2024 INSC 1004

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO……..OF 2024
(Arising out of Special Leave Petition (Civil) No.1904 of 2015)

SANJEEVKUMAR HARAKCHAND KANKARIYA … APPELLANT(S)

VERSUS

UNION OF INDIA & ORS. … RESPONDENT(S)

J U D G M E N T

SANJAY KAROL, J.

Leave granted.

THE CHALLENGE

2. This appeal questions the correctness of the judgment and order dated 1st October, 2014 passed by the High Court of Judicature at Bombay (Aurangabad Bench) between the self-same parties, whereby the High Court refused the prayer of the appellant herein seeking -

(a) a writ, order, order or direction to the State of Maharashtra to initiate a complete refund of court fees of all litigants including the appellant

whose proceedings before the Civil Courts were disposed of in accordance with Section 89 of the Code of Civil Procedure 1908[1];

(b) quashing of notification dated 8th May, 2013 issued by the Law and Judiciary Department, Government of Maharashtra bearing No. HCA.2010/C.R 87/D19[2] as contrary to the provisions of the Court Fees Act, 1870[3] read with certain provisions of the Legal Services Authorities Act, 1987[4];

(c) a declaration to the effect that Respondent No.2 i.e. State of Maharashtra had no authority in law to issue a notification contrary to the provisions of the CFA, 1870; and

(d) that all such notifications and rules running contrary thereto be quashed and set aside.

THE FACTUAL AND LEGAL BACKGROUND

3. The factual background which led the appellant to prefer the writ petition before the High Court was that he had entered into an agreement to sell a certain property located at Aurangabad. However, the said Agreement could not be performed and as such, he preferred Special Civil Suit No.274 of 2013 before the Court of the Civil Judge, Senior Division, Aurangabad, praying for a direction of specific

[1] Hereinafter 'CPC'
[2] Hereafter, "the impugned notification"
[3] CFA, 1870
[4] LSA Act, 1987

performance of the contract. The dispute was referred to mediation under Section 89 CPC and, amicably resolved. The terms of settlement were presented to the Court and the Civil Suit was disposed of in terms of the said compromise. A request for refund of court fees was allowed only to the extent of 50%.

3.1 The appellant contended before the High Court that the learned Civil Court fell in error by allowing refund only to the extent of 50% in view Section 16 of the CFA, 1870. It was further contended that as per Section 21 of the LSA Act,1987 when a matter is referred to Lok Adalat under Section 20(1) of the said Act and a compromise or settlement is arrived at therein, the Court Fee paid in such a matter shall also be refunded in accordance with CFA, 1870. Still further it was argued that the said Act being a Central legislation, would override the State enactment.

3.2 The High Court's observations can be summarized thus:-

(a) The CFA, 1870 is a pre-constitutional enactment which no longer applies to the State of Maharashtra after the enactment of the Bombay Court Fees Act, 1959[5]. In reaching this conclusion, reliance was placed on a judgment of a co-ordinate

[5] Hereinafter, BCFA, 1959.

bench in ***Pushpabai Shankerlal Sura*** v. ***The Official Liquidator, Sholapur Oil Mills Ltd***.[6]

(b) The use of CFA, 1870 in LSA, 1987 is a case of "legislation by incorporation", the same analogy cannot be applied to the orders passed by courts on settlement of disputes. Decrees passed by courts on the basis of settlement cannot be equated to awards passed by Lok Adalat. Since the BCFA, 1959 would be applicable, no error can be found in the State issuing a notification under Section 43(2) thereof.

3.3 Disposing of the writ petition, the Court made the following observations:

> "**16.** While disposing of the writ petition, we deem it appropriate to recommend the State Government to issue necessary notification or to bring out necessary amendment incorporating provision in respect of refund of Court fees to the extent of 100% in respect of the matters which are disposed of by the Courts on adaptation of any of the modes prescribed under section 89 of the Code of Civil Procedure, 1908. Such a step would be in consonance with the directives issued by the Supreme Court in *Salem Advocates Bar Association* v. *Union of India* (supra), as well as it would bring parity with the provisions of section 21 of the Legal Services Authorities Act and section 16 of the Court Fees Act, 1870. Thus, in order to bring uniformity in the matter of refund of Court fees and to eliminate discrepancies so far as matters disposed of in view of the award passed by *Lok Adalat*, and such of those matters which are disposed of in terms of the settlement arrived at on the basis of observance of any of the modes prescribed under section 89 of the Code of Civil Procedure, a direction needs to be issued by the State of Maharashtra to take effective steps. Such a positive move will also give boost to the movement of Alternate Disputes Resolution, which, in fact, curtails precious time of the Court as well as avoids unnecessary and prolonged indulgence in litigation before the Court. We hope and trust

[6] 1968 SCC OnLine Bom 62

that respondent-State would consider this suggestion earnestly and take measures expeditiously."

