

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment pronounced on: 28th January, 2021

+ CM(M) 410/2020

GREENPOLIS WELFARE ASSOCIATION ... Petitioner
versus

M/S. ORRIS INFRASTRUCTURE PRIVATE
LIMITED & ANR. Respondents

+ CM(M) 411/2020

GREENPOLIS WELFARE ASSOCIATION ... Petitioner
versus

M/S. ORRIS INFRASTRUCTURE PRIVATE
LIMITED & ANR. Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. Piyush Singh with Mr. Akshay Srivastava, Advocates.

For the Respondent : Mr. Vaibhav Gaggar with Sumedha Dang, Advocates for
respondent No.1.

Mr. Dhananjai Jain, Advocate for respondent No.2

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Petitioner has approached this Court under Article 227 of the Constitution of India seeking a direction to the National Consumer Disputes Redressal Commission (hereinafter referred to as the National Commission) to expeditiously dispose of the complaints, filed by the petitioner, which have been pending for over two years.

2. It is contended that repeated adjournments have been given by the National Commission to the respondents to file written statements/written submissions, which has led to delay in disposal of the petitions.

3. Petitioner has prayed that direction be issued to the National Commission for early time bound disposal of the complaints and not to grant any further adjournment at the request of either of the parties.

4. Learned counsel appearing for respondents has raised a preliminary objection with regard to the maintainability of the petitions.

5. It is contended by learned counsel appearing for the respondents that as the subject petitions seek directions with regard to proceedings emanating from original complaints filed before the National Commission, and all orders of the National Commission passed in exercise of its original jurisdiction would be appealable to the Supreme Court of India under Section 23 of the Consumer Protection Act, 1986 (hereinafter referred to as the Act), a petition under Article 227 of the Constitution of India would not be maintainable before the High Court. Further, it is contended that the orders of the National Commission are mere procedural orders same do not warrant any interference of this court.

6. The question that arises for consideration is as to whether this Court in exercise of its jurisdiction under Article 227 the Constitution

of India should interfere in a matter of the present nature.

7. Section 23 of the Act lays down as under:

“23. Appeal.—Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 21, may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period:

Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited in the prescribed manner fifty per cent. of that amount or rupees fifty thousand, whichever is less.”

8. Section 21(a)(i) of the Act confers jurisdiction on the National Commission to entertain complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore.

9. Section 21(a)(i) of the Act confers original jurisdiction on the National Commission in addition to the appellate jurisdiction exercised by it under Section 21(a)(ii) of the Act and the revisional jurisdiction exercised by it under Section 21(b) of the Act.

10. Section 23 of the Act provides for an appeal to the Supreme Court from an order made by the National Commission in exercise of

its powers conferred by Section 21(a)(i) of the Act.

11. It is only in cases where the National Commission passes an order in exercise of its original jurisdiction that an appeal lies to the Supreme Court and not from an order passed in its appellate or revisional jurisdiction.

12. Section 23 of the Act does not qualify as to the nature of order against which an appeal would lie to the Supreme Court. So appeal to the Supreme Court, under Section 23 of the Act, would lie not only against a final order of the National Commission but also against an interim order passed by the National Commission in exercise of its original jurisdiction.

13. The Supreme Court in *Sadhana Lodh v. National Insurance Co. Ltd.*, (2003) 3 SCC 524 has held as under:

“6. The right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Articles 226/227 of the Constitution on the premise that the insurer has limited grounds available for challenging the award given by the Tribunal. Section 149(2) of the Act limits the insurer to file an appeal on those enumerated grounds and the appeal being a product of the statute it is not open to an insurer to take any plea other than those provided under Section 149(2) of the Act (see National Insurance Co. Ltd. v. Nicolletta Rohtagi [(2002) 7 SCC 456 : 2002 SCC (Cri) 1788]). This being the legal position, the petition filed under Article 227 of the Constitution by the insurer

was wholly misconceived. Where a statutory right to file an appeal has been provided for, it is not open to the High Court to entertain a petition under Article 227 of the Constitution. Even if where a remedy by way of an appeal has not been provided for against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court under Section 115 of the Code of Civil Procedure. Where remedy for filing a revision before the High Court under Section 115 CPC has been expressly barred by a State enactment, only in such case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution. As a matter of illustration, where a trial court in a civil suit refused to grant temporary injunction and an appeal against refusal to grant injunction has been rejected, and a State enactment has barred the remedy of filing revision under Section 115 CPC, in such a situation a writ petition under Article 227 would lie and not under Article 226 of the Constitution. Thus, where the State Legislature has barred a remedy of filing a revision petition before the High Court under Section 115 CPC, no petition under Article 226 of the Constitution would lie for the reason that a mere wrong decision without anything more is not enough to attract jurisdiction of the High Court under Article 226 of the Constitution.

7. *The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the*

evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.

8. *For the aforesaid reasons, we are of the view that since the insurer has a remedy by filing an appeal before the High Court, the High Court ought not to have entertained the petition under Articles 226/227 of the Constitution and for that reason, the judgment and order under challenge deserves to be set aside.”*

14. The Supreme Court in *Sadhana Lodh v. National Insurance Co. Ltd (supra)* has held that where a statutory right to file an appeal has been provided for, it is not open to the High Court to entertain a petition under Article 227 of the Constitution. It has held that the supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court, on a petition filed under Article 227 of the Constitution, to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.

15. In the present case, the Petitioner has filed these petitions merely on the ground that the Complaints which are at the stage of final hearing have not been finally heard and have been adjourned 2 –

3 times.

16. Perusal of the record shows that the proceedings were adjourned on one occasion because the presiding member was not present and then because parties had not filed their written submission. It is also noticed that the Petitioner/Complainant had also filed applications seeking to challenge the grant of an opportunity to the respondent to file written submission, which took a date in disposal.

17. If the petitioner is aggrieved by any order passed by the National Commission, then the remedy of the petitioner is to file an appeal before the Supreme Court under Section 21 (a) (1) of the Act.

18. In a case where there is a statutory remedy of an appeal provided, the High Court would be reluctant to exercise its powers under Article 227 of the Constitution, even if there is an error apparent on the face of the record.

19. High Court would exercise powers under Article 227 of the Constitution only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law.

20. In the present case, petitioner has not even been able to point out to any error apparent on the face of the record. The grievance of the petitioner is only with regard to grant of an adjournment. Grant of

an adjournment, in the facts of a particular case, is within the domain of the court and is purely administrative in nature. High Court would be reluctant to interfere in a mere grant of an adjournment unless it is shown that the adjournment gravely prejudices the petitioner.

21. Since petitioner has not even been able to make out a case for exercise of jurisdiction under Article 227 of the Constitution, so the question as to whether a petition under Article 227 of the Constitution is maintainable before the High Court or not is left open.

22. There is no merit in the petitions. They are accordingly dismissed.

23. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels for the parties through email by the Court Master.

SANJEEV SACHDEVA, J

JANUARY 28, 2021/HJ