

**HIGH COURT AT CALCUTTA  
IN THE CIRCUIT BENCH AT JALPAIGURI  
APPELLATE JURISDICTION**

**C.O. 4 of 2022  
Sri Dilip Kundu & Anr.**

**Vs.**

**Smt. Mira Devi Agarwal @ Mina Devi Agarwal & Ors.**

|                        |                          |
|------------------------|--------------------------|
| For the Petitioner     | : Mr. Sunil Kumar Sarkar |
| For the Opposite Party | : Mr. Saumyajyoti Dutta  |
| Heard On               | : June 15, 2022          |
| Judgement On           | : June 27, 2022          |

**Debangsu Basak, J.:**

1. The petitioners have filed the present revisional application against the order dated December 3, 2021 passed by the West Bengal State Consumer Disputes Redressal Commission, Circuit Bench, Siliguri in Consumer Case No. CC/10/2020 (Smt. Mira Devi Agarwal vs. Sri Mohny Soorma & Ors).
2. Learned Advocate appearing for the petitioners has submitted that the petitioners are developers. They have constructed ground plus four storied building consisting of 64 flats along with parking spaces. The petitioners had entered into

agreements with the opposite parties on August 6, 2012 and August 22, 2015 in respect of three flats at a settled consideration. The opposite parties had paid a part of such consideration at the time of the execution of the agreement. The opposite parties had failed to pay the balance consideration within the time agreed. Consequently, upon the failure of the opposite parties to pay the agreed consideration, the agreements dated August 6, 2012 and August 22, 2015 stood terminated.

3. Learned advocate appearing for the petitioners has submitted that, the petitioners had filed a suit in the Court of the learned Civil Judge, Junior Division, Siliguri, against the opposite parties being Title Suit No. 14 of 2019, praying for a decree of declaration that the agreement dated August 6, 2012 and August 22, 2015 were terminated on the failure of the opposite parties paying the agreed consideration within the time stipulated.

4. The opposite parties had filed a complaint under Section 17 of the Consumer Protection Act, 1986 against the petitioners before the West Bengal State Consumer Disputes Redressal Commission being Consumer Case No. 10 of 2020 for enforcing

the agreements dated August 6, 2012 and August 22, 2015. The petitioners had filed an application under Section 10 of the Code of Civil Procedure, 1908 in Consumer Case No. 10 of 2020. The learned Commission had by the impugned order dated December 3, 2021 rejected the application under Section 10 of the Code of Civil Procedure, 1908.

5. Learned advocate appearing for the petitioners has submitted that, the application of the principles of the Code of Civil Procedure, 1908 in a proceeding under the Act of 1986 is not barred. In support of such contention, he has relied upon ***1999 Volume 6 Supreme Court Cases 406 (Sovintorg (India) Ltd. vs. State Bank Of India, New Delhi)***.

6. Learned advocate appearing for the petitioners has relied upon ***Section 13 (4) of the Act of 1986*** and ***Section 22 of the Recovery of Debts Due to Banks and Bankruptcy Act, 1993***.

He has relied upon ***1999 Volume 4 Supreme Court Cases 710 (Industrial Credit And Investment Corporation Of India Ltd. vs. Grapco Industries Ltd. And Others)*** and ***1999 Volume 6 Supreme Court Cases 755 (Allahabad Bank Calcutta vs. Radha Krishna Maity And Others)*** and submitted that,

provisions of the Code of Civil Procedure, 1908 are applicable in a proceeding under the Act of 1986.

7. Referring to **Section 13(4) of the Act of 1986** and **2005 Volume 6 Supreme Court Cases 321 (Canara Bank vs. V. K. Awasthy)**, learned advocate appearing for the petitioner has submitted that the principles of natural justices are applicable to a proceeding under the Act of 1986.