4. We have heard Mr. Sandeep Sudhakar Deshmukh, learned Advocate-on- Record for the Appellant, Mr. Vikramjit Banerjee, learned Additional Solicitor General, and Ms. Rukmini Bobde, Learned Counsel, for the Respondents. We have also perused the parties' written submissions.

4A. ***Submissions on behalf of Appellants***

4A.1 Section 16 of the CFA, 1870 contemplates a refund of court fees in its entirety if the dispute *inter se* the parties is settled. The same is irrespective of the stage of the *lis.*

4A.2 The Constitution of India in its Federal structure provides for the distribution of powers as enumerated in the lists under Schedule VII. Administration of justice is Entry No.11 – A in List III. The process of settlement of disputes through alternative dispute resolution[7] mechanisms is a concept embedded in the effective administration of justice, and, therefore the CFA, 1870 as also the legislations governing court fees in the States, are in concurrent operation. It, therefore, submitted that the State cannot be permitted to legislate to an extent such as it may repeal this Central Legislation.

[7] Hereinafter, ADR

4A.3 Section 21 of the LSA Act, 1987 specifically contemplates a reference to refund of court fees in terms of the provisions of CFA, 1870.

4A.4 It is submitted that Section 89 CPC was inserted into the statute book in 1999 empowered by the 129th Report of the Law Commission of India. The statement of objects and reasons thereof prescribes the intention of encouraging the settlement of disputes through ADR mechanisms. If the contention of the State is accepted that the CFA, 1870 is repealed in so far as the State of Maharashtra is concerned and the MCFA, 1959 holds the field, it is submitted that the intention of the legislature in inserting Section 89 into the CPC, would be frustrated.

4A.5 It is submitted that in order to protect the fulcrum of the insertion of Section 89 CPC, harmonious construction of all the statutes is to be adopted. Without doing the same, the said section would be rendered otiose.

4B. ***Submissions on behalf of Respondent(s)***

4B.1. The CFA, 1870 was an 'existing law' within the meaning of Article 366 of the Constitution of India, and by virtue of Article 372 of the Constitution, it continued to operate as law till such time 'until altered or repealed or amended by a competent legislature.'

4B.2 The erstwhile State of Bombay, being the competent state legislature as described under Article 372 read with Article 246(2) superseded the CFA, 1870 with the BCFA, 1959, renamed the Maharashtra Court Fees Act,[8] by an amendment in 2012. Section 49 of the MCFA, 1959 read with Schedule 4 thereof, explicitly repealed the CFA, 1870 in so far as Entries 3 and 66 of the List II of the Constitution are concerned. As such, CFA, 1870 has no application in the State of Maharashtra, which would, obviously, include Section 16 thereof, which provides for 100% refund of court fees if the case is settled through one of the modes mentioned in Section 89, CPC.

4B.3 Section 43 of the MCFA, 1959 governs the refund of court fees in the circumstances specified therein. The impugned notification dated 8th May, 2013 was passed under sub-section 2 of Section 43, which specifies hundred percent repayment of court fees in certain specified circumstances- relating to social and welfare legislations, and for other matters it provides for fifty percent, and in yet other cases, the refund percentage is twenty-five.

4B.4 Even if the impugned notification is found to be unconstitutional, the appellant would still be bound by Section 43(1) of the MCFA, 1959. The appellant has not challenged the vires of the said section.

[8] Hereinafter, MCFA, 1959.

4B.5 This Court and various High Courts, it is submitted, have recognized court fees as a state subject. Reference is made to decisions of this Court in ***Salem Advocate Bar Assn. (II)*** v. ***Union of India***[9]***; High Court of Madras*** v. ***MC Subramaniam***[10] as being entirely distinguishable from the present facts. For High Courts, reliance is placed on ***Rangathan*** v. ***In the Court of District Judge, Trichirapalli***; ***K.S Periyaswamy*** v. ***State of Karnataka***[11]; ***Maharishi Shankarrao Mohite-Patil Sahakar Sakhar Karkhana Ltd.*** v. ***State of Maharashtra***[12]. In these judgments, it is submitted that the respective High Courts permitted a hundred percent refund of court fees recognizing that the settlement arrived at was under the LSA Act, 1987.

