

S/L 5
18.01.2021
Court. No. 19
GB

C.O. 1231 of 2020
With
CAN 1 of 2020

Smt. Zoe Chakraborty Nee Talukdar
Vs.
Harihar Senapati & Ors.

(Through Video Conference)

*Mr. Aniruddha Chatterjee,
Mr. Tanmoy Mukherjee,
Mr. Arindam Ghosh,
Mr. Souvik Ghosh.*

...for the Petitioner.

*Mr. Debanik Banerjee,
Mr. Nazmut Touhid.*

...for the Opposite Party Nos.1 & 2.

The dispute arises out of a challenge to the jurisdiction of the District Forum in entertaining the complaint case filed by the opposite party nos.1 and 2. The petitioner, who is the opposite party no.5 (a) in the complaint case, has filed this application. Service upon the other opposite parties in the complaint case is dispensed with as the complainants/opposite party Nos.1 and 2 are represented.

This revisional application arises out of Complaint Case No.655 of 2018 pending before the learned District Consumer Disputes Redressal Forum, District 24 Parganas (South) at Alipore.

The petitioner filed an application under Section 26 of the Consumer Protection Act, 1986 (hereinafter referred to

as the 'said Act') for rejection of the complaint case. The primary challenge in the said application was that the learned Forum did not have the pecuniary jurisdiction to entertain the complaint case as the complaint case had been undervalued and the State Commission would have jurisdiction to entertain the same. It was the case of the petitioner that the registered agreement for sale, which was sought to be enforced before the learned District Forum itself, would reflect that the registered value of the property was 31,04,400/- and stamp duty was paid on the said amount. Thus, according to the petitioner as the aggregate value of the reliefs claimed should be above 20 lakhs if the complaint was properly valued, the learned District Forum would not have jurisdiction to entertain the complaint. The learned District Forum rejected such application and aggrieved by the said rejection the petitioner filed a revision before the learned State Commission. The learned State Commission rejected the revisional application, inter alia, holding that there was no specific provision as to how a complaint should be valued for the purpose of jurisdiction. Although, the learned Commission has referred to certain decisions wherein it has been held that determination of pecuniary jurisdiction in respect of a dispute regarding service relating to housing would include the value of the property as a whole, as well as the compensation demanded in the complaint, yet the learned Commission rejected the revisional application by accepting the valuation made by the

complainant in paragraph 27 of the complaint without addressing the point raised by the petitioner that the complainant was undervalued for the purposes of jurisdiction of the District Forum.

Hence this revisional application has been filed by the petitioner aggrieved by the order dated March 11, 2020, passed in Revision Petition No. RP/138/2019.

Mr. Banerjee, learned advocate appears on behalf of the opposite party nos.1 and 2, who are the principal opposite parties in this proceeding. Mr. Banerjee, submits that the revisional application is not maintainable and an appeal would lie before the National Commission in terms of the decision of the Hon'ble Apex Court in the matter of ***Shiur Sakhar Karkhana Pvt. Ltd. Versus State Bank of India***, reported in ***2019 SCC OnLine SC 1768***. According to him the jurisdiction of the National Commission as provided for under Section 21 of the said Act, included hearing of an appeal from all orders including the order impugned before this Court and as such the revisional application should not be entertained.

Mr. Chatterjee, learned advocate appearing on behalf of the petitioner relies on a decision of this Court in the matter of ***Gailwell Enterprises Pvt. Ltd. and Anr. Versus Ahsoke Kumar Agarwal and Ors.*** and submits that the jurisdiction of the High Court under Article 227 of the Constitution of India cannot be scuttled on the ground that an alternative remedy by way of appeal is available

under the Statute. Paragraph 6 of the decision deals with the powers of the High Court to entertain an application or like nature when there is an error apparent on the face of record or refusal on the part of the State Commission to exercise jurisdiction. The relevant paragraphs are quoted below:

“6. On meaningful reading of the aforesaid provisions, the National Commission is vested with the jurisdiction to entertain the complaints where the value of the goods of services and compensation exceeds Rs.1 Crore and the appeals against the order of any State Commission. The National Commission is further vested with the power to call for the records and passed appropriate orders in a pending or disposed of proceeding before the State Commission if it appears that the State Commission has exercised jurisdiction not vested in it by law or failed to exercise jurisdiction so vested or have acted illegally or with material irregularity. Even if, it is conceived that the National Commission has jurisdiction and competence to decide and entertain, a proceeding initiated against the order of the State Commission, whether it necessarily implies the exclusion of the power of superintendence of the High Court under Article 227 of the Constitution of India. In Waryam Singh and another –vs- Amarnath and another report in MANU/SC/0121/1954 : AIR 1954 SC 215, the Supreme Court traced the genesis of the power of superintendence of the High Court under Article 227 of the Constitution and held that it can be exercised both administratively and judicially. In Achutananda Baidya –vs- Prafulla Kumar Gayen & others reported in MANU/SC/0498/1997 : (1997) 5 SCC 76, the Supreme Court held that the High Court can interfere under Article 227 of the Constitution in case of erroneous assumption or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record and distinguished from a mere

mistake of law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure arriving at a finding which is perverse or based on no material or resulting in manifest injustice.

