

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 473 OF 2019

Vishwa Travels and Courier,
Through Sunil Bapurao Deshpande
R/o; Udyog Bhawan, Shivaji Nagar,
Latur.

...Applicant

VERSUS

Amazing Software Agencies,
Through Sameer Ganpati Padwal,
Age; 36 years, Occ; Business,
R/o; F-41, MIDC Latur

...Respondent.

...
Advocate for Applicant : Mr. (Dr.) R.R. Deshpande h/f Mrs. Priyanka
R. Deshpande
Advocate for Respondent : Mr. S.S. Halkude
...

CORAM : SURENDRA P.TAVADE , J.

Date of Reservation : 23th September, 2021.
Date of Pronouncement : 01st October, 2021

JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of learned counsel for both the parties, heard finally at the admission stage.

2. The applicant is challenging the order passed by the District Consumer Disputes Redressal Forum at Latur (for short "District Forum") in Second Darkhast No. 88 of 2016 dated 13.12.2018.

3. It is contended that the respondent had filed a Consumer Complaint No. 92 of 2008 against the applicant before the District Forum. The said complaint was allowed on 29.12.2006. The applicant was directed to pay Rs. 30,000/- to the respondent with interest @ 9% p.a. and he also directed to pay Rs. 3,000/- and 2,000/- towards compensation for mental agony and costs respectively. It is contended that both the parties have preferred First Appeal Nos. 1111 of 2008 and 1224 of 2008 respectively, against the order passed by the District Forum before the State Commission. The said appeals came to be dismissed on 25.04.2011 and 05.09.2013 respectively by the State Commission.

4. It is contended that the respondent had filed Regular Darkhast No. 140 of 2008 on 15.12.2008. The said darkhast was dismissed by the District Forum on 15.12.2015. The respondent has filed second Darkhast bearing No. 88 of 2016 at District Forum under Section 27 of the Consumer Protection Act (for short the "Act"). In pursuance of second Darkhast, the District Forum had issued

process against the applicant for the offence punishable under Section 27-A of the Act.

5. The applicant appeared before the District Forum and his plea was recorded. The respondent filed affidavit and the proceeding was kept for cross-examination of the respondent. The applicant submitted an application before the District Forum and raised various legal objections pertaining to the maintainability of the Regular Darkhast No. 88 of 2016, being barred by the limitation, as well as on the ground that earlier Regular Dstkhasht No. 140 of 2008 has been already dismissed in default on 15.12.2015. The applicant raised contention that the earlier Darkhast was dismissed in default. Therefore, the applicant was acquitted in view of the provisions of Section 256 of the Code of Criminal Procedure (for short "Cr.P.C."), therefore, the second Darkhast is not maintainable. It is contended that the District Forum though had appreciated point raised by the applicant but shown its inability vide paragraphs Nos. 18, 19, 20 and 21 of the impugned order, to allow the application filed by the applicant, on the ground that the District Forum has no powers to review its own order. Hence the applicant has filed the present application to quash the judgment and orders passed by the District Forum in R.D. No. 88 of 2016. In addition to the above facts the applicant has also prayed that he has paid the entire amount of

compensation to the respondent, therefore, nothing is now payable to the respondent. Hence it is prayed that R.D. No. 88 of 2016 filed by the respondent before the District Forum be dismissed.

6. The learned counsel for the respondent submitted that the first Darkhast was dismissed in default, therefore, the respondent is entitled to file second Darkhast. Accordingly second Regular Darkhast bearing No. 88 of 2016 was filed by the respondent. The District Forum has rightly taken cognizance of the same. It is contended that the dismissal of the earlier Regular Darkhast has no effect of acquittal under Section 256 of the Cr.P.C. It is contended that there is no bar of limitation to file the second Darkhast. It is contended that the impugned order passed by the District Forum is under Section 27 of the Act, therefore, it is appealable before the State Commission, hence the present application is not maintainable. It is contended that there is dispute regarding the payment of fine amount by the applicant. The applicant is still liable to pay some amount towards the compensation, therefore, the second Darkhast is maintainable. There is no need to interfere with Second Darkhast, hence it is prayed that application be dismissed.

7. Heard the learned counsel for the applicant and the learned Counsel for the Respondent.

8. Learned counsel for the respondent submits that the applicant has efficacious remedy to challenge the impugned order by preferring the appeal before the State Commission. He also submits that when an alternative remedy is available then writ under Article 226 and 227 of the Constitution of India and the application under Section 482 of the Code of Criminal Procedure is not maintainable.

