

**(2008) 11 MAD CK 0218**

**Madras High Court**

**Case No:** Criminal R.C. No's. 1414 to 1421 and 1234 of 2008

Alacrity Foundations Pvt. Ltd.  
T.Nagar, Chennai, Dilip  
Dharmasthal Chairman, and  
Indukanth Ragade

APPELLANT

Vs

S. Ramakrishnan

RESPONDENT

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**Date of Decision:** Nov. 10, 2008

**Citation:** (2009) 1 LW(Cri) 322

**Hon'ble Judges:** K. Mohan Ram, J

**Bench:** Single Bench

**Advocate:** B. Harikrishnan, for the Appellant;

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

K. Mohan Ram, J.

The Petitioners, who are accused in C.C. Nos. 8297 to 8305 of 2004 on the file of learned XI Metropolitan Magistrate, Sai-dapet, Chennai and facing trial for offences under Sections 14(1A) and 14A(2) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, filed petitions u/s 20(l)(i)(b) of the Legal Services Authorities Act, 1987 (hereinafter called as "the Act"), to refer the cases to Lok Adalat.

2. In the petitions filed before the Court below, it is stated that the Petitioners are ready and willing to settle the dispute amicably; though the amount referred in the complaint is disputed, they are willing to settle the same after negotiation with the complainant and further negotiation process is to be initiated very shortly with the head of the department of complainant. It is further stated that they have settled approximately a sum of Rs. 16 lakhs out of the amount claimed by the complainant and the remaining dues will be settled in a period of time and for that purpose, the

accused are going to have a meeting with the head of the department of the complainant.

3. The said petitions filed by the Petitioners/accused were strongly objected and opposed by the complainant/ Respondent herein by filing a counter affidavit. In the counter affidavit, it is inter alia contended that all the petitions filed u/s 20(l)(i)(b) of the Act are not maintainable; the averment in these petitions that the accused are willing to settle the dispute amicably and they are willing to settle the same after negotiation, which is to be initiated with the head of the department of the complainant is misleading and totally false; the dues payable by the accused are statutory dues, which was assessed by the competent authority u/s 7 A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and as such, the same is not negotiable; the statutory dues payable pertains to the year 2002-2003 and already six years have elapsed since the amount became due for remittance to the department. It is further contended that since the amount belongs to the employees of the establishment, the request of the accused to refer the matter for Lok Adalat to enable them to arrive at an amicable settlement is not acceptable to the complainant, since neither the Provident Funds Act nor Provident Fund Scheme provides for such reference and settlement. It is further contended that the delay in remittance of the statutory dues is defeating the very spirit of enactment of Social Security legislation since it results in the denial of the legal right of the employees in claiming their provident fund and pensionary benefits.

4. On a careful consideration of the contentions put forth by either party, the learned Magistrate, by separate orders dated 24.7.2008, dismissed all the petitions. Being aggrieved by that, the accused are before this Court in the above revisions.

5. Mr. Harikrishnan, learned Counsel appearing for the revision Petitioners, strenuously contended that the learned Magistrate failed to appreciate that under the provisions of the Legal Services Authority Act, 1987, any dispute can be referred at any stage before the Lok Adalat and it does not preclude the dispute being referred to Lok Adalat after the trial has commenced in any proceedings. Learned Counsel further contended that the learned Magistrate erred in prejudging the issue by observing that there is no possibility of settlement through negotiation and the learned Magistrate failed to appreciate that an innovative mechanism for alternate dispute resolution has proved effective for resolving disputes in a spirit of conciliation outside the Courts and as such, the learned Magistrate ought to have referred the case to Lok Adalat by invoking the provision u/s 20 of the Act. The learned Counsel further submitted that only because of the slump in business and severe financial crisis, the revision Petitioners were not in a position to pay the statutory dues in time. The learned Counsel further submitted that several litigations were pending in various forums and the Petitioners had to settle one by one and if sufficient time is given to the Petitioners, they will be in a position to settle all the statutory dues, for the non-payment of which, the Petitioners have

been prosecuted.

6. In Crl.R.C No. 1234 of 2008, notice was ordered to the Respondent and private notice permitted by this Court has been served. Though the name of the Respondent has been shown in the cause list, the Respondent is neither appearing in person nor through any counsel and no counter affidavit is filed. Hence, the said Crl.R.C. is being disposed of on merits.

