THE HIGH COURT OF SIKKIM: GANGTOK

(Civil Appellate Jurisdiction)

DIVISION BENCH: THE HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

Com. A. No. 01 of 2025

Nil Kumar Pradhan,
S/o Late Ratna Kumar Pradhan,
Resident of Jitlang,
Central Pandem,
P.O. Duga,
Sikkim. ..... Appellant

versus

1. State of Sikkim,
   Through the Chief Secretary,
   Government of Sikkim.

2. Secretary,
   Roads and Bridges Department,
   Government of Sikkim,
   Gangtok. ..... Respondents

Appeal under Section 13(1A) of the Commercial Courts Act, 2015.

[*against the impugned judgment and decree dated 27.12.2024 passed by the learned Judge, Commercial Court at Gangtok in Commercial Suit No. 01 of 2024 in Nil Kumar Pradhan -vs- State of Sikkim & Another]*

Appearance:

Mr. D.K. Siwakoti, Advocate (Legal Aid Counsel) for the Appellant.

Mr. Aarohi Bhalla, Additional Advocate General with Mr. Thinlay Dorjee Bhutia, Government Advocate for the Respondents.

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and

Com. A. No. 02 of 2025

Dil Bahadur Pradhan,
S/o Late Dhan Bahadur Pradhan,
Resident of Jitlang,
Central Pandem,
P.O. Duga, P.S. Rangpo,
Sikkim. ..... Appellant

versus

1. State of Sikkim,
Through the Chief Secretary,
Government of Sikkim,
Gangtok.

2. Roads and Bridges Department,
Through the Secretary,
Government of Sikkim,
Gangtok, Sikkim. ..... Respondents

Appeal under Section 13(1A) of the Commercial Courts Act, 2015.

[*against the impugned judgment and decree dated 27.12.2024 passed by the learned Judge, Commercial Court at Gangtok in Commercial Suit No. 02 of 2024 in Dil Kumar Pradhan -vs- State of Sikkim & Another]*

Appearance:

Mr. D.K. Siwakoti, Advocate (Legal Aid Counsel) for the Appellant.

Mr. Aarohi Bhalla, Additional Advocate General with Mr. Thinlay Dorjee Bhutia, Government Advocate for the Respondents.

J U D G M E N T

(24th September, 2025)

Bhaskar Raj Pradhan, J.

While hearing two connected Commercial Appeals, i.e., Com. A. No. 1 of 2025 and Com. A. No. 2 of 2025, a question of importance cropped up as it was submitted by

the learned Counsel for the appellants that prior to filing the commercial suits they had filed “pre-litigation suits” directly before the Lok Adalat and since the “pre-litigation suits” could not be resolved there, the commercial suits were filed.

2. In paragraph 15 of both the commercial suits, it is stated that the appellants filed “pre-litigation case” before the Hon’ble Lok Adalat which was registered as Pre-Litigation Case No. 100 of 2022 and Pre-Litigation Case No. 101 of 2022, which could not be settled. As such, the same was disposed of as withdrawn. The orders dated 23.04.2022 in both the “pre-litigation cases” passed by the Lok Adalat also reflects the said facts. As such, we considered it relevant to examine the provisions of the Legal Services Authorities Act, 1987 (for short, the Legal Services Act), as to whether a litigant who is a party to a dispute could directly approach the Lok Adalat in “pre-litigation cases” or not. It would be relevant to answer this question as the learned Counsel submitted that in many cases this was being done.

3. We have heard the learned Counsel for the parties at length. The learned Additional Advocate General draws our attention to section 19(5) of the Legal Services Act and

submits that the Lok Adalat does not have any jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute which is filed directly before it in "pre-litigation cases". He further submits that it is only in cases relating to "public utility services" can a case be directly filed before the "Permanent Lok Adalat" to explore the possibility of settlement.

