[h] If the reference tot he 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 off 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.

(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."

* * * * * * *

II. **Sri.N.Ramachandrappa Vs. Smt.M.Geetha, reported in ILR 2010 KAR 1896:**

The scope and ambit of Sec.89 CPC, expecially in regard to matrimonial dispute is discussed in this decision. The importance of the agreement reached by the parties in the Mediation centre, its 'lawfulness' and the role of the Court with reference to Rule 24 and 25 of Karnataka Civil (Mediation) Rules, 2005 are discussed in this ruling.

* * * * *

III. **A. Sreeramaiah Vs. The South Indian Bank Ltd., Bangalore and another, reported in ILR 2006 KAR 4032 (DB):**

It is held that in view of Sec.89 CPC and Sec.16 of Court Fees Act, the object of providing of refund of full court fees is to encourage the settlement of the disputes in terms of Sec.89 of CPC. Further, it is held that the parties agreeing for settlement in terms suggested by the Court, is a judicial settlement, which is one of the alternative method of settlement of the disputes, hence the appellant was entitled to full refund of court fee.

* * * * *

IV. Our Hon'ble High Court in **Rudraaradya and others Vs. Nanjundappa @ Nanjundawamy and another, reported in ILR 2011 KAR 221** has held that if a party is absenting himself before the mediator after referring the case to mediation, the Court cannot strike off the defence of the defendants but may impose costs.

* * * * * *

THE CODE OF CIVIL PROCEDURE, 1908

Sec.89: **Settlement of disputes outside the Court:** - (1) Where it appears to the court that there exists 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 observation 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

(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 Authority 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 Authority 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 X

EXAMINATION OF PARTIES BY THE COURT

1. **Ascertainment whether allegations in pleadings are admitted or denied** – At the first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

1A. **Direction of the court to opt for any 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.

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

1C. **Appearance before the Court consequent to the failure of efforts of conciliation** – Where a suit is referred under Rule 1A 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.]

2. **Oral examination of party, or companion of party** –(1) At the first hearing of the suit, the Court –

(a) shall, with a view to elucidating maters in controversy in the suit, examine orally such of the parties to the suit appearing in person or present in Court, as it deems fit; and

(b) may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in Court or the pleader is accompanied.

(2) At any subsequent hearing, the Court may orally examine any party appearing in person or present in Court, or any person able to answer any material question relating to the suit, by whom such party or his pleader is accompanied.

(3) The court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party.

Do's and Don'ts for the Mediators

Do's

- Advocates to wear mediation blazer, tie and badge while doing mediation.
- Before mediation, to check whether proper referral order is passed by the court.
- To make parties and Counsel to be seated comfortably.
- Opening Statement is a must.
- To communicate clearly to the parties and their counsel the next adjournment date.
- Mediators to maintain records properly and fill up all requisite forms.
- The process of mediation to be concluded within 60 days. If an extension of time is required, the same has to be done by requesting the referring court.
- The settlement agreement to be read and after the litigants and their counsel have clearly understood the same, to obtain their signatures.
- Xerox copies of the agreement to be made available to the parties immediately and original agreement to be forwarded to the Court.

Don'ts:

- Not to wear black coat while doing mediation
- Not to ask for original records from the court
- Not to use cell phone while doing mediation.
- Not to issue any summons/notice to any litigants/third parties.
- Not to make any spot inspection.
- Mediator not to mention his/her name in the settlement agreement and not to affix signature in the settlement agreement.
- Not to maintain any Court-like order sheet and not to obtain any signatures of the parties for their attendance.

* * * * *

Case Laws

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8. An examination of the provisions would show that the claimant was an employee up to 30-9-1989 and ceased to be so on the next day as his salary had exceeded Rs 1600 per month which was the cut-off wage fixed under the Act at that time. Admittedly, also the claimant was an insured person and the only difference between the two contesting parties is with regard to the significance of the contribution period which was to end on 30-6-1990.

9. For determining as to whether an employee was entitled to the benefit under the Act, reference has to be made to Section 46(1)(*c*) which would cover the present case. Section 46(1)(*c*) specifically provides for two cumulative conditions for its applicability (*i*) that the claimant must be an insured person, and (*ii*) that such an injury must be sustained when he was an employee. We therefore find that as the injury had been suffered after the claimant ceased to be an employee, he would not be entitled to any benefit of disablement notwithstanding the fact that his contribution period and his status as an insured person continued up to 30-6-1990. The Corporation has been taking pains to point out that certain benefits which would accrue to the claimant such as the benefit of sickness, has already been given to him. In this view of the matter, we find no merit in the appeal. It is accordingly dismissed. No costs.

(2008) 7 Supreme Court Cases 454

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

UNITED INDIA INSURANCE COMPANY LIMITED .. Appellant;

Versus

AJAY SINHA AND ANOTHER .. Respondents.

Civil Appeal No. 3537 of 2008†, decided on May 13, 2008

A. Legal Aid — Legal Services Authorities Act, 1987 — S. 22-C(1) first proviso; Ss. 22-C(2), 22-C(8) and 22-E — Exclusion of jurisdiction of Permanent Lok Adalat — "Any matter relating to an offence not compoundable under any law" — Insurance claim for theft — Fact of theft disputed by Insurance Company — Held, the case was beyond conciliatory jurisdiction of Permanent Lok Adalat — Provisos must be interpreted in an expansive manner — Hence term "relating to an offence" in first proviso should be interpreted broadly

This case was a dispute between an Insurance Company (the appellant) and an insured (the respondent) who, a few days before expiry of insurance contract, filed an FIR complaining theft of insured goods. His case was that electronic goods worth Rs 11,14,597 were stolen. The Insurance Company disputed the insurance claim. Respondent filed a claim of Rs 18,45,697.50 before District Consumer Forum, which rejected the claim on the ground that the claim did not fall within the Forum's jurisdiction because it was not a case of deficiency in

† Arising out of SLP (C) No. 17758 of 2006. From the Final Judgment and Order dated 19-6-2006 of the High Court of Jharkhand at Ranchi in Letters Patent Appeal No. 523 of 2005 : AIR 2006 Jharkhand 113

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service but of enforcement of a commercial contract. The respondent then approached Permanent Lok Adalat wherein he filed claim for Rs 9,80,000 only (i.e. less than rupees ten lakhs).

The Permanent Lok Adalat overruled the appellant's objection based on jurisdiction. The appellant's writ was allowed by the Single Judge of High Court on ground that offences under Sections 479/461 IPC being not compoundable, the Permanent Lok Adalat had no jurisdiction. The Division Bench allowed the respondent's appeal, holding that the Lok Adalat is not required to go into the question whether the offence is compoundable or not. The appellant approached the Supreme Court thereagainst. The appellant Insurance Company took the stand that Permanent Lok Adalat did not have conciliatory jurisdiction by virtue of first proviso to Section 22-C of the Legal Services Authorities Act, 1987, which provides that Permanent Lok Adalat, for the purpose of "settlement of dispute" will not have jurisdiction "in respect of any matter relating to an offence not compoundable under any law". The Insurance Company also contended that Permanent Lok Adalat, by virtue of second proviso to Section 22-C, did not have pecuniary jurisdiction in matters where value of property exceeded Rs ten lakhs. Besides, the Insurance Company's contention was that the respondent had put up a false claim that burglary had taken place.

