

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.16431 OF 2024

Shiv Sagar Developers and others

...*Petitioners*

V/s.

Tilak Nager Audumbar Co-
operative Housing Society Ltd.

...*Respondent*

Ms. Gargi U. Warunjikar *with Mr. Hrishikesh Nabar i/b. Ms. Poonam Makhijani for the Petitioner.*

CORAM : SANDEEP V. MARNE, J.

Dated : 26 February 2025.

P.C. :

1) Petition challenges order dated 4 January 2024 passed by the Presiding Officer, National Consumer Disputes Redressal Commission, New Delhi (**NCDRC**) dismissing First Appeal No.9 of 2016 filed by the Petitioners on account of failure on the part of the Petitioners to deposit an amount of costs of Rs.20,000/-. The order dated 4 January 2024 is assailed principally on the ground that the same is passed by single Member of NCDRC whereas under provisions of Section 20(1)(a) of the Consumer Protection Act, 1986, a Bench of NCDRC can alone exercise jurisdiction for deciding the appeal. Reliance is sought to be placed on judgments of Rajasthan High Court, Bench at Jodhpur

in ***Divisional Manager N.I.C. Ltd., Jodhpur V/s. Rajasthan State Consumer Dispute Redressal Commission and Ors.***¹ and ***Kamal Travels Kokks International V/s. The State of Rajasthan and Ors.***² The Special Leave Petition filed against the order passed by the learned Single Judge of Rajasthan High Court in ***Komal Travels*** (supra) has been dismissed by the Supreme Court by order dated 30 September 2021. However, considering the unique facts of the case, I am not inclined to entertain the present Petition. It is well established principle of law that High Court in exercise of its corrective jurisdiction under Article 227 of the Constitution of India cannot be compelled to correct every error of law or fact. Reference in this regard can be made to the judgment of the Apex Court in ***Garment Craft V/s. Prakash Chand Goel***³ in which it is held in paragraph 15 as under:-

15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in

¹ S.B. Civil Writ No.1972 of 2012, decided on 25 October 2018.

² S.B. Civil Writ Petition No.18 of 2012, decided on 14 March 2018.

³ (2022) 4 SCC 181

appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

2) In my view, following are the reasons why this Court is not inclined to entertain the present Petition:-

- (i) Petitioners are developers, who failed to deliver correct carpet area to the flat purchasers which led to passing of order dated 7 December 2015 by the State Consumer Disputes Redressal Forum, Mumbai, directing them to pay compensation of Rs.11,20,180/- alongwith interest @ 9% interest per annum in addition to costs of Rs.25,000/- to the Complainant-Society.
- (ii) Petitioners filed First Appeal No.9 of 2016 challenging State Forum's order dated 7 December 2015.
- (iii) The appeal was apparently dismissed in default by order dated 2 February 2017.
- (iv) Two years later Petitioners applied for restoration of the appeal and by order dated 25 February 2020, order dated 2 February 2017 was recalled and the appeal was restored.
- (v) The appeal was apparently dismissed for default once again though the exact date of dismissal has not been disclosed.

- (vi) Petitioners filed Miscellaneous Application No.504 of 2023 once again seeking restoration of the appeal. This time NCDRC imposed costs of Rs.20,000/- on the Petitioners while restoring the appeal by order dated 17 October 2023. The costs were directed to be deposited with Consumer Legal Aid account of the Commission within a period of four weeks. Continuing the casual approach, Petitioners failed to deposit the costs of Rs.20,000/- within the stipulated time. Though the costs were directed to be deposited within a period of four weeks from 17 October 2023, the same were not deposited till 4 January 2024.
- (vii) On account of failure of Petitioners to deposit costs of Rs.20,000/- appeal came to be dismissed by order dated 4 January 2024.
- (viii) Petition is filed 10 months later on 15 October 2024 challenging the order of dismissing the appeal passed on 4 January 2024.

3) The above conduct on the part of the Petitioners would depict gross negligence in the manner in which the first appeal has been prosecuted before the NCDRC. Now Petitioners want to take shelter of orders passed by the Rajasthan High Court as well as dismissal of SLP by the Supreme Court in support of its contention that the single Member of the NCDRC is not

competent to pass order dismissing the appeal and the same could only be done by a Bench of the Commission. Considering the peculiar facts and circumstances of the present case where the Petitioner is found to be grossly negligent in prosecuting its appeal, I am not inclined to exercise jurisdiction of this Court under Article 227 of the Constitution of India.

4) Petition is accordingly rejected.

[SANDEEP V. MARNE, J.]