9. On the other hand, learned counsel for the applicant submits that the applicant has challenged the impugned order under Section 482 of the Cr.P.C. He submits that under the inherent jurisdiction the impugned order can be challenged. He relied on the ratio laid down in the case of **M/s. Magadh Sugar & Energy Ltd Vs. The State of Bihar & Ors. - Civil Appeal 5728 of 2021**, wherein the Apex Court held that,

“19 While a High Court would normally not exercise its writ jurisdiction under Article 226 of the Constitution if an effective and efficacious alternate remedy is available, the existence of an alternate remedy does not by itself bar the High Court from exercising its jurisdiction in certain contingencies. This principle has been crystallized by this Court in *Whirpool Corporation v. Registrar of Trademarks, Mumbai* and *Harbanslal Sahni V. Indian Oil Corporation Ltd.*, Recently, in *Radha Kishan Industries Vs. State of Himachal*

Padesh & Ors. a two judge Bench of this Court of which one of us was a part of (Justice DY Chandrachud) has summarized the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy. This Court has observed:

“28. The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged; (iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

(emphasis supplied)

The principle of alternate remedies and its exceptions was also reiterated recently in the decision in Assistant Commissioner of State Tax V. M/s Commercial Steel Limited. In State of HP v. Gujarat Ambuja Cement Ltd. this Court has held that a writ petition is maintainable before the High Court if the taxing authorities have acted beyond the scope of their jurisdiction. This Court observed:

“23. Where under a statute there is an allegation of infringement of fundamental rights or when on the undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess can be the grounds on which the writ petitions can be entertained. But normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute. It was noted by this Court in *L. Hirday Narain v. ITO* [(1970) 2 SCC 355: AIR 1971 SC 33] that if the High Court had entertained a petition despite availability of alternative remedy and heard the parties on merits it would be ordinarily unjustifiable for the High Court to dismiss the same on the ground of non-exhaustion of statutory remedies; unless the High Court finds that factual

disputes are involved and it would not be desirable to deal with them in a writ petition.”

The above principle was reiterated by a three-judge Bench of this Court in *Executive Engineer v. Seetaram Rice Mill*. In that case, a show cause notice/provisional assessment order was issued to the assessee on the ground of an unauthorized use of electricity under Section 126 (1) of the Electricity Act 2003 and a demand for payment of electricity charges was raised. The assessee contended that Section 126 was not applicable to it and challenged the jurisdiction of the taxing authorities to issue such a notice, before the High Court in its writ jurisdiction. The High Court entertained the writ petition. When the judgment of the High Court was appealed before this Court, it held that the High Court did not commit any error in exercising its jurisdiction in respect of the challenge raised on the jurisdiction of the revenue authorities. This Court made the following observations:

“81. Should the courts determine on merits of the case or should they preferably answer the preliminary issue or jurisdictional issue arising in the facts of the case and remit the matter for consideration on merits by the competent authority? Again, it is somewhat difficult to state with absolute clarity any principle governing such exercise of jurisdiction. It always will depend upon the facts of a given case. We are of the considered view that

interest of administration of justice shall be better sub served if the cases of the present kind are heard by the courts only where they involve primary questions of jurisdiction or the matters which go to the very root of jurisdiction and where the authorities have acted beyond the provisions of the Act.

82. It is argued and to some extent correctly that the High Court should not decline to exercise its jurisdiction merely for the reason that there is a statutory alternative remedy available even when the case falls in the above stated class of cases. It is a settled principle that the courts/tribunal will not exercise jurisdiction in futility. The law will not itself attempt to do an act which would be vain, *lex nil frustra facit*, nor to enforce one which would be frivolous—*lex neminem cogit ad vana seu inutilia*—the law will not force anyone to do a thing vain and fruitless. In other words, if exercise of jurisdiction by the tribunal *ex facie* appears to be an exercise of jurisdiction in futility for any of the stated reasons, then it will be permissible for the High Court to interfere in exercise of its jurisdiction. This issue is no longer *res integra* and has been settled by a catena of judgments of this Court, which we find entirely unnecessary to refer to in detail...”

(emphasis supplied) ”

10. In the present case the applicant has filed a criminal application under Section 482 of the Cr.P.C. The impugned order is not challenged by way of writ with the aid of article 226 of the Constitution of India. The impugned order was passed by the District Forum under Section 27 of the Act. The impugned order can be challenged by way of appeal before the State Forum under Section 27-A of the Protection Act. The Clause (v) laid down in the case of

Radha Kishan Industries Vs. State of Himachal Pradesh & Ors.

(Supra) is applicable to the facts of this case.