7. I have carefully considered the submissions made by the learned Counsel for the revision Petitioners and perused all the materials made available in the typed set of papers and the orders passed by the learned Magistrate.

8. A perusal of the orders passed by the learned Magistrate show that the learned Magistrate has taken into consideration the fact that the quantum of dues payable by the accused had already been adjudicated in accordance with Section 7A of the Provident Funds and Miscellaneous Provisions Act and there is no question or possibility of negotiating the quantum of dues payable by the Petitioners/accused before any authority at a later point of time. The learned Magistrate has also referred to the objections raised by the complainant, viz., the quantum of dues cannot be reduced by any authority to the detriment of the employees. The learned Magistrate has also relied upon the fact that the dues have not been settled for the past six years and has also observed that evidence on the side of the complainant is closed and only at the stage of defence, the Petitioners/accused have chosen to file the petitions to refer the dispute before the Lok Adalat. The aforesaid reasons recorded by the learned Magistrate, in my considered view, cannot be said to be erroneous or illegal.

9. Section 20(1) of the Legal Services Authority Act, 1987, reads as under:

20. Cognizance of cases by Lok Adalat. -(1) Where in any case referred to in Clause (i) of Sub-section (5) of Section 19

(i) (a) the parties thereof agree; or

(b) one of the parties thereof makes an application to the Court, for referring the case to the Lok Adalat for settlement and if such Court is prima facie satisfied that there are chances of such settlement; or

(ii) the Court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat, the Court shall refer the case to the Lok Adalat:

Provided that no case shall be referred to the Lok Adalat under sub Clause (b) of Clause (i) or Clause (ii) by such Court except after giving a reasonable opportunity of being heard to the parties.

10. A careful reading of the aforesaid provision shows that if in a case, the parties thereto agree that the matter can be referred to Lok Adalat for settlement or one of the parties thereof makes application to the Court for referring the case to Lok

Adalat for settlement and if such Court is, prima facie, satisfied that there are also chances of settlement or if the Court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat, the Court shall refer the case to Lok Adalat. Admittedly, in this case, the other party, viz., the complainant/ Respondent herein has not agreed for referring the dispute to the Lok Adalat. The accused, have admittedly filed these petitions by invoking the provisions contained in Section 20(l)(i)(b) of the Act and as such, the Court should be prima facie satisfied that there are chances of such settlement or the Court should be satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat. The Court below, on a consideration of the entire facts and circumstances of the case, the delay in payment of statutory dues, the adjudication of the statutory dues becoming final, the objections raised by the complainant/Respondent herein and the delay in filing the above petitions under the aforesaid provision, has prima facie arrived at a satisfaction that there are no chances of arriving at a settlement. The aforesaid prima facie satisfaction arrived at by the learned Magistrate cannot be interfered with by this Court by invoking its revisional powers, unless this Court is of the opinion that the reasons stated by the learned Magistrate are erroneous, irregular or illegal or contrary to the provisions contained in the Act. If judged from this angle, it cannot be said that the order passed by the learned Magistrate suffers from any infirmity, irregularity or illegality.

11. The contentions put forth by the learned Counsel for the Petitioner that only because of the financial crises faced by the accused, they were not in a position to pay the statutory dues and that they had to face so many other litigations in several forums cannot be a ground to be taken note of at this stage for invoking the provisions contained in the Act. As rightly pointed out by the learned Magistrate, once the statutory dues have been adjudicated u/s 7 A of the Provident Funds and Miscellaneous Provisions Act and the said order has become final as the accused has admittedly not filed any appeal, it is common knowledge that even if the dispute is referred to the Lok Adalat, the authorities will not agree for reducing the liability of the accused since any such reduction in the liability will adversely affect the interest of the employees, who are the real beneficiaries under the Act. The statutory dues payable by the accused are actually the amounts payable to the employees towards their provident fund and pensionary benefits. So, without the consent and concurrence of the employees, who are the beneficiaries, no reduction in the statutory dues can be made by the Lok Adalat. Therefore, the reasons stated by the learned Magistrate cannot be said to be erroneous.

12. Further, it has to be pointed out that the reasons stated in the affidavit filed in support of M.P. No. I of 2008 in CrI.R.C. No. 1234 in paragraphs 7 to 9 were not placed before the learned Magistrate and such facts are being placed for the first time before this Court and hence, such facts cannot be taken into consideration.

For the aforesaid reasons, the Criminal Revision Cases fail and the same are dismissed.