

CO 4001 of 2025

Dipan Rit & Anr.

-vs-

Berger Paints India Ltd.

31.8.2026

Sl.no.12

ct.652

Dr. Siddhartha Goswami

Ms. Upasana Shaw

Ms. Joyasmita Bhattacharjee

...for the petitioners

Mr. Arnab Basu Mullick

...for the opposite party.

- 1) An order of the State Consumer Disputes Redressal Commission, West Bengal dated May 15, 2025 in C.C. No. 150 of 2023 is under challenge in the instant revision.
- 2) The said order of the State Commission arises in connection with an order dated 15th May, 2025 by the District Consumer Redressal Commission, Howrah in M.A.Case No. 14 of 2024(Consumer Case No. 150 of 2023).
- 3) In both the orders, the respective Commissions have turned down the prayer of the present petitioner/complainant, for appointment of Advocate Commissioner in respect of the suit property.
- 4) The factual background in a nut-shell relates to a contract between the parties for painting of the premises of the present petitioner.
- 5) The opposite parties were granted the contract. The painting work was completed on July 30, 2021. The complainant/revisionist filed a complaint case before the District Commission on 3rd July, 2023.

- 6) In the said complaint case, after the pleadings were exchanged, the present revisionist/petitioner had prayed for appointment of an Advocate Commissioner for local inspection and report as regards the physical features of the property-in-question and the alleged deficiency of the service by the present opposite party.
- 7) Since before, the Forum as stated above, the prayer of the petitioner as above has been turned down, the present revision has been filed by the petitioner with the prayer to set aside the order of the State Commission as well as the District Commission and to direct for appointment of Local Inspection Commissioner.
- 8) Dr. Goswami, learned advocate appearing for the petitioners has emphatically submitted that for the purpose of fair trial and to restore failure of justice by not allowing the petitioner to properly assist the Court with appropriate evidence, by refusing appointment of Local Inspection Commission, the Commissions as stated has failed to exercise jurisdiction vested in it by law.
- 9) It is submitted that unless and until local inspection of the suit property is made, the Commission could not be in an appropriate position to duly and properly adjudicate the issues in dispute before it.
- 10) According to the petitioners, therefore, appointment of Advocate Commissioner is absolutely necessary for proper adjudication of the case.
- 11) Dr. Goswami, learned advocate for the petitioners has further stated that the reason cited by both the

Commissions for refusal of the petitioners' prayer, amount to be not maintainable insofar as, delay in proceeding with the case before the concerned Commission, if any, due to appointment of Advocate Commissioner, would ultimately bear effect or confer upon the petitioners.

- 12) According to him, the ground of delay as cited by the Commission for rejecting the petitioners' application for appointment of Advocate Commissioner is unsustainable in the eye of law. In this regard, Dr. Goswami has cited a judgment of High Court of Kerala in **Thankamma-vs-Gracy Alexander**.
- 13) The other judgment of Andhra Pradesh High Court reported in **1993 2 ALT 589;1993 2 APLJ 119 (Vishnudas Manga Bhavani-vs-Vooturi Bhaskar)** has been referred to by Dr. Goswami appearing for the petitioners in support of his submission that the Commission should have passed an order to safeguard failure of justice to the petitioners.
- 14) He has further referred to the other judgment of this Court dated **August 12, 2022** in **CRR 2955 of 2022 (Samasth Infotainment Pvt. Ltd. & Ors.-vs-The State of West Bengal & Ors.)** to emphasize about the maintainability of the instant revision. However, it is noted that the opposite party has not argued challenging maintainability of the instant petition. Hence, the instant is not relevant.
- 15) It is finally submitted that in interest of justice the prayer of the present petitioners for appointment of Advocate Commissioner is required to be allowed by the respective Commissions.

- 16) Strong objection has been raised as regards the contention and prayer of the petitioners as above, by the opposite party.
- 17) The ground of objection being that the petitioners have been non-diligent litigant before the Forum, who not only have come after prolonged period of time after conclusion of the trial but also spent fair amount of unexplained period of delay during the proceeding.
- 18) It is further submitted by Mr. Basu Mullick representing the opposite party that the petitioners has not come up with primary evidence as defence in alleging deficiency of service. Now he cannot seek for appointment of Advocate Commissioner which would amount to fishing out additional evidence in the case, not permissible under the law. He submits that the present revision may be dismissed.
- 19) Having heard submissions of both the learned advocates for the parties respectively and perusing the record and the judgments relied on by the petitioners, this Court comes to the following finding;
- 20) The paint work was completed by the opposite party on July 30, 2021. According to the opposite party, for any alleged deficiency in service, it cannot be treated as responsible and no action can be held against the same, for the reason that the opposite party has been only the supplier of the paint materials, whereas the service provider has actually executed and completed the painting works. To this, the petitioner has replied that for ascertainment of actual liability of the petitioner,

determination of several questions of facts is required, which exercise can only be done by the commission itself and not by the court in exercise of revisional jurisdiction.

- 21) The basic object to appoint Advocate Commissioner is to enable the Court to obtain assistance in matters, requiring local investigation, factual elucidation, scientific, technical examination and similar other factors, where such assistance would facilitate a proper adjudication. A fundamental condition for appointment of an advocate commissioner is that there must be a statutory purpose for such appointment, which necessarily elucidate the controversy between the parties. The court can in an appropriate case, decline to appoint an advocate commissioner where, because of the efflux of time, the proposed local investigation can no longer elucidate the matter, which is originally in dispute. The crucial question is not merely whether inspection is possible, but whether it can still answer the issue in dispute.
- 22) Concerning a dispute between the parties which relates to the physical condition of a property at a particular point of time, for example, as it is in the instant case. Here one alleges about deficiency of painting service, whereas the other denies the same. Important is the time when such dispute as regards deficiency in quality of service has been raised. That is because of the reason that, with the efflux of time, the quality of the wall paints very naturally tend to diminish. The physical condition is subject to change with change of time. The commissioner, even if inspect the property as on

today, shall be able to report only on its present condition. He cannot, by local inspection, reliably reconstruct the condition of the property, precisely the alleged deficiency of service if there was any, existed at the material date. There is no doubt that a particularly strong case for refusal to appoint advocate commissioner arises, where the factual position has become irreversible.

- 23) It appears in the instant case that alleging an act of deficiency in service made in the year 2021, a complaint has been lodged before the Commission in 2023. In the said case the petitioner wanted appointment of an advocate commissioner, even thereafter. Thus, the petitioner ran against time in this case and substance of his grievance is automatically diluted, due to huge time gap intervening in between. If the same did not motivate the Commission to exercise its discretionary jurisdiction. While considering prayer for appointment of Advocate commissioner, this Court is to find no jurisdictional, legal or propriety related flaw, in the said order of the Commission. Nevertheless, the petitioner has tried utmost to establish that the delay, if any caused by the same, in filing the complaint case, would only be attributable to the opposite party as none of its offices moved in due time and to action with respect to several written representation is filed by the petitioner before the same, seeking redress of his grievance. In these circumstances, the Court finds that the well-settled propositions of law which have been discussed in the judgments referred to by the petitioners, do not practically apply in case of the present petitioners. On the contrary, no such

apparent jurisdictional, patent, or legal infirmity being there in the said impugned order of the State Commission, this court finds no justifiable reason to interfere into the same.

- 24) Accordingly, the instant revision is dismissed.
- 25) Urgent certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)