

CWP-22121-2014

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP-22121-2014
Date of Decision:21.09.2015**

M/s Puma Realtors Pvt. Ltd.

... Petitioner(s)

Versus

Union of India and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- | | |
|--|------------|
| 1) Whether Reporters of the local papers may be allowed to see the judgment ?. | YES |
| 2) To be referred to the Reporters or not ?. | YES |
| 3) Whether the judgment should be reported in the Digest ? | YES |

Argued by: Mr. Sanjeev Sharma, Sr. Advocate with
Mr. Shekhar Verma, Advocate for
the petitioner.

Mr. D.R.Bansal, Advocate,
for repondent No.2.

PARAMJEET SINGH, J.

By way of the present writ petition, the petitioner has challenged the order dated 18.09.2014 (Annexure P-15) passed by the District Consumer Disputes Redressal Forum (in short, 'District Consumer Forum'), Phase- 2 SAS, Nagar, Mohali in consumer complaint No. 455 of 2014 (Annexure P-10).

For the sake of brevity, I do not deem it necessary to mention averments in the writ petition, however, relevant averments are

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being referred to herein. Petitioner-company is in the business of real estate development and is developing a colony namely “IREO Hamlet” in Sector 98, SAS, Nagar Mohali. On 20th of October 2011, respondent No. 2 booked plot No. 269 measuring 307.77 square yards. In Clause 19 of the Schedule-I of the application Form filled-up by respondent No. 2, it has been clearly mentioned that he would be entitled to possession of the plot only after complete payment of sale consideration. On 17.11.2011, a provisional allotment letter was issued for plot No.269 -IREO Hamlet, Sector 98, Mohali. On 24.11.2011, respondent No.2-Vijeypal Singh Mann and the petitioner-company entered into a “plot buyer's agreement”. The rights and obligations of the petitioner and respondent No. 2 are governed by the said agreement. Clause 33 of the agreement reads as under:

“33. *Dispute resolution by arbitration*

All or any disputes arising out or touching upon or in relation to the terms of this agreement or its termination including the integration and validity of the terms hereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussions failing which the same shall be settled through reference to a sole Arbitrator to be appointed by a resolution of the Board of Directors of the company, whose decision shall be final and binding upon the parties. The allottee hereby confirms that it shall have no objection to the appointment of such sole Arbitrator even if the person so appointed, is an employee or advocate of the company or is otherwise connected to the company and the allottee

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hereby accepts and agrees that this alone shall not constitute a ground for challenge to the independence or impartiality of the said sole Arbitrator to conduct the arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/modifications thereto shall be held at Company's offices or at a location designated by the said sole Arbitrator in Chandigarh. The language of the arbitration proceedings and the award shall be in English. Both the parties will share the fees of the arbitrator in equal proportion."

Respondent No. 2 paid three instalments. These instalments were not at all linked to the development. It is the 4th instalment that was to be paid after initiation of development works which commenced on 1st of May 2013. Respondent No.2 was called upon vide notice dated 30th of April 2013 to pay 4th instalment by 27th of May 2013. Thereafter, respondent No.2 remained in continuous default and failed to make any payment towards the balance instalments of the plot in question. Respondent No. 2 served legal notice dated 27.11.2013 (Annexure P-6) upon the petitioner, who filed reply dated 20th of December 2013 (Annexure P-7). Respondent No.2 failed to pay 4th instalment. As per Clause 19 of the agreement, after forfeiting the amount paid by respondent No.2, the allotment was cancelled. Thereafter, respondent No.2 filed a consumer complaint before District Consumer Forum and prayed for various reliefs. In pursuance of the notice in the complaint, the petitioner filed

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written statement (Annexure P-11) raising a preliminary objection as regards the maintainability of the consumer complaint and filed Miscellaneous Application No.263 of 2014 (Annexure P-12) for dismissal of the complaint and also moved Miscellaneous Application No. 264 of 2014 (Annexure P-13) under Clause 8 of the Arbitration and Conciliation Act, 1996 (in short 'Arbitration Act, 1996'). The District Consumer Forum dismissed Miscellaneous Application No. 264 of 2014 under Section 8 of the Arbitration Act, 1996 as also Miscellaneous Application No.263 of 2014 holding that complaint is maintainable. Hence, this writ petition.

