

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No.1162 of 2019
Kotak Mahindra Bank Ltd. Vs. Naim s/o Hamid Khan

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Y.R. Sonkusare, Advocate for the petitioner
Mr. Abhijit Deshpande, Advocate for the respondent

CORAM : MANISH PITALE, J.

DATED : FEBRUARY 04, 2020

By this writ petition, the petitioner has challenged order dated 22/08/2017, passed by the State Consumer Dispute Redressal Commission, Maharashtra, whereby appeal filed by the petitioner was dismissed in default. The impugned order dated 22/08/2017, was challenged by filing this writ petition on 08/02/2019, i.e. more than 1½ years after the impugned order was passed.

2. Before the writ petition could be taken up for hearing on merits, a preliminary objection was raised on behalf of the respondent contending that the petitioner had an alternative efficacious remedy in the form of filing Revision Application before the National Consumer Redressal Commission under Section 21(b) of the Consumer Protection Act, 1986. On this basis, it was submitted that the writ petition deserved to be dismissed at the threshold.

3. The learned counsel appearing for the petitioner submitted that even if the remedy of filing Revision Application under Section 21(b) of the said Act was available for the petitioner, this Court could certainly entertained the writ petition, as was done on earlier occasions by this Court. It was submitted that the facts and circumstances of the present case demonstrate that this Court ought to exercise writ jurisdiction so as to interfere with the impugned order passed by the State Consumer Commission.

4. On the other hand, the learned counsel appearing for the respondent relied upon the judgments of the Hon'ble Supreme Court and this Court to contend that even if a writ petition was to be entertained despite existence of an alternative efficacious remedy, certain special circumstances were required to be demonstrated. According to the learned counsel for the respondent no such circumstances exist in the present case. It was further pointed out that the petitioner had in fact approached the National Dispute Redressal Commission by invoking revisional jurisdiction under Section 21(b) of the said Act on two earlier occasions in the same proceeding and, therefore, it could not lie in the mouth of the petitioner that on this occasion, while challenging the impugned order passed by the State Commission after considerable delay of 1½ years, writ jurisdiction could

be invoked for seeking relief as against the impugned order passed by the State Commission.

5. This Court deems it necessary to consider the serious objection with regard to maintainability of the writ petition raised on behalf of the respondent. Section 21(b) of the aforesaid Act was taken into consideration by this Court in the case of **Wasan Automotive Pvt. Ltd., Mumbai and another Vs. Subhash Rajaram Vande 2019(4) Mh.L.J. 776** and after quoting the provisions it was held as follows :

“11. The other ground raised on behalf of the petitioners while insisting that there is no alternative remedy in the form of Revision Petition under section 21(b) of the aforesaid Act before the National Commission, is based on an assertion that a Revision Petition would be maintainable only against an order passed by the State Commission while disposing of an appeal on merits and not against an order dismissing an appeal in default. Section 21(b) of the said Act reads as follows :

“Section 21. Jurisdiction of the National Commission :

(a)

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.”

12. A perusal of the said provision nowhere indicates that a Revision Petition would be maintainable before the National Commission only against orders passed by the State Commission disposing of appeals on merits. Even an order passed by the State Commission dismissing an appeal in default could very well be made subject matter of challenge in a Revision Petition before the National Commission. The learned Counsel for the petitioners was unable to support the said contention raised on behalf of the petitioners. In this situation, the learned Counsel for the petitioners referred to and relied upon a number of judgments to contend that Writ Petitions in similar circumstances had been entertained by this Court and that therefore, the present Writ Petition filed by the petitioners was maintainable.

15. Thus, it becomes clear that although alternative remedy, in the form of section 21(b) of the aforesaid Act, was available to the petitioners in the present case, they chose to file the present Writ Petition. It could be entertained by this Court, if the petitioners also are able to demonstrate certain special facts and circumstances for exercise of writ jurisdiction. The learned Counsel for the respondent has insisted that the Writ Petition could be entertained by this Court despite availability of alternative remedy, only in the three contingencies referred to by him. In this context, the learned Counsel relied upon judgment of the Hon'ble Supreme Court in the case of *Harbanslal Sahnia and another Vs. Indian Oil Corpn. Ltd. and others*, (2003) 2 SCC 107. But, a perusal of paragraph 7 of the said judgment shows that the Hon'ble Supreme Court has laid down that the High Court may exercise writ jurisdiction despite availability of

alternative remedy in at least three contingencies. Thereafter, the Hon'ble Supreme Court has stated three contingencies that are referred to and relied upon by the learned Counsel for the respondents. But, the use of the words "at least three contingencies", shows that there could be other circumstances also wherein writ jurisdiction could be exercised by the High Court. In this context, the judgment relied upon by the learned Counsel for the respondent in the case of *Commissioner of Income Tax and others Vs. Chhabil Dass Agrawal*, reported at 2013 MhLJ Online (S.C.) 88 = (2014) 1 SCC 603 becomes relevant.

