

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

C.O. 2637 of 2022

Can 1 of 2022

**Balageria Central Co-operative
Bank Limited and Anr.**

-versus-

M/S star Sea Food and Anr.

For the Petitioner

: Mr. Amitabha Ghosh, Adv.

: Mr. Madan Mohan Roy, Adv.

For the opposite parties

: Mr. Dipankar Dhar, Adv.

: Mr. Rudra Dhar, Adv.

Last Heard on : December 02, 2022

Judgment on : December 16, 2022

Biswaroop Chowdhury, J:

This application is directed against order dated 28-07-2022 passed by the presiding Member West Bengal State Consumer Dispute Redressal Commission Kolkata in connection with interlocutory application No. IA/7/2019 arising out of complaint Case No. CC/557/2018.

The case of the petitioner who is the opposite party before the West Bengal State Consumer Dispute Redressal Commission Kolkata in Complaint Case No. CC/557/2018 may be summed up thus;

The opposite party no-1 M/S Star Sea Food, filed a complaint before West Bengal State Consumer Dispute Redressal Commission Kolkata being complaint Case No. CC/557/2018 praying for the following reliefs:

- a) Return back to the petitioners all the documents lying in the custody of the opposite parties for the purpose of the aforesaid mortgage and the aforesaid loans;
- b) Cancel the mortgage if not already cancelled and to send the petitioners the necessary documents in that respect.
- c) Take all the necessary steps to execute a deed of conveyance in favour of the petitioner no.1. in respect of the subject plots of land and the building thereon effecting the auction sale date 8.09.2008.
- d) Pay compensation for damages to the tune of Rs. 20,00,000/- to the petitioner no – 1.
- e) Pay compensation for damages to the tune of Rs. 30,00,000/- to the petitioner no.2.

The petitioners contested the case by filing written objection and challenging the maintainability of the said case. The petitioner apart from submitting written objection also filed an application for dismissing the complaint case on the ground of maintainability. By order dated 20th January 2020, Learned Presiding Member of the State Consumer Disputes Redressal Commission while disallowing the interlocutory application filed by the petitioner observed as follows:

Heard the submission of both sides on the earlier occasion regarding the maintainability of the instant case. Considering the entire panorama, I am of the view at this nascent stage, the instant IA case cannot be allowed on the ground maintainability fix 29.04.2020 for filing evidence of the complainant.

The petitioner being aggrieved by the Order dated 29-04-2020 passed by Learned State Consumer Disputes Redressal Commission moved an application under Article 227 of the Constitution of India being CO. 791 of 2022. By order dated 12-04-

2022 his Lordship the Hon'ble Justice Subhasis Dasgupta was pleased to dispose of the said application by observing and directing as follows:

Upon perusal of the impugned order it appears that the Learned Member West Bengal State Consumer Dispute Redressal Commission, Kolkata was not inclined to decide the maintainability petition in the absence of the evidence being adduced.

‘When there has been no rejection of the prayer for maintainability petition by any express words, the maintainability application may be heard out expeditiously as possible providing sufficient opportunity of hearing to either of the parties to this case, but without granting any unnecessary adjournment unless it is extremely unavoidable. This order is passed without going into the merits of the case.

The revisional application is thus disposed of with such observation.’

Pursuant to the order passed in C.O. 791 of 2022 Learned West Bengal State Consumer Disputes Redressal Commission upon considering the issue of maintainability by order dated 28th July 2022 made the following observation.

‘On a meticulous perusal of the entire case record it has come to the surface that this case has been running in the evidence stage and the complainant has been directed to file their evidence on affidavit at this juncture it will not be prudent, proper and just to decide the question of maintainability without receiving evidence (both oral and documentary) from the end of the parties to the complaint case. The question of maintainability of the complaint case can only be adjudged in a proper way after closure of the evidence of the parties at the time of final hearing.

Considering all aspects from all angles and having considered the averments of the parties and keeping in mind the submissions of Ld Counsel for the respective parties and regard being had to the position of law we hold and firmly hold that the question of maintainability of the complaint case cannot and should not be adjudged at

this juncture without receiving evidence (both oral and documentary) from the end of the parties. We are also of the view that in order to give effective adjudication of the complaint case the present IA on the point of the maintainability of the complaint case should be heard and considered along with the complaint case. Thus being the position we held that the present IA on the point of maintainability of the complaint case will be heard and considered at the time of final hearing of the complaint case.’

The petitioners being aggrieved by the order dated 28th July 2022 passed by the Learned West Bengal State Consumer Dispute Redressal Commission Kolkata has come up with the instant application. Heard Learned Advocate for the petitioner and Learned Advocate for the opposite parties. Perused the petition filed and materials on record.

Learned Advocate for the petitioner submits that the complaint case filed by the opposite parties is not maintainable as Learned West Bengal State Consumer Dispute Redressal Commission Kolkata has no jurisdiction to try the case.. Learned Advocate further submits that section 102(4) of West Bengal co-operative societies Act 2000 provides that any Civil Court or any Consumers’ Dispute Redressal Forum shall not have any jurisdiction to try any dispute as mentioned in sub-section (1) Learned Advocate also submits that in view of the express bar of section 102 of West Bengal co-operative societies Act State Consumer Dispute Redressal Commission has no jurisdiction to entertain and dispose the complaint case filed by the opposite parties.

Learned Advocate for the opposite parties submits that as there is an alternative remedy provided under the consumer protection Act 2019 this application may not be entertained. Learned Advocate draws attention to the provision contained in section 58 of the consumer Protection Act 2019.

