

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

CO 1638 of 2019

Sri Ramesh Paul

Vs

Manoj Kumar Singh and another

For the Petitioner : Mr. Partha Pratim Roy
Sk. Moinuddin
Ms. Swapna Mitra (paul)

For the Opposite Parties : Mr. Ezaz Khan
Mr. Pradip Kumar De
Ms. Ananya Adhikary
Mr. Amit Pachal

Heard on : 03.08.2023

Judgment on : 30.08.2023

Ajoy Kumar Mukherjee, J.

1. Order impugned dated 1st march 2019 passed by the Learned State Consumer Disputes Redressal Commission, West Bengal in First Appeal no. A/745/2017 (arising out of order dated 28.04.2017 passed by the Learned the District Forum at Howrah in CC/356/2016) has been assailed by way of filing present application under article 227 of the constitution of the India.

2. Petitioner herein contended that petitioner filed a complain case before the District Forum contending that the opposite parties are the owner of land more or less 3 Katha 15 square feet comprised holding no.

37/1 and 37 , I.R Belilious Lane, Howrah, wherein they have constructed and developed one G +3 building over the said property and offered to sell one shop room measuring about 150 square feet area together with undivided proportionate share of land, including all sorts of common facilities on the ground floor and the petitioner herein for earning his daily livelihood, desired to purchase the same and accordingly one agreement for sale was prepared on 04.04.2012, which was notarized on 04.05.2012. The total consideration price for the same was settled at Rs. 12 lakh and petitioner paid earnest money of Rs. 2 lakh and obtained receipt on 21.04.2012. On 07.06.2012 the petitioner further paid Rs. 5 lakh by two separate cheques and the opposite party no. 1 herein issued two separate receipts. On 23.07.2012 the petitioner further paid Rs. 67,000/- by cheque being no. 255664 dated 24.07.2012 after obtaining money receipt on 23.07.2012. Thereafter petitioner paid Rs. 1 lakh 33 thousand by cash.

3. Petitioner further contended that the petitioner repeatedly requested the opposite parties to receive the rest amount to execute the deed of sale but they have deliberately failed to discharge their duty and for which the petitioner sent a legal notice through his Learned advocate on 08.11.2016 but as opposite parties did nothing the petitioner herein was compelled to file the complain case before Learned District Consumer Dispute Redressal forum at Howrah being case no. 356 of 2016, which was decided by the said Forum on 28.04.2017, allowing the said case exparte with costs against the opposite parties, with a direction to execute and register the sale deed within one month and also to pay Rs. 50,000/ out of which Rs.

40,000/- is to be deposited at the Consumer Legal Aid A/c and the rest is to be paid to the petitioner herein towards compensation.

4. Feeling arrived by the said order the opposite parties herein filed aforesaid appeal before the State Consumer Disputes Redressal Commission, West Bengal, being appeal no. 745 of 2017, which came up for hearing on 01.03.2019. Learned State Commission observed that the case of the petitioner does not come within the purview of Consumer Protection Act, 1986 and set aside the order of the learned District Forum but liberty was given to the petitioner to approach before appropriate court in accordance with law for getting the said deed executed.

5. Mr. Partha Pratim Roy learned counsel appearing on behalf of the petitioner submits that the matter may be decided as per provision of the Building Act along with the provisions under Consumer Protection Act. He further submits that the opposite parties have received Rs. 9 lakh out of Rs.12 lakh. Mr. Roy further contended that in the agreement the opposite parties have clearly mentioned to provide “service” to the petitioner and as per written agreement the petitioner has invested huge money towards the service and as such the dispute comes within the definition of “consumer dispute”. In fact State Commission has erred in law and facts in deciding the issue in favour of the opposite parties. The opposite party at the time of filling appeal before the State commission, did not comply the order dated 28.04.2017 passed by the District Forum. In this context Mr. Roy further contended that under section 41 of the Consumer Protection act 1986, no appeal by a person who is required to pay any amount in terms of an order

of the District Forum, shall be entertained by the State Commission, unless the appellant has deposited fifty percent of that amount.

6. He further submitted that in view of reported judgment in ***Universal Consortium of Engineering (P) Ltd. and other Vs. State of West Bengal reported in (2019) 1 Cal LT 580 (HC)***, the present Revisional application is maintainable and is to be decided on merit.

7. In support of his case petitioner further relied upon following judgments: -

(1) Arifur Rahman Khan Vs. D.L.F southern Home Ltd. And other, (2020) 16 SCC 512

(2) Black Diamond Track Parts Pvt. Ltd. And others Vs. Black Diamond Motors Pvt Ltd, 2022 SCC OnLine Del 545

(3) Ganesh Lal Vs. Shyam, (2014) 14 SCC 773

(4) L&T finance Limited Vs. Anup Kumar Bera and Other III (2014) CPJ 124 (Cal)

(5) Sri Ranjit Kumar Chakraborty and other Vs. Smt. Sandha Modak and others.

8. Mr. Ezaz Khan Learned counsel appeared on behalf of the opposite party, contended that the State Commission has clearly observed that the alleged disputes cannot be treated as “consumer disputes” as there is no element of service in the said agreement for sale and the petitioner intended to purchase the shop room from the owners “AS IS WHERE BASIS” which is a sale simpliciter. He further contended that the petitioner herein without preferring any Revisional Application under section 21(b) of the Consumer Protection Act 1986, before the National Consumer Disputes Redressal

Commission at Delhi, filed the present application under Article 227 of the Constitution of India.