8. Learned advocate appearing for the petitioners has contended that Section 10 of the Code of Civil Procedure, 1908 is a pre res judicata stage as envisaged in Section 11 of the Code of Civil Procedure, 1908. He has relied upon **2011 Volume 3 Supreme Court Cases 408 (M. Nagabhushana vs. State Of Karnataka And Others)** with regard to the principles of res judicata. He has also relied upon **2021 SCC Online SC 1182 (Manohar Infrastructure And Constructions Private Ltd. Vs. Sanjeev Kumar Sharma & Ors.)** for the proposition that at the time of considering an application under Section 19 of the Act of 1986 generally principles mentioned under Order 41 Rule 5 of the Code of Civil Procedure, 1908 are required to be considered. According to him, even though specific provisions of the Code of

Civil Procedure, 1908 have not been incorporated under the Act of 1986, the Disputes Redressal Authorities are bound by the principles of natural justice, good conscience and equity and, therefore, ought to consider and adopt the established procedure of the Code of Civil Procedure, 1908 to do complete justice. In any event, two parallel proceedings cannot proceed, simultaneously. Issues in both the proceedings are same and identical.

9. Learned advocate appearing for the opposite parties has submitted that, the Act of 1986 is a special act with the object of providing better protection to the interest of the consumers. He has referred to Sections 11, 13, 14, 15, 17, 18 and 29 of the Act of 1986. He has also referred to Regulation 26(1) of the Consumer Protection Regulation, 2005. He has relied upon **2011 Volume 8 Supreme Court Cases 539 (Ethiopian Airlines vs. Ganesh Narain Saboo)** and contended that, since the Legislature expressly made specific provisions of the Code of Civil Procedure, 1908 applicable to the consumer proceedings, the legislature is, therefore, deemed to have intentionally omitted

other provisions of the Code of Civil Procedure, 1908 from applicability to the proceedings under the Act of 1986.

10. Learned advocate appearing for the opposite parties has submitted that Section 10 of the Code of Civil Procedure, 1908 is not applicable and in support of such contention he has relied upon **2005 Volume 2 Supreme Court Cases 256 (National Institute of Mental Health & Neuro Sciences vs. C. Parameshwara)**. Learned advocate appearing for the opposite parties has submitted that, other tribunals including the debts recovery tribunal are governed by their specific statute which made specifically permitted the applicability of the Code of Civil Procedure, 1908. He has referred to **2003 Volume 3 Supreme Court Cases 186 (Cellular Operators Association Of India And Others vs. Union of India And Others)** and **1999 Volume 6 Supreme Court Cases 406 (Sovintorg (India) Ltd. Vs. State Bank Of India, New Delhi)**.

11. Learned advocate appearing for the opposite parties has relied upon **2012 Volume 8 Supreme Court Cases 243 (Bar Council Of India vs. Union Of India)** and submitted that, merely because all the provisions of the Code of Civil Procedure,

1908 are not applicable, the same does not compromise on the quality of determination of dispute.

12. Learned advocate appearing for the opposite parties has contended that, equity and justice will not be sub-served by staying the proceedings filed by the consumer under the Act of 1986. In the facts of the present case, he has contended that, the opposite parties had paid a sum of Rs. 40 lakhs out of the total consideration of Rs. 44,38,400 to the petitioners. Despite such payments being made, the two flats have not been made over to the opposite parties. The Civil Suit had been filed by the petitioners with the intention to prolong the litigation. The Civil Suit is an instrument that has been mis-utilized by the petitioners for the purpose of denying the rightful claim of the opposite parties, if possible.

13. The issue that has fallen for consideration in this proceeding is whether provisions of Section 10 of the Code of Civil Procedure, 1908 are applicable to a proceeding before a forum exercising jurisdiction under the Consumer Protection Act, 1986 or not.

14. The petitioner had filed that Suit No. 14 of 2019 in the Court of the learned Civil Judge, Junior Division at Alipore inter alia against the opposite parties and Sri Anil Bindal. In the plaint of such suit, the petitioners had claimed that Sri Anil Bindal was the owner of land measuring about 42 kathas of land. It had also claimed that one Pritam Kaur was the owner of about 11 kathas of land. Such immovable properties were adjacent to each other. The petitioners had claimed that Anil Bindal and Pritam Kaur had transferred about 53 kathas of land in favour of the opposite parties herein. The petitioners had entered into a partnership with each other for the purpose of carrying on construction business as developer under the name and style of M/s. Chhaya Builder and Developer. The petitioners had entered into a development agreement dated February 19, 2012 in respect of about 50 kathas of land with the opposite party. Thereafter, the building plan had been sanctioned. The petitioners had started construction. In the month of August, 2015, the opposite party had approached the plaintiffs for sale of two flats for a settled sum of Rs. 44, 38, 400. The plaintiffs and the opposite party along with Anil Bindal had entered into an

agreement for sale in respect of two flats. Another agreement had been entered into in respect of another flat in the month of July, 2012. According to the petitioners, the opposite party had failed to pay the consideration in terms of the agreements dated August 22, 2015 and August 6, 2012.

