a just settlement. In their conciliatory role, the Lok Adalats are guided by the principles of justice, equity and fair play. When the LSA Act refers to "determination" by the Lok Adalat and "award" by the Lok Adalat, the said Act does not contemplate nor require an adjudicatory judicial determination, but a non-adjudicatory determination based on a compromise or settlement, arrived at by the parties, with guidance and assistance from the Lok Adalat. The "award" of the Lok Adalat does not mean any independent verdict or opinion arrived at by any decision-making process. The making of the award is merely an administrative act of incorporating the terms of settlement or compromise agreed by parties in the presence of the Lok Adalat, in the form of an executable order under the signature and seal of the Lok Adalat.

9. But we find that many sitting or retired Judges, while participating in the Lok Adalats as members, tend to conduct the Lok Adalats like courts, by hearing parties, and imposing their views as to what is just and equitable, on the parties. Sometimes they get carried away and proceed to pass orders on merits, as in this case, even though there is no consensus or settlement. Such acts, instead of fostering alternative dispute resolution through the Lok Adalats, will drive the litigants away from the Lok Adalats. The Lok Adalats should resist their temptation to play the part of judges and constantly strive to function as conciliators. The endeavour and effort of the Lok Adalats should be to guide and persuade the parties, with reference to principles of justice, equity and fair play to compromise and settle the dispute by explaining the pros and cons, strengths and weaknesses, advantages and disadvantages of their respective claims.

10. The order of the Lok Adalat in this case (extracted above), shows that it assumed a judicial role, heard parties, ignored the absence of consensus, and increased the compensation to an extent it considered just and reasonable, by a reasoned order which is adjudicatory in nature. It arrogated to itself the appellate powers of the High Court and "allowed" the appeal and "directed" the respondents in the appeal to pay the enhanced compensation of Rs 62,200 within two months. The order of the Lok Adalat was not passed by consent of parties or in pursuance of any compromise or settlement between the parties, is evident from its observation that "if the parties object to the

proposed order they may move the High Court within two months for disposal of the appeal on merits according to law". Such an order is not an award of the Lok Adalat. Being contrary to law and beyond the power and jurisdiction of the Lok Adalat, it is void in the eye of the law. Such orders which "impose" the views of the Lok Adalats on the parties, whatever be the good intention behind them, bring a bad name to the Lok Adalats and legal services.

11. The travails of the parties did not end with the Lok Adalat. Because the Lok Adalat directed the aggrieved party to move the High Court for disposal of appeal on merits if they had objection to its order, the appellants moved the High Court by an application in the appeal, stating that they had not agreed to the enhancement proposed by the Lok Adalat and praying that the order of the Lok Adalat increasing the compensation by Rs 62,200 may be set aside as there was no settlement or compromise. The learned Single Judge failed to notice that there was no settlement or compromise between the parties; that the order made by the Lok Adalat was not an award in terms of any settlement as contemplated under the LSA Act; that the Lok Adalat had clearly stated that the parties may either agree to it, or move the High Court for disposal of the appeal on merits in accordance with law; and that in the absence of any settlement and "award", the appeal before the High Court continued to be pending and could not have been treated as finally disposed of. The learned Single Judge instead of perusing the order of the Lok Adalat and hearing the appeal on merits, proceeded on a baseless assumption that the order dated 3-8-2001 of the Lok Adalat was a binding award and therefore an application to hear the appeal, was not maintainable and the only remedy for the appellants was to challenge the order of the Lok Adalat by filing a writ petition under Article 227 of the Constitution.

12. It is true that where an award is made by the Lok Adalat in terms of a settlement arrived at between the parties (which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court, and no appeal lies against it to any court. If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and/or Article 227 of the Constitution, that too on very limited grounds. But where no compromise or settlement is signed by the parties and the order of the Lok Adalat does not refer to any settlement, but directs the respondent to either make payment if it agrees to the order, or approach the High Court for disposal of appeal on merits, if it does not agree, is not an award of the Lok Adalat. The question of challenging such an order in a petition under Article 227 does not arise. As already noticed, in such a situation, the High Court ought to have heard and disposed of the appeal on merits.