9. Mr. Ezaz Khan in this context contended that the present application under article 227 of the constitution of India is not maintainable as the petitioner had chosen the Forum constituted under the Consumer Protection Act 1986 under section 12 of the Act, Accordingly if the petitioner has any grievance against the order of state commission he ought to have preferred revisional application before national commission.

10. Mr. Khan strenuously argued that the supervisory power of the High court can be invoked only when there is gross miscarriage of Justice or abuse of process of court, which is glaring on the face of record. In the present application petitioner has not made out any such case of irregularity and as such the present application is not maintainable. This is also because High Court is not a statutory appellate authority nor a revisional authority under the Act of 1986. The respondent in support of his submission relied upon the case of

- (1) Manager, HDFC Bank Ltd. Vs. SK Sahidul Haque, 2012 (1) Cal L T 285**
- (2) Cicily Kallara Ckal Vs. Vehicle factory, (IV) 2012 CPJ 1 (SC) 1**
- (3) R. Jaivel Vs. state of Tamil Nadu, AIR (2006) Madras 215.**

11. Mr. Khan further submitted that the petitioner herein has admitted the opposite parties as the owners and the agreement for sale entered by

and between the petitioner and opposite parties are purely agreement for sale of shop room and there is no element of service which is to be provided by the respondent as developer and as such the State Commission being the Appellate Authority rightly held that the agreement between the parties are of sale simpliciter and the petitioner is not a consumer within the meaning of the Act of 1986. Opposite parties in this context also relied upon an unreported judgment of this court in CO no 3357 of 2016 (**Sri Ranjit Kr Chakraborty and other Vs. Smt Sandha Modok and other**). Accordingly opposite party herein has prayed for dismissal of aforesaid application.

12. Before going to further details let me consider whether section 21 (b) of the Consumer protection Act 1986 (now under section 58 (b) of the Consumer Protection Act 2019) attracts in the present case or not. Section 21 of the Consumer protection Act runs as follows.

“21. Jurisdiction of the National Commission.—Subject to the other provisions of this Act, the National Commission shall have jurisdiction—

(a) to entertain—

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds 1[rupees one crore]; and

(ii) appeals against the orders of any State Commission; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.”

13. Admittedly in the present context the petitioner had chosen the Forum constituted under the Consumer Protection Act, to redress his grievance by filing application under section 12 of the Consumer Protection Act 1986. The other side preferred an appeal against the order passed by the District Forum and State Forum have decided the issue against the present

petitioner. Accordingly it can be said that state Forum has exercised jurisdiction of the appellate Forum in dealing with the aforesaid appeal and as such the petitioner who is feeling aggrieved by the order of the State Forum can prefer revision before Hon'ble National Commission. Section 21(b) makes it clear that the national Commission has jurisdiction to call for the records from the state Commission and if the national Commission is of the view that the order impugned is based on any perverse finding, it can set aside the order. Accordingly the petitioner can very well agitate his grievances before the National Commission for redressal. When the National Commission can have the jurisdiction to call for the records from the State Commission then naturally alternative remedy is available to approach the National Commission. In the present case since such remedy has not been exhausted, I am of the view that approaching this court under Article 227 cannot be said as proper. Once the legislature has provided for a statutory Appeal/Revision to a Higher Forum it cannot be proper exercise of jurisdiction to permit the parties to bypass the statutory appeal/Revision to such higher Forum and entertain petition in exercise of this court's power under article 227 of the Constitution of India.

14. It is settled law when an equal efficacious alternative remedy is available, the High Court is not supposed to exercise its supervisory jurisdiction or power unless the order impugned reflects a gross miscarriage of Justice or abuse of process of court, glaring on the face of the impugned order. This court also certainly has jurisdiction under Article 227 to set aside the wrong committed in any order of the forum below, if the impugned order is wholly without jurisdiction. In the present case the

petitioner has not made out any such case that the order of the State Forum is without jurisdiction. In such situation I am of the view that this court ought not to have entertained such application under Article 227 of the Constitution of India, since Revision lies before the National Commission against the order impugned. It is well settled that High Court in exercise of its jurisdiction can interfere any order only to keep the Tribunals and Courts subordinate to it within its bound of their authority and it must not act as a court of appeal. Therefore, I am of the view that this court should not go into the merits of the judgment passed by State Forum. It would be fit and proper for the petitioner to approach before the Appropriate Forum to ventilate his grievance or before Civil Court in terms of liberty granted by State Forum to get his remedy, if any.

15. C.O. 1638 of 2019 thus stands dismissed. However, this order will not preclude the petitioner from agitating his grievance before the Appropriate Forum/Authority, subject to other provisions of law including law of limitation. Since there is nothing to show that the error committed in preferring the present Application under Article 227 of constitution of India before this court is *malafide*, if an application for condonation of delay is filed in preferring Revision or institution of suit, that might be considered by the concerned Authority/Forum in accordance with law.

Urgent Photostat certified copy of this order, if applied for, be supplied to the petitioner, on priority basis on compliance of all usual formalities.

(AJAY KUMAR MUKHERJEE, J.)