

UNITED INDIA INSURANCE CO. LTD.

v.

AJAY SINHA AND ANOTHER
(Civil Appeal No. 3537 Of 2008)

MAY 13, 2008

[S.B. SINHA AND V.S.SIRPURKAR, JJ.]

Legal Services Authorities Act, 1987 – s. 22-C proviso and s. 22-C(8) – Cognizance of cases by Permanent Lok Adalat (PLA) – Power of – Case of burglary – Goods of complainant insured with Insurance Company – Claim of, before PLA – Criminal case u/s 479/461 pending before criminal court – Jurisdiction of PLA – Held: Terms ‘relating to an offence’ in proviso 1 to s. 22 C is to be broadly interpreted – Since PLA is to determine whether non-compoundable offence has been committed or not, PLA has no jurisdiction to entertain such claim – Construction of statute conferring wide power in PLA must be guarded – PLA must at the outset formulate questions – It must exercise its power with due care and caution – It cannot be said that it has adjudicatory role to play in relation to its jurisdiction without going into the statutory provisions and restrictions imposed thereunder – Thus, order of Division Bench of High Court that PLA had jurisdiction to decide the claim not sustainable and set aside.

The goods of the first respondent were insured with the appellant company for the period 29.08.2001 – 31.08.2002. It is alleged that on the night of 18/19.08.2002 burglary took place in his godown. FIR was lodged. Respondent raised a claim with the appellant-insurance company that in the burglary, goods worth Rs 11,14,597/- were stolen and the same was rejected. A criminal case was filed. The Investigating Officer filed a report. However, the insurance company denied the same. Aggrieved, respondents filed application before the District Consumer Fo-

A rum claiming a sum of Rs 18,45,697.50 from the appellant. Application was not entertained. The First respondent then filed application before the Permanent Lok Adalat (PLA) claiming a sum of Rs 9,80,000/-. The PLA held that it had the pecuniary jurisdiction over the matter and pendency of a criminal case was not relevant. Appellant challenged the order. The Single Judge of the High Court allowed the same holding that offence u/ss. 469/461 IPC not being compoundable, the PLA did not have jurisdiction to entertain the claim. In appeal, the Division Bench of the High Court held that the PLA had jurisdiction to decide the claim made by the parties. The pendency of a criminal case had nothing to do with the exercise of jurisdiction by PLA as it was not concerned as to who had committed the burglary but whether the burglary had taken place or not. It was not required to determine whether offence committed by accused was compoundable or not. Hence the present appeal.

Allowing the appeal, the Court

E HELD: 1.1. Section 89 of CPC 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 F 22-C (1) of the Act curtail the jurisdiction of the Permanent Lok Adalat. It states that PLA will not have jurisdiction in respect of any matter relating to an offence not compoundable under any law and in the matter where the value of the property in dispute exceeds Rupees ten lakhs. [Para 22] [525-E-G]

H 1.2 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 de-

termination. 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. [Para 23] [525-H; 526-A-B] A

Advanced Law Lexicon 3rd Edition 2005 p 1253 - referred to. B

1.3 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 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 23] [526-B-E] C D E

1.4 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 other thing to say that an adjudicatory power is conferred on it. Chapter VI-A, thus, deserves a closure scrutiny. It a case of this nature, the level of scrutiny must also be high. [Para 24] [526-E-G] F G H

A *Anuj Garg & Ors. vs. Hotel Association of India & Ors*
(2008) 3 SCC 1 – relied on.

1.5 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 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 conciliation only at the final stage of the proceedings would adopt the role of an arbitrator. However, the PLA does not simply adopt the role of an Arbitrator whose award could be the subject matter of challenge but the role of an adjudicator. The Parliament has given the authority to the PLA to decide the matter. It has an adjudicating role to play. The construction of such a provision must be given in such a manner so as make it prima facie reasonable. The meaning of the word “relating to an offence” is considered. It is assumed 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. [Paras 25, 26 and 27] [526-H; 527-A,D-H; 528-A]

1.6 In the instant case, 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. For the said purpose, the dispute under the criminal procedure and/or the nature thereof would also play an important role. Whereas Respondent 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 form 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. This aspect of the matter was not 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 s. 9 of CPC. [Paras 28, 29 and 30] [528-A-E]

Dhulabhai and Ors. vs. The State of Madhya Pradesh and Anr. AIR 1969 SC 78 ; Dwarka Prasad Agarwal (D) by Lrs. and Anr. vs. Ramesh Chander Agarwal and Ors. (2003) 6 SCC 220; Bhagubhai Dhanabhai Khalasi and Anr. vs. The State of Gujarat and Ors. 2007 (5) SCALE 357 – referred to.

1.7 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; and (ii) provisions conferring jurisdiction on authorities and tribunals other than civil courts have to be strictly construed. [Para 32] [529-G-H; 530-A-C]

Bhagwat Singh vs. State of Rajasthan AIR 1964 SC 444; Raichand vs. Union of India AIR 1964 SC 1268; Kasturi and Sons vs. Salivateswaran AIR 1958 SC 507; Upper Doab Sugar Mills vs. Shahdara (Delhi) Saharanpur Light Railway AIR 1963 SC 217 – relied on.