In pursuance of notice of motion, respondent No.2 appeared and filed written statement contending that writ petition is not maintainable against the impugned order passed by the District Consumer Forum. Against the order of the District Consumer Forum, appeal/revision lies before the State Consumer Redressal Commission. Although, there is an arbitration clause in the agreement between the parties, but the jurisdiction of the consumer fora to decide the dispute is not barred. Various other objections have also been raised which are not relevant to reproduce here.

I have heard learned counsel for the parties and with their able assistance perused the record.

Learned senior counsel for the petitioner vehemently contended that the terms "Consumer" and "Service" have been defined in Section 2 (1)(d) and 2(1)(o) of the Consumer Protection Act, 1986 (in

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short' 'C.P.Act, 1986'). It was vehemently contended further that dispute between the parties arises out of “plot buyer's agreement” which stands validly terminated vide letter dated 30.04.2014 (Annexure P-8) and the District Consumer Forum has no jurisdiction to decide the same in view of arbitration clause contained in Clause 33 of the “plot buyer’s agreement”. The impugned order has been incorrectly/erroneously passed by the learned District Consumer Forum. Learned senior counsel referred to the judgments, to substantiate his contentions, in ***Bharathi Knitting Company vs DHL Worldwide Express Courier Division of Airfreight Ltd.*** (1996) 4 SCC 704 and ***Morgan Stanley Mutual Fund Vs. Kartick Das*** (1994) 4 SCC 225.

Per contra, learned counsel for respondent No. 2 vehemently contended that writ is not maintainable against the order of the District Consumer Forum. The petitioner has efficacious and speedy remedy of appeal/revision before the State Consumer Redressal Commission. Learned counsel for respondent No.2 cited judgment of the Hon'ble Supreme Court titled ***Om Parkash Saini Vs DCM Ltd. and others*** (2010) 11 SCC 622. Learned counsel further contended that even if, there is an arbitration clause in the agreement, remedy under the C.P.Act, 1986 is not barred, it is an additional remedy and cited judgment of the Hon' ble Supreme Court titled ***National Seeds Corporation Ltd. Vs M. Madhusudhan Reddy & anr.*** (2012) 2 SCC 506. Learned counsel further contended that the agreement is stereotype and consumer signed 'plot buyer’s agreement' under duress

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because builder was in a dominating position. The builder reserves the right to appoint sole arbitrator who may be its own man/employee etc. As result of this, the consumer would never be able to get redressed his genuine grievance. In support of his contentions, learned counsel relied upon ***Saurabh Parkash vs DLF Universal Ltd.*** (2007) 1 SCC 228.

I have given my anxious thoughtful consideration to the contentions of the Ld. counsel for the parties.

In the view of the arguments addressed by learned counsel for the parties, following questions of law arise for consideration:

1. *Whether the consumer forum/fora constituted under the C.P.Act, 1986 is bound to refer the dispute raised in the complaint to arbitration, once an application under Section 8 of the Arbitration Act, 1996 is filed by the opposite party in view of the valid arbitration agreement?*
2. *Whether writ before High Court is maintainable against the order of the Consumer Forum/fora?*

In Re Question No.1:

Before dealing with the question involved, it would be appropriate to refer to the aims and objects of C.P.Act. The C.P.Act, 1986 in its preamble states as follows:-

“An Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumer’s disputes and for matters connected therewith.”

