

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

Date of decision: 23rd NOVEMBER, 2022

IN THE MATTER OF:

+ **LPA 604/2022 & CM APPL. 45661/2022**

MR. M. H. PATEL

..... Appellant

Through: Appellant – in person.

versus

NATIONAL CONSUMER DISPUTE REDRESSAL COMMISSION
& ORS. Respondents

Through: Mr. Siddharth Sangal, Mr. Chirag
Sharma, Advocates for Respondents
No.2 & 3
Mr. K. K. Jha, Advocate for
Respondent No.6

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Appellant seeks to challenge the Order dated 31.08.2022, passed by the learned Single Judge in W.P. (C) 2190/2020, dismissing the Writ Petition which was filed by the Appellant herein challenging the Order dated 15.11.2019, passed by the National Consumer Disputes Redressal Commission (hereinafter referred to as 'the NCDRC') in Revision Petition No.2196/2019.

2. Shorn of details, the facts of the case are as under:

- a) It is the case of the Appellant herein that he purchased two gold bars of 999.9 purity weighing 500 grams each from Bank of India (Respondents No.4 & 5 herein) and deposited the same with the State Bank of India (Respondents No.2 & 3 herein)

under a scheme called 'SBI Gold Deposit Scheme'. It is stated that as per the Scheme, for determination of actual weight and purity of the gold, the gold bars were sent to Government of India Mint for testing their purity by melting. It is stated that on melting the gold bars, their purity was found to be 999.9 purity, however, there was a nominal loss to the extent of 0.04% of the weight of the gold bars during the process of melting. It is stated that as certified by India Government Mint, the weight of the gold in 995 purity would be 502.161gms. for one bar and 501.809 gms. for the other bar. It was also certified that the weight in 999.0 purity would be 500.150 gms in respect of one bar and 499.800 gms in respect of the other bar. It is stated that based upon the purity and weight so determined by the Government Mint, the State Bank of India sent certificates to the Appellant herein in terms of the Scheme under which the gold bars were deposited by him and he was informed that the weight of the gold bars deposited by him was 499.8 in respect of one bar and 500.150 in respect of the other bar in 999 purity.

- b) It is stated that the Appellant herein approached the concerned District Forum by filing a consumer complaint disputing the weight given in the certificates and seeking compensation.
- c) It is stated that the District Forum *vide* its Order dated 03.08.2017 found that the Bank of India and State Bank of India had committed deficiency in providing service and had adopted unfair trade practice in respect of gold deposited by the Appellant herein under the Scheme. The District Forum held that after completion of tenure of the Scheme, the State Bank of India

should return gold bars with same purity and weight as was deposited by the Appellant herein.

- d) It is stated that the said Order was challenged by the State Bank of India by filing an appeal, being Appeal No. A/17/1138, before the State Consumer Disputes Redressal Commission (SCDRC), Maharashtra, Mumbai, and the same was dismissed by the SCDRC *vide* Order dated 18.07.2019.
- e) Thereafter, the State Bank of India filed a Revision Petition, being Revision Petition No.2196/2019, before the NCDRC. The NCDRC, *vide* Order dated 15.11.2019, after going through the Scheme, held that the Scheme, as floated by the State Bank of India envisages acceptance of gold in scrap form and, therefore, the State Bank of India had to send the gold deposited by the Appellant herein to the Government Mint for the purpose of melting the same and determining its purity. NCDRC further held that the Appellant herein having accepted all the terms and conditions of the Scheme and having deposited the gold with the State Bank of India, can have no grievance on account of the Bank sending the gold bars to the Government Mint for the purpose of ascertaining their weight and purity as the purity of the gold bars could not have been correctly determined without melting them. The NCDRC held that since the State Bank of India was to accept the gold only in melted form and even otherwise, it was necessary to melt the gold bars in order to verify their purity, and the loss which happened during the process of melting has to be borne by the Appellant herein and not by the State Bank of India. It held that the State Bank of India

was to pay interest in respect of only that quantity of gold as was left with them after the process of melting. The NCDRC, therefore, held that the State Bank of India was required to return only that quantity of gold as was left with them after the process of melting and verifying the purity of the gold bars. The NCDRC also held that as per the Scheme, the Bank is required to redeem the gold either in 995 purity or in 999 purity. It held that the certificates sent by the State Bank of India to the Complainant/Appellant herein gave the weight of the gold bars as determined by the Government Mint in 999 purity and, therefore, the Complainant/Appellant herein can have no grievance with respect to the quantity or the purity of the gold which the State Bank of India has promised to return. The NCDRC, therefore, allowed the Revision Petition.

- f) The Order dated 15.11.2019, allowing the Revision Petition filed by the State Bank of India, was challenged by the Appellant before the Supreme Court by filing a Petition, being Petition for Special Leave to Appeal (C) No.2551/2020. The Apex Court, *vide* Order dated 07.02.2020, rejected the said appeal on the ground that it is not inclined to entertain the Special Leave Petition under Article 136 of the Constitution of India.
- g) The Appellant herein filed a Review Petition before the NCDRC which was also dismissed *vide* Order dated 11.03.2020. Thereafter, the Appellant once again filed a petition before the NCDRC seeking recall of the Order dated 15.11.2019 and Order dated 11.03.2020. The said petition was also dismissed *vide* Order dated 26.11.2020.

