

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 664 of 2020

Shubham Farms and another

Versus

Dhanraj S/o Upasrao Mote

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri J.M.Gandhi, Advocate for the petitioners.

Shri Sanjay Solat, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.

DATED : 5th APRIL, 2023.

Heard.

2. In the present writ petition, the judgment and award dated 12th August, 2016 passed by the District Consumer Redressal Forum, Nagpur in RBT/CC/13/340 directing the petitioners to refund back the amount of Rs.2,61,000/- along with interest, if it is not possible for the petitioners to execute the sale-deed is under challenge. The petitioners are also praying for dismissal of execution proceeding pending before the District Consumer Forum.

3. It is the case of the respondent complainant that he entered into an oral agreement with the

petitioners in respect of plot in question for consideration of Rs.6,50,000/- out of which time to time he paid Rs.2,61,000/-. However, since the petitioners avoided to execute the sale-deed, the respondent filed a complaint before the Consumer Forum.

4. In reply, the petitioners stated that since the respondent failed to pay installments on due dates, the sale-deed was not executed. The complaint was further opposed on the ground of limitation.

5. The learned District Consumer Redressal Forum passed an impugned order dated 12th August, 2016 directing the petitioners to refund back the amount of Rs. 2,61,000/- along with interest @ 9% p.a. if it is not possible for the petitioners to execute the sale-deed in favour of the respondent. The said judgment and order dated 12th August, 2016, is under challenge in this petition

6. Admittedly, the present petition came to be filed on 15th January, 2020 i.e. after more than three and half years from the date of impugned judgment and order dated 12th August, 2016. For approaching to this Court, belatedly, there is no satisfactory explanation has been offered.

7. Shri Solat, learned counsel for the respondent opposed the present petition on the ground of delay and laches and also on the ground of alternate remedy. In support of his submission, he has placed reliance on the judgments of Hon'ble Supreme Court of india in the case of *Cicily Kallarackal Vs. Vehicle Factory*¹ and in the case of *Royal Orchid Hotels Vs. G. Jayarama Reddy*².

8. Shri Gandhi, learned counsel for the petitioners submits that there is no bar to entertain the writ petition under Articles 226 and 227 of the Constitution of India, even if there is an alternate remedy available.

9. It is submitted that since the District Consumer Forum has entertained the complaint barred by limitation, this Court can entertain the writ petition. In support of his submission, he has placed reliance on a judgment of Hon'ble Supreme Court of India in the case of *M.P.State Agro Industries Development Corpn. Ltd., Vs. Jahan Khan*³

10. In the light of the rival submissions, I have perused the petition, the reply, the documents filed on record, and the impugned order and authorities cited.

1 2012 (8) SCC 524

2 2011(10) SCC 608

3 2007 (10) SCC 88

11. As the preliminary objection to the tenability of the present petition is raised on two counts, i.e. on the ground of alternate remedy and delay and laches, before examining the matter on merit, it would be appropriate to consider the preliminary objection, first.

12. The Hon'ble Supreme Court of India in M.P. State Agro Industries (supra) has held thus :

“12. Before parting with the case, we may also deal with the submission of learned counsel for the appellants that a remedy by way of an appeal being available to the respondent, the High Court ought not to have entertained his petition filed under Articles 226/227 of the Constitution. There is no gainsaying that in a given case, the High Court may not entertain a writ petition under Article 226 of the Constitution on the ground of availability of an alternative remedy, but the said rule cannot be said to be of universal application. The rule of exclusion of writ jurisdiction due to availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of the availability of an alternative remedy, a writ court may still exercise its discretionary jurisdiction of judicial review, in at least three contingencies, namely, (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. In these circumstances, an alternative remedy does not operate as a bar. (See: Whirpool Corpn. Vs. Registrar of Trade Marks, Harbanslal Sahnia Vs. Indian Oil Corpn. Ltd., State of H.P. Vs.

Gujarat Ambuja Cement Ltd. and Sanjana M. Wig Vs.
Hindustan Petroleum Corpn. Ltd.).”

13. From the above observations, it is evident that the Rule of Exclusion of writ jurisdiction due to availability of an alternative remedy is a Rule of Discretion and not one of Compulsion. In an appropriate case, inspite of the availability of an alternate remedy, writ court may still exercise its discretionary jurisdiction of judicial review in the contingencies namely where the writ is filed for enforcement of any fundamental right, on failure to follow principles of natural justice or where the proceedings are wholly without jurisdiction or the vires of an act is under challenge.

