THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE N.BALAYOGI

WRIT PETITION NOS.39001, 39002, 39003 AND 39025 OF 2016

C O M M O N O R D E R

The respondents in these writ petitions filed complaints, C.C.Nos. 750, 752, 754 and 818 of 2011, under Section 12 of the Consumer Protection Act, 1986 (for brevity, 'the Act of 1986'), against M/s. Veenus & SV Projects, a partnership firm represented by its Managing Partner, Hyderabad, and T.Venkat Reddy, one of its partners. W.P.No.39001 of 2016 relates to C.C.No.750 of 2011 filed by A.Saida Reddy, W.P.No.39002 of 2016 relates to C.C.No.818 of 2011 filed by T.Lakshminarayana, W.P.No.39003 of 2016 relates to C.C.No.752 of 2011 filed by Jinka Nagaraju, and W.P.No.39025 of 2016 relates to C.C.No.754 of 2011 filed by P.Sridhar. By individual orders dated 28.08.2012 in C.C.Nos.750, 752 and 754 of 2011 and order dated 16.10.2012 passed in C.C.No.818 of 2011, the District Consumer Disputes Redressal Forum-I, Hyderabad (for brevity, 'the District Forum'), disposed of the four cases holding the writ petitioners herein jointly and severally liable to return the original sale deeds pertaining to the complainants' properties; to pay them Rs.10/- per square foot per month from 13.03.2011 till realization; to pay each of them Rs.50,000/- towards compensation and Rs.2,000/- towards costs. Aggrieved thereby, the writ petitioners preferred F.A.No.731 of 2012 (against C.C.No.750 of 2011), F.A.No.733 of 2012 (against C.C.No.752 of 2011), F.A.No.735 of 2012 (against C.C.No.754 of 2011) and F.A.No.905 of 2012 (against C.C.No.818 of 2011) before the Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad (for brevity, 'the State Commission'). By

common order dated 22.07.2013, the State Commission dismissed the appeals. The complainants in the four cases thereupon filed applications before the District Forum seeking execution of the orders passed in their favour. E.A.No.74 of 2013 arose out of C.C.No.752 of 2011, E.A.No.75 of 2013 arose out of C.C.No.754 of 2011, E.A.No.76 of 2013 arose out of C.C.No.750 of 2011 and E.A.No.68 of 2013 arose out of C.C.No.818 of 2011. By common order dated 10.07.2014 passed in E.A.Nos.74, 75 and 76 of 2013 and a separate order of the same date passed in E.A.No.68 of 2013, the District Forum directed the writ petitioners herein to pay the amounts named therein to the complainants within a time frame. Aggrieved thereby, the writ petitioners filed appeals before the State Commission. F.A.No.469 of 2014 arose out of E.A.No.76 of 2013 in C.C.No.750 of 2011, F.A.No.468 of 2014 arose out of E.A.No.68 of 2013 in C.C.No.818 of 2011, F.A.No.467 of 2014 arose out of E.A.No.74 of 2013 in C.C.No.752 of 2011 and F.A.No.470 of 2014 arose out of E.A.No.75 of 2013 in C.C.No.754 of 2011. By separate orders dated 28.04.2016, the State Commission dismissed the appeals. These writ petitions were filed assailing the individual orders dated 28.04.2016 passed by the State Commission dismissing the appeals arising out of the execution proceedings.

Interim stay of further proceedings in C.C.No.750 of 2011 on the file of the District Forum was granted by this Court *vide* order dated 18.11.2016 passed in W.P.No.39001 of 2016. Following the said order, interim stay of further proceedings in C.C.No.818 of 2011 on the file of the District Forum was granted *vide* order dated 23.01.2017 passed in W.P.No.39002 of 2016. On the same lines, interim stay of further proceedings in C.C.No.752 of 2011 on the file of the District Forum was granted by this Court *vide* order dated

23.01.2017 in W.P.No.39003 of 2016 and interim stay of further proceedings in C.C.No.754 of 2011 was granted by this Court *vide* order dated 23.01.2017 in W.P.No.39025 of 2016. Petitions were filed by the learned counsel for the respondents in each of the writ petitions to vacate the aforestated orders, except in W.P.No.39001 of 2016.