1.8 Section 22-C(1) read with Section 22-C(2), Section 22-C(8) and Section 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

A do so, and the other party is precluded from approaching
the civil court in such a case. Section 22-C(1) contains
certain provisos which limit the jurisdiction of the PLA.
Given the principle of statutory interpretation, these pro-
visos, as a corollary, must be interpreted in an expansive
B manner. [Para 36 and 37] [530-H; 531-A-B]

1.9 With respect of 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."
C Therefore, in the instant case, the terms "relating to" an
"offence" appearing in proviso 1 must be interpreted
broadly, and as the determination before the PLA will in-
volve the question as to whether or not an offence, which
is non-compoundable in nature, has indeed been com-
D mitted, this case falls outside the jurisdiction of the Per-
manent Lok Adalat. [Paras 38 and 39] [531-C-D]

1.10 The construction of a statute which would con-
fer such a wide power in the Permanent Lok Adalat hav-
ing regard to sub-section (8) of Section 22-C of the Act
E must be guarded. The Permanent Lok Adalat must at the
outset formulate the questions. However, there is no in-
tention to lay down a law, as at present advised, that Per-
manent Lok Adalat would refuse to exercise its jurisdic-
tion to entertain such cases but emphasise that it must
F 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 re-
lation to its jurisdiction without going into the statutory
provisions and restrictions imposed thereunder. There-
G fore, the order of the High Court cannot be sustained and
is set aside. [Paras 40 and 41] [531-E-G]

*Swamy Atmananda and Ors. vs. Sri Ramakrishna
Tapovanam and Ors. AIR 2005 SC 2392; State of Punjab and
another vs. Jalour Singh and others JT 2008 (2) SC 83 - re-*
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Principles of Statutory Interpretation by G.P. Singh, Ninth Edition, p 630 – referred to.

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 3537 of 2008

B

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

Raju Ramachandran, M.K. Dua and Kishore Rawat for the Appellant.

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Nitish Massey, Ajit Kumar Sinha, Amit Kumar and Ritesh Ratnam for the Respondents.

The Judgment of the Court was delivered by

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S.B. SINHA, J. Leave granted.

1. Legal Services Authorities Act, 1987 (the Act) was enacted to constitute Legal Services Authorities to provide for free and competent legal service 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 organize Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.

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2. The Act was enacted with a view to give effect to the provisions of Article 39A 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.

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3. 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

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A 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'.

B 4. 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 27th October, 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

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

D (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.

E With a view to implement the report of the Bhagwati Committee and in fulfillment 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 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 mobilization and rights enforcement through public interest litigations and other

F 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 Tahasil levels to cater

G legal services to the people at large.

H 5. In the year 1987 the Legal Services Authorities Act was

enacted by the 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 organize 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.”

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

7. Section 22-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

A 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:

B 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.

C (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)

D (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.

E (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.

F (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

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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."

8. 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 Indian Evidence Act, 1872 but guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice.

9. 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.

10. 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.

11. Before, however, we embark thereupon we may briefly notice the factual matrix involved herein.

12. First respondent carries on business in electrical goods. He is an authorized distributor of Sony products. He entered into a contract of insurance with the appellant company; the period covered thereunder being 29th August, 2001 to 31st August, 2002. Allegedly, a burglary took place in his godown in the night of 18th /19th August, 2002. He lodged a First Information Report with Doranda 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.

13. Appellant denied and disputed the said claim which refuted the claims by a letter dated 12th August, 2004 interlia

A 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.

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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.

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c)

d)

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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 such the credibility of the accounts submitted by you is doubtful.

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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.

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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*

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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.” A

(Emphasis supplied) B

14. 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. C

15. We may, however, notice that 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. D

16. First respondent, thereafter, filed an application for the Permanent Lok Adalat claiming a sum of Rs.9,80,000/-. Appellant filed an objection raising the question of jurisdiction of the Permanent Lok Adalat. By reason of an order dated 4th January, 2005, the said objection was overruled stating that it had the pecuniary jurisdiction over the matter and only because a criminal case is pending in the Court of Chief Judicial Magistrate, Ranchi, the same was not relevant stating :- E
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“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 finding of Surveyor is concerned, it is regarding merit of the claim which this P.L.A. has to decide after taking evidence. If the claim cannot be refused on the basis of surveyor report at this stage.” G

17. Appellant filed a writ application challenging the valid- H

A ity 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 Indian Penal Code being not compoundable, the Permanent Lok Adalat had no jurisdiction to entertain the claim opining:-

B "9 In my considered opinion, the Permanent Lok Adalat has committed great error of law in holding that it has jurisdiction inspite 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
C 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 Amendment Act of 2002
D 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.
E 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."