4B.6 It was also submitted that subsequently, in 2018, a provision, identical to Section 16 CFA, 1870 came to be inserted into the MCFA, 1959 by Maharashtra Act No. X of 2018.

4B.7 In view of the above submissions, it is prayed that the High Court has rightly rejected the challenge to the impugned notification, on grounds of inconsistency with Section 16 of the CFA, 1870.

[9] (2005) 6 SCC 344
[10] (2021) 3 SCC 560
[11] 2019 SCC OnLine Kar 3032
[12] 2019 SCC OnLine Bom 628

QUESTION FOR CONSIDERATION

5. The question presented for this Court's adjudication was, considering the submissions as afore-stated is whether in view of the inconsistency between the CFA, 1870 and the MCFA, 1959, if any, would the appellant be entitled to a complete refund of court fees per the former, since it is a Central legislation? Allied thereto, would be the question of whether the Maharashtra State Legislature could have enacted the provision and brought out a notification giving refunds in ways contrary to and distinct from the manner and method provided in the Central Legislation?

RELEVANT PROVISIONS

6. As is clear from the above, the present case involves the interpretation of various legislative provisions falling within both Central and State Legislations. For reference, they are extracted hereinbelow :-

"CONSTITUTION OF INDIA

PART XI

RELATIONS BETWEEN THE UNION AND THE STATES CHAPTER I.— LEGISLATIVE RELATIONS

Distribution of Legislative Powers

> "246. (2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List")."

… … … …

"372. (1) Notwithstanding the repeal by this Constitution of the enactments referred to in article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.

(2) For the purpose of brining the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

(3) Nothing in clause (2) shall be deemed—

(a) to empower the President to make any adaptation or modification of any law after the expiration of three years from the commencement of this Constitution; or
(b) to prevent any competent Legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause.

Explanation I.—The expression "law in force" in this article shall include a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.

Explanation II.—....
Explanation III.—....
Explanation IV.—....

List II—State List 1.

1. ...
2. ...
3. ***Officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.

List III—Concurrent List

x x x x

[11A. Administration of Justice; constitution and organisation of all courts, except the Supreme Court and the High Courts.]

PART XXI
[TEMPORARY, TRANSITIONAL AND SPECIAL PROVISIONS]

372. (1) Notwithstanding the repeal by this Constitution of the enactments referred to in article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.

(2) For the purpose of brining the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order1 make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

(3) Nothing in clause (2) shall be deemed—
(a) to empower the President to make any adaptation or modification of any law after the expiration of 2[three years] from the commencement of this Constitution; or
(b) to prevent any competent Legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause.
Explanation I.—The expression "law in force" in this article shall include a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas."

COURT FEES ACT, 1870

16. [Refund of fee *[Section 16 repealed by Act 5 of 1908 and again inserted by Act 46 of 1999, Section 34.]*

Where the Court refers the parties to the suit to any one of the mode of settlement of dispute referred to in section 89 of the Code of Civil Procedure, 1908 (5 of 1908), the plaintiff shall be entitled to a certificate from the Court authorising him to receive back from the Collector, the full amount of the fee paid in respect of such plaint.]"

LEGAL SERVICES AUTHORITIES ACT, 1987

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

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

MAHARASHTRA COURT FEES ACT, 1959

Section 43. Repayment of fee in certain circumstances.

(*1*) When any suit in a Court or any proceeding instituted by presenting a petition to a Court under the Hindu Marriage Act, 1955 (XXV of 1955), is settled by agreement of parties before any evidence is recorded, or any appeal or cross objection is settled by agreement of parties before it is called on for effective hearing by the Court, half the amount of the fee paid by the plaintiff, petitioner, appellant, or respondent on the plaint, petition, appeal or cross objection, as the case may be, shall be repaid to him by the Court :

Provided that, no such fee shall be repaid if the amount of fee paid does not exceed twenty-five-rupees or the claim for repayment is not made within one year from the date on which the suit, proceeding, appeal or cross objection was settled by agreement.