13. But the travails continued. In view of the order dated 11-9-2002 passed by the learned Single Judge holding that a petition under Article 227 has to be filed to challenge the order of the Lok Adalat, the appellants filed a petition under Article 227. But the said petition was dismissed by another

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Single Judge on the ground that the order of the Lok Adalat passed on 3-8-2001 had attained finality as the objections to it were dismissed on 11-9-2002 and a petition under Article 227 was not maintainable to challenge the order of the Lok Adalat. He failed to notice that the order dated 3-8-2001 was neither a decision nor had it attained finality. He also failed to notice that the objections to the order were not rejected by the High Court after consideration on merits. He also overlooked the fact that the learned Judge who decided the appellants' application, had directed that the order of the Lok Adalat should be challenged by filing a petition under Article 227. Be that as it may.

14. Thus we find that the Lok Adalat exercised a power/jurisdiction not vested in it. On the other hand, the High Court twice refused to exercise the jurisdiction vested in it, thereby denying justice and driving the appellants to this Court. In this process, a simple appeal by the legal heirs of the deceased for enhancement of compensation, has been tossed around and is pending for more than eight years, putting them to avoidable expense and harassment.

15. We therefore allow this appeal and quash the order dated 3-8-2001 of the Lok Adalat as also set aside the orders dated 11-9-2002 and 26-2-2003 of the High Court. As a consequence, the High Court shall hear and dispose of FAO No. 1549 of 1999 which continues to be pending on its record, on merits in accordance with law. The High Court is requested to dispose of the appeal expeditiously. Parties to bear their respective costs.

(2008) 2 Supreme Court Cases 667

(BEFORE S.B. SINHA AND V.S. SIRPURKAR, JJ.)

RAMESH SINGH AND ANOTHER .. Appellants;

Versus

SATBIR SINGH AND ANOTHER .. Respondents.

Civil Appeals Nos. 545-46 of 2008†, decided on January 21, 2008

A. **Motor Vehicles Act, 1988 — S. 163-A and Sch. II — Compensation — Appropriate multiplier — Determination of — Death of young person having aged parents as sole dependants — Held, choice of multiplier is determined by the age of the deceased or the claimants, whichever age is higher — Sch. II is to be used not only referring to the age of victim but also other factors relevant therefor — If a young man is killed in the accident leaving behind aged parents who may not survive long enough to match with a high multiplier provided by Sch. II, then the court has to offset such high multiplier and balance the same with the short life expectancy of the claimants — Complicated questions of fact and law arising in accident cases cannot be answered always by relying on mathematical equations — In present case, taking the age of the deceased's father to be 55 years, the**

† Arising out of SLPs (C) Nos. 13019-20 of 2007. From the Final Judgment and Order dated 31-1-2007 of the High Court of Delhi at New Delhi in MAC APPs Nos. 330-31 of 2006

NOTE

*Para. 28.

ANNEXURE V3/22

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Civil Appeal No. 11345 of 2017

Bharvagi Constructions v. Kothakapu Muthyam Reddy

2017 SCC OnLine SC 1053

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
(BEFORE R.K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.)

Bharvagi Constructions & Anr. ..... Appellant(s)

v.

Kothakapu Muthyam Reddy & Ors. ..... Respondent(s)

Civil Appeal No. 11345 of 2017
(Arising out of S.L.P. (C) No. 23605 of 2015)
Decided on September 7, 2017

The Judgement of the Court was delivered by

ABHAY MANOHAR SAPRE, J.:— Leave granted.

2. This appeal is filed by the defendants against the final judgment and order dated 25.06.2015 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in Appeal Suit No. 968 of 2013 whereby the High Court allowed the appeal filed by the respondents herein with costs and set aside the order dated 24.07.2013 passed by the second Additional District Judge, Ranga Reddy District in I.A. No. 894 of 2010 in O.S. No. 107 of 2010.

