

(2020) 08 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9079 Of 2020

Pranav Ansal

APPELLANT

Vs

State Consumer Disputes Redressal Commissioner, Punjab
And Other

RESPONDENT

Date of Decision : 13-08-2020

Acts Referred:

Consumer Protection Act, 1986 — Section 17, 19, 27, 27A, 27A(1), 27(1)(b), 27A(1)(c)
Constitution Of India, 1950 — Article 226

Citation : (2020) 08 P&H CK 0025

Hon'ble Judges : Suvir Sehgal, J

Bench : Single Bench

Advocate : Anand Chhibbar, Gaurav Mankotia

Final Decision : Dismissed

Judgement

Suvir Sehgal, J

The case has been taken up for hearing through video conferencing on account of Covid-19 pandemic.

The present writ petition has been filed for issuance of a writ in the nature of certiorari for quashing the orders passed by the Commission-respondent

No.1 in Consumer Complaint No.35 of 2019 and in Execution No.571 of 2019 dated 08.01.2020 (Annexure P-12), 26.02.2020 (Annexure P-13) and

11.05.2020 (Annexure P-16) and in Miscellaneous Application No.837 of 2020 dated 19.03.2020 (Annexure P-15). The petitioner has further sought a

direction for setting aside of final order dated 26.08.2019 (Annexure P-10) in the said consumer complaint and entire proceedings initiated against the

petitioner under Section 27 of the Consumer Protection Act, 1986 (for brevity â?? the Actâ??).

The petition came up for motion hearing on 07.07.2020. After hearing the petitioner, this Court passed the following order:-

â??The petitioner lays challenge to the execution proceedings initiated by respondent Nos. 2 and 3 (complainants) before the State Consumer

Disputes Redressal Commission, Punjab (for short `the State Commissionâ??), for compliance of the judgment/order dated 26.8.2019 passed in

Consumer Complaint No. 35 of 2019.

A complaint filed was filed by complainants Shriya Sharma and Ritu Sharma under Section 17 of the Consumer Protection Act, 1986 (for short `the

Actâ??) against three Opposite Parties (OPs) i.e. Ansal Lotus Melange Projects Pvt. Ltd., Pranav Ansal (present petitioner) and Pradeep Bansal

(being the Managing Director and Director of OP No.1-Ansal Lotus Melange Projects Pvt. Ltd.). In the said proceedings, OPs No. 2 and 3 did not

appear despite service and were proceeded as against ex-parte. Ultimately, the said complaint was allowed by the learned State Commission vide

order dated 26.08.2019 directing the OPs to refund the complainants the deposited amount of Rs.17,33,845/- along with interest @ 12% per annum

and to pay a compensation of Rs.35,000/- as compensation on account of mental agony and harassment as well as litigation expenses.

As per the facts on record, no appeal has been filed by the OPs against the said order dated 26.8.2019, meaning thereby that the same has attained

finality.

The complainants filed execution proceedings for compliance of the order dated 26.8.2019. In the said proceedings, the learned State Commission has

passed the order dated 26.02.2020, thereby issuing the production warrants of the petitioner.

From the said facts, it is apparent that the petitioner chose not appear in the consumer complaint filed by respondent Nos.2 and 3. He also did not lay

any challenge to the judgment 26.08.2019 before the National Consumer Disputes Redressal Commission, New Delhi, in terms of Section 19 of the

Act. Still further, document Annexure P.14 on record, shows that the petitioner has already filed objections in the said execution proceedings.

In view of the said fact, I am, prima-facie, of the opinion that the petitioner cannot be allowed to circumvent the proceedings by invoking the writ

jurisdiction of this Court, especially when remedy against any order passed in the

execution proceedings, is provided under Section 27-A of the Act.

Still further, the learned Senior Counsel has failed to point out any inherent lack of jurisdiction or perversity in the orders passed by the learned State

Commission, so as to warrant any interference.

In the said backdrop, a specific query was put to the learned Senior Counsel appearing for the petitioner as to how the present writ petition is maintainable.

Faced with such a situation, learned Senior Counsel for the petitioner prays for an adjournment to cite some case law.

Adjourned to 08.07.2020.??

Learned Senior counsel has urged that the State Commission has failed to appreciate that the petitioner had no connection or relation with M/s Ansal

Lotus Melange Projects Private Limited (for short, ??respondent No.4-Company?) since 04.04.2006. He has relied upon a judgment of the

Hon??ble Supreme Court in Mrs. Anita Malhotra Vs. Apparel Export Promotion Council, AIR 2012 Supreme Court 3 1to contend that as the

petitioner was not the Director, the proceedings initiated against him deserve to be quashed. He has argued that in view of this factual scenario, the

judgment passed by the State Commission which was being executed under Section 27 of the Act is a nullity and is thus inexecutable. He has referred

to the judgment in Brakewell automotive Components (India) Private Limited Vs. P.R. Selvam Alagappan (2017) 5 SCC 37 1and in M/s R.S. Bajwa

and Company Vs. State of Chattisgarh, AIR 2008 Chattisgarh, 75. He submits that no notice was received by the petitioner in consumer complaint

due to which the petitioner had no knowledge of the proceedings.

