

## K.N. Govindan Kutty Menon vs C.D. Shaji on 28 November, 2011

**Equivalent citations:** AIR 2012 SUPREME COURT 719, 2012 (2) SCC 51, 2012 AIR SCW 465, 2012 (2) AIR JHAR R 524, 2011 (13) SCALE 232, (2012) 1 CLR 189 (SC), 2012 (1) SCC(CRI) 732, 2012 (1) CLR 189, (2012) 1 KCCR 23, (2012) 1 JCR 322 (SC), (2012) 5 CAL HN 305, (2012) 109 ALLINDCAS 140 (SC), AIR 2012 SC (CIVIL) 414, 2012 (106) CORLA 13.2 SN, (2011) 4 KER LT 857, (2012) 1 CIVILCOURTC 1, (2012) 1 KER LJ 131, (2012) 1 MAD LW 113, (2011) 13 SCALE 232, (2012) 114 CUT LT 45, (2012) 1 CAL HN 162, (2012) 2 MAD LJ 307, (2012) 3 MAH LJ 490, (2012) 2 MPLJ 482, (2012) 2 ORISSA LR 244, (2012) 1 PUN LR 546, (2012) 3 RAJ LW 2423, (2012) 1 RECCRIR 102, (2012) 3 ANDHLD 28, (2012) 1 WLC(SC)CVL 264, (2012) 1 NIJ 436, (2012) 90 ALL LR 454, (2012) 2 ALL WC 1606, (2012) 3 CIVLJ 224, (2012) 1 CPJ 112

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**Bench:** J. Chelameswar, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10209 OF 2011

(Arising out of SLP (C) No.2798 of 2010)

K.N. Govindan Kutty Menon

.... Appellant (s)

Versus

C.D. Shaji

.... Respondent(s)

J U D G M E N T

P. Sathasivam, J.

1) Leave granted.

2) This appeal raises an important question as to the

interpretation of Section 21 of the Legal Services Authorities Act, 1987 (in short 'the Act'). The question posed for consideration is that when a criminal case filed under Section 138 of the Negotiable Instruments Act, 1881 referred to by the Magistrate Court to Lok Adalat is settled by the parties and an award is passed recording the settlement, can it be considered as a decree of a civil court and thus executable?

3) This appeal is directed against the final judgment and order dated 24.11.2009 passed by the High Court of Kerala at Ernakulam in Writ Petition (C) No. 33013 of 2009 whereby the High Court dismissed the petition filed by the appellant herein.

4) Brief facts:

(a) The appellant herein filed a complaint being C.C. No.

1216 of 2007 before the Judicial Ist Class Magistrate Court No.1, Ernakulam against the respondent herein under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the N.I. Act'). The Magistrate referred the said complaint to the Ernakulam District Legal Service Authority for trying the case for settlement between the parties in the Lok Adalat.

(b) On 08.05.2009, both parties appeared before the Lok Adalat and the matter was settled and an award was passed on the same day. As per the award, out of Rs. 6,000/-, the respondent herein paid Rs.500/- on the same day and agreed to pay the balance amount of Rs.5,500/- in five equal instalments of Rs.1,100/- per month on or before the 10th day of every month starting from June, 2009 and, in case of default, the appellant herein can recover the balance amount due from the respondent in lump sum.

(c) As the respondent did not pay any of the installments as per the settlement, the appellant filed execution petition being E.P. No..... of 2009 in C.C. No. 1216 of 2007 in the Court of Principal Munsiff, Ernakulam for seeking the execution of the award. On 23.09.2009, the Principal Munsiff

Judge, Ernakulam dismissed the petition holding that the award passed by the Lok Adalat on reference from the Magistrate Court cannot be construed as a "decree" executable by the civil court.

(d) Aggrieved by the said order, the appellant filed writ petition being Writ Petition (C) No. 33013 of 2009 before the High Court of Kerala. The High Court, vide order dated 24.11.2009, dismissed the writ petition.

(e) Against the said order, the appellant filed the above appeal by way of special leave before this Court.