3. In order to appreciate the short legal controversy involved in the appeal, it may not be necessary to set out the factual controversy involved in the case in detail and only narration of few facts to appreciate the legal question arising in the case would suffice for the disposal of this appeal.

4. On 07.05.2007, T. Jagat Singh (respondent No. 5 herein) filed a civil suit being O.S. No. 481 of 2007 against respondent Nos. 1 to 34 herein (defendant Nos. 1 to 33) in the Court of District Judge, Ranga Reddy District Court.

5. The suit was for specific performance of agreement of sale dated 28.12.1995 said to have been entered into between the parties in respect of agricultural land totally admeasuring AC. 51.29 guntas in (Sy. Nos. 262-274) situated at Pappalguda village of Rajendranagar Mandal, Ranga Reddy District (hereinafter referred to as the "suit land").

6. Originally, the plaintiff had filed suit only against defendant Nos. 1 to 9 but later on defendant Nos. 10 to 33 made an application for being joined as defendant Nos. 10 to 33 in the civil suit as according to them, they had an interest in the subject matter of the civil suit and also in its decision and, therefore, they were necessary parties to the suit. Their prayer was allowed. The defendants then contested the suit.

7. During the pendency of civil suit, on 22.08.2007, the parties (plaintiff and defendants) settled the matter in relation to the suit land and accordingly entered into written compromise.

8. A joint compromise petition signed by all the parties to the suit was accordingly filed before the Lok Adalat, which held its Lok Adalat sitting in the Court on 22.08.2007.

9. The members of the Lok Adalat before whom the suit was posted for its disposal in terms of the compromise petition filed by the parties perused the compromise

petition and accepted the compromise petition finding it to be in order. An Award was accordingly passed on 22.08.2007 under Section 21 of the Legal Services Authorities Act, 1987 (hereinafter referred to as "the Act") in terms of the compromise petition, which, in turn, disposed of the suit as having been compromised. (Annexure P-2).

10. On 14.11.2009, respondent Nos. 1 to 4 herein (who were original defendant Nos. 22 to 25 in Suit No. 481 of 2007) filed Civil Suit No. 107 of 2010 against the plaintiff and the remaining defendants of Civil Suit No. 481 of 2007. This suit was filed in the Court of II Additional District Judge, Ranga Reddy District at L.B. Nagar.

11. This suit was for a declaration that the award dated 22.08.2007 passed by the Lok Adalat in Civil Suit No. 481 of 2007 was obtained by the defendants of this suit by playing fraud/misrepresentation on the plaintiffs and hence the Award dated 22.08.2007 be declared illegal, null and void and not binding on the plaintiffs.

12. According to the plaintiffs, though they were parties to the award along with defendants in Civil Suit No. 481/2007 but since the award dated 22.08.2007 was obtained by the parties by misrepresenting the facts to the plaintiffs which was nothing short of fraud played by the defendants on them to grab their more land without their knowledge and taking advantage of their illiteracy, the same is not a legal award and hence not binding on the plaintiffs. On these averments, the plaintiffs prayed that the award dated 22.08.2007 be declared illegal, void, in-operative and not binding on the plaintiffs.

13. The defendants, on being served with the notice of the suit, filed an application under Order 7 Rule 11 (d) of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") and prayed for rejection of the plaint. According to the defendants, since the suit seeks to challenge the Award of Lok Adalat, it is not maintainable being barred by virtue of rigour contained in Order 7 Rule 11(d) of Code. It was contended that the remedy of the plaintiff was in filing writ petition under Article 226 or/and 227 of the Constitution of India to challenge the award dated 22.08.2007 as held by this Court in *State of Punjab* v. *Jalour Singh*, (2008) 2 SCC 660.

14. The Trial Court, by order dated 24.07.2013 allowed the application filed by the defendants and rejected the plaint by invoking powers under clause (d) of Rule 11. It was held that the filing of the civil suit to challenge the award of Lok Adalat is impliedly barred and the remedy of the plaintiffs is to challenge the award by filing writ petition under Article 226 or/and 227 of the Constitution in the High Court as held by this Court in the case of *State of Punjab* (supra).