A perusal of preamble to the C.P.Act, 1986 shows that it is

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meant to provide for better protection of the interests of consumers and for that purpose makes provision for establishment of consumer councils and other authorities for the settlement of consumer disputes and for matters connected therewith. The salient features of the Consumer Protection Bill were to promote and protect the rights of consumers such as :-

- “(a) The right to be protected against marketing of goods which are hazardous to life and property;*
- (b) The right to be informed about the quality, quantity, potency, purity, standard and price of goods, to protect the consumer against unfair trade practices;*
- (c) The right to be assured, wherever possible, access to an authority of goods at competitive prices;*
- (d) The right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums;*
- (e) The right to seek Redressal against unfair trade practices or unscrupulous exploitation of consumers, and*
- (f) Right to consumer education.”*

Section 2 of the C.P.Act, 1986 contains the definition of various terms. Clause (d) and (f) read as under:-

“2 (d) ‘consumer’ means any person who,—

- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who*

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obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person but does not include a person who avails of such services for any commercial purpose;

Explanation.—For the purposes of sub-clause (i), ‘commercial purpose’ does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;

xxxx xxxx xxxx

(f) ‘defect’ means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied, or as is claimed by the trader in any manner whatsoever in relation to any goods.”

The C.P.Act, 1986 for the redressal of the genuine grievances of consumers has set up an elaborate redressal mechanism at District, State and National levels to deal with the matters relating to defect in goods within the meaning of Section 2 (f), deficiency in service under Section 2(g), restrictive trade practice under Section 2 (nnn) and unfair trade practice under Section 2(r) of the Act. By establishing the consumer disputes redressal fora, the legislature has provided a special remedy for the redressal of the said wrongs which is

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in addition to the remedy already provided under the Code of Civil Procedure and the MRTP Act (now known as Competition Act). The remedy provided under the C.P.Act, 1986 is a special remedy with the object of redressal of the grievance of the affected consumers in an expeditious and non-expensive manner. The Arbitration Act, 1996 has not taken away the said remedy.

Section 3 declares that the provisions of the C.P.Act, 1986 shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Section 9 provides for establishment of the Consumer Fora at the District, State and National levels. Section 11 relates to jurisdiction of the District Forum. Section 12 prescribed the manner in which the complaint can be filed before the District Forum and the procedure required to be followed for entertaining the same.

The scope and reach of the C.P.Act, 1986 has been considered by the Hon'ble Supreme Court in catena of judgments, some of the important ones are: ***Lucknow Development Authority v. M.K. Gupta*** (1994) 1 SCC 243, ***Fair Air Engineers (P) Ltd. vs. N. K. Modi*** (1996) 6 SCC 385, ***Skypay Couriers Limited v. Tata Chemicals Limited*** (2000) 5 SCC 294, ***State of Karnataka vs. Vishwabharathi House Building Cooperative Society*** (2003) 2 SCC 412, ***CCI Chambers Cooperative Housing Society Limited Vs. Development Credit Bank Limited*** (2003) 7 SCC 233, ***Secretary, Thirumurugan Cooperative Agricultural Credit Society Vs. M. Lalitha*** (2004) 1 SCC

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305, *H.N. ShankaraShastri Vs. Assistant Director of Agriculture, Karnataka* (2004) 6 SCC 230.

In *M.Lalitha's case (supra)*, Hon'ble Supreme Court noticed the background, the object and reasons and the purpose for which the C.P.Act, 1986 was enacted. After referring to its earlier judgments in *M.K. Gupta's case (supra)* and *N.K. Modi's case (supra)*, the Hon'ble Supreme Court observed as under:-

“11. The preamble of the Act declares that it is an Act to provide for better protection of the interest of consumers and for that purpose to make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and matters connected therewith. In Section 3 of the Act in clear and unambiguous terms it is stated that the provisions of the 1986 Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

12. From the Statement of Objects and Reasons and the scheme of the 1986 Act, it is apparent that the main objective of the Act is to provide for better protection of the interest of the consumer and for that purpose to provide for better redressal, mechanism through which cheaper, easier, expeditious and effective redressal is made available to consumers. To serve the purpose of the Act, various quasi-judicial forums are set up at the district, State and national level with wide range of powers vested in them. These quasi-judicial forums, observing the principles of natural justice, are empowered to give relief of a specific nature and to award, wherever

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appropriate, compensation to the consumers and to impose penalties for non-compliance with their orders.”