Allowing the appeal, the Supreme Court

Held :

Section 22-C(1) read with Sections 22-C(2), 22-C(8) and 22-E of the Legal Services Authorities Act, 1987, exclude the jurisdiction of civil courts by providing that when an application is made by either party to the Permanent Lok Adalat to settle a dispute at the pre-litigation stage, the Adalat is obliged to do so, and other party is precluded from approaching civil court in such a case. Provisos appended to Section 22-C(1) limit jurisdiction of Permanent Lok Adalat. These provisos must be interpreted in an expansive manner. With respect to public utility services, the main purpose behind Section 22-C(8) seems to be that most of the petty cases which ought not go in the regular courts, would be settled in the pre-litigation stage itself. Therefore, the term "relating to an offence" appearing in first proviso must be interpreted broadly, and as the determination before Permanent Lok Adalat will involve question as to whether or not offence, which is non-compoundable, has indeed been committed, this case falls outside the jurisdiction of Permanent Lok Adalat. (Paras 37 to 40)

Ajay Sinha v. *United India Insurance Co. Ltd.*, AIR 2006 Jharkhand 113, *reversed*

B. Legal Aid — Legal Services Authorities Act, 1987 — Chap. VI-A — Ss. 22-C(1), (4), (5) and (8) — Conciliation by Permanent Lok Adalat — Scope of conciliation in the absence of its definition in the Act — Comparison with conciliation under the Arbitration and Conciliation Act, 1996 and CPC — Held, conciliation in the Act achieves a different purpose — Conciliation, if fails, is followed by compulsory determination under S. 22-C(8) — Conciliator in such a situation assumed the role of adjudicator — Arbitration and Conciliation Act, 1996, Part III, Ss. 67 and 73 — Civil Procedure Code, 1908 — S. 89(1) — UNCITRAL Model Law on International Commercial Arbitration

Held :

The term "conciliation" is not defined in the Legal Services Authorities Act, 1987. It should, therefore, be considered from the perspective of the Arbitration

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and Conciliation Act, 1996. In order to understand what Parliament meant by "conciliation", it is necessary to refer to the functions of a "conciliator" as visualised by Part III of the 1996 Act. Section 67 describes the role of a conciliator. Under Section 73, conciliator can formulate terms of a possible settlement if he feels that there exists element of settlement. The provisions of the 1996 Act make it clear that the conciliator apart from assisting the parties to arrive at a settlement, is also permitted to make proposals for a settlement and to formulate the terms of a possible settlement or reformulate the terms. This is UNCITRAL concept. Section 89 CPC, also talks of resolution of dispute through mutual settlement. However, Chapter VI-A of the Legal Services Authorities Act, 1987, seeks to achieve different purpose. It not only speaks of conciliation qua conciliation but conciliation qua determination. Jurisdiction of Permanent Lok Adalat, although limited is of wide amplitude. This is however subject to the two exceptions laid down in two provisos to Section 22-C. (Paras 22 to 24)

Chapter VI-A stands independently. Whereas the heading of the Chapter talks of pre-litigation, conciliation and settlement, Section 22-C(8) of the Act speaks of determination. It creates another adjudicatory authority, the decision of which by a legal fiction would be a decision of a civil court. It has the right to decide a case. The term "decide" means to determine; to form a definite opinion; to render judgment. Any award made by the Permanent Lok Adalat is executable as a decree. No appeal lies against it. The decision of the Permanent Lok Adalat is final and binding on the parties. Whereas on the one hand, keeping in view the parliamentary intent, settlement of all disputes through negotiation, conciliation, mediation, Lok Adalat and judicial settlement are required to be encouraged, it is equally well settled that where the jurisdiction of a court is sought to be taken away, the statutory provisions deserve strict construction. A balance is thus required to be struck. A court of law can be created under a statute. It must have the requisite infrastructure therefor. Independence and impartiality of Tribunal being a part of human right is required to be taken into consideration for construction of such a provision. When a court is created, the incumbents must be eligible to determine the lis. (Para 25)

Advanced Law Lexicon, 3rd Edn., 2005, p. 1253, *quoted*

Section 22-C(1) speaks of settlement of disputes. The authority has to take recourse to conciliation mechanism. One of the essential ingredients of the conciliation proceeding is that nobody shall be forced to take part therein. It has to be voluntary in nature. The proceedings are akin to one of the recognised ADR mechanism which is made of Medola. It may be treated on a par with conciliation and arbitration. In such a case the parties agree for settlement of dispute by negotiation, conciliation or mediation. The proceedings adopted are not binding ones, whereas the arbitration is a binding procedure. Even in relation to arbitration, an award can be the subject-matter of challenge. The provisions of the Arbitration and Conciliation Act, 1996 shall apply thereto. The jurisdiction in terms of Section 34 of the Arbitration and Conciliation Act, 1996 is wide. The court in exercise of the said jurisdiction may not enter into the merit of the case but would be entitled to consider as to whether the arbitrator was guilty of misconduct. If he is found to be biased, his award would be set aside. The scope of voluntary settlement through the mechanism of conciliation is also limited. If the parties in such a case can agree to come to settlement in relation to the principal issues, no exception can be taken thereto as the parties have a right of

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self-determination of the forum, which shall help them to resolve the conflict, but when it comes to some formal differences between the parties, they may leave the matter to the jurisdiction of the conciliator. The conciliator only at the final stage of the proceedings would adopt the role of an arbitrator. Permanent Lok Adalat does not simply adopt role of an arbitrator whose award could be the subject-matter of challenge but the role of an adjudicator. Parliament has given the authority to the Permanent Lok Adalat to decide the matter. It has an adjudicating role to play. (Paras 27 and 28)

Anuj Garg v. *Hotel Assn. of India*, (2008) 3 SCC 1, *relied on*

C. **Legal Aid — Legal Services Authorities Act, 1987 — S. 22-B(1) — Public utility service — Insurance service — Held, is a public utility service** (Para 9)

D. **Legal Aid — Legal Services Authorities Act, 1987 — Ss. 22-C(1), 22-C(4) and 22-C(8) — Formulation of questions by Permanent Lok Adalat — Dual role of conciliator and adjudicator — Permanent Lok Adalat must avoid the impression that it has adjudicator's role from the very beginning**

The Court must guard against construction of a statute which confers a wide power on Permanent Lok Adalat, having regard to Section 22-C(8). The Permanent Lok Adalat must at the outset formulate the questions. It must exercise its power with due care and caution. It must not give an impression to any of the disputants that it, from the very beginning has an adjudicatory role to play in relation to its jurisdiction without going into the statutory provisions and restrictions imposed thereunder. (Para 41)

State of Punjab v. *Jalour Singh*, (2008) 2 SCC 660 : (2008) 1 SCC (Cri) 524 : (2008) 1 SCC (L&S) 535, *relied on*

E. **Civil Procedure Code, 1908 — S. 9 — Civil court — Exclusion of jurisdiction — Held, any such provision has to be construed strictly** (Para 35)

Dhulabhai v. *State of M.P.*, AIR 1969 SC 78; *Dwarka Prasad Agarwal* v. *Ramesh Chander Agarwal*, (2003) 6 SCC 220; *Bhagubhai Dhanabhai Khalasi* v. *State of Gujarat*, (2007) 4 SCC 241 : (2007) 2 SCC (Cri) 260 : (2007) 5 Scale 357; *Bhagwat Singh* v. *State of Rajasthan*, AIR 1964 SC 444; *Raichand Amulakh Shah* v. *Union of India*, AIR 1964 SC 1268; *Kasturi and Sons (P) Ltd.* v. *N. Salivateswaran*, AIR 1958 SC 507; *Upper Doab Sugar Mills Ltd.* v. *Shahdara (Delhi) Saharanpur Light Railway Co. Ltd.*, AIR 1963 SC 217, *relied on*

Swamy Atmananda v. *Sri Ramakrishna Tapovanam*, (2005) 10 SCC 51, *referred to*

G.P. Singh: *Principles of Statutory Interpretation*, 9th Edn., p. 630, *referred to*

K-M/A/38399/C

Advocates who appeared in this case :

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10. AIR 1958 SC 507, *Kasturi and Sons (P) Ltd.* v. *N. Salivateswaran* 467*e*

The Judgment of the Court was delivered by

S.B. SINHA, J.— Leave granted.