15. The petitioner had filed the suit praying for a decree of declaration that the agreements dated August 6, 2012 and August 22, 2015 were terminated after the expiry of the month of April, 2015 and that the opposite party did not have any right in respect of the three flats in question. The petitioners had also prayed for a permanent injunction restraining the opposite party from using the agreements dated August 6, 2012 and August 22, 2015 for any purpose whatsoever.

16. During the pendency of such suit, the opposite party had filed a complaint before the West Bengal State Consumer Disputes Redressal Commission, Circuit Bench, Siliguri in Consumer Case No. CC/10/2020. In such consumer complaint, the opposite party had prayed for possession of the flats in complete shape and alternatively refund of the entire amount of Rs. 40 lakhs along with interest thereof.

17. In the consumer complaint case, the petitioner had applied for stay of the same under the provisions of Section 10 of the Code of Civil Procedure, 1908. Such application had been filed on October 8, 2021.

18. By the impugned judgement and order dated December 3, 2021, the West Bengal State Consumer Disputes Redressal Commission, Circuit Bench, Siliguri had dismissed such application. The Consumer Disputes Redressal Forum by the impugned order had held that the Consumer Protection Act, 1986 was in addition to and not in derogation of the provisions of any other law for the time being in force. It had held that, the proceedings under Act of 1986 is strictly independent in nature and do not overlap the provisions of any statute. It had held that the pendency of any civil suit regarding the subject matter is no barrier to continue with the proceeding under the Act of 1986. It had dismissed the petition under Section 10 of the Code of Civil Procedure, 1908.

19. Section 10 of the Code of Civil Procedure, 1908 as has been referred to by the parties is as follows :-

**“10. Stay of suit.** -- No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in <sup>1</sup>[India] have jurisdiction to grant the relief claimed, or in any Court beyond the limits of <sup>1</sup>[India] established or continued by <sup>2</sup>[the Central Government <sup>3</sup>\* \* \*.] and having like jurisdiction, or before <sup>4</sup>[the Supreme Court].

*Explanation.--The pendency of a suit in a foreign Court does not preclude the Courts in <sup>1</sup>[India] from trying a suit founded on the same cause of action.”*

20. Some of the ingredients that have to be satisfied for the purpose of applicability of the provisions for Section 10 of the Code of Civil Procedure, 1908 are that, two suits must be pending in Court or Courts the matter in issue in the second suit must be directly and substantially in issue in a previously instituted suit, the two suits between the same parties or between the parties under whom they or any of them claim litigating under the same title, and that the first Court is with the jurisdiction to grant the relief claimed in the second suit.

21. Consumer Disputes Redressal Forum discharging functions and jurisdiction under the Act of 1986 is not a Court, as has been held in **1995 Volume 3 Supreme Court Cases 583 (Laxmi Engineering Works vs. P.S.G. Industrial Institute)**. It is a tribunal having the trappings of a Court but it is not a Court.

22. In **Sovintorg (India) Ltd. (supra)** the Supreme Court has observed that the provisions of Section 34 of the Code of Civil Procedure, 1908, can be applied in respect of calculating interest in a proceeding which is not pending before a Court. It has held that, the general provisions of Section 34 of the Code of Civil Procedure, 1908 being based upon justice, equity and good conscience would authorize the Redressal Forum and Commissions to grant interest appropriately under the circumstances of each case.