Upon hearing the Learned Advocates and considering the facts of the case and the decision relied upon by Learned Advocate for the opposite parties this Court is of the view that in order to decide as to whether this application under Article 227 of the Constitution should be refused on the ground of alternative remedy it is necessary to consider relevant judicial decisions in this regard apart from the decision relied upon by the opposite parties.

In the case of *L.Chandra Kumar v Union of India* reported in AIR S.C. 1125 the Hon'ble Supreme Court observed as follows:

We also hold that the power vested in the Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the constitution this is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation is equally to be avoided.'

In the matter of *State of Gujrat vs. V Akhat Singh* reported in AIR 1968 S.C. P-1481 the Hon'ble Supreme Court observed as follows:

'Article 227 of the constitution 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. It was the duty of the Revenue Tribunal to award compensation to the Taluqdars in accordance with the provisions of section 7 and 14 of the Act. The High Court had jurisdiction to revise the decision of the tribunal where the Tribunal on a misreading of the provisions of Section 7 and 14 declined to do what was by those provisions of law incumbent on it to do.'

In the matter of Union of India vs. Adhoc Claim Commissioner reported in AIR 1977. Cal p-393 the Hon'ble High Court Calcutta observed as follows:

‘A preliminary objection has also to be considered. It is said that an appeal has been provided against the determination of the Claim Commissioner under s-82-F(2) of the Act and accordingly the application under S. 227 is not maintainable. Without entering into the controversy that the right of appeal conferred on a ‘person’ is available to the Union of India, the order of the claim Commissioner were impugned on the ground that the compensation was determined in manner not otherwise or warranted by the relevant law and accordingly such determination was without jurisdiction. In view of the challenge to determination of compensation as being without jurisdiction we think that the applications under Act 227 are maintainable in law.’

Upon considering the decisions as mentioned above this Court is of the view that where there is existence of alternative remedy there may be self imposed restrictions regarding invoking power under Article 227 of the constitution but there is no existence of absolute bar. However it should also be kept in mind that as per judicial ethics when a judgement is passed by a Learned Judge of a High Court on a particular issue on question of law the same should be followed as far as practicable unless factual aspects differ or when there is an exceptional situation.

Thus in the instant case also the judgement passed by a single judge of this Court in the case of Manager Contai co-operative Bank Ltd and Anr. Vs Smt Gouri Mondal reported in 2009 (10 CLJ-929) should be considered.

In the said judgement Learned Judge was pleased to observe that since an alternative Forum of appeal is available to the petitioner under the consumer protection Act and since the remedy of appeal is much more exhaustive efficient and

speedy the petitioner cannot invoke the jurisdiction of this Court under Article 227 of the Constitution of India. The issue involved in the said case was wrongful assumption of jurisdiction by District Consumer Redressal Forum. In the instant matter facts slightly differ. The petitioner earlier moved an application under Article 227 of the constitution before this Court against the State Consumer Dispute Redressal Commission being CO. 79/of 2022. The said application was entertained by this court and there was a direction upon the Learned Commission to decide the maintainability application expeditiously. The order passed in Co. 791 of 2022 was not appealed by any of the parties thus it reached its finality. When an order passed by this Court reaches its finality it is obligatory to comply the order upon whom it is directed and this Court has power to see as to whether it is complied. Although there is no allegation against the state Commission about non-compliance but the petitioner is aggrieved with regard to the procedure adapted by the Learned Commission while disposing the application with regard to maintainability of the case, and keeping the issue pending. As the final Order is not yet passed with regard to maintainability it cannot be said that there is an alternative remedy.

The operative portion of the Order dated 28th July 2022 passed by West Bengal State Consumer Disputes Redressal Commission Kolkata in Interlocutory Application No. IA-7/2019 of complaint case No. CC/557/2018 is as follows:

‘Considering all aspects from all angles and having considered the averments of the parties and keeping in mind the submissions of the Learned Counsel for the respective parties and regard being had to the position of law we hold and firmly hold that the question of maintainability of the complaint case should be heard and considered along with the complaint case. Thus being the position we hold that the present IA on the point of maintainability of the complaint cause should be heard and

considered along with the complaint case. Thus being the position we hold that the present IA on the point of maintainability of the complaint case will be heard and considered at the time of final hearing of the complaint case.’

Thus upon plain reading of the order of the Learned State Commission, it will appear that the Learned Commission deferred the adjudication of the issue of maintainability till hearing of the case on evidence. The issue of maintainability of a case although is a mixed question of law and fact but when the issue involves a question with regard to inherent jurisdiction of a Court or Tribunal it is purely a question of law. Thus when the issue of inherent jurisdiction to try a case is raised before a Court or Tribunal it is incumbent upon the said Court or Tribunal to decide the issue with regard to inherent jurisdiction before proceeding to hear case on merits by receiving evidence. Hence in order to decide the issue of inherent jurisdiction to try a case it is necessary only to consider the averment of the plaint or petition, the relief claimed and the relevant provisions of the Statute as to whether such case before Court or tribunal is barred under law, Thus upon perusing the order dated 28th July 2022, passed, by Learned West Bengal Consumer Disputes Redressal Commission it appears that the Learned Commission has committed a procedural error in considering the issue of maintainability of the case before it, which should be rectified by this court.

Thus the order dated 28th July 2022 passed by Learned West Bengal State Consumer Dispute Redressal Commission in IA/7/2019 of complaint case No. CC/557/2018 is hereby set aside. Learned West Bengal State Consumer Disputes Redressal, Commission is directed to decide the issue of inherent jurisdiction to try the case on the basis of averments in complaint petition, the relief claimed and section 102 of the West Bengal Cooperative Societies Act 2006.

This application stands disposed.

Learned Advocate for the opposite parties prays for urgent certified copies, which may be given within a short period.

(Biswaroop Chowdhury,J,)