

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE DR.JUSTICE B.SIVA SANKARA RAO**

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**WRIT PETITION NOS.21013, 23382,
23383 AND 27420 OF 2013**

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COMMON ORDER
(Per Hon'ble Sri Justice Sanjay Kumar)

These four writ petitions were filed by the Andhra Pradesh Co-operative Housing Societies Federation Limited, Hyderabad (hereinafter, 'the petitioner society'), aggrieved by the common appellate order dated 25.02.2013 passed by the A.P. State Consumer Disputes Redressal Commission, Hyderabad, (hereinafter, 'the Commission') in so far as it relates to F.A.Nos.530, 649, 651 and 652 of 2011.

Interim orders of *status quo* were passed in all the cases and are operative as on date.

Ms.K.Hemalatha, learned counsel for the petitioner society, would fairly state that when the petitioner society earlier approached this Court by way of W.P.No.13469 of 2013 challenging an appellate order passed by the Commission, the said writ petition was dismissed by a Division Bench of this Court on 31.07.2013 holding that the petitioner society had the statutory remedy of appeal under the Consumer Protection Act, 1986 (for brevity, 'the Act of 1986') and accordingly dismissed the writ petition. She would further state that the review petition filed by the petitioner society in relation to the said dismissal resulted in the order dated 15.09.2014 reported in ***A.P. CO-OPERATIVE HOUSING SOCIETIES FEDERATION LIMITED, HYDERABAD V/s. A.P. STATE CONSUMER DISPUTES REDRESSAL COMMISSION, HYDERABAD***^[1]. Perusal of this decision reflects that, while accepting the contention of the petitioner society that no remedy of appeal was provided under the Act of 1986 against an appellate order of the Commission, the Division Bench held

that an effective remedy in the form of statutory revision under Section 21(b) of the Act of 1986 was provided and therefore, the earlier refusal to exercise discretionary jurisdiction under Article 226 of the Constitution could not be said to be incorrect. The aforestated legal position was only a reiteration of the *ratio* in **OM PRAKASH SAINI V/s. DCM LTD.**^[2]. The Review Petition was therefore dismissed.

Ms. K.Hemalatha, learned counsel, would however seek to distinguish the aforestated decision and would contend that invoking of the extraordinary discretionary jurisdiction of this Court under Article 226 of the Constitution is warranted on facts so far as the cases on hand are concerned. She would advert to the relevant facts, common to all the four cases, which are as follows: The complainants before the District Forum, Krishna District, who are shown as the second respondent in each of these cases, contended that they had availed loans from the petitioner society through the Bandar Co-operative Building Society Limited, Machilipatnam, Krishna District, but despite full repayment, their title documents were not being returned. The District Forum dismissed their cases which led to filing of the subject appeals before the Commission. By the common order under challenge in these writ petitions, the Commission accepted the claim of the complainants and directed return of their title deeds with costs.

Ms. K.Hemalatha, learned counsel, would state that a significant fact, which was not taken into consideration by the Commission, was that after institution of the consumer cases before the District Forum, Krishna District, the Bandar Co-operative Building Society Limited, Machilipatnam, Krishna District, went into liquidation. She would therefore assert that, in the light of the statutory bar under Section 121(2) of the Andhra Pradesh Co-operative Societies Act, 1964 (for brevity, the Act of 1964'), the cases ought not to have been proceeded with in the absence of the leave of the Registrar of Co-operative Societies, Andhra Pradesh. She would further assert that this jurisdictional flaw taints the common order of the Commission also, as

the appeals filed by the complainants were in continuation of their consumer cases and as no prior leave was obtained under Section 121(2) of the Act of 1964 before institution thereof. She would therefore submit that this factor distinguishes the cases on hand from **A.P.CO-OPERATIVE HOUSING SOCIETIES FEDERATION LIMITED, HYDERABAD¹** and that this Court should exercise its discretionary writ jurisdiction in favour of the petitioner society by entertaining and allowing these writ petitions.