23. **Grapco Industries Ltd. And Others (supra)** and **Radha Krishna Maity And Others (supra)** have been distinguished by the Hon'ble Supreme Court in **2012 Volume 5 Supreme Court Cases 488 (Super Cassettes Industries Limited vs. Music Broadcast Private Limited)**. Moreover, the provisions of Section

22 of the Recovery of Debts Due to Banks and Bankruptcy Act, 1993 cannot be said to be *pari materia* with that of Section 13 of the Act of 1986.

24. The Act of 1986 has been replaced by the Consumer Protection Act, 2019. Various provisions of the Act of 2019 have been notified to come into effect from July 20, 2020. It has been submitted at the bar that the consumer complaint involved had been filed prior to the coming into force of the Act of 2019 and that the provisions of the Act of 1986 would govern the concerned consumer complaint.

25. The Act of 1986 has various provisions regarding the applicability of the Code of Civil Procedure, 1908. Section 13(4) of the Act of 1986 has vested the District Forum with the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 in respect of the matters specified in Clauses (i) to (vi) thereof. Sections 13(6) and Section (7) of the Act of 1986 has provided for the applicability of the Code of Civil Procedure, 1908 with regard to Order I Rule 8 and the provisions of Order XXII.

26. Consumer Protection Regulation, 2005 which has been promulgated in exercise of powers under Section 30A of the Act of 1986 in order to govern the proceedings under the Act of 1986 contains Regulation 26(1) and it is as follows:-

*“26. Miscellaneous.-(1) In all proceedings before the Consumer Forum, endeavor shall be made by the parties and their counsel to avoid the use of provisions of Code of Civil Procedure, 1908 (5 of 1908):*

*Provided that the provisions of the Code of Civil Procedure, 1908 may be applied which have been referred to in the Act or in the rules made thereunder.”*

27. In ***Ethiopian Airlines (supra)*** the Supreme Court has considered the issue as to whether proceedings before the Consumer Forum are suit or not. It has answered such issue in the negative. It has considered the provisions of Sections 3, 13(4), (5) and (6) of the Act of 1986 as well as Regulation 26 of the Consumer Protection Regulation, 2005. It has held that in view of the provisions of Section 13 (4) of the Act of 1986 read with Regulation 26, the provisions of the Code of Civil Procedure, 1908 in general are not applicable in the proceedings under the

Act of 1986 except to the extent provided for under Section 13 of the Act of 1986.

28. ***Ethiopian Airlines (supra)*** has been rendered by the Supreme Court by a Bench of a larger strength than the Bench rendering ***Sovintorg (India) Ltd. (supra)***. However, ***Sovintorg (India) Ltd. (supra)*** has not been considered in ***Ethiopian Airlines (supra)***.

29. ***C. Parameshwara (supra)*** has considered the issue as to whether an application under Section 10 read with Section 151 of the Code of Civil Procedure, 1908 seeking stay of a Civil Suit before a civil Court was maintainable in view of a writ petition pending assailing an award passed by the Labour Court. It has answered such issue by holding as follows:-

*“8. The object underlying Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil court and it*

cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as *res judicata* in the subsequent suit. Section 10 applies only in cases where the whole of the subject-matter in both the suits is identical. The key words in Section 10 are “the matter in issue is directly and substantially in issue” in the previous instituted suit. The words “directly and substantially in issue” are used in contradistinction to the words “incidentally or collaterally in issue”. Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject-matter in both the proceedings is identical.” (emphasis supplied)

30. **V. K. Awasthy (supra)** has been rendered in the context of a disciplinary proceedings. It has considered the applicability of the principles of natural justice in disciplinary proceedings.

31. In **M. Nagabhushana (supra)** the Supreme Court has dealt with the issue of applicability of the principles of *res judicata*. It has held that the principles of *res judicata* are of

universal application. It has observed that the principles of finality of litigation is based on high principle of public policy. In absence of such a principle great mischief might result under the colour and pretense of law in as much as there will be no end of litigation. In the facts of the present case, the principles of res judicata are not attracted since, the issues between the parties have not been decided conclusively by any competent Court or forum.

32. **D. Saibaba (supra)** has dealt with the constitutional validity of Section 48A of the Advocates Act, 1961 and an appeal under Section 38 of the Advocates Act, 1961.