In ***Kishori Lal Vs. Chairman, Employees’ State Insurance Corporation*** 2007(5) Recent Apex Judgments (R.A.J.) 68, the Hon'ble Supreme Court held as under:-

“17..... The trend of the decisions of this Court is that the jurisdiction of the Consumer Forum should not and would not be curtailed unless there is an express provision prohibiting the Consumer Forum to take up the matter which falls within the jurisdiction of civil court or any other forum as established under some enactment. The Court had gone to the extent of saying that if two different fora have jurisdiction to entertain the dispute in regard to the same subject, the jurisdiction of the Consumer Forum would not be barred and the power of the Consumer Forum to adjudicate upon the dispute could not be negated.”

The definition of ‘consumer’ contained in Section 2 (d) of the C.P.Act, 1986, which is reproduced in the earlier part of the judgment, is very wide. Sub Clause (i) of the definition takes within its fold any person who buys any goods for a consideration paid or provided to be paid or partly paid and partly promised, or under any system of deferred payment. It also includes any person who uses the goods though he may not be buyer thereof, provided that such use is with the approval of the buyer. The last part of the definition contained in Section 2 (d) (i) excludes a person from the definition of ‘consumer’ who obtains the goods for resale or for any commercial purpose. By

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virtue of the explanation which was added by Amendment Act 62 of 2002, it has been clarified that the expression 'commercial purpose' used in sub clause (i) does not include use by a consumer of goods bought and used by him for the purpose of earning his livelihood by means of self-employment.

I will now notice some of the relevant Sections of the Arbitration Act, 1996 which read as under:-

“5. *Extent of judicial intervention.-*

Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

7. *Arbitration agreement.-*

(1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in:-

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or

(c) an exchange of statements of claim and

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defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

8. Power to refer parties to arbitration where there is an arbitration agreement.-

(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.”

I have noticed in brief from some of the important judgments of the Hon'ble Supreme Court wherein Section 3 of C.P.Act, 1986 and Section 34 of the Arbitration Act, 1940 which is analogous to Section 8 of Arbitration Act, 1996 have been taken into consideration.

In ***N.K. Modi's case (supra)***, the Hon'ble Supreme Court after taking into consideration the provisions of the C.P.Act, 1986,

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Arbitration Act, 1996 and Arbitration Act, 1940 held as under:

“15. Accordingly, it must be held that the provisions of the Act are to be construed widely to give effect to the object and purpose of the Act. It is seen that Section 3 envisages that the provisions of the Act are in addition to and are not in derogation of any other law in force. It is true, as rightly contended by Shri Suri, that the words “in derogation of the provisions of any other law for the time being in force” would be given proper meaning and effect and if the complaint is not stayed and the parties are not relegated to the arbitration, the Act purports to operate in derogation of the provisions of the Arbitration Act. Prima facie, the contention appears to be plausible but on construction and conspectus of the provisions of the Act we think that the contention is not well founded. Parliament is aware of the provisions of the Arbitration Act and the Contract Act and the consequential remedy available under Section 9 of the Code of Civil Procedure, i.e., to avail of right of civil action in a competent court of civil jurisdiction. Nonetheless, the Act provides the additional remedy.

16. It would, therefore, be clear that the legislature intended to provide a remedy in addition to the consentient arbitration which could be enforced under the Arbitration Act or the civil action in a suit under the provisions of the Code of Civil Procedure. Thereby, as seen, Section 34 of the Act does not confer an automatic right nor create an automatic embargo on the exercise of the power by the judicial authority under the Act. It is a matter of discretion. Considered from this perspective, we hold that though the District

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Forum, State Commission and National Commission are judicial authorities, for the purpose of Section 34 of the Arbitration Act, in view of the object of the Act and by operation of Section 3 thereof, we are of the considered view that it would be appropriate that these forums created under the Act are at liberty to proceed with the matters in accordance with the provisions of the Act rather than relegating the parties to an arbitration proceedings pursuant to a contract entered into between the parties. The reason is that the Act intends to relieve the consumers of the cumbersome arbitration proceedings or civil action unless the forums on their own and on the peculiar facts and circumstances of a particular case, come to the conclusion that the appropriate forum for adjudication of the disputes would be otherwise those given in the Act.”