- h) The Appellant, thereafter, approached this Court by filing a Writ Petition, being W.P. (C) 2190/2020, challenging the Order dated 15.11.2019, passed by the NCDRC. Notice was issued in the said Writ Petition by the learned Single Judge on 26.02.2020. The learned Single Judge, *vide* Order dated 31.08.2022, dismissed the said Writ Petition on the ground that the Appellant herein had challenged the very same Order which has been challenged by him before the Supreme Court by filing a Special Leave Petition which was dismissed by the Supreme Court on 07.02.2020 and, therefore, the Writ Petition was not maintainable.
- i) The Appellant has, thereafter, approached this Court by filing the instant appeal challenging the Order dated 31.08.2022, passed by the learned Single Judge.
3. Heard the Appellant, who appears in person, and the Counsel for the State Bank of India and the Government Mint and perused the material on record.
4. The short question which arises for consideration is whether the Order passed by the learned Single Judge dismissing the Writ Petition of the Appellant herein on the ground that since the Appellant herein had already approached the Supreme Court assailing the very same Order which was challenged in the Writ Petition, the Writ Petition would not be maintainable, requires interference or not.
5. Admittedly, the Order dated 15.11.2019, passed by the NCDRC, was challenged by the Appellant before the Apex Court by filing a Petition, being Petition for Special Leave to Appeal (C) No.2551/2020, which was dismissed by the Apex Court.

6. It is well settled that a decision rendered by a competent Court cannot be challenged in collateral proceedings and if it is permitted to do so there would be confusion and chaos and the finality of the proceedings would have no meaning. A Division Bench of the Calcutta High Court in Indu Bhusan Jana v. Union of India, **2008 SCC OnLine Cal 626**, has observed that upon an order attaining finality, it matters little as to whether it was erroneous. It has held that a party aggrieved by an order has to work out his remedies within the legal framework and if an issue or the entire lis is concluded upon a finding being rendered and such finding remains unchallenged, it is no longer open to the party to undo the effect thereof at any subsequent stage or collaterally unless it is demonstrated that the finding was obtained by fraud or the Court lacked jurisdiction to pass the order. It further held that the hierarchy in the judiciary exists to afford litigants to climb up the ladder in pursuit of justice and to right a wrong committed at a lower level but if a litigant accepts an order, he does it to his prejudice and binds himself thereby.

7. The Division Bench of the Culcutta High Court also held that the principle of finality or *res judicata* is a matter of public policy and is one of the pillars on which a judicial system is founded and once a judgment becomes conclusive, the matters in issue covered thereby cannot be reopened unless fraud or mistake or lack of jurisdiction is cited to challenge it directly at a later stage. It further held that the said principle is rooted in the rationale that the issues decided may not be reopened, and has little to do with the merit of the decision and if it were to be otherwise, no dispute can be resolved or concluded. The Division Bench also held that the principles of *res judicata* and constructive *res judicata* apply equally to proceedings under Article 226 of the Constitution and a decision pronounced by a Court

of competent jurisdiction is binding between the parties unless it is modified or reversed by adopting a procedure prescribed by law. It held that it is in the interest of the public at large that finality should be attached to the binding decisions pronounced by a Court of competent jurisdiction and it is also in the public interest that individuals should not be vexed twice over in the assessment of the same matter in issue and even in case of a judgment passed *incuriam* which is unchallenged, the efficacy and binding nature of the operative order is conclusive *inter partes*. The Division Bench further held that the principle applies both to an order from which an appeal lies and no appeal is preferred as well as to an order from which no appeal is provided.

8. This Court is in complete agreement with the ratio and opinion rendered by the Division Bench of the Calcutta High Court in the aforesaid judgment.

9. The Apex Court in Union of India v. S.P. Sharma, (2014) 6 SCC 351, has observed as under:

“76. A decision rendered by a competent court cannot be challenged in collateral proceedings for the reason that if it is permitted to do so there would be “confusion and chaos and the finality of proceedings would cease to have any meaning”.

77. In Mohd. Aslam v. Union of India [(1996) 2 SCC 749] a writ petition under Article 32 of the Constitution was filed seeking reconsideration of the judgment rendered by this Court on the ground that the said judgment is incorrect. Rejecting the prayer, this Court held that Article 32 of the Constitution is not available to assail the correctness of the decision on merit or to claim its reconsideration.

78. In the case of Babu Singh Bains etc. versus Union of India and others etc., AIR 1997 SC 116, this Court reiterated the settled principal of law that once an order passed on merit by this Court exercising the power under Article 136 of the Constitution has become final no writ petition under Article 32 of the Constitution on the self-same issue is maintainable. The principle of constructive res judicata stands fast in his way in his way to raise the same contention once over.