Heard Sri Vivek Jain, learned counsel representing Sri B.Vijaysen Reddy, learned counsel for the writ petitioners, and Sri M.S.P.Kamaraju, Sri Katta Sankaraiah, and Sri C.Tulasi Krishna, learned counsel appearing for the respondents in these four cases.

As the learned counsel for the respondents raised a preliminary objection as to the maintainability of these writ petitions, Sri Vivek Jain, learned counsel, addressed copious arguments on this aspect. It would therefore be necessary to deal with this issue first. Needless to state, in the event these writ petitions are held to be not maintainable, it would not be necessary for this Court to venture into the merits of the matter.

Sections 12 to 14 of the Act of 1986 deal with the manner in which a complaint is to be made before a District Forum and the procedure to be followed thereon upto recording of findings by such District Forum and the orders to be passed by it based on the same. Section 15 of the Act of 1986 provides the remedy of appeal to a State Commission to any person aggrieved by an order made by a District Forum. Section 17 details the jurisdiction of a State Commission to entertain complaints where the value of goods or services and the compensation, if any, claimed exceeds Rs.20.00 lakhs but does not exceed Rs.1.00 crore under Clause (a)(i) and appeals against the orders of any District Forum within the State under Clause (a)(ii). Section 19 of the Act of 1986 provides that any person aggrieved by

an order made by a State Commission in exercise of its power conferred by Section 17(a)(i) may prefer an appeal against such order to the National Commission. Section 21 of the Act of 1986, dealing with the jurisdiction of the National Commission, provides under Clause (a)(i) that the National Commission can entertain complaints where the value of the goods or services and compensation, if any, claimed exceeds Rs.1.00 crore and under Clause (a)(ii), it has jurisdiction to entertain appeals against the orders of any State Commission. Under Clause (b), the National Commission exercises revisionary jurisdiction over orders passed by a State Commission.

In the light of the aforestated statutory regime, it is the contention of the learned counsel for the respondents in these writ petitions that the remedy for the petitioners herein is to approach the National Commission under Section 21 of the Act of 1986 and that, as an effective alternative remedy is available to the petitioners, these writ petitions filed under Article 226 of the Constitution are not maintainable.

Per contra, Sri Vivek Jain, learned counsel, would contend that the mere presence of an alternative remedy would not automatically bar the plenary writ jurisdiction of this Court and that this self-imposed rule of restraint can be relaxed in deserving cases. He would further contend that the cases on hand qualify for such relaxation and therefore, his clients need not be driven to avail the alternate remedy before the National Commission.

Case law was cited by both sides in support of their respective contentions.

A look at the case law relied upon by the learned counsel for the respondents in the first instance.

In ***OM PRAKASH SAINI V/s. DCM LIMITED***[1], the Supreme Court was dealing with a case where a State Commission, having entertained a complaint, allowed it requiring the opposite party to make payment to the claimants. This order was initially challenged by the opposite party by filing an appeal under Section 21 of the Act of 1986 but thereafter, the same was withdrawn and a petition under Article 227 of the Constitution was filed before the Delhi High Court. Dealing with the issue of maintainability of this petition, the Supreme Court observed that the Act of 1986 was enacted to provide better protection to consumers by establishing authorities for settlement and adjudication of consumer disputes. The Act of 1986 was categorized as a complete code in itself providing for establishment of adjudicatory fora at the District, State and National levels. Noting the statutory hierarchy of remedies provided to an aggrieved party, the Supreme Court held that as the Act of 1986 was a special statute enacted by the Parliament for better protection of consumers' interests and a wholesome mechanism was put in place for adjudication of their disputes, the remedy of appeal available to a person aggrieved by an order of a State Commission cannot but be treated as an effective alternative remedy. The matter was therefore remitted to the High Court for fresh adjudication with a rider that the High Court take notice of the existence of the effective alternative remedy. The High Court was given the liberty, if it came to the conclusion that the party should be relegated to the remedy of appeal, to pass an appropriate order in that regard.