15. The plaintiffs, felt aggrieved, filed an appeal before the High Court. The High Court, by impugned order, allowed the appeal, set aside the order of the Trial Court and restored the suit on its file for its disposal on merits in accordance with law. The High Court held that since the suit is founded on the allegations of misrepresentation and fraud, it is capable of being tried on its merits by the Civil Court.

16. Against this order, the defendants have felt aggrieved and filed this appeal by way of special leave before this Court.

17. Heard Mr. Dushyant Dave and Mr. Jayant Bhushan, learned senior counsel for the appellants and Mr. B. Adinarayana, learned senior counsel, Mr. D. Mahesh Babu, Mr. Pranab Mullick, Mr. Ejaz Maqbool for the respondents.

18. Mr. Dushyant Dave, learned senior counsel, appearing for the appellants (defendants) while assailing the legality and correctness of the impugned order argued only one legal point. He urged that the reasoning and the conclusion arrived at by the Trial Court was right whereas the reasoning and the conclusion arrived at by the High Court was not so and hence the Trial Court's order deserves to be restored.

19. Elaborating his submission, Mr. Dushyant Dave placed reliance on the law laid down by this Court in *State of Punjab* (supra) and contended that the issue urged by him no longer remains *res integra* and stands answered by this Court in appellant's

favour.

20. It was his submission that the expression "barred by any law" occurring in clause (d) of Rule 11 of Order 7 not only includes any Act enacted by the legislature creating a "bar" but the expression "law" includes therein "judicial decision of the Supreme Court" also, which are binding on all the Courts in the Country by virtue of Article 141 of the Constitution of India.

21. In other words, his submission was that the expression "law" occurring in clause(d) of Rule 11 of Order 7 should be construed liberally so as to include therein not only any "Act" which is admittedly a "law" made by the legislature but also include therein a "a decision of Supreme Court ".

22. Learned counsel urged that the appellants (defendants) were, therefore, fully justified in invoking the powers under Order 7 Rule 11(d) of the Code praying for rejection of the plaint as being barred on the strength of law laid down by this Court in *State of Punjab* (supra).

23. In reply, learned counsel for the respondents while supporting the impugned order contended that the reasoning and the conclusion arrived at by the High Court is just and proper and hence does not call for any interference.

24. Having heard the learned counsel for the parties and on perusal of the record of the case, we find force in the submissions of the learned counsel for the appellants.

25. The question arose before this Court (Three Judge Bench) in the case of *State of Punjab* (supra) as to what is the remedy available to the person aggrieved of the award passed by the Lok Adalat under Section 20 of the Act. In that case, the award was passed by the Lok Adalat which had resulted in disposal of the appeal pending before the High Court relating to a claim case arising out of Motor Vehicle Act. One party to the appeal felt aggrieved of the Award and, therefore, questioned its legality and correctness by filing a writ petition under Article 226/227 of the Constitution of India. The High Court dismissed the writ petition holding it to be not maintainable. The aggrieved party, therefore, filed an appeal by way of special leave before this Court. This Court, after examining the scheme of the Act allowed the appeal and set aside the order of the High Court. This Court held that the High Court was not right in dismissing the writ petition as not maintainable. It was held that the only remedy available with the aggrieved person was to challenge the award of the Lok Adalat by filing a writ petition under Article 226 or/and 227 of the Constitution of India in the High Court and that too on very limited grounds. The case was accordingly remanded to the High Court for deciding the writ petition filed by the aggrieved person on its merits in accordance with law.

