

In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 23768 of 2015

Date of Decision: November 06, 2015

Balwinder Singh Bhatti

... Petitioner

Versus

Padam Motors and others

... Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

Present: Mr. Harpal Singh Sirohi, Advocate,
for the petitioner.

Paramjeet Singh, J. (Oral)

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing order dated 06.06.2013 (Annexure P/1) and order dated 15.07.2013 (Annexure P/2) passed by respondent no.4 – State Consumer Disputes Redressal Commission, Punjab.

I have heard learned counsel for the petitioner and perused the record.

The matter is well settled that against the order passed by State Consumer Disputes Redressal Commission, an appeal lies before the National Consumer Commission as per the provisions of Consumer Protection Act, 1986 and writ petition is not maintainable.

The Hon'ble Supreme court in ***Om Parkash Saini Vs DCM Ltd. and others (2010) 11 SCC 622*** 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 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 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 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."

In the present case, petitioner instead of availing the appropriate remedy has approached this Court.

In view of the settled position of law, against the orders of State Consumer Disputes Redressal Commission, instant writ petition is not maintainable.

Dismissed. However, petitioner will be at liberty to avail the appropriate remedy in accordance with law.

November 06, 2015
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[Paramjeet Singh]
Judge