11. Learned counsel for the applicant submitted that the original Darkhast No. 140 of 2008 was filed on 15.12.2008 and it was dismissed on 15.12.2015, therefore, the second Darkhast bearing No. 88 of 2016 is barred by the limitation. He submitted that the offences under the Act are triable by summary procedure, therefore the District Forum can impose punishment up to 3 months only as per the provisions of Section 262 of the Cr.P.C. He further submitted that as per Section 468 of the Cr.P.C. the complaint has to be filed within time. He submitted that the order was passed by the District Forum on 29.08.2008, therefore, the second Darkhast is not within the limitation. On the other hand, the learned counsel for the respondent submitted that the complaint was dismissed in default. Therefore, fresh complaint on the same facts is maintainable. To substantiate his point he relied on the ratio laid down in the **Jatinder Singh and Others Vs. Ranjit Kaur reported in (2001) 2 Supreme Court Cases 570** wherein, the Apex Court held that

“If the dismissal of the complaint was not on merit but on default of the complainant to be present, there is no bar in the complainant moving the Magistrate again with a second complaint on the same facts. But if the dismissal of the complaint under Section 203 of the Code

was on merits the position could be different.”

12. In the present case the Regular Darkhast No. 140 of 2008 was dismissed in default and it was not decided on merit, therefore, as per the ratio laid down in the cited case **Jatinder Singh and Others** (supra) a complaint can be filed afresh on the same facts, Therefore, the submission on behalf of the applicant has no merit.

13. Learned counsel for the respondent submitted that there is no limitation for filing Darkhast to execute the order of the District Forum. To substantiate his point he relied on the ratio laid down in the case of **Prem Chandra Varshney Vs. Murarilal Sharma & Ors., - VI (2007) CPJ 229 (NC)**, wherein, it is held that

“No bar to file simultaneously execution application under Section 25 and 27 of the Consumer Protection Act. No limitation for filing the execution provided under the Act.”

It is further held that,

“Execution of Civil order or decree the period of limitation is 12 years, but no limitation is applicable for filing execution under the Consumer Protection Act.”

14. Therefore, there is no bar to entertain the second execution. The respondent has filed second execution No. 88 of 2016

after dismissal of earlier Regular Darkhast No. 140 of 2008, therefore, the Second Darkhast is permissible.

15. To appreciate the facts, I would like to reproduce the provisions of **Section 27-A of the Consumer Protection Act, 1986** as follows :

“27-A. Appeal against order passed under Section 27 ---

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal under Section 27, both on facts and on law, shall lie from –

a) the order made by the District Forum to the State Commission;

b) the order made by the State Commission to the National Commission; and

c) the order made by the National Commission to the Supreme Court;

2) Except as aforesaid, no appeal shall lie to any Court from any order of a District Forum or a State Commission or the National Commission.

3) Every appeal under this Section shall be preferred within a period of thirty days from the date of an order of a District Forum or a State Commission or, as the case may be, the National Commission;

Provided that the State Commission or the National Commission or the Supreme Court, as the case may be, may entertain an appeal after the expiry of the said period of thirty days, if, is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.)”

16. The impugned order is passed by the District Forum under Section 27 of the Act, therefore, as per Sub Section 1 (a) and under Section 27-A of the Act, an appeal lies before the State Commission. Therefore, the impugned order should have been challenged before the State Commission. The ratio relied on by the applicant in the case of **M/s. Magadh Sugar & Energy Ltd** (supra) is not applicable to the present case.

17. Learned counsel for the respondent relied on the ratio laid down in the case of **The President Vs. Smt. Shantamma w/o Manoharappa** in Writ Petition No. 70206 of 2012 (GM-CON) decided on **2nd August, 2013**, wherein the orders of the District Forum was challenged by way of Writ Petition under Section 226 and 227 of the Constitution Act, wherein, it is held that

“6. In a Writ Petition filed under Articles 226 and 227 of the Constitution of India, this Court in exercise of its supervisory jurisdiction cannot interfere with the impugned order passed by the District Forum.”

It is further held that,

“8. Under Section 482 of the Cr.P.C., this Court can pass orders as may be necessary to give effect to provisions of Criminal Procedure Code or to prevent abuse of process of Court or otherwise to secure the ends of justice. Therefore, this Court cannot exercise its powers under articles 226 and 227 of the Constitution of

India or under Section 482 of Cr.P.C., to examine legality or otherwise of the impugned order passed by the District Forum.”

18. In view of the above discussion, and on going through the case-laws cited by the parties, I am of the opinion that the impugned order passed by the District Forum needs no interference. The second execution proceedings is permissible under the Consumer Protection Act. Therefore, there is no need to interfere with the order of the District Forum. Therefore, I pass the following order :

ORDER

- (i). Application is dismissed.
- (ii). Rule discharged.

**(SURENDRA P.TAVADE)
JUDGE**