2. The Legal Services Authorities Act, 1987 (the Act) was enacted to constitute Legal Services Authorities to provide for free competent legal services to the weaker sections of the society, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organise Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.

3. The Act was enacted with a view to give effect to the provisions of Article 39-A of the Constitution of India which mandates that State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability.

4. If we are to look at the history of grant of legal aid, it may be noticed that the Law Commission of India in its 14th Report on "Reform of Judicial Administration" published in 1958, strongly advocated the need for rendering legal aid to poor litigants and categorically stated that "the rendering of legal aid to the poor litigants is not a minor problem of procedural law but a question of fundamental character".

5. The Committee under the chairmanship of Hon'ble Mr Justice V.R. Krishna Iyer, then a member of the Law Commission, constituted by the Government of India Order dated 27-10-1972 to consider the question of making available to the weaker sections of the community and persons of limited means in general and citizens belonging to the socially and educationally backward class in particular, facilities for

(*a*) legal advice so as to make them aware of their constitutional and legal rights and obligations; and

(*b*) legal aid in proceedings before civil, criminal and Revenue Courts so as to make justice more easily available to all sections of the community.

6. With a view to implement the report of the Bhagwati Committee and in fulfilment of its constitutional obligations under Article 39-A of the Constitution, a committee known as the "Committee for Implementing Legal Aid Schemes" (CILAS) was being constituted by the Government of India at

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the very beginning under the chairmanship of Hon'ble Mr Justice P.N. Bhagwati. This Committee formulated a broad pattern of the legal aid programme to be set up in the country. It gave stress on preventive legal aid programme with a view to creating legal awareness amongst the people. It also suggested dynamic and activist programmes to carry legal services to the doorsteps of the rural population, to promote community mobilisation and rights enforcement through public interest litigations and other statutes. The Committee also framed a model scheme for establishment of State Legal Aid and Advice Boards, as also, committees at the High Court, District and Tehsil levels to cater legal services to the people at large.

7. In the year 1987 the Legal Services Authorities Act was enacted by Parliament with a view to provide free and competent legal services and to ensure opportunity for securing justice to the downtrodden class of the society. The Statement of Objects and Reasons for enacting the Amendment Act is as under:

> "The Legal Services Authorities Act, 1987 was enacted to constitute Legal Services Authorities for providing free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice were not denied to any citizen by reason of economic or other disabilities and to organise Lok Adalats to ensure that the operation of the legal system promoted justice on a basis of equal opportunity. The system of Lok Adalat, which is an innovative mechanism for alternate dispute resolution, has proved effective for resolving disputes in a spirit of conciliation outside the courts."

8. We may have a look to the relevant statutory provisions for the purpose of this case.

9. Section 22-A(*a*) of the Act defines "Permanent Lok Adalat" to mean a Permanent Lok Adalat established under sub-section (1) of Section 22-B. "Public utility service" inter alia means 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. Section 22-B provides for establishment of Permanent Lok Adalats. Section 22-C delineates the jurisdiction of Permanent Lok Adalat to take cognizance of cases filed before it, the relevant provisions whereof are as under:

> "22-C. *Cognizance of cases by Permanent Lok Adalat.*—(1) Any party to a dispute may, before the dispute is brought before any court, make an application to the Permanent Lok Adalat for the settlement of dispute:
>
> Provided that the Permanent Lok Adalat shall not have jurisdiction in respect of any matter relating to an offence not compoundable under any law:
>
> Provided further that the Permanent Lok Adalat shall also not have jurisdiction in the matter where the value of the property in dispute exceeds ten lakh rupees:

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Provided also that the Central Government, may, by notification, increase the limit of ten lakh rupees specified in the second proviso in consultation with the Central Authority.

(2) After an application is made under sub-section (1) to the Permanent Lok Adalat, no party to that application shall invoke jurisdiction of any court in the same dispute.

(3)-(4) * * *

(5) The Permanent Lok Adalat shall, during conduct of conciliation proceedings under sub-section (4), assist the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner.

(6) It shall be the duty of every party to the application to cooperate in good faith with the Permanent Lok Adalat in conciliation of the dispute relating to the application and to comply with the direction of the Permanent Lok Adalat to produce evidence and other related documents before it.

(7) When a Permanent Lok Adalat, in the aforesaid conciliation proceedings, is of opinion that there exist elements of settlement in such proceedings which may be acceptable to the parties, it may formulate the terms of a possible settlement of the dispute and give to the parties concerned for their observations and in case the parties reach at an agreement on the settlement of the dispute, they shall sign the settlement agreement and the Permanent Lok Adalat shall pass an award in terms thereof and furnish a copy of the same to each of the parties concerned.

(8) Where the parties fail to reach at an agreement under sub-section (7), the Permanent Lok Adalat shall, if the dispute does not relate to any offence, decide the dispute."

10. The Permanent Lok Adalat, in terms of Section 22-D of the Act, while conducting conciliation proceedings or deciding a dispute on merit is not bound by the provisions of the Code of Civil Procedure, 1908 and the Evidence Act, 1872 but guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice.

11. Section 22-E of the Act makes an award of Permanent Lok Adalat to be final and binding on all the parties, which would be deemed to be a decree of a civil court. Jurisdiction of the civil court to call in question any award made by the Permanent Lok Adalat is barred. It has the jurisdiction to transfer any award to a civil court and such civil court is mandated to execute the order as if it were the decree by the court.

12. Interpretation of the aforesaid provisions in the light of the Statement of Objects and Reasons for which they have been enacted calls for our consideration. Before, however, we embark thereupon we may briefly notice the factual matrix involved herein.

13. The first respondent carries on business in electrical goods. He is an authorised distributor of Sony products. He entered into a contract of insurance with the appellant Company; the period covered thereunder being 29-8-2001 to 31-8-2002. Allegedly, a burglary took place in his godown in the night of 18/19-8-2002. He lodged a first information report with Doranda

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Police Station, Ranchi. He also submitted a claim with the appellant alleging that in the said burglary, goods worth Rs 11,14,597 had been stolen away.

14. The appellant denied and disputed the said claim which refuted the claims by a letter dated 12-8-2004, inter alia, stating:

"(*a*) The surveyor has observed that the loss cannot be assessed since the quantity claimed by you is not verifiable especially as the authenticity of the documents provided by you creates doubt.

(*b*) The surveyor has noticed that there is movement of stock from the godown without proper billing and proper entry which was found by the surveyor on their random inspection of the godown on 27-7-2003.

(*c*)-(*d*) * * *

(*e*) The Chartered Accountant who accompanied the surveyor had made an inspection of the financial statements as provided by you and found various discrepancies in your accounts. For these reasons the accounts provided by you cannot be relied upon. It was found by the said Chartered Accountant that there was difference in closing stock, opening balance of sundry debtors, etc. and thus the credibility of the accounts submitted by you is doubtful.

(*f*) The Dy. Superintendent of Police in his supervision note has recorded that the alleged crime has been done by people who are closely associated with the Company under a high hatched conspiracy and also having the capacity to sell the alleged stolen products in the market.