In ***NIVEDITA SHARMA V/s. CELLULAR OPERATORS ASSOCIATION OF INDIA***[2], the Supreme Court was dealing with a

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[1] (2010) 11 SCC 622
[2] (2011) 14 SCC 337

case where the High Court had entertained writ petitions against orders passed by a State Commission, ignoring the remedy of appeal provided under Section 19 of the Act of 1986. Acting upon the complaints made to it, the said State Commission had granted relief whereupon the opposite party approached the High Court by filing writ petitions. Dealing with the issue of maintainability of these writ petitions, the Supreme Court observed that there can be no dispute as to the power of a High Court to issue writs under Article 226 of the Constitution and that the same was a basic feature of the Constitution, which cannot be curtailed even by parliamentary legislation. Having stated so, the Supreme Court observed that it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, a High Court can entertain a writ petition against any order and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained as a matter of course, ignoring the fact that the aggrieved party has an effective alternative remedy. The Supreme Court pointed out that it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. Referring to the Act of 1986, the Supreme Court observed that it was enacted for better protection of the interests of consumers and the object and purpose of the Act was to provide a simple, inexpensive and speedy remedy to consumers. Adverting to the statutory provisions of the Act, the Supreme Court observed that a reading of Section 19 showed that the remedy of appeal is provided against an order passed by a State Commission under Section 17(a)(i). The Supreme Court further observed that Sections 11, 17 and 21 of the Act of 1986, which relate to the jurisdiction of a District

Forum, a State Commission and the National Commission, should not be interpreted in a manner which would frustrate the object of the legislation and liberty was therefore granted to the opposite party to challenge the order of the said State Commission by availing the alternative remedy of appeal under Section 19 of the Act of 1986.

In ***CICILY KALLARACKAL V/s. VEHICLE FACTORY***[3], the Supreme Court was dealing with the question as to whether the Kerala High Court had jurisdiction to entertain a writ petition against an order passed by the National Commission. Reiterating that it had no power to do so and relying on ***MOHAMMAD SWALLEH V/s. III ADDITIONAL DISTRICT JUDGE, MEERUT***[4], the Supreme Court observed that it could not help but state in absolute terms that it is not appropriate for the High Courts to entertain writ petitions under Article 226 of the Constitution against an order passed by the National Commission, as a statutory appeal was provided to the Supreme Court under the provisions of the Act of 1986. The Supreme Court further observed that once the legislature provided a statutory appeal to a higher Court, it would not be proper exercise of jurisdiction to permit the parties to bypass such a statutory appeal and entertain petitions in exercise of its powers under Article 226 of the Constitution. The Supreme Court made it clear that an order of the National Commission was incapable of being questioned under writ jurisdiction as a statutory appeal lay to the Supreme Court.

Referring to the aforestated judgments in ***OM PRAKASH SAINI***[1] and ***CICILY KALLARACKAL***[3], a Division Bench of this Court, in ***IVRCL ASSETS & HOLDINGS LIMITED V/s. A.P.STATE***

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[3] (2012) 8 SCC 524
[4] AIR 1988 SC 94

CONSUMER DISPUTES REDRESSAL COMMISSION[5], held that the order passed by the State Commission on a complaint filed before it was not amenable to review in a writ petition. The Division Bench held that the petitioner was not entitled to seek relief under Article 226 of the Constitution, as it had failed to exhaust the statutory and efficacious remedy available under the Act of 1986.

In ***M/S. ANUTEJA CONSTRUCTIONS V/s. APSCDRC, HYDERABAD***[6], a Division Bench of this Court was dealing with writ petitions filed against the orders passed by the State Commission refusing to receive the counter-affidavit and documents filed before it. Referring to precedential law, including ***WHIRLPOOL CORPORATION V/s. REGISTRAR OF TRADE MARKS, MUMBAI***[7], ***NIVEDITA SHARMA***[2] and ***CICILY KALLARACKAL***[3], the Division Bench observed that as an effective alternative statutory remedy was available in the form of an appeal to the National Commission, the writ petitions could not be entertained and dismissed the same.

Now, a look at the case law cited by Sri Vivek Jain, learned counsel:

In ***L.CHANDRA KUMAR V/s. UNION OF INDIA***[8], the Supreme Court held that the power of judicial review vested in the High Court under Article 226 is part of the basic structure of the Constitution and that such power is an integral and essential feature of the Constitution which could neither be ousted nor excluded.