5) The respondent, though duly served by this Court, has not chosen to contest the matter either by appearing in person or through counsel. Heard Mr. Prashanth P., learned counsel for the appellant and Mr. V. Giri, learned senior counsel, who, on our request, assisted this Court as *amicus curiae*.

6) In order to find out the answer to the question raised, it is useful to refer the Statement of Objects and Reasons and certain provisions of the Act applicable to the question posed before us.

"Statement of objects and Reasons.- Article 39-A of the Constitution provides that the State shall secure that the operation of the legal system promotes justice on the 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 disabilities.

2. With the object of providing free legal aid, Government had, by Resolution dated the 26th September, 1980 appointed the "Committee for Implementing Legal Aid Schemes" (CILAS) under the Chairmanship of Mr. Justice P.N. Bhagwati (as he then was) to monitor and implement legal aid programmes on a uniform basis in all the States and Union territories. CILAS evolved a model scheme for legal aid programme applicable throughout the country by which several legal aid and advice boards have been set up in the States and Union territories. CILAS is funded wholly by grants from the Central Government. The Government is accordingly concerned with the programme of legal aid as it is the implementation of a constitutional mandate. But on a review of the working of the CILAS, certain deficiencies have come to the fore. It is, therefore, felt that it will be desirable to constitute statutory legal service authorities at the National, State and District levels so as to provide for the effective monitoring of legal aid programmes. The Bill provides for the composition of such authorities and for the funding of these authorities by means of grants from the Central Government and the State Governments. Power has been also given to the National Committee and the State Committees to supervise the effective implementation of legal aid schemes.

For some time now, Lok Adalats are being constituted at various places in the country for the disposal, in a summary way and through the process of arbitration and settlement between the parties, of a large number of cases expeditiously and with

lesser costs. The institution of Lok Adalats is at present functioning as a voluntary and conciliatory agency without any statutory backing for its decisions. It has proved to be very popular in providing for a speedier system of administration of justice. In view of its growing popularity, there has been a demand for providing a statutory backing to this institution and the awards given by Lok Adalats. It is felt that such a statutory support would not only reduce the burden of arrears of work in regular Courts, but would also take justice to the door-steps of the poor and the needy and make justice quicker and less expensive."

"2. (aaa) "Court" means a civil, criminal or revenue Court and includes any Tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions;"

"2(c) "legal service" includes the rendering of any service in the conduct of any case or other legal proceeding before any Court or other authority or Tribunal and the giving of advice on any legal matter;"

"2(d) "Lok Adalat" means a Lok Adalat organized under Chapter VI."

"21. Award of Lok Adalat.- (1) Every award of Lok Adalat shall be deemed to be a decree of a Civil Court or, as the case may be, an order of any other Court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of section 20, the Court-fee paid in such case shall be refunded in the manner provided under the Court-Fee Act, 1870 (7 of 1870). (2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any Court against the award."

7) Free legal aid to the poor and marginalized members of the society is now viewed as a tool to empower them to use the power of the law to advance their rights and interests as citizens and as economic actors. Parliament enacted the Legal Services Authorities Act, 1987 in order to give effect to Article 39-A of the Constitution to extend free legal aid, to ensure that the legal system promotes justice on the basis of equal opportunity. Those entitled to free legal services are members of the Scheduled Castes and the Scheduled Tribes, women, children, persons with disability, victims of ethnic violence, industrial workmen, persons in custody, and those whose income does not exceed a level set by the government (currently it is Rs 1 lakh a year in most States). The Act empowers Legal Services Authorities at the District, State and National levels, and the different committees to organize Lok Adalats to resolve pending and pre-litigation disputes. It provides for permanent Lok Adalats to settle disputes involving public utility services. Under the Act, "legal services" have a meaning that includes rendering of service in the conduct of any court-annexed proceedings or proceedings before any authority, tribunal and so on, and giving advice on legal matters. Promoting legal literacy and conducting legal awareness programmes are the functions of legal services institutions. The Act provides for a machinery to ensure access to justice to all through the institutions of legal services authorities and committees. These institutions are manned by Judges and judicial officers. Parliament entrusted the judiciary with the task of implementing the

provisions of the Act.