(*g*) *It is also observed that neither the FIR nor during investigation by the police you ever disclosed that there was a common watchman in that area where the godown is located which creates doubt about the genuineness of the incident. Furthermore, not providing any security/watchman with respect to the said godown also amounts to violation of the terms of the policy coupled with misrepresentation.*"

(emphasis supplied)

15. The investigating officer in the criminal case filed a final report. It was, however, opposed by the Insurance Company. We have not been informed as to whether the cognizance of the alleged offence has been taken by a competent court or not.

16. We may, however, notice that the respondent being aggrieved by and dissatisfied with the purported repudiation of his claim filed an application before the District Consumer Forum claiming a sum of Rs 18,45,697.50 from the appellant. It was not entertained on the premise that deficiency in service had occurred in connection with a commercial contract.

17. The first respondent, thereafter, filed an application before the Permanent Lok Adalat claiming a sum of Rs 9,80,000. The appellant filed an objection raising the question of jurisdiction of the Permanent Lok Adalat. By reason of an order dated 4-1-2005, the said objection was overruled stating that it had the pecuniary jurisdiction over the matter and only because

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a criminal case is pending in the Court of the Chief Judicial Magistrate, Ranchi, the same was not relevant stating:

> "However, the finding of criminal court is not binding on this court and this court has to decide as to whether burglary had taken place or not. After taking independent evidences of the parties, so far as finding of surveyor is concerned, it is regarding merit of the claim which this PLA has to decide after taking evidence if the claim cannot be refused on the basis of surveyor's report at this stage."

18. The appellant filed a writ application challenging the validity of the said order before the Jharkhand High Court. A learned Single Judge of the High Court allowed the said writ application opining that as Sections 479/461 of the Penal Code, 1860 being not compoundable, the Permanent Lok Adalat had no jurisdiction to entertain the claim opining:

> "9. In my considered opinion, the Permanent Lok Adalat has committed great error of law in holding that it has jurisdiction in spite of the fact that the matter relates to an offence not compoundable under any law. The Permanent Lok Adalat has further committed serious error in holding that the finding of the criminal court in non-compoundable offence is not binding on it.
>
> *10.* No doubt Chapter VI-A has been inserted in the Legal Services Authority Act, 1987 by the Amendment Act of 2002 for constitution of Permanent Lok Adalat for the purpose of pre-litigation, conciliation and settlement, but the whole object of the Act is to provide free legal and competent legal services to the weaker section of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability. The amended provision of the Act does not confer power to the Permanent Lok Adalat even to entertain the disputes which related to a criminal offence non-compoundable in law."

19. An intra-court appeal was preferred thereagainst. The Division Bench of the High Court by reason of the impugned judgment and order dated 29-3-2006 allowed the appeal of the first respondent holding that the pendency of a criminal case has nothing to do with the exercise of jurisdiction by the Permanent Lok Adalat as it was not concerned as to who had committed the burglary but was only concerned with the fact as to whether burglary had taken place or not stating:

> "So far as the case before the Permanent Lok Adalat is concerned, the Adalat is to determine whether burglary had taken place or not, after taking into consideration the independent evidence of the parties. It is not required to determine as to who has committed burglary nor is it required to determine whether an accused is guilty of the charges or not. Therefore, for the purpose of determination of the issue and claim in question, the Permanent Lok Adalat is not required to determine whether offence committed by an accused is 'compoundable' or not. Thus, as in this case such issue is not required to be determined by the Permanent Lok Adalat, we hold that the Permanent Lok Adalat has jurisdiction to

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decide the claim as made by the appellant, on merit, after hearing the parties and on appreciation of evidence on record. The learned Single Judge has failed to notice the aforesaid facts while determining the issue in question."

20. Mr Raju Ramachandran, learned Senior Counsel appearing on behalf of the appellant would submit:

(*i*) Chapter VI-A of the Act will have no application in a case of this nature which involves complicated questions of fact and law.

(*ii*) The question as to whether the burglary has been committed or not being pending before the criminal court, Permanent Lok Adalat had no jurisdiction in relation thereto.

(*iii*) As the contract of insurance had been repudiated, it was not a case which was fit for settlement within the meaning of Section 22-B of the Act.

(*iv*) Claim of the first respondent is mala fide as he had artificially reduced the claim to bring the same within the jurisdiction of the Permanent Lok Adalat, although initially he claimed a sum higher than Rs ten lakhs.

21. Mr Amit Kumar, learned counsel appearing on behalf of the respondent, on the other hand, would urge:

(*i*) That the value of the property being less than Rs ten lakhs, the Permanent Lok Adalat had jurisdiction in regard to the dispute in question.

(*ii*) The restrictions imposed in regard to the offences cannot be applied to civil dispute between the parties arising out of any offence as the same relates to the claim of the respondent against the appellant.

(*iii*) Jurisdiction of the Permanent Lok Adalat being confined to determination of the amount of loss caused to the first respondent on account of burglary, Permanent Lok Adalat is not required to decide the case of burglary between the accused and the State.

(*iv*) For invoking the jurisdiction of Permanent Lok Adalat, the question as to whether the offence is compoundable or not is not relevant.

(*v*) Proviso appended to sub-section (5) of Section 22 of the Act should be construed in a manner which would widen the scope and ambit of the Act, rather accentuate the same.

(*vi*) The object of the legislation is to promote resolution of the dispute by conciliation and, therefore, it is for the welfare of the general public that construction which would achieve the object of the beneficial legislation should be preferred.

22. The term "conciliation" is not defined under the Act. It should, therefore, be considered from the perspective of the Arbitration and Conciliation Act, 1996. In order to understand what Parliament meant by "conciliation", we have necessarily to refer to the functions of a "conciliator" as visualised by Part III of the 1996 Act. Section 67 describes the role of a

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conciliator. Sub-section (1) states that he shall assist parties in an independent and impartial manner. Sub-section (2) states that he shall be guided by principles of objectivity, fairness and justice, giving consideration, among other things, to the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties. Sub-section (3) states that he shall take into account "the circumstances of the case, the wishes the parties may express, including a request for oral statements". Sub-section (4) is important and permits the "conciliator" to make proposals for a settlement. This section is based on Article 7 of the UNCITRAL Conciliation Rules.

23. Section 73, which is important, states that the conciliator can formulate terms of a possible settlement if he feels that there exists elements of settlement. He is also entitled to "reformulate the terms" after receiving the observations of the parties. The above provisions in the 1996 Act make it clear that the "conciliator" under the said Act, apart from assisting the parties to arrive at a settlement, is also permitted to make "proposals for a settlement" and "formulate the terms of a possible settlement" or "reformulate the terms". This is indeed the UNCITRAL concept.

