IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

127 **CR-7189-2024 (O&M)**
Date of Decision: 10.12.2024

Renu Garg

....Petitioner

Versus

Rajesh Bhalla and others

....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Kanwar Pahul Singh, Advocate
for the petitioner.

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<u>**VIKAS SURI, J.**</u> **(Oral)**

1. In this petition under Article 227 of the Constitution of India, at the very outset, learned counsel for the petitioner restricts his claim to the alternative relief sought therein. It is, thus, prayed that the miscellaneous application filed by the petitioner for dismissal of the appeal being in contravention to the second proviso to Section 41 of the Consumer Protection Act, 2019, (for short, 'the Act of 2019') (Annexure P-2), be decided before finally deciding the main appeal.

2. Briefly stated, the petitioner filed a consumer complaint against the respondents seeking refund of amount to the tune of Rs.18,50,000/- along with interest @ 12% per annum along with compensation and litigation expenses, on account of purchase of one plot from the respondents in the year

2006. The said complaint was allowed by the District Consumer Disputes Redressal Commission, Tarn Taran (for short, 'District Consumer Commission'), vide order dated 29.11.2023. The petitioner, thereafter, filed an execution application before District Consumer Commission.

3. Respondent Nos.1 and 2 preferred an appeal against order dated 29.11.2023, which was dismissed by the State Commission, Punjab vide order dated 24.07.2024 (Annexure P-3), on the ground of limitation. Further appeal was preferred thereagainst, by respondent Nos.1 and 2, before the National Consumer Commission, wherein the petitioner was on caveat, represented through counsel.

3.1 The aforesaid revision petition was disposed of vide order dated 14.10.2024, on the 'no objection' given by the counsel representing the petitioner, for the matter being decided by the State Commission, Punjab, on merits, subject to payment of reasonable costs. Accordingly, the parties were directed to appear before the State Commission on 25.11.2024.

4. Learned counsel for the petitioner submits that as the appeal before the State Commission had been dismissed on the ground of limitation, the concession made before the National Commission was only with regard to the matter not being ousted only on the ground of limitation. It is further argued that the appeal preferred under Section 41 of the Act of 2019, would remain subject to the statutory limitations as an appeal is a creation of the statute and the statutory provisions cannot be altered by consent or acquiescence. Reliance has also been placed upon ***Manohar Infrastructure and Constructions Private Limited vs. Sanjeev Kumar Sharma and others,***

2022(1) RCR (Civil) 330 and ***Shreenath Corporation and others vs. Consumer Education and Research Society and others*, (2014) 8 SCC 657**.

5. Heard learned counsel for the petitioner and perused the record.

6. It would be apposite to refer to Section 41 of the Consumer Protection Act, 2019, which is reproduced hereunder:

> "41. Any person aggrieved by an order made by the District Commission may prefer an appeal against such order to the State Commission on the grounds of facts or law within a period of forty-five days from the date of the order, in such form and manner, as may be prescribed:
>
> Provided that the State Commission may entertain an appeal after the expiry of the said period of forty-five days, if it is satisfied that there was sufficient cause for not filing it within that period:
>
> Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the District Commission, shall be entertained by the State Commission unless the appellant has deposited fifty per cent. of that amount in the manner as may be prescribed:
>
> Provided also that no appeal shall lie from any order passed under sub-section (1) of section 81 by the District Commission pursuant to a settlement by mediation under section 80."

7. It is not disputed that the order had been passed in favour of the complainant by the District Consumer Commission against which an appeal was preferred by only two of the opposite parties. Concededly, the said appeal instituted on 11.07.2024 was beyond the period of limitation and accordingly, an application seeking condonation of delay of 179 days had been filed along with the appeal. The said application along with the main appeal was dismissed by the State Commission, vide order dated 24.07.2024. On a

revision having been preferred thereagainst, the following order was passed by the learned National Consumer Disputes Redressal Commission, New Delhi:

> "Heard Ld. Counsel for both sides.
>
> On submission, Ld. Counsel for Caveator, who states that he has no objection to the matter being decided by State Commission on merits subject to payment of reasonable costs which his client has incurred for the purpose of hearing before this Commission.
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> In view of the aforesaid submission, the Revision Petition is allowed, after setting aside the impugned order passed by State Commission subject to payment of costs of Rs.25,000/- in favour of the Respondent/Complainant, which will be a condition precedent to restoration of the First Appeal No.347 of 2024 dismissed by the State Commission.
>
> After such payment is made, Ld. State Commission shall decide the aforesaid Appeal on merits after giving an opportunity to both Parties.
>
> Parties shall appear before the State Commission on 25.11.2024.
>
> Revision Petition shall stand disposed off accordingly."

8. On the matter being remanded back to the State Commission, the petitioner moved an application (Annexure P-2) with the following prayer:

> "A. The appeal of the appellant may kindly be dismissed in toto being not entertainable for a reason of non-deposit of pre-deposit of 50% of the amount awarded by District Commission, by appellant with costs, in the interest of justice and equity.
>
> B. The Punitive costs may kindly be imposed upon appellant for deliberately mis-leading this

> commission by concealing complete amount in their calculation sheet annexed with the present appeal, in the interest of justice and equity."

9. Having considered the submissions advanced by learned counsel for the petitioner and having perused the paperbook with his able assistance, this Court deems it fit to dispose of the petition at this stage with a request to the learned State Commission to dispose of the application (Annexure P-3), expeditiously, in accordance with law. Needless to observe that the said application be disposed of prior to the decision of the main appeal, as the same goes to the very foundation of the appellate jurisdiction under Section 41 of the Act of 2019, which would remain subject to the second proviso to the principle provision, i.e. Section 41 *ibid*.

10. The present petition is disposed of with the aforesaid observations.

(VIKAS SURI)
JUDGE

December 10, 2024
Varinder

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No