4. Section 2(d) of the Legal Services Act defines "Lok Adalat" to mean a Lok Adalat organised under Chapter VI.

5. Chapter VI consists of sections 19 to 22. Section 19 deals with organisation of Lok Adalats and provides:

> "CHAPTER VI
> LOK ADALATS
> **19. Organisation of Lok Adalats**.—(1) Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluk Legal Services Committee may organise Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.
> (2) Every Lok Adalat organised for an area shall consist of such number of—
> (*a*) serving or retired judicial officers; and
> (*b*) other persons,
> of the area as may be specified by the State Authority or the District Authority or the Supreme Court Legal Services Committee or the High Court Legal Services Committee, or, as the case may be, the Taluk Legal Services Committee, organising such Lok Adalat.
> (3) The experience and qualifications of other persons referred to in clause (*b*) of sub-section (2) for Lok Adalats organised by the Supreme Court Legal Services Committee shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India.
> (4) The experience and qualifications of other persons referred to in clause (*b*) of sub-section (2) for Lok Adalats other than referred to in sub-section (3) shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(5) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of—

(*i*) any case pending before; or

(*ii*) any matter which is falling within the jurisdiction of, and is not brought before,

any court for which the Lok Adalat is organised:

Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law."

[emphasis supplied]

6. Section 20 deals with cognizance of cases by Lok Adalats and provides:

"20. Cognizance of cases by Lok Adalats.—(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.

(2) Notwithstanding anything contained in any other law for the time being in force, the Authority or Committee organising the Lok Adalat under sub-section (1) of Section 19 may, on receipt of an application from any one of the parties to any matter referred to in clause (*ii*) of sub-section (5) of Section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination:

Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.

(3) Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

> (4) Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.
>
> (5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub-section (1) for disposal in accordance with law.
>
> (6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advise the parties to seek remedy in a court.
>
> (7) Where the record of the case is returned under sub-section (5) to the court, such court shall proceed to deal with such case from the stage which was reached before such reference under sub-section (1)."
>
> [emphasis supplied]

7. Under section 19(5)(i), a Lok Adalat has jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of any case pending before any Court. Section 20(1) provides that in any case referred to in section 19(5)(i) the parties thereof agree; or one of the parties thereof makes an application to the Court, for referring the case to the Lok Adalat for settlement, the Court must be *prima facie* satisfied that there are chances of settlement or that the matter is an appropriate one to be taken cognizance of by the Lok Adalat. It is only on such *prima facie* satisfaction that the matter could be referred to the Lok Adalat. In case one of the parties to a dispute makes an application to the "Court" or the "Court" is satisfied that the matter is an appropriate one

to be taken cognizance of by the Lok Adalat, the "Court" shall not refer the matter to the Lok Adalat except after giving a reasonable opportunity of being heard to the parties.

8. Under section 19(5)(ii), a Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of any matter which is falling within the jurisdiction of, and is not brought before, any Court for which the Lok Adalat is organised.

9. However, section 19(5)(ii) must be read along with section 20(2) which provides that when an "Authority" or a "Committee" organizing the Lok Adalat receives an application [in accordance with section 19(5)(ii)], it shall determine whether to refer it to the Lok Adalat. The proviso to section 20(2) further stipulates that the "Authority" or the "Committee" organizing a Lok Adalat shall only make its determination after giving parties a reasonable opportunity of being heard. After such determination, if the "Authority" or the "Committee" refers the matter to the Lok Adalat, the Lok Adalat would get the necessary jurisdiction to dispose of the case or matter and arrive at a compromise or settlement

between the parties in terms of section 20(3). Section 20(4) provides that in disposing of a case, the Lok Adalat shall be guided by the principles of justice, equity, fair play and other legal principles. In case the Lok Adalat is unable to reach a settlement between the parties and no award is made, it shall advise the parties to approach the Court if it was received under section 20(2) [in accordance with section 20(6)]. (see ***Canara Bank vs. G.S. Jayarama***[1])

10. Thus, a party to a dispute could not have approached the Lok Adalat directly by filing "pre-litigation cases" as was done in the present cases. It is imperative that a party to a dispute at the "pre-litigation stage" must first approach the "Authority" or the "Committee" by filing an application regarding any matter referred to in clause (ii) of sub-section (5) of section 19. On receipt of such an application, the "Authority" or "Committee" organising the Lok Adalat under sub-section (1) of section 19 is required to determine whether the matter needs to be determined by the Lok Adalat. It is only when the "Authority" or "Committee" comes to such a conclusion that the matter can be referred to the Lok Adalat. Before referring the matter to the Lok Adalat, reasonable opportunity of being heard is required to

[1] (2022) 7 SCC 776

be given to the other party. On completion of the process before the “Authority” or the “Committee” and on reference by the “Authority” or the “Committee”, Lok Adalat will have jurisdiction to dispose the case or matter and arrive at a compromise or settlement between the parties.