F 18. An intra court appeal was preferred thereagainst. The Division Bench of the High Court by reason of the impugned judgment and order dated 29th March, 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
G to whether burglary had taken place or not stating :-

H "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 it is required to determine whether an accused is guilty for 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 decide the claim as made by the appellant, on merit, after hearing the parties and on appreciation of evidence on record. Learned Single Judge has failed to notice the aforesaid facts while determining the issue in question." A
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19. Mr. Raju Ramachandran, learned Senior counsel appearing on behalf of the appellant would submit :- D

- (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. E
- (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. F
- (iv) Claim of 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. 10 lakhs. G

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

- A (i) That the value of the property being less than Rs.10 lakhs, the Permanent Lok Adalat had jurisdiction in regard to the dispute in question.
- B (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.
- C (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 between the accused of burglary and the State.
- D (iv) For invoking the jurisdiction of Permanent Lok Adalat, the question as to whether the offence is compoundable or not is not relevant.
- E (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.
- F (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.

G 21. The term "conciliation" is not defined under the Act. It should, therefore, be considered from the perspective of 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 visualized by Part III of the 1996 Act. Section 67 describes the role of a conciliator. Sub-section (1) states that he shall assist parties in an independent and impartial manner. Subsection (2) states that he

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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 UNICTRAL Conciliation Rules.

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.

22. 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:

23. Chapter VI-A stands independently. Whereas, the

A 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 Edition 2005 at 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 parties. Whereas on the one hand, keeping in view the Parliamentary intent, settlement of all disputes through negotiation, conciliation, medication, 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.

E 24. 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. F 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 other thing to say that an adjudicatory power is conferred on it. Chapter VI-A, therefore, in our opinion, deserves a closure scrutiny. It a case of this nature, G the level of scrutiny must also be high. {See *Anuj Garg & ors. vs. Hotel Association of India & Ors.* [(2008) 3 SCC 1]}

H 25. 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 concilia-

tion proceeding is that nobody shall be forced to take part therein. A
It has to be voluntary in nature. The proceedings are akin to one
of the recognized ADR mechanism which is made of Medola. It
may be treated at par with Conciliation and Arbitration. In such
a case the parties agree for settlement of dispute by negotia-
tion, conciliation or mediation. The proceedings adopted are B
not bending ones, whereas the arbitration is a binding proce-
dure. Even in relation to arbitration, an award can be the sub-
ject 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 C
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 D
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 determina-
tion of the forum, which shall help them to resolve the conflict,
but when it comes to some formal differences between the parties, E
they may leave the matter to the jurisdiction of the concilia-
tor. The conciliation only at the final stage of the proceedings
would adopt the role of an arbitrator.

26. Here, however, the Permanent Lok Adalat does not
simply adopt the role of an Arbitrator whose award could be the F
subject matter of challenge but the role of an adjudicator. The
Parliament has given the authority to the Permanent Lok Adalat
to decide the matter. It has an adjudicating role to play.

27. The validity of the said provision is not in question. G
But then construction of such a provision must be given in such
a manner so as 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 be-
tween the service provider and the service recipient may not
have anything to do with the ultimate result of the criminal case H

A but there are cases and cases.

28. 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.

B

29. For the said purpose, the dispute under the criminal procedure and/or the nature thereof would also play an important role. Whereas Respondent 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 form 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.

C

D

30. 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

31. In *Dhulabhai and Ors. vs. The State of Madhya Pradesh and Anr.* : AIR 1969 SC 78, the Court discussed the ambit of S.9 of the CPC and laid down the following principles:

F

"... (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 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.

G

(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

H

provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. A

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 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..." B C

32. In *Dwarka Prasad Agarwal (D) by Lrs. and Anr. vs. Ramesh Chander Agarwal and Ors.* : (2003) 6 SCC 220 , this Court held: D

"...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..." E F

This case was cited with approval in *Bhagubhai Dhanabhai Khalasi and Anr. vs. The State of Gujarat and Ors.*, 2007 (5) SCALE 357. G

32. 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 H

- A should receive strict construction. (See *Bhagwat Singh vs. State of Rajasthan* : AIR 1964 SC 444; *Raichand vs. Union of India* : AIR 1964 SC 1268), and
- B (ii) provisions conferring jurisdiction on authorities and tribunals other than civil courts (See *Kasturi and Sons vs. Salivateswaran* : AIR 1958 SC 507; *Upper Doab Sugar Mills vs. Shahdara (Delhi) Saharanpur Light Railway* : AIR 1963 SC 217)
- C have to be strictly construed.

34. This principle, taken from Principles of Statutory Interpretation by G.P. Singh, Ninth Edition, page 630, was cited with approval in *Swamy Atmananda and Ors. vs. Sri Ramakrishna Tapovanam and Ors.* : AIR 2005 SC 2392.

35. We must also take notice of a recent decision of this Court in *State of Punjab and another vs. Jalour Singh and others* : JT 2008 (2) SC 83 where this Court expressed its dismay with the manner in which the Lok-Adalat matters are dealt with. Chief Justice of India speaking for the Bench, upon noticing the provisions of the Legal Services Authority Act, 1987, observed that whereas Lok Adalat had to 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.

36. Section 22-C(1) read with Section 22-C(2), Section 22-C(8) and Section 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. A

37. 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. B

38. What is important to note is that with respect of 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." C

39. Therefore, in the instant case, the terms "relating to" an "offence" appearing in Proviso 1 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. D

40. 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. E F

41. 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. G

N.J.

Appeal allowed.

H