In ***Skypay Couriers Ltd.’s case (supra)***, the Hon'ble Supreme Court again in the context of Arbitration Act, 1940 observed as under :-

“2..... Even if there exists an arbitration clause in an agreement and a complaint is made by the consumer, in relation to a certain deficiency of service, then the existence of an arbitration clause will not be a bar to the entertainment of the complaint by the Redressal Agency, constituted under the Consumer Protection Act, since the remedy provided under the Act is in addition to the provisions of any other law for the time being in force.”

In ***Trans Mediterranean’ Airways vs. M/s. Univeral***

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Exports and another 2011(1) SCC 316, the Hon'ble Supreme Court observed as under :-

“32. *In our view, the protection provided under the CP Act to consumers is in addition to the remedies available under any other statute. It does not extinguish the remedies under another statute but provides an additional or alternative remedy.....”*

In ***N.K. Modi's case (supra)*** and ***Skypay Courier's Case (supra)***, the Hon'ble Supreme Court in the context of the provisions of the C.P.Act, 1986 and in particular Section 3 of C.P.Act, 1986 and Arbitration Act of 1940 has held that the Consumer Fora created under the C.P.Act, 1986 are at liberty to proceed with the matter in accordance with the provisions of the Act, rather than relegating the parties to the arbitration proceedings pursuant to an agreement entered into between the parties. Learned counsel appearing for the opposite parties submitted before the Hon'ble Supreme Court that these judgments would not be applicable as they are in the context of the Arbitration Act, 1940 and that the Arbitration Act, 1996 has brought out fundamental changes and in view of the Arbitration Act, 1996, it is mandatory on the part of the Judicial Authorities to refer the parties to the arbitration. The mandate of Section 8 of Arbitration Act, 1996 would be defeated if the matter is not referred to arbitration in the cases where the parties have agreed to refer the dispute to the Arbitration.

The Hon'ble Supreme Court in ***Madhusudhan Reddy's case (supra)*** noticed the above submissions as under :-

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“10..... The Ld. Counsel relied upon Section 8 of the Arbitration and Conciliation Act, 1996 and argued that in view of the arbitration clause contained in the agreements entered between the appellant and the growers, the latter could have applied for arbitration and Consumer Forums should have non-suited them in view of Section 8 of the Arbitration and Conciliation Act, 1996.....”

and held that the complaint filed under the C.P.Act, 1986 would be maintainable and the consumer cannot be denied the relief by invoking the jurisdiction of Section 8 of the Arbitration Act, 1996. Section 3 of the C.P.Act, 1986 makes it clear that remedy available is in addition to and not in derogation of the provisions of any other law for the time being in force. The relevant observations of the Hon'ble Supreme Court read as under:-

“29. The remedy of arbitration is not the only remedy available to a grower. Rather, it is an optional remedy. He can either seek reference to an arbitrator or file a complaint under the Consumer Act. If the grower opts for the remedy of arbitration, then it may be possible to say that he cannot, subsequently, file complaint under the Consumer Act. However, if he chooses to file a complaint in the first instance before the competent Consumer Forum, then he cannot be denied relief by invoking Section 8 of the Arbitration and Conciliation Act, 1996 Act. Moreover, the plain language of Section 3 of the Consumer Act makes it clear that the remedy available in that Act is in addition to and not in derogation of the provisions of any other law for the time being in force.....”

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In *M. Madhusudhan Reddy's case(supra)*, the Hon'ble Supreme Court had taken into consideration the background, aims, objectives and reasons behind the enactment of C.P.Act, 1986, and considered Section 3 of C.P.Act, 1986 and Section 8 of Arbitration Act, 1996. It has been held that complaint would be maintainable and relief cannot be denied by invoking Section 8 of the Arbitration Act.