11. The “Central Authority” is defined under section 2(aa) to mean the National Legal Services Authority constituted under section 3. The “State Authority” is defined under section 2(h) to mean the State Legal Services Authority constituted under section 9. The “District Authority”, as defined in section 2(b) means, a District Legal Services Authority consitituted under section 9. Section 9 contemplates the “District Authority” to consist of the District Judge to be the Chairman and such number of other members, possessing such experience and qualifications, as may be prescribed by the State Government to be nominated by the Government in consultation with the Chief Justice of the High Court. The Supreme Court Legal Services Committee is constituted under section 3A. The High Court Legal Services Committee defined in section 2(bb) is constituted under section 8A. Therefore, when section 20(2) refers to “Authority or Committee organising the Lok Adalat”, these Authorities or

Committees organising the Lok Adalat are not the Lok Adalat. The Lok Adalat is defined in section 2(d) to mean a Lok Adalat organised under Chapter VI. Section 19(2) contemplates the Lok Adalat to consists of such number of (a) serving or retired judicial officers; and (b) other persons, of the area as may be specified by the "State Authority" or the "District Authority" or the "Supreme Court Legal Services Committee" or as the case may be, the "Taluk Legal Services Committee", organising such Lok Adalat.

12. It could be possible that the District & Sessions Judge of a District may be wearing different hats. She/He could be the Chairman of the District Legal Services Authority constituted under section 9. She/He could at the same time also be a Judicial Officer serving the Lok Adalat constituted under section 19(2). However, the specific roles assigned to the "District Legal Services Authority" and the "Lok Adalat" is well defined and different. The District Legal Services Authority is assigned to do specific things as contemplated by the Legal Services Act. The role of the District Legal Services Authority as explained above under section 20(2) cannot be undertaken by the Lok Adalat merely because the District and Sessions Judge is also the judicial officer of the Lok Adalat.

13. If, therefore, it is the practice for litigants to approach the Lok Adalats directly by filing “pre-litigation cases”, then that practice is required to be stopped immediately and the process contemplated by the Legal Services Act, as explained above, should be strictly followed.

14. As the learned Counsel for the appellants in both the Commercial Appeals categorically submitted that this was the practice followed in “pre-litigation cases”, we deem it appropriate to direct the Registry of this Court to send a copy of this judgment for compliance to:

(i) The Sikkim State Legal Services Authority

(ii) The District Legal Services Authorities of all the Districts of Sikkim

(iii) The High Court Legal Services Committee

(iv) Taluk Legal Services Committee

(v) The District and Sessions Judges of all Districts including the Special Division Judges

(vi) All other Judicial Officers and retired Judicial Officers in the State of Sikkim

(vii) The President and General Secretary of the Bar Association of Sikkim (High Court & District Courts), Gangtok

(viii) The President and General Secretary of Sikkim High Court Bar Association, Gangtok

(ix) The President and General Secretary of Namchi Bar Association, Namchi

15. The above Authorities, Committees, District & Sessions Judges including the Special Division Judges, the judicial officers and the retired judicial officers in the State of Sikkim, the President and General Secretaries of above Bar Associations, shall take all necessary steps to ensure that this order is notified to all the stakeholders and followed.

16. As we have arrived at the above opinion and issued the necessary directions, let these Commercial Appeals be listed for hearing on merits on 16th October, 2025.

(Bhaskar Raj Pradhan)
Judge

(Biswanath Somadder)
Chief Justice

Approved for reporting: **Yes**
Internet: **Yes**

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