14. The Hon’ble Supreme Court of India in the case of Cicily (supra) had an occasion to deal with a situation similar with the present matter as regards the alternate remedy by way of appeal provided under the Act of 1986 and after examining the law in this regard, has observed thus :

“4. Despite this, we cannot help but state in absolute terms that it is not appropriate for the High Courts to entertain writ petitions under Article 226 of the Constitution of India against the orders passed by the Commission, as a statutory appeal is provided and lies to this Court under the provisions of the Consumer Protection Act, 1986. Once the legislature has provided for a statutory

appeal to a higher court, it cannot be proper exercise of jurisdiction to permit the parties to bypass the statutory appeal to such higher court and entertain petitions in exercise of its powers under Article 226 of the Constitution of India. Even in the present case, the High Court has not exercised its jurisdiction in accordance with law. The case is one of improper exercise of jurisdiction. It is not expected of us to deal with this issue at any greater length as we are dismissing this petition on other grounds.” (Emphasis supplied).

15. Thus, from the above referred observations of the Hon’ble Supreme Court, it is clear that it is not appropriate to entertain writ petition under Article 226 of the Constitution of India against the orders passed by the Commission as a statutory appeal is provided. It is further held that once the legislature has provided for a statutory appeal to higher Court, it cannot be proper exercise of jurisdiction to permit the parties to by-pass the statutory appeal to such higher Court and entertain petitions in exercise of powers under Article 226 of the Constitution of India and such cases are of improper exercise of jurisdiction.

16. In the teeth of above referred observations of the Hon’ble Supreme Court of India in the case of M.P. State Agro Industries (supra) and Cicily (supra), I revert back to the facts of the present case.

17. Undisputedly, in the case at hand, the petitioner has not preferred statutory appeal against order and award dated 12th August, 2016 passed by the District Consumer Redressal Forum, Nagpur. The validity of said order of the District Consumer Redressal Forum is being questioned first time, in the present writ petition, which was filed on 15th January, 2020 i.e. after 40 months. Thus, there is an inordinate delay of about 1120 days in filing the petition against the order dated 12th August, 2020. The petitioner has not offered any explanation for such an inordinate delay.

18. The Hon'ble Supreme Court of India in the case of Royal Orchid (*supra*) has held thus :

“25. Although the framers of the Constitution have not prescribed any period of limitation for filing a petition under Article 226 of the Constitution of India and the power conferred upon the High Court to issue to any person or authority including any Government, directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari is not hedged with any condition or constraint, in the last 61 years the superior Courts have evolved several rules of self-imposed restraint including the one that the High Court may not enquire into belated or stale claim and deny relief to the petitioner if he is found guilty of laches. The principle underlying this rule is that the one who is not vigilant and does not seek intervention of the Court within reasonable time from the date of accrual of cause of action or alleged violation of the constitutional, legal or other right is not entitled to

relief under Article 226 of the Constitution. Another reason for the High Court's refusal to entertain belated claim is that during the intervening period rights of third parties may have crystallized and it will be inequitable to disturb those rights at the instance of a person who has approached the Court after long lapse of time and there is no cogent explanation for the delay. We may hasten to add that no hard and fast rule can be laid down and no straightjacket formula can be evolved for deciding the question of delay/laches and each case has to be decided on its own facts.” (emphasis supplied)

19. The Hon’ble Supreme Court of India in clear terms has observed that the one who is not vigilant and does not seek intervention of the Court within reasonable time from the date of accrual of cause of action or alleged violation of constitutional, legal or other rights, is not entitled to relief under Article 226 of the Constitution.

20. It is also a settled law that the question of delay and laches has to be decided in each case on its own merit.

21. In the present matter, undoubtedly the delay is inordinate and no explanation is offered for such a huge delay.

22. If the provisions of the Act of 1986 are considered, it can be seen that a period is prescribed to decide the complaints. Therefore, considering the intention of the legislature in providing such period

under the statute, in the present case, in absence of any explanation for delay and as the application under Section 27 of the Act of 1986 is pending for execution of the order dated 12th August, 2016, I am not inclined to exercise discretion under Article 226 of the Constitution of India.

23. Considering the above stated well settled principle of law, in absence of any explanation offered by the petitioners for delay and laches in approaching to this Court and further as the alternate remedy is available to the petitioners, I am not inclined to entertain the present writ petition. Accordingly, it is dismissed.

24. Needless to mention that if the petitioners approach to the State Consumer Dispute Redressal Commission by filling an appeal, the period spent in pursuing the present writ petition shall be excluded, while considering the delay.

[ANIL S. KILOR, J.]

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K NAIR

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