It would be pertinent to notice that respondent No.2 appears to have signed the 'plot buyers agreement' under duress because the petitioner being a builder is in a dominating position. The builders insist upon the buyer to sign the agreement on dotted lines else they would not enter into agreement. Clause 33 of the agreement refers to dispute resolution by arbitration. Under Clause 33 of the agreement, the petitioner has reserved the right to appoint sole Arbitrator who may be his employee or advocate of the company etc.

In this regard, it would be appropriate to refer to the following passages from the book titled "Mustil & Boyd Commercial Arbitration, Second Edition", Page No. 149 & 151 & 152, which read as under:-

"In practice therefore, the question has not been whether a particular dispute is capable of settlement by arbitration, but whether it ought to be referred to arbitration or whether it has given rise to an enforceable award. No doubt for this reason, English law has never arrived at a general theory for distinguishing those disputes which may be settled by arbitration from those which may not. The general

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principle is, we submit, that any dispute or claim concerning legal rights which can be the subject of an enforceable award, is capable of being settled by arbitration. The principle must be understood, however, subject to certain reservations.”

“In Soleimany V Soleimany (1999) QB 785, the Court of Appeal suggested that there may be cases where on grounds of public policy disputes under certain types of contract cannot be referred to arbitration, e.g., trading with the enemy or a partnership in crime.”

In view of above discussion, if the petitioner- builder is allowed to have resort to the arbitration agreement contained in the 'Plot Buyer's agreement', going by the prevalent practice and little experience I have in the matters, respondent No.2-consumer would never be able to redress his genuine grievance. Legislature by providing the additional remedy under Section 3 of the C.P.Act, 1986 has tried to take care of such a situation to redress the grievances of the small time consumers.

In view of the discussion above it is held that the consumer forum/fora constituted under the C.P.Act, 1986 is not bound to refer the dispute raised in the complaint, on an application under Section 8 of the Arbitration Act, 1996 filed by the opposite party (petitioner-builder herein). Section 3 of the C.P.Act, 1986 makes it clear that remedy available is in addition to and not in derogation of the provisions of any other law for the time being in force. The question is answered accordingly.

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In Re Question No.2:

So far as the issue of jurisdiction of High Court is concerned, learned counsel for respondent No.2- appears to be right in his contentions that High Court has no jurisdiction to deal with the matter as the impugned order dated 18.09.2015 (Annexure P-15) has been passed by the District Consumer Forum.

The Hon'ble Supreme court in ***Om Parkash Saini's case (supra)*** has observed as under:

“12. We have considered the respective submissions. The 1986 Act was enacted to provide for better protection of the interests of consumers by making provisions for establishment of consumer councils and other authorities for settlement of consumer disputes and adjudication thereof. The 1986 Act is a complete Code unto itself. It defines the various terms like ‘consumer’, ‘consumer dispute’, ‘defect’, ‘deficiency’, ‘goods’, ‘manufacturer’, ‘restrictive trade practice’, ‘service’, ‘unfair trade practice’. It provides for establishment of consumer councils and adjudicatory forums at the District, State and National levels. Any person aggrieved by an order passed by the District Forum can file an appeal before the State Commission. If he is not satisfied with the order of the State Commission, a further remedy is available by way of revision before the National Commission. If the complaint is decided by the State Commission, the aggrieved person can file an appeal before the National Commission. Elaborate procedure has been laid down for filing of the complaints and

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disposal thereof. Since the 1986 Act is a special statute enacted by the Parliament for better protection of the interest of consumers and a wholesome mechanism has been put in place for adjudication of consumer disputes, the remedy of appeal available to a person aggrieved by an order of the State Commission cannot but be treated as an effective alternative remedy.

