
(2025) 04 SHI CK 1138
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 515 Of 2024

Surinder Singh

APPELLANT

Vs

Dwarpal And Others

RESPONDENT

Date of Decision : 30-04-2025

Acts Referred:

Motor Vehicle Act, 1988 — Section 168, 169
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2(i)

Citation : (2025) 04 SHI CK 1138

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Pritam Singh Chandel, H.S. Rangra, Vijay Chaudhary

Final Decision : Partly Allowed

Judgement

Satyen Vaidya, J

1. By way of instant petition, the petitioner has prayed for quashing and setting aside of order dated 27.02.2024 passed by learned District Consumer Disputes Redressal Commission, Una (for short, the "District Consumer Commission") in Execution Petition No. 33/2021.

2. The case as set-up by the petitioner is that The Deoli Cooperative Agriculture Service Society Ltd. (for short "the Society") is registered under the Himachal Pradesh Cooperative Societies Act, 1968 (for short, "the Act"). The Registrar of the Society has superseded the management of the Society and has appointed an Administrator. It has further been submitted that lastly the Society has gone into liquidation and a Liquidator has also been appointed.

3. It is contended that previously the petitioner was the President of the Society, but after the appointment of Administrator and Liquidator, he has no role to play in the management of the Society.

4. One person named as Dwarpal had filed Consumer Complaint No.18/2020

against the Society and one Jatinder Singh as opposite parties. The Society was sued through its President i.e. the petitioner. The District Consumer Commission vide order dated 19.10.2021 had allowed the complaint in following terms:

"11. Keeping in view above discussion the present complaint is allowed and opposite parties No. 1 and 2 are jointly and severally held liable and directed to pay to complainant the maturity amount of Rs.9,65,424/- along with 9% interest from the date of filing of the complaint till realisation of the amount, if already not paid. Since complainant was forced to file the complaint so compensation of Rupees 10,000/- is granted on account of mental tension and harassment and Rupees 8,000/- towards litigation costs. Let certified copy of this order be sent to the parties free of cost, as per rules. The file, after its due completion be consigned to records."

5. The Society intended to assail the aforesaid order of District Consumer Commission before the H.P. State Consumer Disputes Redressal Commission, Shimla (for short, "the State Commission"). The Misc. Application No. 182/2021 was filed before the State Commission for seeking exemption to deposit 50% of the awarded amount, which as per Section 41 of the Consumer Protection Act, was a pre-condition. The State Commission dismissed the aforesaid application of the Society by not granting it exemption to deposit the required amount.

6. The said Dwarpal has filed Execution Petition before District Consumer Commission, which has been registered as Case No.33 of 2021. In the said Execution Petition, the petitioner filed an application under Order 1 Rule 10 of the Code for deletion of his name on the ground that he was no more in the management of the Society and hence his name should be deleted and the Society should be sued through its Administrator. Learned District Commission vide impugned order dated 27.02.2024 though allowed the Administrator to be impleaded in the Execution Petition as a party, but the prayer of petitioner to delete his name has been rejected on the ground that he was the President of the Society at the time of filing of the complaint.

7. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

8. Learned Senior Counsel for the petitioner has referred to Section 10 of the Act to contend that a Society registered under the Act becomes a body corporate by the name under which it is registered having perpetual succession and a common seal and with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it is constituted. He submitted that the petitioner is not personally liable to discharge the liability imposed by order dated 19.10.2021 passed in Consumer Complaint No. 18/2020 by the District Commission. The liability is that of the Society and the other opposite party.

9. On the other hand, learned counsel for the respondents have submitted that though the petitioner may not be personally liable under the orders/award dated

19.10.2021 of the District Commission, but he had been made personally liable by the order dated 30.06.2021 passed by the Assistant Registrar, Cooperative Society, Una in surcharge proceedings under Section 69 (2) of the Act.

10. Learned Senior Counsel for the petitioner has rebutted the contention of the respondents by making a submission that the petitioner has assailed the order of the Assistant Registrar Cooperative Societies, Una passed in surcharge proceedings before this Court and by way of an interim order, the recovery proceedings against the petitioner have been stayed.

11. Be that as it may, it cannot be ignored that the petitioner is invoking supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

12. To justify the maintainability of the petition, learned Senior Counsel would contend that the order under execution before Learned District Consumer Commission was without jurisdiction. In light of existence of complete mechanism under the Act itself the District Consumer Commission was not vested with any jurisdiction to decide the dispute between the Society and its member or creditor. According to him the said Dwarpal was not a consumer vis-à-vis the Society.