Learned Senior counsel has argued on the merits of the impugned orders and has challenged the legality and validity of the same.

Before examining the merits of the orders challenged herein, the core question required to be addressed is as to whether this Court has the jurisdiction

under Article 226 of the Constitution of India and whether the writ petition is maintainable against the orders passed by the Commission-respondent

No.1, in execution proceedings, particularly when a remedy of appeal has been provided under Section 27(1)(b) of the Act.

For the purpose of determining this question, the relevant provision laid down in Section 27-A(1) of the Act, is quoted below:-

27A. Appeal against order passed under Section 27-

(1) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), an appeal under section 27, both on facts and on law, shall lie from

- (a) the order made by the District Forum to the State Commission;
- (b) the order made by the State Commission to the National Commission; and
- (c) the order made by the National Commission to the Supreme Court.

From a plain reading of the aforesaid provision, it appears that the legislature has specifically mentioned the appellate fora under Section 27-A of the

Act. In fact, in terms of Section 27-A(1)(b), the appeal lies against the order passed by the State Commission under Section 27 of the Act to the

National Commission. In the instant case, the petitioner has approached this Court invoking Article 226 of the Constitution instead of approaching the

National Commission for setting aside the orders of the Commission-respondent No.1 in the proceedings initiated under Section 27 of the Act.

The Hon'ble Supreme Court in *Cicily Kallarackal Vs. Vehicle Factory* (2012) 8 SCC 524 has observed as under:-

2. Despite this, we cannot help but to 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.

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7. While declining to interfere in the present Special Leave Petition preferred against the order passed by the High Court in exercise of its

extraordinary jurisdiction under Article 226 of the Constitution of India, we

hereby make it clear that the order of the Commission are incapable of being questioned under the writ jurisdiction of the High Court, as a statutory appeal in terms of Section 27 A(1)(c) lies to this Court. Therefore, we have no hesitation in issuing a direction of caution that it will not be proper exercise of jurisdiction by the High Courts to entertain writ petitions against such orders of the Commission.

A copy of this order may be sent to the Registrar General of all the High Courts, for bringing the same to the notice of Hon'ble the Chief Justices and

Hon'ble Judges of the respective High Courts.â??

The Hon'ble Supreme Court is of the view that an order passed by the National Commission under Section 27 of the Act, is incapable of being

questioned in the writ jurisdiction of the High Court under Article 226 of the Constitution of India as a statutory appeal in terms of Section 27-A(1)(c)

lies before the Supreme Court and that it would not be a proper exercise of jurisdiction by the High Courts to entertain writ petitions directed against

the orders of the National Commission. The same analogy applies to the facts of the present case. The orders of the State Commission are appealable

before the National Commission and following the dictum of Cicily Kallarackal's case (supra). It would not be proper to exercise the jurisdiction under

Article 226 of the Constitution of India and entertain the present writ petition which is directed against the orders passed by the Commission-

respondent No.1 under Section 27 of the Act.

In *Rajesh Moti Sujjan Vs. State Consumer Dispute Redressal Commission, Maharashtra and others*, the High Court of Bombay held as under:-

â??12. Perusal of Section 27-A, extracted hereinabove, shows that notwithstanding anything contained in Cr.P.C an appeal under section 27, both on

facts and on law, lies before the National Commission when the order is made by the State Commission. Section 27-A does not make any distinction

between interim order and the final order. In view thereof, it has to be held that the Petition is not maintainable before the High Court challenging the

order passed by the Commission. Hence, Petition fails and the same is dismissed on the ground of maintainability reserving liberty to the petitioner to

approach appropriate forum. It is made clear that I have not examined the merits of the case. Order accordingly.â??

A perusal of the above judgments makes it amply clear that the Consumer

Protection Act, 1986 itself provides for filing of an appeal both on facts and on law, before the specially constituted forum under the said Act for redressal of the grievances of the aggrieved party. In such a situation, the invocation of Article 226 of the Constitution of India by the person aggrieved against the orders of the Commission-respondent No.1 would not be tenable.

Accordingly, without examining or considering the legality of the impugned orders, the writ petition is dismissed as being not maintainable, with liberty to the petitioner to avail the statutory remedy available to him under the Consumer Protection Act, 1986.