13. *Admittedly, respondent No.1 had availed the alternative remedy available to it under Section 21 by filing an appeal against the order of the State Commission. During the pendency of the appeal, respondent No.1 chose to challenge the order of the State Commission by filing a petition under Article 227 of the Constitution, which was entertained by the learned Single Judge on the basis of the assurance given by the learned counsel that the appeal filed before the National Commission will be withdrawn. The order passed by the learned Single Judge on 21.3.2007 or the one by which the petition filed by respondent No.1 was finally disposed of does not contain any indication as to why the learned Single Judge thought it proper to make a departure from the rule that the High Court will not entertain a petition under Article 226 or 227 of the Constitution if an effective alternative remedy is available to the aggrieved person. In our view, during the pendency of the appeal filed by respondent No.1 under Section 21 of the 1986 Act, the learned Single Judge was not at all justified in entertaining the petition filed under Article 227 of the Constitution merely because he thought that the State Commission did not have the*

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jurisdiction to entertain the complaint in view of the scheme sanctioned by the Company Judge under Section 391 read with Sections 392 and 394 of the Companies Act.”

The Hon'ble Supreme Court while dealing with a similar issue in case titled **Cicily Kallarackal vs. Vehicle Factory** (2012) 8 SCC 524 observed as under:

*“2. So far as the issue of jurisdiction is concerned, the learned counsel for the petitioner is right that the High Court had no jurisdiction to deal with the matter against the order of the Commission. However, while dealing with a similar issue this Court in **Mohammad Swalleh&Ors. v. IIIrd All. District Judge, Meerut & Anr.**, AIR 1988 SC 94, observed:*

*“7. It was contended before the High Court that no appeal lay from the decision of the Prescribed Authority to the District Judge. The High Court accepted this contention. (sic no appeal lay)... On that ground the High Court declined to interfere with the order of the learned District Judge. It is true that there has been some technical breach because if there is no appeal maintainable before the learned District Judge, in the appeal before the learned District Judge, the same could not be set aside. But the High Court was exercising its jurisdiction under **Art. 226** of the Constitution. The High Court had come to the conclusion that the order of the Prescribed Authority was invalid and improper. The High Court itself could have set it aside. Therefore in the facts and circumstances of the case justice has been done though, as mentioned hereinbefore, technically the appellant had a point that the order of the District Judge was illegal and improper. If we reiterate the order of the High Court as it is setting aside the order of the Prescribed Authority in exercise of the*

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jurisdiction under Art. 226 of the Constitution then no exception can be taken. As mentioned hereinbefore, justice has been done and as the improper order of the Prescribed Authority has been set aside, no objection can be taken.” (Emphasis added).

In view of the above, it is not always necessary to set aside an order if found to have been passed by an authority/court having no jurisdiction.

Despite this, we cannot help but to state in absolute terms that it is not appropriate for the High Courts to entertain writ petitions under Article 226 of the Constitution of India against the orders passed by the Commission, as a statutory appeal is provided and lies to this Court under the provisions of the Consumer Protection Act, 1986. Once the legislature has provided for a statutory appeal to a higher court, it cannot be proper exercise of jurisdiction to permit the parties to bypass the statutory appeal to such higher court and entertain petitions in exercise of its powers under Article 226 of the Constitution of India. Even in the present case, the High Court has not exercised its jurisdiction in accordance with law. The case is one of improper exercise of jurisdiction. It is not expected of us to deal with this issue at any greater length as we are dismissing this petition on other grounds.

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7. *While declining to interfere in the present Special Leave Petition preferred against the order passed by the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, we hereby make it clear that the orders of the Commission are incapable of being questioned under the writ jurisdiction of the High Court, as a statutory appeal in terms of Section 27 A (1)(c) lies to this Court. Therefore, we have no hesitation in issuing a direction of caution that it will not be proper exercise of jurisdiction by the High Courts to entertain writ petitions against such orders of the Commission.*

A copy of this order may be sent to the Registrar General of all the High Courts, for bringing the same to the notice of Hon'ble the Chief Justices and Hon'ble Judges of the respective High Courts.”

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In view of the above settled position of law, I hold the writ petition against the order/orders of consumer fora and is not maintainable before the High Court.

The question is answered accordingly.

In view of above discussion, writ petition is *devoid of* merits, hence dismissed.

I intended to impose exemplary costs as the petition is sheer abuse of the process of court in spite of settled position of law on the matter in issue. However taking lenient view, I restrain from imposing the costs.

21.09.2015
parveen kumar

(Paramjeet Singh)
Judge