7. It admits no quarrel that the power of superintendence should not be exercised by the High Court as an Appellate Court to correct a wrong or erroneous decision unless it is referable to a grave dereliction of duty and flagrant abuse of the power by the Subordinate Court or Tribunal resulting in grave injustice to the party [See *Ouseph Mathai and Others –vs- M Abdul Khadir* reported in MANU/SC/0718/2001 : (2002) 1 SCC 319]. In a decision rendered by the Supreme Court in case of *State of New Delhi-vs-Navjot Sadhu & Ors.* reported in MANU/SC/0396/2003 : (2003) 6 SCC 641, it is held:

28. Thus, the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However, the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and

only to keep subordinate courts and tribunals within the bounds of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised “as the cloak of an appeal in disguise.

8.

9. *The power of superintendence as deducible from the above noted judgment is wide and discretionary in nature and to be exercised in advancement to secure the ends of justice and uproot injustice. There cannot be a straight jacket principle to exercise the power of superintendence by the High Court under Article 227 of the Constitution over the Subordinate Court or the Tribunal as it is meant for advancement to secure justice.*

10. *On the above board principles as enunciated in the above reports, let me consider whether the judgment of the State Commission which has a trapping of a Court of Tribunal is amenable to be interfered with.”*

Considering the provisions of Section 19 read with Section 21 of the said Act, I am of the view that for the reasons aforesaid, the revisional application is maintainable before this Court as the order of the learned Commission suffers from error apparent on the face of record as also refusal on the part of the State Commission to exercise jurisdiction by applying the settled principles of law with regard to the role of an adjudicating body in dealing with

objections as to valuation of suits and the exercise to be undertaken by a Court or an authority or Forum while deciding such a dispute, regarding valuation and payment of court fees. The order impugned suffers from serious contradictions. Moreover the decision of the Hon'ble Apex Court does not apply in this case, inasmuch as, the order of the State Commission in the case before the Apex Court was passed in an appeal and not in a revision petition.

In my opinion, when the petitioner had raised a point with regard to under valuation of the complaint for the purposes of jurisdiction of the District Forum, both fora ought to have applied the principles laid down by the National Commission with regard to the valuation of goods and services and compensation claimed while dealing with the application filed by the petitioner. Sections 12, 13 and 14 of the said Act deal with the manner in which a complaint shall be made, and the procedure to be followed upon admission of the complaint upto the final adjudication by the District Forum. Section 18 of the said Act makes all these provisions applicable in case of the State Commission. The provisions of Section 12(3) of the said Act as also the provisos thereto empower the District Forum to consider the admissibility of a complaint and either reject or allow the same and proceed thereon with the hearing if the complaint is admissible. This exercise should have been done in true letter and spirit. Just as a Civil Court is required to make an enquiry with regard to the valuation of suits under the

relevant laws, similarly the District Forum and the State Commission also ought to have exercised their jurisdiction to determine the valuation on the basis of the records in view of the challenge thrown in this regard.

In this case, the petitioner filed an application for rejection of the complaint on the ground of under valuation and consequential lack of pecuniary jurisdiction of the learned District Forum. Reliance was placed on the registered deed of sale which the complainants sought to enforce in order to agitate before the learned Forum that the petition of complaint ought to have been valued above 20 lakhs as the price of the property itself as per the registered document was more than 31 lakhs. The District Forum without applying the procedure to be followed in cases of challenges to valuation of a suit, rejected the application filed by the petitioner and the learned Commission did not deal with the challenge raised by the petitioner with regard to the valuation and rejected the revision with cost inter alia, holding that the District Forum had rightly held that it had jurisdiction, on a bare reading of the valuation statement made in the complaint which itself was challenged by the petitioner.

In my opinion, both the fora failed to exercise their jurisdiction by not applying the law with regard to the procedure to be adopted by an adjudicating body in case of under valuation. Both the fora ought to have probed deeper into the issue with reference to the pleadings, reliefs and the

registered sale deed by taking into consideration the specific contention of the petitioner and the decisions as to valuation of complaints of like nature.

Under such circumstances, the orders impugned are set aside and quashed.

The learned District Forum is directed to hear out the application under Section 26 filed by the petitioner afresh, upon giving an opportunity to all the parties to contest the same. The learned Forum will not be influenced by the order of the learned State Commission.

I do not agree with Mr. Chatterjee on his submission that the complaint should be rejected as it was undervalued. In view of the provisions of Order VII, Rule 10 of the Code of Civil Procedure, the complaint can always be returned if found to be undervalued for presentation before the proper forum. This Court has not gone into the merits of the contention of the petitioner and the learned District Forum will decide the issue as to whether the complaint was undervalued or not and pass appropriate orders and directions in accordance with law.

The revisional application is disposed of.

There will be, however, no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)