24. Section 89 of the Code of Civil Procedure, inter alia, was enacted to promote resolution of disputes through mutual settlement. Chapter VI-A of the Act seeks to achieve a different purpose. It not only speaks of conciliation qua conciliation but conciliation qua determination. Jurisdiction of Permanent Lok Adalat, although is limited but they are of wide amplitude. The two provisos appended to Section 22-C(1) of the Act curtail the jurisdiction of the Permanent Lok Adalat which are as under:

> "Provided that the Permanent Lok Adalat shall not have jurisdiction in respect of any matter relating to an offence not compoundable under any law:
>
> Provided further that the Permanent Lok Adalat shall also not have jurisdiction in the matter where the value of the property in dispute exceeds ten lakh rupees:
>
> * * *"

25. Chapter VI-A stands independently. Whereas the heading of the Chapter talks of pre-litigation, conciliation and settlement, Section 22-C(8) of the Act speaks of determination. It creates another adjudicatory authority, the decision of which by a legal fiction would be a decision of a civil court. It has the right to decide a case. The term "decide" means to determine; to form a definite opinion; to render judgment. (See *Advanced Law Lexicon*, 3rd Edn., 2005 at p. 1253.) Any award made by the Permanent Lok Adalat is executable as a decree. No appeal thereagainst shall lie. The decision of the Permanent Lok Adalat is final and binding on the parties. Whereas on the one hand, keeping in view the parliamentary intent, settlement of all disputes through negotiation, conciliation, mediation, Lok Adalat and judicial settlement are required to be encouraged, it is equally well settled that where

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the jurisdiction of a court is sought to be taken away, the statutory provisions deserve strict construction. A balance is thus required to be struck. A court of law can be created under a statute. It must have the requisite infrastructure therefor. Independence and impartiality of Tribunal being a part of human right is required to be taken into consideration for construction of such a provision. When a court is created, the incumbents must be eligible to determine the lis.

26. An option is given to any party to a dispute. It may be a public utility service provider or a public utility service recipient. The service must have some relation with public utility. Ordinarily, insurance service would not come within the public utility service. But having regard to the statutory scheme, it must be held to be included thereunder. It is one thing to say that an authority is created under a statute to bring about a settlement through alternate dispute resolution mechanism but it is another thing to say that an adjudicatory power is conferred on it. Chapter VI-A, therefore, in our opinion, deserves a closer scrutiny. In a case of this nature, the level of scrutiny must also be high. (See *Anuj Garg* v. *Hotel Assn. of India*[1].)

27. Sub-section (1) of Section 22-C speaks of settlement of disputes. The authority has to take recourse to conciliation mechanism. One of the essential ingredients of the conciliation proceeding is that nobody shall be forced to take part therein. It has to be voluntary in nature. The proceedings are akin to one of the recognised ADR mechanism which is made of Medola. It may be treated on a par with conciliation and arbitration. In such a case the parties agree for settlement of dispute by negotiation, conciliation or mediation. The proceedings adopted are not binding ones, whereas the arbitration is a binding procedure. Even in relation to arbitration, an award can be the subject-matter of challenge. The provisions of the Arbitration and Conciliation Act, 1996 shall apply thereto. The jurisdiction in terms of Section 34 of the Arbitration and Conciliation Act, 1996 is wide. The court in exercise of the said jurisdiction may not enter into the merit of the case but would be entitled to consider as to whether the arbitrator was guilty of misconduct. If he is found to be biased, his award would be set aside. The scope of voluntary settlement through the mechanism of conciliation is also limited. If the parties in such a case can agree to come to settlement in relation to the principal issues, no exception can be taken thereto as the parties have a right of self-determination of the forum, which shall help them to resolve the conflict, but when it comes to some formal differences between the parties, they may leave the matter to the jurisdiction of the conciliator. The conciliator only at the final stage of the proceedings would adopt the role of an arbitrator.

28. Here, however, the Permanent Lok Adalat does not simply adopt the role of an arbitrator whose award could be the subject-matter of challenge but also the role of an adjudicator. Parliament has given the authority to the

1 (2008) 3 SCC 1

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Permanent Lok Adalat to decide the matter. It has an adjudicating role to play.

29. The validity of the said provision is not in question. But then a construction of such a provision must be given in such a manner so as to make it prima facie reasonable. With that end in view let us consider the meaning of the word "relating to an offence". We will assume that in a given case the dispute between the service provider and the service recipient may not have anything to do with the ultimate result of the criminal case but there are cases and cases. b

30. In this case, as noticed above, the genuineness of the claim itself is in dispute. Where the parties have taken extreme positions, the same prima facie may not be the subject-matter of conciliation which provides for a non-binding settlement.

31. For the said purpose, the dispute under the criminal procedure and/or the nature thereof would also play an important role. Whereas the respondent c states that the burglary has taken place, the appellant denies and disputes the same. In a criminal case, the accused shall be entitled to raise a contention that no offence has taken place. If the criminal court forms an opinion that an offence had taken place, which otherwise is a non-compoundable one, the term "relating to an offence" should be given wider meaning. The first proviso appended to Section 22-B of the Act may not be of much relevance. d

32. This aspect of the matter had not been argued before the Division Bench of the High Court. The counsel appearing were remiss in bringing the same to the notice of the Court the binding precedents, as regards the jurisdictional aspect of the civil court in the light of Section 9 of the Code of Civil Procedure. e

33. In *Dhulabhai* v. *State of M.P.*[2] the Court discussed the ambit of Section 9 CPC and laid down the following principles: (AIR p. 89, para 32)

> "32. ... (1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where f the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.
>
> (2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not g decisive to sustain the jurisdiction of the civil court.
>
> Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and h

2 AIR 1969 SC 78

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provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not."

34. In *Dwarka Prasad Agarwal* v. *Ramesh Chander Agarwal*[3] this Court held: (SCC p. 228, para 22)

"22. The dispute between the parties was eminently a civil dispute and not a dispute under the provisions of the Companies Act. Section 9 of the Code of Civil Procedure confers jurisdiction upon the civil courts to determine all disputes of civil nature unless the same is barred under a statute either expressly or by necessary implication. Bar of jurisdiction of a civil court is not to be readily inferred. A provision seeking to bar jurisdiction of a civil court requires strict interpretation. The court, it is well settled, would normally lean in favour of construction, which would uphold retention of jurisdiction of the civil court."

This case was cited with approval in *Bhagubhai Dhanabhai Khalasi* v. *State of Gujarat*[4].

35. Therefore, it is a fundamental presumption in statutory interpretation that ordinary civil courts have jurisdiction to decide all matters of a civil nature. As a corollary,

(*i*) provisions *excluding jurisdiction* of civil courts should receive strict construction (see *Bhagwat Singh* v. *State of Rajasthan*[5] and *Raichand Amulakh Shah* v. *Union of India*[6]), and

(*ii*) provisions *conferring jurisdiction on authorities and tribunals other than civil courts* [see *Kasturi and Sons (P) Ltd.* v. *N. Salivateswaran*[7] and *Upper Doab Sugar Mills Ltd.* v. *Shahdara (Delhi) Saharanpur Light Railway Co. Ltd.*[8]]

have to be strictly construed. This principle, taken from *Principles of Statutory Interpretation* by G.P. Singh, 9th Edn., p. 630, was cited with approval in *Swamy Atmananda* v. *Sri Ramakrishna Tapovanam*[9].

36. We must also take notice of a recent decision of this Court in *State of Punjab* v. *Jalour Singh*[10] where this Court expressed its dismay with the manner in which the Lok Adalat matters are dealt with. The Chief Justice of India speaking for the Bench, upon noticing the provisions of the Legal Services Authorities Act, 1987, observed that whereas Lok Adalat had to

3 (2003) 6 SCC 220
4 (2007) 4 SCC 241 : (2007) 2 SCC (Cri) 260 : (2007) 5 Scale 357
5 AIR 1964 SC 444
6 AIR 1964 SC 1268
7 AIR 1958 SC 507
8 AIR 1963 SC 217
9 (2005) 10 SCC 51 : AIR 2005 SC 2392
10 (2008) 2 SCC 660 : (2008) 1 SCC (Cri) 524 : (2008) 1 SCC (L&S) 535 : JT (2008) 2 SC 83

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arrive at a just settlement in their conciliatory role guided by the principles of justice, equity, fair play and other legal principles, but in that case 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 within a period fixed by it. It was held that such an order is not an award.