8) Section 21 of the Act, which we have extracted above, contemplates a deeming provision, hence, it is a legal fiction that the "award" of the Lok Adalat is a decree of a civil court.

In the case on hand, the question posed for consideration before the High Court was that "when a criminal case referred to by the Magistrate to a Lok Adalat is settled by the parties and award is passed recording the settlement, can it be considered as a decree of civil court and thus executable by that court?" After highlighting the relevant provisions, namely, Section 21 of the Act, it was contended before the High Court that every award passed by the Lok Adalat has to be deemed to be a decree of a civil court and as such executable by that court. Unfortunately, the said argument was not acceptable by the High Court. On the other hand, the High Court has concluded that when a criminal case is referred to the Lok Adalat and it is settled at the Lok Adalat, the award passed has to be treated only as an order of that criminal court and it cannot be executed as a decree of the civil court. After saying so, the High Court finally concluded "an award passed by the Lok Adalat on reference of a criminal case by the criminal court as already concluded can only be construed as an order by the criminal court and it is not a decree passed by a civil court" and confirmed the order of the Principal Munsiff who declined the request of the petitioner therein to execute the award passed by the Lok Adalat on reference of a complaint by the criminal court. On going through the Statement of Objects and Reasons, definition of 'Court', 'legal service' as well as Section 21 of the Act, in addition to the reasons given hereunder, we are of the view that the interpretation adopted by the Kerala High Court in the impugned order is erroneous.

9) It is useful to refer some of the judgments of this Court and the High Courts which have a bearing on the present issue.

10) In Subhash Narasappa Mangrule (M/S) and Others vs. Sidramappa Jagdevappa Unnad, reported in 2009 (3) Mh.L.J. 857, learned single Judge of the High Court of Bombay, considered an identical question. In that case, on 22.06.2001, the respondent filed a Criminal Complaint being S.C.C. No. 923 of 2001 in the Court of Judicial Magistrate, First Class, Akkalkot under Section 138 of the N.I. Act. Later, the said criminal case was transferred to Lok Adalat. The matter was compromised before the Lok Adalat and an award was passed accordingly for Rs. 4 lakhs. The respondent therein filed a Darkhast proceeding No. 17 of 2006 in the Court of C.J.J.D. for execution of the award passed by the Lok Adalat in the criminal case as there was no compliance of the compromised order/award. The learned C.J.J.D., issued a notice under Order XXVII Rule 22 of the Code of Civil Procedure, 1908 (in short 'the Code'). The petitioner therein raised an objection stating that the Darkhast proceeding is not maintainable as the award has been passed in criminal case.

By order dated 18.07.2007, the learned Civil Judge, (Jr. Division) disposed off the objection and directed to proceed with the execution by the Judgment and order. Aggrieved by the same, the petitioners therein filed a revision before the High Court. After adverting to Section 20 and other provisions of the Act, the learned single Judge has concluded thus:-

"16. The parties were fully aware that under the Act, the District Legal Services Authority may explore the possibility of holding pre-litigation Lok Adalats in respect of the cheque bouncing cases. The compromise in such cases would be treated as Award having force of a decree. All objections as raised with regard to the execution in view of above statutory provisions itself is rightly rejected. Having settled the matter in Lok Adalat and now after more than 3 years raising such plea is untenable. Having obtained the award from Lok Adalat, the party is not permitted to resile from the same. It attains finality to the dispute between the parties finally and binds all. Therefore, the order in this regard needs no interference.

17. Once the parties entered into compromise before the Lok Adalat, & at that time no question of any pecuniary jurisdiction raised and or required to be considered by the Lok Adalat. Therefore, once the award is passed, it is executable under C.P.C....."