16. Therefore, it becomes clear that the High Court not entertaining a Writ Petition when an alternative remedy is available, is a rule of self imposed limitation, being more a rule of prudence and policy, rather than being a rule of law. The High Court has discretion to exercise writ jurisdiction even when an alternative remedy is available to the petitioners. But such discretion could be exercised in favour of the petitioners, if they are able to make out an exceptional case showing that special facts and circumstances existed for exercise of such jurisdiction."

6. The learned counsel for the respondent was also justified in relying upon judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of **Thansingh Nathmal Vs. The Superintendent of Taxes, Dhubri and others** AIR 1964 SC 1419 and also judgment in the case of **ITI Ltd. Vs. Siemens Public Communications Network Ltd.** (2002) 5 SCC 510. The position of law that emerges from the aforesaid

judgments is that when an alternative efficacious remedy is available to the petitioner, the writ Court would not entertain the petition. There are exceptions to the said Rule, including the three contingencies noted in the case of **Harbanslal Sahnia and another Vs. Indian Oil Corpn. Ltd. and others (2003) 2 SCC 107**, which are (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice ; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. It is an admitted position that the present writ petition filed by the petitioner does not fall in any of the aforesaid three contingencies. Apart from the said three contingencies laid down by the Hon'ble Supreme Court, as noted in the case of **Wasan Automotive Pvt. Ltd., Mumbai and another Vs. Subhash Rajaram Vande** (supra), there could be special circumstances in which the writ Court may entertain the writ petition despite availability of alternative efficacious remedy. In fact, in the said case, this Court after taking note of availability of alternative efficacious remedy in the form of revision petition before the National Commission under Section 21(b) of the said Act, did entertain the writ petition to pass appropriate orders. The special and peculiar facts and circumstances of that case were taken note of by this Court while entertaining the writ petition.

7. In this backdrop, the learned counsel

appearing for the petitioner was asked as to what would be the special circumstances justifying entertaining the present writ petition. The learned counsel appearing for the petitioner emphasised on the fact that in the present case also special facts and circumstances exist, because an order passed by the District Consumer Forum to proceed *ex-parte* against the petitioner had been challenged by filing a Revision Petition before the State Commission, but, later the original complaint itself stood decided in favour of the respondent and the same was made subject matter of challenge in appeal before the State Commission. It was submitted that by the impugned order, the appeal was dismissed in default and the contentions of the petitioner were not considered on merits at any stage. According to the learned counsel for the petitioner, despite this situation, the petitioner had made all endeavours to comply with the conditions imposed while passing interim order by the State Commission, as modified by the National Commission and yet, the petitioner was not heard on merits when the appeal stood dismissed by the impugned order.

8. A perusal of the material on record shows that the situation in which the petitioner finds itself is because of its own actions and the petitioner cannot blame either the District Forum or State Commission in the facts and circumstances of the present case. It is not as if the petitioner was deprived of opportunities to

seek redressal of his grievance and, therefore, this Court does not find any special facts and circumstances to justify exercise of writ jurisdiction.

9. The record shows that when the impugned order was passed by the State Consumer Commission, it was the fourth occasion on which none had appeared for the petitioner and that the appeal was kept at the end of board. It was only when none appeared for the petitioner even on second call at the end of board that the State Commission was constrained to dismiss the appeal in default. The question is, whether it can lie in the mouth of a party like the petitioner herein to contend that it had suffered violation of principles of natural justice to claim that special circumstances exist for the writ petition to be entertained, despite availability of alternative efficacious remedy in the form of revision petition before the National Consumer Redressal Commission under Section 21(b) of the said Act. The facts and circumstances of the present case demonstrate that the writ petition filed by the petitioner cannot be entertained and no such circumstances have been demonstrated by the petitioner. The facts and circumstances of the present case are clearly distinguishable from the facts in the case of **Wasan Automotive Pvt. Ltd., Mumbai and another Vs. Subhash Rajaram Vande** (supra) and the judgment of this Court in the case of **Ashwin s/o Karunashankar Chaurasia Vs. Amrut S. Dhanwatey in**

Writ Petition No.2123 of 2018, decided on 15/03/2019.

10. It is also relevant that petitioner had earlier also invoked revisional jurisdiction of the National Consumer Commission during pendency of appeal before the State Consumer Commission.

11. In view of above, this Court found that the present writ petition cannot be entertained as it is not maintainable in the face of availability of alternative efficacious remedy to the petitioner. Accordingly, the writ petition is dismissed.

12. Needless to say, the petitioner would be at liberty to invoke alternative remedy available to it under Section 21(b) of the aforesaid Act, in accordance with law.

JUDGE