26. This is what Their Lordships held in Para 12:

> **"12. It is true that where an award is made by the Lok Adalat in terms of a settlement arrived at between the parties (which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court, and no appeal lies against it to any court. If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and/or Article 227 of the Constitution, that too on very limited grounds. But where no compromise or settlement is signed by the parties and the order of the Lok Adalat does not refer to any settlement, but directs the respondent to either make payment if it agrees to the order, or approach the High Court for disposal of appeal on merits, if it does not agree, is not an award of the Lok Adalat. The question of challenging such an order in a petition under Article 227 does not arise. As already noticed, in such a situation, the High Court ought to have heard and disposed of the appeal on merits."**

27. In our considered view, the aforesaid law laid down by this Court is binding on all the Courts in the country by virtue of mandate of Article 141 of the Constitution. This Court, in no uncertain terms, has laid down that challenge to the award of Lok Adalat can be done only by filing a writ petition under Article 226 and/or Article 227 of the Constitution of India in the High Court and that too on very limited grounds.

28. In the light of clear pronouncement of the law by this Court, we are of the opinion that the only remedy available to the aggrieved person(respondents herein/plaintiffs) was to file a writ petition under Article 226 and/or 227 of the Constitution of India in the High Court for challenging the award dated 22.08.2007 passed by the Lok Adalat. It was then for the writ Court to decide as to whether any ground was made out by the writ petitioners for quashing the award and, if so, whether those grounds are sufficient for its quashing.

29. The High Court was, therefore, not right in by passing the law laid down by this Court on the ground that the suit can be filed to challenge the award, if the challenge is founded on the allegations of fraud. In our opinion, it was not correct approach of the High Court to deal with the issue in question to which we do not concur.

30. We also do not agree with the submissions of Mr. Adinarayana Rao, learned senior counsel for the respondents when he urged that firstly, the expression "law" occurring in clause(d) of Rule 11 Order 7 does not include the "judicial decisions" and clause (d) applies only to bar which is contained in "the Act" enacted by the Legislature; and Secondly, even if it is held to include the "judicial decisions", yet the law laid down in the case of *State of Punjab* (supra) cannot be read to hold that the suit is barred. Both these submissions, in our view, have no merit.

31. Black's Law Dictionary (Ninth Edition) defines the expression "law". It says that "Law" includes the "judicial precedents" (see at page 962). Similarly, the expression "law" defined in Jowett's Dictionary of English Law (Third Edition Volume-2, (pages 1304/1305) says that "law is derived from judicial precedents, legislation or from custom. When derived from judicial precedents, it is called common law, equity, or admiralty, probate or ecclesiastical law according to the nature of the Courts by which it was originally enforced".

32. The question as to whether the expression "law" occurring in clause(d) of Rule 11 of Order 7 of the Code includes "judicial decisions of the Apex Court" came up for consideration before the Division Bench of the Allahabad High Court in *Virender Kumar Dixit* v. *State of U.P.*, 2014 (9) ADJ 1506. The Division Bench dealt with the issue in detail in the context of several decisions on the subject and held in para 15 as under:

> **"15. Law includes not only legislative enactments but also judicial precedents. An authoritative judgment of the Courts including higher judiciary is also law."**

33. This very issue was again considered by the Gujarat High Court (Single Bench) in the case of *Hermes Marines Limited* v. *CapesMore Maritime Partners F.Z.C.* (unreported decision in Civil Application (OJ) No. 144 of 2016 in Admiralty Suit No. 10 of 2016 decided on 22.04.2016). The learned Single Judge examined the issue and relying upon the decision of the Allahabad High Court quoted supra held in Para 53 as under:

> **"53. In the light of the above discussion, in the considered view of this Court, it cannot be said that the term "barred by any law" occurring in clause(d) of Rule 11 of Order 7 of the Code, ought to be read to mean only the law codified in a legislative enactment and not the law laid down by the Courts in judicial precedents. The judicial precedent of the Supreme Court in** Liverpool & London Steamship Protection and Indemnity Association *v.* M.V. Sea Success, **(2004) 9 SCC 512 has been followed by the decision of the Division Bench in** Croft Sales & Distribution Ltd. *v.* M.V. Basil, **2011 (2) GLR 1027. It is,**

therefore, the law as of today, which is that the Geneva Convention of 1999 cannot be made applicable to a contract that does not involve public law character. Such a contract would not give rise to a maritime claim. As discussed earlier, the word 'law' as occurring in Order 7 Rule 11(d) would also mean judicial precedent. If the judicial precedent bars any action that would be the law."