11) In M/s Valarmathi Oil Industries & Anr. vs. M/s Saradhi Ginning Factory, AIR 2009 Madras 180, the admitted facts were that C.C. No. 308 of 2006 was taken on file by the learned Judicial Magistrate No. I, Salem on the complaint given by the respondent therein that the cheque was issued by the second petitioner therein on behalf of the first petitioner as partner of the firm, however, the same was dishonoured by the bank due to insufficient funds. According to the respondent, after issuance of the legal notice to the petitioner, the complaint was given under Section 138 of the N. I. Act against the petitioners. During the pendency of the criminal case, at the request of both the parties, the matter was referred to Lok Adalat for settlement. Both the parties were present before the Lok Adalat and as per the award, they agreed for the settlement and accordingly, the petitioner/accused agreed to pay Rs. 3,75,000/- to the respondent on or before 03.09.2007. It was signed by the respondent/complainant, petitioners/accused and their respective counsel. In view of the compromise arrived at between both the parties, the amount payable was fixed at Rs.

3,75,000/- towards full quit of the claim and that the petitioners therein agreed to pay the above-said amount on or before 03.09.2007 and accordingly, the award was passed and placed before the Judicial Magistrate Court for further orders.

When the said award was placed before the learned Judicial Magistrate, by judgment dated 17.10.2007, based on the award held that the petitioners therein guilty and convicted under Section 138 of N.I. Act, accordingly, imposed sentence of one year simple imprisonment and directed the petitioners therein to pay a sum of Rs. 3,75,000/- as compensation to the respondent. Aggrieved by which, the petitioners/accused preferred appeal in C.S.No.167 of 2007 before the Sessions Judge, Salem. Learned Sessions Judge, while suspending the sentence of imprisonment till 16.12.2007, directed the petitioners/accused to deposit the sum of Rs. 3,75,000/-

before the trial court and clarified that in case of failure of depositing the amount, the order of suspension of sentence would stand cancelled automatically and the petitioners were also directed to execute a bond for Rs. 10,000/- with two sureties each for the like sum to the satisfaction of the trial court. Aggrieved by the same, the accused preferred criminal revision case before the High

Court. It was contended on behalf of the petitioners before the High Court that as per Section 21 of the Act, every award of the Lok Adalat shall be deemed to be a decree of a civil court and, therefore, after the award passed by the Lok Adalat, the respondent/complainant was entitled to execute the award like a decree of the civil court, however, in the instant case, the learned Magistrate, by his Judgment has found the petitioners guilty under Section 138 of N.I. Act and also convicted and sentenced them to undergo simple imprisonment for one year and to pay the compensation of Rs. 3,75,000/-. The question formulated by the High Court is whether the Magistrate can convict the petitioners/accused under Section 138 of N.I. Act after the award was passed in the Lok Adalat. Learned single Judge, after adverting to Section 21(1) of the Act and the order of the learned Magistrate has concluded as under:-

"13. Had there been no settlement in the Lok Adalat, the learned Magistrate could have proceeded with the trial and deliver his Judgment, for which, there is no bar. In the instant case, as admitted by both the learned Counsel, there was an award passed in the Lok Adalat, based on the consensus arrived at between the parties. As per the award, the petitioners/accused had to pay Rs. 3,75,000/- to the respondent/complainant on or before 03.09.2007. As it is an award made by Lok Adalat, it is final and binding on the parties to the criminal revision and as contemplated under Section 21(2) of the Act, no appeal shall lie to any court against the award.

14. In such circumstances, the petitioners could have filed the Execution Petition before the appropriate court, seeking the award amount to be paid with interest and costs. In such circumstances, it is clear that the learned Judicial Magistrate became functus officio, to decide the case after the award passed by Lok Adalat, to convict the accused under Section 138 of Negotiable Instruments Act, hence, the impugned order passed by the learned Sessions Judge is also not sustainable in law, however, it is clear that the petitioners/accused herein after having given consent for Lok Adalat award being passed and also the award amount agreed to pay Rs. 3,75,000/- on or before 03.09.2007 to the respondent, have not complied with their undertaking made before the Lok Adalat, which cannot be justified. However, the order passed by the learned Judicial Magistrate under Section 138 of Negotiable Instruments Act has to be set aside, in view of the Lok Adalat award passed under Section 20(1)(i)(b), 20(1)(ii) of Legal Services Authorities Act (Act, 39/1987), as the Judicial Magistrate became functus officio and the award is an executable decree in the eye of law, as per Section 21 of the Act."