79. In Khoday Distilleries Limited & Anr. vs. The Registrar General, Supreme Court of India, (1996) 3 SCC 114, this Court re-iterated the view as under:

"In a case like the present, where in substance the challenge is to the correctness of a decision on merits after it has become final, there can be no question of invoking Article 32 of the Constitution to claim reconsideration of the decision on the basis of its effect in accordance with law. Frequent resort to the decision in Antulay (AIR 1988 SC 1531) in such situations is wholly misconceived and impels us to emphasis this fact."

80. In M. Nagabhushana vs. State of Karnataka & Ors., AIR 2011 SC 1113, this Court held that doctrine of res-judicata was not a technical doctrine but a fundamental principle which sustains the rule of law in ensuring finality in litigation. The main object of the doctrine is to promote a fair administration of justice and to prevent abuse of process of the court on the issues which have become final between the parties. The doctrine was based on two age old principles, namely, 'interest reipublicae ut sit finis litium' which means that it is in the interest of the State that there should be an end to litigation and the other principle is 'nemo debet bis vexari si constat curiae quod sit pro una et eadem causa' meaning thereby that no one

ought to be vexed twice in a litigation if it appears to the Court that it is for one and the same cause.

81. Thus, the principle of finality of litigation is based on a sound firm principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law inasmuch as there will be no end to litigation. The doctrine of res-judicata has been evolved to prevent such an anarchy.

82. In a country governed by the rule of law, finality of judgment is absolutely imperative and great sanctity is attached to the finality of the judgment and it is not permissible for the parties to reopen the concluded judgments of the court as it would not only tantamount to merely an abuse of the process of the court but would have far reaching adverse affect on the administration of justice. It would also nullify the doctrine of stare decisis a well established valuable principle of precedent which cannot be departed from unless there are compelling circumstances to do so. The judgments of the court and particularly the Apex Court of a country cannot and should not be unsettled lightly.

83. Precedent keeps the law predictable and the law declared by this Court, being the law of the land, is binding on all courts/tribunals and authorities in India in view of Article 141 of the Constitution. The judicial system "only works if someone is allowed to have the last word" and the last word so spoken is accepted and religiously followed. The doctrine of stare decisis promotes a certainty and consistency in judicial decisions and this helps in the development of the law. Besides providing guidelines for individuals as to what would be the consequences if he chooses the legal action, the doctrine promotes confidence of the people in the system of the judicial administration. Even otherwise it is an imperative necessity to avoid

uncertainty, confusion. Judicial propriety and decorum demand that the law laid down by the highest Court of the land must be given effect to.

84. In Rupa Ashok Hurra v. Ashok Hurra & Anr., AIR 2002 SC 1771, this Court dealt with the issue and held that reconsideration of a judgment of this Court which has attained finality is not normally permissible. A decision upon a question of law rendered by this Court was conclusive and would bind the court in subsequent cases. The court cannot sit in appeal against its own judgment.

85. In Maganlal Chhaganlal (P) Ltd. v. Municipal Corporation of Greater Bombay, AIR 1974 SC 2009, this Court held as under:

"At the same time, it has to be borne in mind that certainty and continuity are essential ingredients of the rule of law. Certainty in law would be considerably eroded and suffer a serious setback if the highest court of the land readily overrules the view expressed by it in earlier cases, even though that view has held the field for a number of years. In quite a number of cases which come up before this Court, two views are possible, and simply because the Court considers that the view not taken by the Court in the earlier case was a better view of the matter would not justify' the overruling of the view. The law laid down by this Court is binding upon all courts in the country under Article 141 of the Constitution, and numerous cases all over the country are decided in accordance with the view taken by this Court. Many people arrange their affairs and large number of transactions also take place on the faith of the correctness of the view taken by this Court. It would create uncertainty, instability and confusion if the law propounded by this Court on the basis of which numerous cases have been

decided and many transactions have taken place is held to be not the correct law. "

Thus, in view of above, it can be held that doctrine of finality has to be applied in a strict legal sense. "

10. The contention of the Appellant that the dismissal of his Special Leave to Appeal does not amount to merger of the Order of the NCDRC and the Supreme Court in the light of the Judgment of the Apex Court in Kunhayammed v. State of Kerala, (2000) 6 SCC 359, which, though is attracted but cannot be accepted, in view of the principles of doctrine of finality. Kunhayammed (supra) was dealing with the question as to whether after the dismissal of a Special Leave Petition, can the Petitioner file a review petition in the High Court. The Apex Court in that context held that the dismissal of an SLP by a non-speaking order does not attract the doctrine of merger and a person can still file a petition in the High Court. The issue raised in the instant case is entirely different. The question here is that after exhausting all the remedies that are available under the Statute, can a person initiate a challenge collaterally in the High Court. In the opinion of this Court, the same is not permissible.

11. This Court is not inclined to enter into the merits of the case because the issue agitated by the Appellant herein has already attained finality on the dismissal of the SLP filed by him challenging the Order dated 15.11.2019, passed by the NCDRC, and the Order of the learned Single Judge in refusing to entertain the Writ Petition filed by the Appellant herein challenging the same Order, i.e. Order dated 15.11.2019, passed by the NCDRC, under Article 226 of the Constitution of India on the ground that the SLP filed by the Appellant herein has been dismissed.

12. Accordingly, the appeal is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

NOVEMBER 23, 2022

Rahul