37. Section 22-C(1) read with Sections 22-C(2), 22-C(8) and 22-E of the Act, exclude the jurisdiction of the civil courts by providing that when an application is made by either party to the Permanent Lok Adalat to settle a dispute at the pre-litigation stage, the PLA shall do so, and the other party is precluded from approaching the civil court in such a case.

38. Section 22-C(1) contains certain provisos which limit the jurisdiction of the PLA. Given the principle of statutory interpretation stated earlier, these provisos, as a corollary, must be interpreted in an expansive manner.

39. What is important to note is that with respect to public utility services, the main purpose behind Section 22-C(8) seems to be that "most of the petty cases which ought not to go in the regular courts would be settled in the pre-litigation stage itself".

40. Therefore, in the instant case, the term "relating to an offence" appearing in proviso I must be interpreted broadly, and as the determination before the Permanent Lok Adalat will involve the question as to whether or not an offence, which is non-compoundable in nature, has indeed been committed, this case falls outside the jurisdiction of the Permanent Lok Adalat.

41. We must guard against construction of a statute which would confer such a wide power in the Permanent Lok Adalat having regard to sub-section (8) of Section 22-C of the Act. The Permanent Lok Adalat must at the outset formulate the questions. We, however, do not intend to lay down a law, as at present advised, that Permanent Lok Adalat would refuse to exercise its jurisdiction to entertain such cases but emphasise that it must exercise its power with due care and caution. It must not give an impression to any of the disputants that it, from the very beginning has an adjudicatory role to play in relation to its jurisdiction without going into the statutory provisions and restrictions imposed thereunder.

42. For the reasons abovementioned the order of the High Court cannot be sustained and is set aside accordingly. The appeal is allowed. In the facts and circumstances of the case, there shall be no order as to costs.

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(2009) 2 Supreme Court Cases 198

(BEFORE R. V. RAVEENDRAN AND D.K. JAIN, JJ.)

B.P. MOIDEEN SEVAMANDIR AND ANOTHER .. Appellants;

Versus

A.M. KUTTY HASSAN .. Respondent.

Civil Appeals Nos. 7282-83 of 2008†, decided on December 12, 2008

A. Civil Procedure Code, 1908 — Or. 17 Rr. 1 & 2 and S. 100 — Adjournment — Prejudice — Adjournment refused by mixing up unrelated issues — Sustainability — Appellant-defendant's counsel seeking adjournment on the ground of sudden illness in the post-lunch session, though she was ready in the pre-lunch session — High Court in second appeal, refusing adjournment on the ground that the appellant-defendant was cantankerous and unreasonable before the Lok Adalat for which a amicable settlement could not be reached — The issue of adjournment and conduct of appellant-defendant in the Lok Adalat, held, have no relation to each other and such dismissal can only be attributed to prejudice — Second appeal, therefore, restored and directed to be disposed of on merits — Practice and Procedure — Adjournment (Paras 20 and 22)

B. Civil Procedure Code, 1908 — Ss. 100 and 89 — Second appeal — Factual relevance of conduct of party before Lok Adalat or other ADR fora — When a case is heard and decided on merits, the conduct of party before any ADR fora, howsoever stubborn or unreasonable, held, is totally irrelevant — Legal Services Authorities Act, 1987, S. 22 (Paras 17 and 19)

C. Legal Services Authorities Act, 1987 — Ss. 22-E and 21 — Award when binding — Final and tentative award, distinguished — Held, there cannot be an award when there is no settlement or only a tentative settlement — Observation by High Court that parties having arrived at a settlement (tentative settlement) before the Lok Adalat, could not refuse to file a compromise petition in court, held, therefore erroneous — Civil Procedure Code, 1908, Ss. 100, 89 and Or. 22 R. 3 (Paras 8, 9, 11, 21 and 19)

D. Legal Services Authorities Act, 1987 — Ss. 22, 21, 20(5) and 2(d) — Lok Adalat and ADR fora — Powers, purpose, scope and procedure of compromise — Either award on the basis of compromise or return of matter to court — No third course open for any directions by the conciliator — Directions determining rights/obligations/title of parties prior to any settlement, held, are not permissible — Civil Procedure Code, 1908 — S. 89 — Arbitration and Conciliation Act, 1996, Ss. 67, 73, 74, 76 and 80 (Paras 8, 11 and 7)

It is unfortunate that the members of the Lok Adalat and the Single Judge totally lost sight of the purpose and scope of Lok Adalats. When a case is referred to the Lok Adalat for settlement, two courses are open to it: (*a*) if a compromise or a settlement is arrived at between the parties, to make an award, incorporating such compromise or settlement (which when signed by the parties and countersigned by the members of the Lok Adalat, has the force of a decree);

† Arising out of SLPs (C) Nos. 28691-92 of 2008. From the Judgment and Order dated 19-8-2008 of the High Court of Kerala at Ernakulam in RSA No. 497 of 2005 and MJC No. 365 of 2008 dated 29-8-2008

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or (*b*) if there is no compromise or settlement, to return the record with a failure report to the court. There can be no third hybrid order by the Lok Adalat containing directions to the parties by way of final decision, with a further direction to the parties to settle the case in terms of such directions.

(Paras 7 and 8)

E. **Legal Services Authorities Act, 1987 — S. 20(5) — Application — Voluntary/amicable negotiations and settlement — No punishment for failing to agree on a settlement — Duty of Judges regarding, stated — Role of Judges as statutory conciliators distinguished from their judicial role — Civil Procedure Code, 1908 — S. 89 — Arbitration and Conciliation Act, 1996, Ss. 67, 73, 74, 76 and 80** **(Paras 10 and 14 to 18)**

State of Punjab v. *Jalour Singh*, (2008) 2 SCC 660 : (2008) 1 SCC (Cri) 524 : (2008) 1 SCC (L&S) 535, *relied on*

F. **Legal Services Authorities Act, 1987 — S. 20(1)(ii) — Reference of cases to Lok Adalat by court — When proper — Each and every case, held, cannot be referred — Judicial training to avoid mechanical reference suggested — Examples of mechanical reference cited**

Judges require some training in selecting and referring cases to Lok Adalats or other ADR processes. Mechanical reference to unsuited mode of ADR process may well be counterproductive. A plaintiff who comes to court alleging unlawful encroachment by a neighbour may well ask what kind of settlement he should have with an encroacher in a Lok Adalat. He cannot obviously be asked to sacrifice a part of his land for purposes of amicable settlement thereby perpetuating the illegality of an encroachment. A plaintiff alleging fraud and forgery of documents against a defendant may well ask what settlement he can have with a fraudster or forger through ADR process as any settlement may mean yielding to or accepting fraud or forgery. (Paras 15 and 16)

G. **Lok Adalats — Need of uniform law and functioning — Directions regarding, given to National Legal Services Authority — Legal Services Authorities Act, 1987 — Ss. 21 & 22 — Arbitration and Conciliation Act, 1996, Ss. 67, 73, 74, 76 and 80**

It is suggested that the National Legal Services Authority as the apex body, should issue uniform guidelines for the effective functioning of the Lok Adalats. As an award of a Lok Adalat is an executable decree, it is necessary for the Lok Adalats to have a uniform procedure, prescribed registers and standardised formats of awards and permanent record of the award to avoid misuse or abuse of the ADR process. The principles underlying following Sections 67, 75 and 86 in the Arbitration and Conciliation Act, 1996 relating to conciliators may also be treated as guidelines to members of Lok Adalats till uniform guidelines are issued. Each Adalat adopts its own procedure. Strange orders by the Lok Adalats are the result of lack of fixed/appropriate rules or guidelines. Many members of the Lok Adalats are not judicially trained. Lok Adalats even pass "orders", issuing "directions" and even granting declaratory relief, which are purely in the realm of courts or specified tribunals, that too when there is no settlement.