In ***WHIRLPOOL CORPORATION***[7], the Supreme Court observed that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other

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[5] ORDER DATED 20.02.2014 IN W.P.NO.29434 OF 2013
[6] 2016 (6) ALT 90 (D.B.)
[7] (1998) 8 SCC 1
[8] (1997) 3 SCC 261

provision of the Constitution. It was reiterated that this power can be exercised by a High Court not only for issuing writs but also for any other purpose. The Supreme Court pointed out that though High Courts had imposed certain restrictions upon themselves, one of which is that if an effective and efficacious remedy is available the High Courts would not exercise writ jurisdiction, the availability of an alternative remedy would not operate as a bar at least in three contingencies, viz., where the writ petition is filed for enforcement of fundamental rights or where there is violation of the principles of natural justice or where the order or proceeding is wholly without jurisdiction or the *vires* of an Act is challenged. Reference was made to ***STATE OF U.P. V/s. MOHD. NOOH***[9], wherein the Supreme Court had observed that exhaustion of statutory remedies before a writ could be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari is issued in spite of the fact that the aggrieved party had other adequate legal remedies. The Supreme Court noted that much water had flown under the bridge but there had been no corrosive effect on the decisions which, though old, continued to hold the field with the result that law as to the jurisdiction of a High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of alternative statutory remedies, is not affected, especially in a case where the authority against whom the writ petition is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without legal foundation.

In ***M/S. EUREKA ESTATES PVT. LTD. V/s. A.P.STATE CONSUMER DISPUTES REDRESSAL COMMISSION***[10], a Division

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[9] AIR 1958 SC 86
[10] AIR 2005 ANDHRA PRADESH 118

Bench of this Court was dealing with a writ petition arising out of an order passed by the State Commission upon a complaint filed before it. On facts, the Division Bench found that the State Commission had reviewed its earlier order in the guise of hearing a petition 'for being mentioned' and granted more than what could have been granted even in a review petition. The Division Bench observed that exercise of such power in an indirect manner would tantamount to fraud and a colourable exercise of power. Dealing with the issue of maintainability of the writ petition, the Division Bench observed that though it was true that the High Court, in exercise of jurisdiction under Article 226 of the Constitution, may not interfere with every erroneous order where such order has not resulted in causing substantial injustice to the parties, the said principle would not be applicable in a case where an authority usurps jurisdiction and makes an order without any authority of law. This case is therefore distinguishable from the others inasmuch as one of the tests laid down in ***WHIRLPOOL CORPORATION***[7] stands satisfied to the extent that the order was found to be one wholly lacking in jurisdiction.

In ***STATE OF KARNATAKA V/s. VISHWABHARATHI HOUSE BUILDING COOP. SOCIETY***[11], the Supreme Court was dealing with the constitutional validity of the Act of 1986. Observing that a District Forum, a State Commission and the National Commission are not manned by laypersons and that provisions had been made in the Act for appeal to a higher forum, the Supreme Court pointed out that by reason of the provisions of the Act of 1986, the power of judicial review of the High Court, which is a basic feature of the Constitution, has not been nor could be taken away. Referring to the provisions of Section 3 of the Act of 1986, the Supreme Court held

[11] (2003) 2 SCC 412

that it was evident that remedies provided under the Act were not in derogation of those provided under other laws and the Act of 1986 merely supplements and does not supplant the jurisdiction of the civil Courts or other statutory authorities. The Supreme Court further observed that the provisions relating to the right to approach an appellate forum by a party aggrieved by the decisions of a District Forum or a State Commission as also the power of the High Court and the Supreme Court under Articles 226/227 and Article 32 of the Constitution provided adequate safeguards. Sri Vivek Jain, learned counsel, would lay heavy stress upon this judgment and assert that the power of this Court to entertain writ petitions in matters arising out of the Act of 1986 was recognized and validated therein by the Supreme Court.