Per contra, Sri P.Veera Reddy, learned senior counsel representing Sri Narasimha Rao Gudiseva, learned counsel appearing for the second respondent in each of these cases, would point out that this aspect of the matter had never been raised, be it before the District Forum, Krishna, or the Commission, and that it must be deemed to have been waived by the petitioner society. Learned senior counsel would further contend that the law laid down by this Court in **A.P. CO-OPERATIVE HOUSING SOCIETIES FEDERATION LIMITED, HYDERABAD¹** would bind the petitioner society which was a party thereto and that it cannot seek to maintain these writ petitions in the light of the *ratio* laid down therein.

The consumer cases which laid foundation for the subject appeals before the Commission were filed in the year 2008. Admittedly, winding up of Bandar Co-operative Building Society Limited, Machilipatnam, Krishna District, was commenced by the Deputy Registrar of Co-operative Societies, Machilipatnam, under Section 64(2) of the Act of 1964, only in December, 2009. Therefore, as on the date of institution of these cases before the District Forum, Krishna, the process of winding up of the said society had not even begun. At this stage, it would be relevant to examine the bar posited by Section 121(2) of the Act of 1964:

‘121. Bar of jurisdiction of Court:- (1)

(2) While a society is being wound up, no suit or other legal proceeding relating to the business of such society shall be proceeded with, or instituted against, the liquidator as such or

against the society or any member thereof on any matter touching the affairs of the society except by leave of the Registrar and subject to such terms and conditions as he may impose:

.....'

In terms of the aforestated statutory bar, no legal proceeding can be instituted or proceeded with against the liquidator or the society or any member thereof on any matter touching the affairs of the society while such society is being wound up, except with the leave of the Registrar and subject to such terms and conditions as he may impose. As the consumer cases were filed by the complainants before the commencement of the winding up proceedings, the petitioner society ought to have raised an objection before the District Forum, Krishna, as to their being proceeded with after initiation of the winding up proceedings and insisted upon the leave of the Registrar of Co-operative Societies being obtained. It is however fairly conceded by Ms. K.Hemalatha, learned counsel, that no such objection was taken by the petitioner society, be it before the District Forum or before the Commission, after the appeals were filed. It is also crucial to note that the bar posited under the aforestated statutory provision is not absolute and is only a procedural one requiring the leave of the Registrar of Co-operative Societies. When the said jurisdictional flaw, owing to the failure to obtain the leave of the Registrar to proceed with the case, does not go to the root of the matter, the conduct of the party who could have taken an objection in this regard must necessarily be examined. As pointed out already, the petitioner society did not even choose to raise this aspect of the matter before the District Forum or the Commission.

Even in the affidavit filed in support of these writ petitions, the only ground taken in para 8 thereof is that after the liquidator was appointed for Bandar Co-operative Building Society Limited, any claims to be made against it would lie only before such liquidator and that the Commission ought to have directed the complainants to approach the liquidator. It is therefore clear that even at the stage of filing of these writ petitions, the petitioner society did not take an objection relatable to Section 121(2) of

the Act of 1964. The petitioner society must therefore be deemed to have waived the objection available to it under the aforesaid statutory provision.

Ms. K.Hemalatha, learned counsel, made no attempt whatsoever to reopen the issues which stood settled by the decision of the Division Bench in ***A.P. CO-OPERATIVE HOUSING SOCIETIES FEDERATION LIMITED, HYDERABAD***¹. In that view of the matter, we respectfully agree with the views expressed therein as to the effectiveness of the alternative remedy of revision available under Section 21(b) of the Act of 1986 as against an appellate order passed by the Commission. On facts, no exceptional grounds have been made out warranting exercise of the extraordinary jurisdiction vested in this Court under Article 226 of the Constitution.

The writ petitions are accordingly dismissed on the ground of maintainability leaving it open to the petitioner society to avail the statutory remedy of revision in accordance with law. Interim orders of *status quo* shall stand vacated.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

**DR.B.SIVA SANKARA RAO,
J**

4th JULY, 2016

PGS

^[1] 2015 (5) ALD 695 (DB)

^[2] AIR 2010 SC 2608