13. Next, he has placed reliance on a judgment passed by the Hon'ble Supreme Court in *Ibrat Faizan vs. Omaxe Buildhome Private Limited* (2023) 11 SCC 594 to submit that the fora under the Consumer Protection Act, are Tribunals and hence amenable to the jurisdiction of this Court under Article 227 of the Constitution of India. He asserted that the refusal by the District Consumer Commission to delete the name of petitioner, in the given facts of the case, amounts to refusal to exercise jurisdiction and for such reason also, this Court should exercise its supervisory jurisdiction. He further contended that the technicalities should not prevail in the dispensation of justice and for such purpose placed reliance on the judgment passed by Hon'ble Supreme Court in *Kulwant Kaur and others vs. Gurdial Singh Mann (dead) by LRs and others* (2001) 4 SCC 262.

14. Learned Senior Counsel for the petitioner has also raised an argument that the powers of this Court under Articles 227 and 226 of the Constitution are akin and for this reasons also, this Court can go into the illegality, impropriety and perversity of the impugned order. He placed reliance on *Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others* (1998) 8 SCC 1; *State of Tripura vs. Manoranjan Chakraborty and others* (2001) 10 SCC 740; *Surya Dev Rai vs. Ram Chander Rai and others* (2003) 6 SCC 675 and *State of West Bengal and others vs. Samar Kumar Sarkar* (2009) 15 SCC 444.

15. Noticeably, Section 41 of the Consumer Protection Act, provides for a right to the petitioner to file an appeal before the State Commission against the order of the District Consumer Commission. The said provision requires the appellant to pay 50% of the amount as a pre-condition to entertain the appeal in such cases only where the appellant is required to pay any amount in terms of an order of

District Consumer Commission. In the instant case, even such requirement would not be applicable as the order impugned in the instant petition does not require the petitioner to pay any amount. Thus, the petitioner definitely has an alternative efficacious remedy against the order sought to be impugned before this Court by way of instant proceedings. The petitioner has failed to render any justifiable explanation as to why without availing the remedy of appeal he has sought the indulgence of this Court by invoking jurisdiction under Article 227 of the Constitution.

16. The pertinent question, thus, is whether this Court should exercise powers under Article 227 of the Constitution especially when the petitioner has an efficacious alternative remedy available to him.

17. In *A. Venkatasubbiah Naidu v. S. Chellappan*, (2000)7 SCC 695, the Hon'ble Supreme Court has held as under:-

"22. Now what remains is the question whether the High Court should have entertained the petition under Article 227 of the Constitution when the party had two other alternative remedies. Though no hurdle can be put against the exercise of the constitutional powers of the High Court it is a well-recognized principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies one or the other before he resorts to a constitutional remedy. Learned single judge need not have entertained the revision petition at all and the party affected by the interim ex parte order should have been directed to resort to one of the other remedies. Be that as it may, now it is idle to embark on that aspect as the High Court had chosen to entertain the revision petition."

18. In *Virudhunagar Hindu Nadargal Dharma Parbalana Sabai and Ors. v. Tuticorin Educational Society and Ors.*, (2019)9 SCC 538, the Hon'ble Supreme Court has held as under:-

"11. Secondly, the High Court ought to have seen that when a remedy of appeal under section 104 (1) (i) read with Order XLIII, Rule 1 (r) of the Code of Civil Procedure, 1908, was directly available, the respondents 1 and 2 ought to have taken recourse to the same. It is true that the availability of a remedy of appeal may not always be a bar for the exercise of supervisory jurisdiction of the High Court. In *A. Venkatasubbiah Naidu Vs. S. Chellappan & Ors.* (2000)7 SCC 695, this Court held that "though no hurdle can be put against the exercise of the Constitutional powers of the High Court, it is a well-recognized principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies before he resorts to a Constitutional remedy".

12. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before Civil Courts in terms of the provisions of Code of Civil procedure and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases

falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which the respondents 1 and 2 invoked the jurisdiction of the High court. This is why, a 3- member Bench of this court, while overruling the decision in *Surya Dev Rai vs. Ram Chander Rai* (2003)6 SCC 675, pointed out in *Radhey Shyam Vs. Chhabi Nath*, (2015) 3 SCC (Civ.)67 that "orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts."

19. The analysis of aforesaid expositions leads to the conclusion that the Constitutional Court ordinarily should not exercise supervisory powers in respect of the orders passed by the Courts or Tribunals against which an alternative efficacious statutory remedy is available.

20. In view of the fact that the petitioner has an alternative efficacious remedy, this Court is not inclined to exercise jurisdiction under Article 227 of the Constitution of India in the given facts and circumstances of the case. It is clarified that this Court has not expressed any opinion on the merits of the claim of the petitioner.

21. The petition is accordingly dismissed, so also the pending miscellaneous application(s), if any.