After arriving at such conclusion, learned single Judge made it clear that as per the award passed by the Lok Adalat, the respondent/complainant is at liberty to file Execution Petition before the appropriate court to get the award amount of Rs.

3,75,000/- reimbursed with subsequent interest and costs, as per procedure known to law.

12) In *Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. and Others*, (2003) 2 SCC 111, it was held that the purpose and object of creating a legal fiction in the statute is well known and when a legal fiction is created, it must be given its full effect.

13) In *Ittianam and Others vs. Cherichi @ Padmini* (2010) 8 SCC 612, it was held that when the Legislature uses a deeming provision to create a legal fiction, it is always used to achieve a purpose.

14) A statutory support as evidenced in the statement of Objects and reasons of the Act would not only reduce the burden of arrears of work in regular courts, but would also take justice to the door steps of the poor and the needy and make justice quicker and less expensive. In the case on hand, the Courts below erred in holding that only if the matter was one which was referred by a civil court it could be a decree and if the matter was referred by a criminal court it will only be an order of the criminal court and not a decree under Section 21 of the Act. The Act does not make out any such distinction between the reference made by a civil court and criminal court. There is no restriction on the power of Lok Adalat to pass an award based on the compromise arrived at between the parties in a case referred by a criminal court under Section 138 of the N.I. Act, and by virtue of the deeming provision it has to be treated as a decree capable of execution by a civil court. In this regard, the view taken in *Subhash Narasappa Mangrule* (supra) and *M/s Valarmathi Oil Industries* (supra) supports this contention and we fully accept the same.

15) It is useful to refer the judgment of this Court in *State of Punjab & Anr. vs. Jalour Singh and Ors.* (2008) 2 SCC 660.

The ratio that decision was that 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 the parties in the presence of the Lok Adalat, in the form of an executable order under the signature and seal of the Lok Adalat. This judgment was followed in *B.P. Moideen Sevamandir and Anr. vs. A.M. Kutty Hassan* (2009) 2 SCC 198.

16) In *P.T. Thomas vs. Thomas Job*, (2005) 6 SCC 478, Lok Adalat, its benefits, Award and its finality has been extensively discussed.

17) From the above discussion, the following propositions emerge:

- 1) In view of the unambiguous language of Section 21 of the Act, every award of the Lok Adalat shall be deemed to be a decree of a civil court and as such it is executable by that Court.
- 2) The Act does not make out any such distinction between the reference made by a civil court and criminal court.
- 3) There is no restriction on the power of the Lok Adalat to pass an award based on the compromise arrived at between the parties in respect of cases referred to by



various Courts (both civil and criminal), Tribunals, Family court, Rent Control Court, Consumer Redressal Forum, Motor Accidents Claims Tribunal and other Forums of similar nature.

4) Even if a matter is referred by a criminal court under Section 138 of the Negotiable Instruments Act, 1881 and by virtue of the deeming provisions, the award passed by the Lok Adalat based on a compromise has to be treated as a decree capable of execution by a civil court.

18) In view of the above discussion and ultimate conclusion, we set aside the order dated 23.09.2009 passed by the Principal Munsiff Judge in an unnumbered execution petition of 2009 in CC No. 1216 of 2007 and the order of the High Court dated 24.11.2009 in Writ Petition (C) No. 33013 of 2009.

Consequently, we direct the execution court to restore the execution petition and to proceed further in accordance with law.

19) Before parting with this case, we would like to record our deep appreciation for the valuable assistance rendered by the learned amicus curiae.

20) The civil appeal is allowed. There shall be no order as to costs.

.....J. (P. SATHASIVAM) .....J. (J. CHELAMESWAR) NEW DELHI;

NOVEMBER 28, 2011.