(*2*) The State Government may, from time to time, by order, provide for repayment to the plaintiffs, petitioners, complaints under section 138 of the Negotiable Instruments Act, 1881 (26 of 1881), appellants or respondents of any part of the fee paid by them on plaints, petitions, complaints under section 138 of the Negotiable Instruments Act, 1881 (26 of 1881), appeals or cross objections, in suits complaints under section 138 of the Negotiable Instruments Act, 1881 (26 of 1881), proceedings or appeals disposed of under such circumstances and subject to such conditions as may be specified in the order.

Explanation.- For the purpose of this section, effective hearing shall exclude the dates when the appeal is merely adjourned without being heard or argued."

ANALYSIS AND CONSIDERATION

7. The sum and substance of the case put forward by the appellant is that this case pertains not merely to court fees as an issue, but the larger issue of administration of justice, as that consequently, by virtue of Entry 11-A to the VII Schedule to the Constitution of India, the issue of refund of court fees, since it involves settlement of disputes by alternate mechanisms, which is an aspect of the administration of justice. Harmonious Construction needs to be adopted of all the provisions involved, i.e., CFA, 1870, MCFA 1959, LSA Act, 1987, and that the MCFA, 1959 being a State Legislation, cannot be allowed to override the Central Legislation(s).

8. Keeping in view the contentions raised, adjudication of this dispute would involve the analysis of the provisions cited from the lens of the doctrine of pith and substance and harmonious construction. Before proceeding to the merits of the instant case, it would be apposite to refer to certain pronouncements in this regard.

8.1 ***The Doctrine of Pith and Substance***

The examination of the application of this doctrine has arisen before this Court on numerous occasions. For instance, a Bench of five Judges in ***Girnar Traders (3) v. State of Maharashtra***[13], observed thus:

> "**173.** The doctrine of pith and substance can be applied to examine the validity or otherwise of a legislation for want of

[13] (2011) 3 SCC 1

legislative competence as well as where two legislations are embodied together for achieving the purpose of the principal Act. Keeping in view that we are construing a federal Constitution, distribution of legislative powers between the Centre and the State is of great significance. Serious attempt was made to convince the Court that the doctrine of pith and substance has a very restricted application and it applies only to the cases where the court is called upon to examine the enactment to be ultra vires on account of legislative incompetence.

174. We are unable to persuade ourselves to accept this proposition. The doctrine of pith and substance finds its origin from the principle that it is necessary to examine the true nature and character of the legislation to know whether it falls in a forbidden sphere. This doctrine was first applied in India in *Prafulla Kumar Mukherjee* v. *Bank of Commerce Ltd.* [(1946-47) 74 IA 23 : AIR 1947 PC 60] The principle has been applied to the cases of alleged repugnancy and we see no reason why its application cannot be extended even to the cases of present kind which ultimately relates to statutory interpretation founded on source of legislation.

175. In *Union of India* v. *Shah Goverdhan L. Kabra Teachers' College* [(2002) 8 SCC 228] this Court held that in order to examine the true character of the enactment, the entire Act, its object and scope is required to be gone into. The question of invasion into the territory of another legislation is to be determined not by degree but by substance. The doctrine of pith and substance has to be applied not only in cases of conflict between the powers of two legislatures but also in any case where the question arises whether a legislation is covered by a particular legislative field over which the power is purported to be exercised. In other words, what is of paramount consideration is that the substance of the legislation should be examined to arrive at a correct analysis or in examining the validity of law, where two legislations are in conflict or alleged to be repugnant."

8.2 ***Doctrine of Harmonious Construction***

In the authoritative text 'Principles of Statutory Interpretation', 14th Ed. by Justice G.P. Singh, the Rule of Harmonious Construction has been captured in the following terms :

"As stated by VENKATARAMA AIYAR, J., "the Rule of Construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is what is known as the rule of harmonious

> construction." That, effect should be given to both, is the very essence of the rule. Thus a construction that reduces one of the provisions to a "useless lumber" or "dead letter" is not harmonious construction. To harmonize is not to destroy."

The judgments referred to in the above paragraph are ***Venkataramana Devaru v. State of Mysore***[14]; ***Calcutta Gas Co. (Proprietary) Ltd. v. State of West Bengal***[15]; ***J.K. Cotton Spinning & Weaving v. State of U.P.***[16].