34. Similarly, this very issue was again examined by the Bombay High Court (Single Judge) in *Shahid s. Sarkar* v. *Usha Ramrao Bhojane*, 2017 SCC OnLine Bom 3440. The learned Judge placed reliance on the decisions of the Allahabad High Court in *Virender Kumar Dixit* v. *State of U.P.* (Supra) and the Gujarat High Court in *Hermes Marines Limited* (supra) and held as under:

"18.....The law laid down by the highest court of a State as well as the Supreme Court, is the law. In fact, Article 141 of the Constitution of India categorically states that the law declared by the Supreme Court shall be binding on all Courts within the territories of India. There is nothing even in the C.P.C. to restrict the meaning of the words "barred by any law" to mean only codified law or statute law as sought to be contended by Mr. Patil. In the view that I have taken, I am supported by a decision of the Gujarat High Court in the case of Hermes Marines Ltd.. ....."

"19. One must also not lose sight of the purpose and intention behind Order VII Rule 11(d). The intention appears to be that when the suit appears from the statement in the plaint to be barred by any law, the Courts will not unnecessarily protract the litigation and proceed with the hearing of the suit. The purpose clearly appears to be to ensure that where a Defendant is able to establish that the Plaint ought to be rejected on any of the grounds set out in the said Rule, the Court would be duty bound to do so, so as to save expenses, achieve expedition and avoid the court's resources being used up on cases which will serve no useful purpose. A litigation, which in the opinion of the court, is doomed to fail would not further be allowed to be used as a device to harass a Defendant....."

35. Similarly, issue was again examined by the High Court of Jharkhand(Single Judge) in *Mira Sinha* v. *State of Jharkhand*, 2015 SCC OnLine Jhar 4377. The learned Judge, in paragraph 7 held as under:

"7. In the background of the law laid down by the Hon'ble Supreme Court, it is apparent that Order VII Rule 11(d) C.P.C. application is maintainable only when the suit is barred by any law. The expression "law" included in Rule 11(d) includes Law of Limitation and, it would also include the law declared by the Hon'ble Supreme Court....."

36. We are in agreement with the view taken by Allahabad, Gujarat, Bombay and Jharkhand High Courts in the aforementioned four decisions which, in our opinion, is the proper interpretation of the expression "law" occurring in clause (d) of Rule 11 of Order 7 of the Code. This answers the first submission of the learned counsel for the respondents against the respondents.

37. So far as the second submission of learned counsel for the respondents is concerned, it also has no merit. In our view, the decision rendered in the case of *State of Punjab* (supra) is by the larger Bench (Three Judge) and is, therefore, binding on us. No efforts were made and rightly to contend that the said decision needs reconsideration on the issue in question. That apart, when this Court has laid down a particular remedy to follow for challenging the award of Lok Adalat then in our view, the same is required to be followed by the litigant in letter and spirit as provided

therein for adjudication of his grievance in the first instance. The reason being that it is a law of the land under Article 141 of the Constitution of India (see - *M. Nagaraj* v. *U.O.I.* (2006) 8 SCC 212). It is then for the writ court to decide as to what orders need to be passed on the facts arising in the case.

38. In the light of foregoing discussion, we cannot concur with the reasoning and the conclusion arrived at by the High Court.

39. As a result, the appeal succeeds and is allowed. Impugned order is set aside and that of the order passed by the Trial Court is restored. As a consequence, the application filed by the appellants (defendants) under Order 7 Rule 11(d) of the Code is allowed resulting in rejection of the plaint.

40. We, however, make it clear that the respondents (plaintiffs) would be at liberty to challenge the legality and correctness of the award dated 22.08.2007 passed by the Lok Adalat by filing the writ petition under Article 226 or/and 227 of the Constitution in the High Court in accordance with law.

41. We also make it clear that we have not examined the merits of case of either parties which is the subject matter of the suit and hence the writ court, in the event of writ petition being filed, would decide the writ petition strictly in accordance with law without being influenced by any of our observations.

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