(Paras 13 and 12)

Appeals allowed SS-D/K/39873/C

Advocates who appeared in this case :

P. Krishnamoorthy, Senior Advocate (Sajith P. Warrier and M.P. Vinod, Advocates) for the Appellants;

C.S. Rajan, Senior Advocate (A. Raghunath, Advocate) for the Respondent.

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

1. (2008) 2 SCC 660 : (2008) 1 SCC (Cri) 524 : (2008) 1 SCC (L&S) 535, *State of Punjab* v. *Jalour Singh* 201g-h

The Order of the Court was delivered by

R.V. RAVEENDRAN, J.— Leave granted. Mr A. Raghunath, learned counsel accepts notice for the sole respondent. Heard by consent.

2. The appellants were the defendants in a suit for declaration and mandatory injunction. Having lost before the trial court and the first appellate court, the appellants filed a second appeal before the High Court of Kerala on 6-2-2005. The appeal was admitted and an interim stay of execution was granted in the said appeal on 1-6-2005. The pending second appeal was referred to the Lok Adalat organised by the Kerala High Court Legal Services Committee on 25-5-2007. Before the Lok Adalat, parties apparently arrived at a tentative settlement. The Lok Adalat consisting of two retired Judges of the High Court purported to pass the following "award" dated 25-5-2007 in the appeal:

"*Award*

Counsel for the parties and the appellants and the respondent present.

The parties have settled the dispute and *agreed to file a memorandum of settlement before the High Court* to obtain orders for disposal of this appeal and for refund of court fee.

A plan of the property is produced by the appellant and it is received. The plan used will *form part of this order. The appellant will vacate the buildings in Plot A to the respondent on or before 31-7-2007. On such surrender, Plot B will belong to the appellant and.... A compromise deed to this effect will be drawn by the parties and filed before the court.*

Post before the Court on or before 31-7-2007." (emphasis supplied)

3. The appellants alleged that the parties could not finalise the terms of settlement as it was found that there was no access to the portion to which they had to move, and therefore no compromise petition was drawn up or filed. As the settlement was not reported, the High Court, by order dated 10-4-2008 made a second reference to the Lok Adalat. The parties and counsel again appeared before the Lok Adalat. Further negotiations were unsuccessful and the Lok Adalat sent the following failure report dated 3-4-2008 to the Court:

"We have discussed the matter with the counsel and their parties and *considering the nature of demand made by the appellants*, there is no chance of settlement." (emphasis supplied)

4. The second appeal was thereafter listed for the final hearing on 19-8-2008 before a learned Single Judge. When the matter reached hearing in the post-lunch session, an advocate attached to the office of the appellants' counsel submitted that the appeal was to be argued by his colleague Mrs Sarita, that due to personal inconvenience she could not be present during that session, and that therefore the matter may be adjourned to the next day.

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The learned Single Judge rejected the request and dismissed the appeal. The operative portion of the order dated 19-8-2008 is extracted below:

> "I see no reason why any further adjournment is to be granted in the appeal of 2005 *when the parties are wilfully abstaining from arriving at any settlement despite an award passed at the Adalat on agreement.* In the result, I dismiss this appeal for default." (emphasis supplied)

5. The very next day, that is on 20-8-2008, an application was filed for restoration of the appeal supported by the affidavit of the counsel (Mrs Sarita) giving the following reason for her absence at the post-lunch session on 19-8-2008:

> "I am an advocate attached to the office of the counsel for the petitioner. I was entrusted to argue the aforementioned second appeal and I was prepared for the same since the matter was listed. The case was taken up as Item 504 in Court I-C in the afternoon session on 19-8-2008. I was present in the court in the forenoon session and unfortunately I developed severe ear pain and had to leave the court. I had entrusted my colleague to appear before the Hon'ble Court and requested a day's adjournment on account of this personal inconvenience and he had submitted the same."

The said application was dismissed by the learned Single Judge on 29-8-2008. The relevant portion of the said order is extracted below:

> "The order passed on 25-5-2007 by the mediators show that the parties had already settled the dispute and they only wanted to file a memorandum of settlement before this Court to obtain orders disposing of the appeal refunding court fee and *it is after having agreed to the terms as stated in the award that untenable and unreasonable contentions are advanced* now and that too coming forward with a petition to restore the appeal when the appeal itself was dismissed for reason of absence of counsel. I see no reason to allow the MJC in the circumstances, *so as to enable a cantankerous litigant to continue protracting the litigation even after an award is passed at the Adalat.*" (emphasis supplied)

6. The said orders dated 19-8-2008 and 29-8-2008 of the High Court are challenged in these appeals by special leave. We have heard Shri P. Krishnamoorthy, learned Senior Counsel for the appellants and Shri C.S. Rajan, learned Senior Counsel for the respondent.

7. It is unfortunate that the learned members of the Lok Adalat and the learned Single Judge totally lost sight of the purpose and scope of Lok Adalats. We may conveniently recall what this Court has said about the scope of Lok Adalats (after referring to the relevant provisions of the Legal Services Authorities Act, 1987), in *State of Punjab* v. *Jalour Singh*[1]: (SCC p. 665, para 8)

> "8. It is evident from the said provisions that the Lok Adalats have no adjudicatory or judicial functions. Their functions relate purely to

1 (2008) 2 SCC 660 : (2008) 1 SCC (Cri) 524 : (2008) 1 SCC (L&S) 535

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conciliation. A Lok Adalat determines a reference on the basis of a compromise or settlement between the parties at its instance, and put 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 principles of justice, equity and fair play. When the Legal Services Authorities 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."

8. When a case is referred to the Lok Adalat for settlement, two courses are open to it: (*a*) if a compromise or a settlement is arrived at between the parties, to make an award, incorporating such compromise or settlement (which when signed by the parties and countersigned by the members of the Lok Adalat, has the force of a decree); or (*b*) if there is no compromise or settlement, to return the record with a failure report to the court. There can be no third hybrid order by the Lok Adalat containing directions to the parties by way of final decision, with a further direction to the parties to settle the case in terms of such directions. In fact, there cannot be an "award" when there is no settlement. Nor can there be any "directions" by the Lok Adalat determining the rights/obligations/title of parties, when there is no settlement. The settlement should precede the award and not vice versa.

9. When the Lok Adalat records the minutes of a proceeding referring to certain terms and directs the parties to draw a compromise deed or a memorandum of settlement and file it before the court, it means that there is no final or concluded settlement and the Lok Adalat is only making tentative suggestions for settlement; and such a proceeding recorded by the Lok Adalat, even if it is termed as an "award", is not an "award of the Lok Adalat".

10. Although the members of Lok Adalats have been doing a commendable job, sometimes they tend to act as Judges, forgetting that while functioning as members of Lok Adalats, they are only statutory conciliators and have no judicial role. Any overbearing attitude on their part, or any attempt by them to pressurise or coerce parties to settle matters before the Lok Adalat (by implying that if the litigant does not agree for settlement

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before the Lok Adalat, his case will be prejudiced when heard in court), will bring disrepute to Lok Adalats as an alternative dispute resolution process (for short "ADR process") and will also tend to bring down the trust and confidence of the public in the judiciary.