We may also refer to ***British Airways PLC v. Union of India***[17] wherein this Court said as follows :

> "**8.** While interpreting a statute the court should try to sustain its validity and give such meaning to the provisions which advance the object sought to be achieved by the enactment. The court cannot approach the enactment with a view to pick holes or to search for defects of drafting which make its working impossible. It is a cardinal principle of construction of a statute that effort should be made in construing the different provisions so that each provision will have its play and in the event of any conflict a harmonious construction should be given. The well-known principle of harmonious construction is that effect shall be given to all the provisions and for that any provision of the statute should be construed with reference to the other provisions so as to make it workable. A particular provision cannot be picked up and interpreted to defeat another provision made in that behalf under the statute. It is the duty of the court to make such construction of a statute which shall suppress the mischief and advance the remedy. While interpreting a statute the courts are required to keep in mind the consequences which are likely to flow upon the intended interpretation."

9. The primary argument, as recorded above is that the resolution of disputes by alternate mechanisms is an aspect of the administration

[14] AIR 1958 SC 255
[15] AIR 1962 SC 1044
[16] AIR 1961 SC 1170
[17] (2002) 2 SCC 96

of justice and, therefore, anything connected thereto inclusive of refund of court fees as a result of out of Court settlement, would be governed by Entry 11A of List III.

Further, the inconsistency between the Central and State Act would have to be resolved, giving the Central Act primacy over the State Act. This argument is difficult to countenance.

10. The scope of Entry 11A of List III has been discussed by a Constitution Bench of this Court in ***Jamshed N. Guzdar v. State of Maharashtra***[18], in the following terms :

> "**42.** The general jurisdiction of the High Courts is dealt with in Entry 11-A under the caption "administration of justice", which has a wide meaning and includes administration of civil as well as criminal justice. The expression "administration of justice" has been used without any qualification or limitation wide enough to include the "powers" and "jurisdiction" of all the courts except the Supreme Court. The semicolon (;) after the words "administration of justice" in Entry 11-A has significance and meaning. The other words in the same entry after "administration of justice" only speak in relation to "constitution" and "organisation" of all the courts except the Supreme Court and High Courts. It follows that under Entry 11-A the State Legislature has no power to constitute and organise the Supreme Court and High Courts. It is an accepted principle of construction of a Constitution that everything necessary for the exercise of powers is included in the grant of power. The State Legislature being an appropriate body to legislate in respect of "administration of justice" and to invest all courts within the State including the High Court with general jurisdiction and powers in all matters, civil and criminal, it must follow that it can invest the High Court with such general jurisdiction and powers including the territorial and pecuniary jurisdiction and also to take away such jurisdiction and powers from the High Court except those, which are specifically conferred under the Constitution on the High Courts."
>
> (Emphasis Supplied)

[18] (2005) 2 SCC 591

It is also important to note the discussion made by Y.V Chandrachud, CJI while writing for the majority of the seven Judges Bench in ***In Re The Special Courts Bill, 1978***[19]. The relevant extract thereof is as under:

> "**45.** The field of legislation covered by Entry 11-A of List III was originally a part of Entry 3 of List II. By Section 57(b)(iii) of the 42nd Amendment Act, 1976 which came into force on January 3, 1977 that part was omitted from Entry 3, List II and by clause (c) of Section 57, it was inserted into List III as Item 11-A. This transposition has led to the argument that the particular amendment introduced by Section 57 (b)(iii) and (c), is invalid since it destroys a basic feature of the Constitution as originally enacted, namely, federalism. We are unable to appreciate how the conferment of concurrent power on the Parliament, in place of the exclusive power of the States, to the constitution and organisation of certain courts affects the principle of federalism in the form in which our Constitution has accepted and adopted it..."
>
> (Emphasis supplied)

We must also take note of the observations in ***State of T.N. v. G.N. Venkataswamy***[20]. It was held :

> "**12.** It is no doubt correct that with the coming into force of Entry 11-A List III it is no more the exclusive power of the State Legislature to legislate under the said entry but "administration of justice" and "constitution and organisation of all courts" are the subjects on which the State Legislature can legislate. These expressions have been authoritatively interpreted by this Court in *Narothamdas case* [1950 SCC 905 : 1951 SCR 51 : AIR 1951 SC 69] . It is, therefore, settled that under Entry 11-A the State Legislature has the power to make laws thereby enlarging or reducing the powers of the courts. The State Legislature can create new courts, reorganise the existing courts, provide jurisdiction to the said courts and also take away the existing jurisdiction if it so desires. We, therefore, see no reason why a State Legislature cannot confer additional jurisdiction on existing revenue courts to recover any public dues as arrears of land revenue."