33. In **Bar Council of India (supra)** where the validity of the Legal Services Authorities Act, 1987 had been challenged, the Supreme Court has observed that, by making the Code of Civil Procedure, 1908 and the statutory provisions of the Evidence Act not applicable there is no compromise on the quality of determination of the disputes since the permanent Lok Adalat has to objectively decide the dispute in fairness and follow the principles of natural justice.

34. ***Cellular Operators Association Of India And Others (supra)*** has considered the provisions of Section 18 of the Telecom Regulatory Authority of India Act, 1997. Section 18 of the Act of 1997 has provided for appeals to the Supreme Court. It has construed such provision to mean that an appeal against the order of the tribunal would lie to the Supreme Court on one or more of the grounds specified for Section 100 of the Code of Civil Procedure, 1908. It has noted that, under Section 100 of the Code of Civil Procedure, 1908, an appeal lies to the High Court in respect of every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that, the case involved a substantial question of law.

35. Neither ***Sovintorg (India) Ltd. (supra)*** nor ***Cellular Operators Association Of India And Others (supra)*** can be considered to be authorities to have laid down the proposition that, Section 10 of the Code of Civil Procedure, 1908 applies to proceedings under the Act of 1986. In ***Sovintorg (India) Ltd. (supra)***, the issue of Section 34 of the Code of Civil Procedure, 1908 had arisen in view of the Consumer Forum calculating interest on the amount of liability. It has recognized that a forum

exercising jurisdiction under the Act of 1986 can award interest and that, the principles underlining Section 34 of the Code of Civil Procedure, 1908 can be applied for the purpose of award of the interest. The applicability of the principles governing Section 34 of the Code of Civil Procedure, 1908 had been recognized in view of the power available to the forum exercising jurisdiction under the Act of 1986 to award an interest. Similarly, ***Cellular Operators Association Of India And Others (supra)***, has noted that the Act of 1997 has a provision of appeal under Section 18 thereof. In construing the scope and ambit of such provision, the Supreme Court has observed that, the principles of Section 100 of the Code of Civil Procedure, 1908 will apply. None of those two authorities can be construed to have laid down that the Code of Civil Procedure, 1908 in its entirety applies to a proceeding under the Act of 1986.

36. In ***Manohar Infrastructure And Constructions Private Limited (supra)***, the Supreme Court has considered the provisions of appeal under Section 19 of the Act of 1986 in respect of the second proviso to Section 19 of the Act of 1986 which has provided for deposit of 50 per cent of the amount due

or a sum of Rs. 35,000 whichever is less for the purpose of admission of the appeal. In such context, the Supreme Court has held that, such power can be exercised in terms of the provisions of Order XLI Rule 3 of the Code of Civil Procedure, 1908. Again such authority cannot be construed to have held that, provisions of the Code of Civil Procedure which have not been made applicable to a proceeding under the Act of 1986 are to be deployed for such purposes.

37. Neither the Act of 1986 nor the Regulation of 2005 has any provision akin to Section 10 of the Code of Civil Procedure, 1908. They have also not made Section 10 of the Code of Civil Procedure, 1908 expressly applicable to a proceeding under the Act of 1986. Regulations 26 of the Regulation 2005 has discouraged the parties and their counsel from using the provisions of the Code of Civil Procedure, 1908 other than those made expressly applicable by the Act of 1986. Moreover, **C. Parameshwara (supra)** has held that, Section 10 of the Code of Civil Procedure, 1908 cannot apply to proceedings of other nature instituted under any other statute.

38. In view of such pronouncements of the Hon'ble Supreme Court that, a Consumer Disputes Redressal Forum acting under the Act of 1986 is not a Court and that it is a tribunal and that Section 10 of the Code of Civil Procedure, 1908 is attracted in respect of proceeding pending before a Civil Court and not to a tribunal, the issue, therefore, has to be answered in the negative, against the petitioners and in favour of the opposite parties. The issue is there answered in the negative, against the petitioners and in favour of the opposite parties.

39. There is, therefore, no merit in the present revisional application. C.O. 4 of 2022 is, therefore, dismissed without any order as to costs.

**[DEBANGSU BASAK, J.]**