11. In this case the proceeding dated 25-5-2007 is termed as an "award". It is also described as an "order" and "directs" the appellant to vacate certain buildings on or before 31-7-2007 and further directs that on such surrender, another portion shall belong to the appellants. Such an "award" could have been made by the Lok Adalat only when there was a final settlement between the parties. The procedure adopted by the Lok Adalat on 25-5-2007, was clearly erroneous and illegal. The learned counsel for the respondent stated that the Lok Adalat followed the said procedure of passing an "award" dated 25-5-2007 and directing parties to file a compromise in the court, only to enable the appellants to get refund of court fee. We fail to understand how the question of refund of court fee can have any bearing on the compliance with the statutory requirements relating to a settlement and award by a Lok Adalat.

12. Such strange orders by the Lok Adalats are the result of lack of appropriate rules or guidelines. Thousands of Lok Adalats are held all over the country every year. Many members of the Lok Adalats are not judicially trained. There is no fixed procedure for the Lok Adalats and each Adalat adopts its own procedure. Different formats are used by different Lok Adalats when they settle the matters and make awards. We have come across Lok Adalats passing "orders", issuing "directions" and even granting declaratory relief, which are purely in the realm of courts or specified tribunals, that too when there is no settlement.

13. As an award of a Lok Adalat is an executable decree, it is necessary for the Lok Adalats to have a uniform procedure, prescribed registers and standardised formats of awards and permanent record of the awards, to avoid misuse or abuse of the ADR process. We suggest that the National Legal Services Authority as the apex body, should issue uniform guidelines for the effective functioning of the Lok Adalats. The principles underlying following provisions in the Arbitration and Conciliation Act, 1996 relating to conciliators, may also be treated as guidelines to members of Lok Adalats, till uniform guidelines are issued: Section 67 relating to role of conciliators; Section 75 relating to confidentiality; and Section 86 relating to admissibility of evidence in other proceedings.

14. The Lok Adalats should also desist from the temptation of finding fault with any particular litigant, or making a record of the conduct of any litigant during the negotiations, in their failure report submitted to the court, lest it should prejudice the mind of the court while hearing the case. For instance, the observation in the failure report dated 3-4-2008 of the Lok Adalat in this case (extracted in para 3 above) that there is no chance of settlement on account of the "nature of demands made by the appellants", implied that such demands by the appellant were unreasonable. This apparently affected the mind of the learned Single Judge who assumed that

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the appellants were cantankerous, when the second appeal and application for restoration came up for hearing before the court.

15. We may now turn to the role of courts with reference to Lok Adalats. Lok Adalat is an alternative dispute resolution mechanism. Having regard to Section 89 of the Code of Civil Procedure, it is the duty of court to ensure that parties have recourse to the alternative dispute resolution (for short "ADR") processes and to encourage litigants to settle their disputes in an amicable manner. But there should be no pressure, force, coercion or threat to the litigants to settle disputes against their wishes. Judges also require some training in selecting and referring cases to Lok Adalats or other ADR processes.

16. Mechanical reference to unsuited mode of ADR process may well be counterproductive. A plaintiff who comes to court alleging unlawful encroachment by a neighbour may well ask what kind of settlement he should have with an encroacher in a Lok Adalat. He cannot obviously be asked to sacrifice a part of his land for purposes of amicable settlement thereby perpetuating the illegality of an encroachment. A plaintiff alleging fraud and forgery of documents against a defendant may well ask what settlement he can have with a fraudster or forger through ADR process as any settlement may mean yielding to or accepting fraud or forgery.

17. When a case is to be heard and decided on merits by a court, the conduct of the party before the Lok Adalat or other ADR fora, howsoever stubborn or unreasonable, is totally irrelevant. A court should not permit any prejudice to creep into its judicial mind, on account of what it perceives as unreasonable conduct of a litigant before the Lok Adalat. Nor can its judgment be "affected" by the cantankerous conduct of a litigant. It cannot carry "ill will" against a litigant, because he did not settle his case. It is needless to remind the oath of office, which a Judge takes when assuming office. He is required to perform his duties without fear or favour, affection or ill will. Any settlement before the Lok Adalat should be voluntary. No party can be punished for failing to reach the settlement before the Lok Adalat.

18. Section 20(5) of the Act statutorily recognises the right of a party whose case is not settled before the Lok Adalat to have his case continued before the court and have a decision on merits.

19. Any admission made, any tentative agreement reached, or any concession made during the negotiation process before the Lok Adalat cannot be used either in favour of a party or against a party when the matter comes back to the court on failure of the settlement process. To deny hearing to a party on the ground that his behaviour before the Lok Adalat was cantankerous or unreasonable would amount to denial of justice. When deciding a matter on merits of a case, if a court carries any prejudice against a party on account of his conduct before an ADR forum, it will violate the inviolable guarantee against prejudice or bias in decision-making process. Such conduct can neither be permitted nor be tolerated and requires to be strongly deprecated. Every Judge should constantly guard against prejudice, bias and prejudging, in whatever form. Judges should not only be unbiased,

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but seem to be unbiased. Judiciary can serve the nation only on the trust, faith and confidence of the public in its impartiality and integrity.

20. When a counsel who is ready in the pre-lunch session, seeks accommodation in the post-lunch session on the ground of a sudden illness or physical ailment, the court cannot refuse a short accommodation and dismiss the appeal on the ground that his client was cantankerous and unreasonable before the Lok Adalat. The two issues have no relation to each other and such dismissal can only be attributed to prejudice.

21. The observation by the High Court that the parties having arrived at a settlement before the Lok Adalat, could not refuse to file a compromise petition in court, is also erroneous. If there was a final settlement before the Lok Adalat, there would have been an award and there was no need for the matter to come before the court for further hearing. If parties state that before the Lok Adalat that they will enter into an agreement and file it before the court, it only means that there was only a tentative settlement before the Lok Adalat.

22. In view of the above, the appeals are allowed. The impugned orders of the High Court are set aside. The second appeal is restored to the file of the High Court for being disposed of on merits in accordance with law. We request the Hon'ble the Chief Justice to assign the appeal to some other learned Judge of the High Court. Whatever is stated above is not intended to be a reflection on the judicial integrity of the learned Judge, nor intended to impute any personal prejudice or bias.

(2009) 2 Supreme Court Cases 205

(BEFORE S.B. SINHA AND CYRIAC JOSEPH, JJ.)

MAHESH YADAV AND ANOTHER .. Appellants;

Versus

RAJESHWAR SINGH AND OTHERS .. Respondents.

Civil Appeal No. 7316 of 2008†, decided on December 16, 2008

A. Civil Procedure Code, 1908 — S. 115, Or. 9 R. 13 and Or. 23 R. 3 — Setting aside of ex parte decree — When warranted — Though decree passed on the basis of compromise and a joint written statement was filed, not all defendant took part in the compromise — Nothing on record to show that the appellant-defendant was represented by the same advocate representing other defendants — Therefore, the view of the High Court that only because a joint written statement was filed, application for setting aside ex parte decree was not maintainable, held, is not sustainable

(Paras 17 and 12 to 14)

B. Civil Procedure Code, 1908 — Or. 9 R. 13 — Setting aside of ex parte decree — Proper mode for disposal of application for — Need for reasons — An order setting aside the ex parte decree being a judicial order, held,

† Arising out of SLP (C) No. 14217 of 2004. From the Judgment and Final Order dated 4-3-2004 of the High Court of Judicature at Patna in CR No. 497 of 2003

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retirement, has no application in the present case. These 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.

(2008) 2 Supreme Court Cases 660

(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

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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

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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

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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

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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.

[Para 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.

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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

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(*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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I-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."

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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 used 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.

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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 coasider 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 Corrigendum No. F.3/Ed.B.J./87/2010 dated 27-8-2010.

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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*, (2005) 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)

> "16. 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