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[19] (1979) 1 SCC 380
[20] (1994) 5 SCC 314

11. Administration of justice, as it flows from the above, pertains to investment in all Courts with general, territorial and pecuniary jurisdiction. All the powers necessary for constitution and organisation of Courts except this Court, and the High Courts, to some extent, have been invested with the State as well as the Centre, under this Entry. Laws made by the Centre would necessarily prevail over the State made laws, should there be any inconsistency between the two, and the laws made by the latter shall be unconstitutional to the extent that they are inconsistent with the Central laws, by virtue of the Doctrine of Repugnancy, the contours of which can be well understood by a perusal of the judgment in ***M. Karunanidhi v. Union of India***[21]. The Constitution Bench held:

> "**8.** It would be seen that so far as clause (1) of Article 254 is concerned it clearly lays down that where there is a direct collision between a provision of a law made by the State and that made by Parliament with respect to one of the matters enumerated in the Concurrent List, then, subject to the pro- visions of clause (2), the State law would be void to the extent of the repugnancy. This naturally means that where both the State and Parliament occupy the field contemplated by the Concurrent List then the Act passed by Parliament being prior in point of time will prevail and consequently the State Act will have to yield to the Central Act. In fact, the scheme of the Constitution is a scientific and equitable distribution of legislative powers between Parliament and the State Legislatures. First, regarding the matters contained in List I, i.e. the Union List to the Seventh Schedule, Parliament alone is empowered to legislate and the State Legislatures have no authority to make any law in respect of the Entries contained in List I. Secondly, so far as the Concurrent List is concerned, both Parliament and the State Legislatures are entitled to legislate in regard to any of the Entries appearing therein, but that is subject to the condition laid down by Article 254(1) discussed above.

[21] (1979) 3 SCC 431

> Thirdly, so far as the matters in List II, i.e. the State List are concerned, the State Legislatures alone are competent to legislate on them and only under certain conditions Parliament can do so. It is, therefore, obvious that in such matters repugnancy may result from the following circumstances:
>
> *1.* Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy.
>
> *2.* Where however a law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with clause (2) of Article 254.
>
> *3.* Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential.
>
> *4*. Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Article 254."

12. The argument of the appellant aside, court fees finds mention in the Seventh Schedule in Entry 3 of List II (reproduced supra). However, as is obvious, there is no inconsistency between Central and State legislation here. The reason why it is difficult to accept the argument of the appellant is because court fees are explicitly governed by Entry 3

List II, reproduced supra. When that is the case, no argument pertaining to inconsistency between the two entries and the respective laws made thereunder can be entertained in law. Still further, the law-making power given as delineated in the Seventh Schedule is not constricted, but wide. When the competence to legislate is called into question, it is permissible to demonstrate the same from a conjoint reading of multiple entries and it need not flow directly from one particular entry. M.N. Venkatachaliah J. (as his Lordship then was) writing for the majority in ***Ujagar Prints (II) v. Union of India***[22] held as under:

> "**53.** If a legislation purporting to be under a particular legislative entry is assailed for lack of legislative competence, the State can seek to support it on the basis of any other entry within the legislative competence of the legislature. It is not necessary for the State to show that the legislature, in enacting the law, consciously applied its mind to the source of its own competence. Competence to legislate flows from Articles 245, 246, and the other articles following, in Part XI of the Constitution. In defending the validity of a law questioned on ground of legislative incompetence, the State can always show that the law was supportable under any other entry within the competence of the legislature. Indeed in supporting a legislation sustenance could be drawn and had from a number of entries. The legislation could be a composite legislation drawing upon several entries…."

13. A natural conclusion that can be drawn is that if legislative competence can be demonstrated, drawing on multiple entries, the same can be taken to be beyond the pale of any doubt when there is a particular entry to that effect. Entry 3, List II specifically empowers the

[22] (1989) 3 SCC 488

Stare to legislate in respect of fees taken in all courts, save this Court. Ergo, there is no reason to accept the appellant's contention that simply because it involves settlement of the dispute per alternative dispute mechanisms, the matter pertaining to the court fee payable in such a case, would travel out of the purview of Entry 3, List II, and would instead fall within the amplitude of Entry 11-A, List III.