He would lastly rely upon a Division Bench judgment of the Karnataka High Court in ***SMT. O.K.DEVAKI V/s. M/S. STANDARD CHARTERED BANK***[12]. This was a case where a complaint was made to a District Forum at Bangalore which was allowed and the opposite party preferred an appeal before the Karnataka State Commission, which came to be disposed of by it setting aside the order and remanding the matter to the said District Forum. The said District Forum thereupon took a contrary view and rejected the claim of the complainants. On appeal, the State Commission dismissed the complainants' appeal. Aggrieved thereby, they filed a writ petition before the Karnataka High Court. Observing that the petitioners, no doubt, had the statutory remedy of preferring a revision before the National Commission under Section 21(b) against the impugned order, the High Court opined that the moot question was with regard to the competence and jurisdiction for interference. The High Court

[12] ILR 2008 KAR 3395

further observed that it would not be proper for it to throw out the petitioners at the threshold on the ground of availability of an alternative efficacious statutory remedy. Referring to ***MOHD. NOOH***[9] and other case law, the Karnataka High Court opined that revisional jurisdiction was narrower and limited whereas the scope in a petition filed under Article 226 of the Constitution would not only be wider but also larger, as many questions could be considered and decided so as to do complete justice between the parties.

We have given earnest consideration to the rival submissions made before us and the various judgments relied upon by both sides. The practice of non-suiting a writ petitioner on the ground of availability of an efficacious alternative statutory remedy is a self-imposed rule of restraint. However, this rule must also be exercised with consistency and on judicious lines. There can be no hard and fast or straitjacket parameters as to when a writ petitioner should be non-suited by applying this rule and when it should be relaxed. It would have to depend on the individual facts of each case. Parameters in this regard have already been delineated to some extent in ***WHIRLPOOL CORPORATION***[7]. There can be no doubt that when there is violation of a fundamental right or of principles of natural justice or where an authority has acted wholly without jurisdiction, a writ petitioner would not be relegated to a statutory remedy by refusal of the High Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution. In so far as the Act of 1986 is concerned, the Supreme Court has time and again pointed out that it is a special enactment formulated with the best interests of consumers at heart, providing special machinery to expedite the adjudicatory processes on their complaints. In the light of the hierarchy of remedies provided thereunder, the Supreme Court

has consistently held that writ jurisdiction would not be the answer for aggrieved parties. So much so that, in ***CICILY KALLARACKAL***[3], the Supreme Court went to the extent of putting it in absolute terms that it would not be appropriate for the High Court to entertain writ petitions under Article 226 of the Constitution against orders passed by the National Commission. The same analogy would be applicable to orders passed by the State Commission which can be subjected to appeal or revision before the National Commission. No doubt, even under the Act of 1986 if an order is passed wholly without jurisdiction or by usurping jurisdiction, this Court would not hesitate to entertain a writ petition. The opinion expressed by the Karnataka High Court in ***SMT. O.K.DEVAKI***[12] was in the context of the revisionary jurisdiction of the National Commission under Section 21(b) of the Act of 1986. Those observations may have no relevance in the present case where the orders passed by the State Commission would be amenable to the appellate jurisdiction of the National Commission under Section 21(a). Needless to state, the remedy of appeal would be far wider in its reach and ambit as compared to a revision or a writ petition. Further, the appellate authority would be in a position to undertake adjudication on factual aspects which would normally not be within the province of this Court while exercising writ jurisdiction.

Presently, Sri Vivek Jain, learned counsel, would contend that the District Forum and the State Commission exceeded their jurisdiction while dealing with the execution proceedings arising out of the consumer cases and therefore, exercise of writ jurisdiction would not be barred. The crucial aspect, however, is that the learned counsel himself admits that this is not a case of an order being passed without jurisdiction or by usurping jurisdiction but, allegedly,

in excess of jurisdiction. If that be so, the orders cannot be said to be wholly illegal for want of jurisdiction warranting entertainment of these writ petitions. An order, if passed in excess of jurisdiction, would be amenable to effective review in appeal and it would be wholly unnecessary for this Court to permit the writ petitioners to circumvent that statutory remedy and approach this Court.

Though we fully appreciate the earnestness and perseverance shown by Sri Vivek Jain, learned counsel, in espousing the cause of the petitioners, we must hold that these writ petitions cannot be entertained in the light of the efficacious alternative remedy of appeal provided under Section 21(a) of the Act of 1986.

We therefore dismiss the writ petitions relegating the petitioners to the statutory remedy in accordance with law. Interim order dated 18.11.2016 passed in W.P.No.39001 of 2016 and individual interim orders dated 23.01.2017 passed in W.P.Nos.39002, 39003 and 39025 of 2016 shall stand vacated.

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

SANJAY KUMAR, J

N.BALAYOGI, J

16th MARCH, 2017

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