14. At this juncture, let us address the argument of the appellant that differentiation in the refund of fees applicable between the Central and State legislation would defeat the overall, salutary purpose of Section 89 CPC.

14.1 Reference may be made to the ***High Court of Judicature at Madras v. M.C. Subramaniam***[23], wherein it has been held that the provision must be understood in the "backdrop of the long-standing proliferation of litigation in the civil court which has placed an undue burden on the judicial system, forcing speedy justice to become a casualty."

14.2 The observations in ***Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd***.[24], are also noteworthy-

> "**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

[23] (2021) 3 SCC 560
[24] (2010) 8 SCC 24

> 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.

Further ahead in this judgment, Raveendran J. writing for this Court, listed out the scenarios in which reference under Section 89 CPC should or should not be made. The same are not reproduced here but suffice it to say that the present dispute does not fall into any of the exceptions listed for the otherwise mandatory reference thereunder.

A perusal of the above as also other judgments on the application and scope of Section 89 CPC nowhere correlates the settlement of disputes by alternate mechanisms to the amount of money that may be saved by the parties in so far as the court fee is concerned. The only purpose is the resolution of the dispute by the means prescribed therein, aiding the reduction of pendency and backlog of cases. The refund of court fees, either partial or complete, as the case may be, is a benefit, incidental to the resolution of the dispute. Undoubtedly, the added pecuniary advantage may serve as a reason to galvanize and buoy the position of ADR, leading an increasing number of persons involved in disputes to

opt therefor, however, that aspect, is not in the realm of primary considerations when examining the growth of ADR, or the object and purpose of the introduction of Section 89 into the CPC.

14.3 It is difficult to accept this submission that Section 89, CPC will be negated if the scheme of refund as envisaged by the MCFA, 1959 is given effect. It cannot be doubted that the settlement of a dispute outside court is a cause for celebration in as much as it translates to early resolution of the dispute *inter se* the parties and it means also, that there is one less file to add on to already overflowing record rooms of the concerned civil courts. It also cannot be gainsaid that all efforts should be made to encourage the adoption of ADR mechanisms.

15. Let us now examine the submission regarding the reference in LSA Act, 1987 of the CFA, 1870 and its effect, if any, on MCFA, 1959. One is a Central legislation and the other is a State legislation. The LSA Act, 1987 was enacted by the legislature to give effect to Article 39A of the Constitution of India which places responsibility upon the State to secure the operation of a legal system which promotes justice and further casts a responsibility upon the State to provide free legal aid by way of suitable legislation or schemes so as to ensure that justice is not the province of only those who are unaffected by economic or other disabilities. The primary mode of dispute settlement prescribed in the

Act is the 'Lok Adalat', the constitution and functioning of which are discussed in Chapters 6 and 6A of the Act.

16. The submission of the learned counsel for the appellant is to the effect that since a Central legislation, i.e., the LSA Act, 1987, in connection with an alternate method of dispute resolution makes reference to CFA, 1870, the same should be extended to other similar modes of dispute resolution as well. In a sense, an effort has been made on part of the appellant to equate the Award of Lok Adalat to the resolution of his dispute by way of reference under Section 89 CPC, i.e., mediation. This equivalence is misplaced.

17. The scope of Lok Adalat has been discussed by a Bench of three learned Judges in ***State of Punjab v. Jalour Singh***[25].

> "**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

[25] (2008) 2 SCC 660

> 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."

18. The process of mediation has been described in ***Perry Kansagra v. Smriti Madan Kansagra***[26]. The following extract, although, in regard to the importance of confidentiality in such proceedings are none the less important for the instant case.

> "**27.** We, thus, have line of cases dealing with mediation/conciliation and other proceedings in general and Rule 8 of the Rules dealing inter alia, with custody issues which is in the nature of an exception to the norms of confidentiality. It is true that the process of mediation is founded on the element of confidentiality. Qualitatively, mediation or conciliation stands on a completely different footing as against regular adjudicatory processes. Instead of an adversarial stand in adjudicatory proceedings, the idea of mediation is to resolve the dispute at a level which is amicable rather than adversarial. In the process, the parties may make statements which they otherwise would not have made while the matter was pending adjudication before a court of law. Such statements which are essentially made in order to see if there could be a settlement, ought not to be used against the maker of such statements in case at a later point the attempts at mediation completely fail. If the statements are allowed to be used at subsequent stages, the element of confidence which is essential for healthy mediation/conciliation would be completely lost. The element of confidentiality and the assurance that the statements would not be relied upon helps the parties bury the hatchet and move towards resolution of the disputes. The confidentiality is, thus, an important element of mediation/conciliation."

19. As can be seen, there are certain similarities in the two processes, however, there are certain undeniable differences, foremost among them being that the former is governed by independent

[26] (2019) 20 SCC 753

legislation and now, so are the certain aspects of the latter (Mediation Act, 2023).

20. It is inconceivable as to how a reference to mediation under the CPC can be read to be the same or equal to proceeding before a Lok Adalat for any reference thereto, to be helpful to the case put forward by the appellant. Simply because a refund under CFA, 1870 is statutorily prescribed, to be given when a dispute is settled by way of a Lok Adalat, does by no stretch of the imagination mean by the exact situation be adopted to the settlement of a dispute by mediation. This argument has to be necessarily rejected. No error can be found, in this regard with the reasoning of the High Court.

CONCLUSION

21. The inescapable conclusion *per* the above discussion, holding that Entry 11A List III cannot govern the refund of court fees when a matter is settled by methods of alternate dispute resolution, in the face of Entry 3 List II simply by the use of the words "administration of justice" in the former and, that reference to CFA, 1870 in respect of refund of court fees when the matter is settled by way of an Award of Lok Adalat does not mean that the same shall be extended to the settlement of dispute by mediation for the simple reason that Lok Adalat and mediation are two distinct methods and cannot be equated, we hold

that this appeal lacks merit and is liable to be dismissed. Ordered accordingly.

22. As extracted supra, the High Court in the impugned judgment had made a suggestion to the State legislature that the differences in the court fees in Lok Adalat, vis-à-vis, the forms of ADR should be done away with the view to promote the adaptation of such methods of dispute resolution among the public. It has been brought to our attention that the State legislature has indeed carried out such an amendment to the MCFA, 1959 and Section 16A has been introduced therein by way of Maharashtra Act No. X of 2018, the relevant extract of which reads under :

MAHARASHTRA ACT No. X OF 2018.

(First published, after having received the assent of the Governor in the "Maharashtra Government Gazette", on the 16th January 2018.)

An Act further to amend the Maharashtra Court-fees Act.

WHEREAS it is expedient further to amend the Maharashtra Court-fees Act, for the purposes hereinafter appearing; it is hereby enacted in the Sixty-eighth Year of the Republic of India as follows :—

1….

2. After section 16 of the Maharashtra Court-fees Act (hereinafter referred to as "principal Act"), the following section shall be inserted, namely :—

" 16A. Where the court refers the parties to the suit to any one of the modes of settlement of dispute referred to in section 89 of the Code of Civil Procedure, 1908 and suit is disposed of by the court by adaptation of any of the modes prescribed under the said section, the plaintiff shall be entitled to a certificate from the court authorising him to receive back from the collector, the full amount of the fee paid in respect of such plaint.''."

23. The effect of the above being that for the time when the amendment to the MCFA, 1959 granting partial or complete refund, as the case may be, in accordance with Section 43 as amended, the persons whose matters were settled by way of ADR would not be entitled to 100% refund. Any matter settled under the processes mentioned in Section 89 CPC after the coming into force of the above-extracted amendment, such parties shall receive refund of court fees in its entirety.

24. The total amount of court fees paid by the appellant, in respect of the refund of which the matter has travelled up to this Court was approximately Rs. 5 lakhs. Should we, in the facts and circumstances of this case grant, in exercise of extraordinary jurisdiction under Article 142 of the Constitution of India, refund of the said amount is a question we have asked ourselves. Considering the fact that the original dispute was settled amicably and that the amount of court fees involved is not excessive, in the peculiar facts of this case, for it not to be a binding precedent, we are of the view that the same can be refunded to him. Ordered accordingly.

Pending applications, if any, shall stand disposed of.

…….J.
(C.T. RAVIKUMAR)

…….J.
(SANJAY KAROL)

December 19, 2024
New Delhi