

(2005) 03 MP CK 0084
In the Madhya Pradesh High Court
Case No : Writ Petition No. 912 of 2005

Surya Prasad Shukla

APPELLANT

Vs

M.P. State Consumer Disputes Redressal Commission and
Others

RESPONDENT

Date of Decision : 10-03-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, 104, 115, 96
Constitution of India, 1950 — Article 226, 227
Consumer Protection Act, 1986 — Section 21

Citation : AIR 2006 MP 81 : (2005) 2 MPHT 328 : (2005) 2 MPLJ 39

Hon'ble Judges : K.K. Lahoti, J

Bench : Single Bench

Advocate : Ashok Tiwari, for the Appellant;

Final Decision : Dismissed

Judgement

K.K. Lahoti, J.

Petitioner has sought following reliefs in this petition :--

(1) That, this Hon''ble Court be pleased to quash the impugned order dated 24-1-2005 (Annexure P-6) passed by the first respondent and restore that of the order dated 1-3-2004 (Annexure P-4) by issuance of orders, directions, writs in the nature of certiorari or mandamus or any other writ deems fit in the circumstances of the case.

(2) Any other relief deems fit in the circumstances of the case including cost of the proceeding may also be awarded."

The petitioner has challenged the order passed by State Consumer Disputes Redressal Commission, Bhopal (hereinafter referred to as "State Commission") in Appeal No. 710/04 (Annexure P-6). By the aforesaid appeal, the State Commission reversed the order passed by District Consumer Dispute Redressal Forum, Rewa in Case No. 253/03, dated 1-3-2004 (Annexure P-4). The order has

been assailed by the petitioner on various grounds enumerated in the writ petition.

It is not in dispute before me that against the order of State Commission, a revision lies before the National Commission u/s 21 of the Consumer Protection Act, 1986 (hereinafter referred to as "Act") but the learned Counsel for the petitioner submits that in spite of the availability of the remedy of revision, this petition may be entertained. He has placed his reliance to Apex Court judgment in Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Others, and Division Bench judgment of this Court in Rewaram Hiralal Sarbarkar and Ors. v. Registrar, Public Trusts, Narsimhapur (1961 MPLJ 1081) and contended that this petition may be entertained.

From the perusal of the petition it appears that the petitioner has challenged the aforesaid order touching the merits of the case. In the grounds it is not stated that the District Forum or State Commission was having no jurisdiction to decide the matter or has committed any error of the jurisdiction. The order has been assailed apparently on factual parts and also on legal issues.

The National Commission has powers to call for records and pass appropriate orders in any consumer dispute which has been decided by the State Commission where it appears to be National Commission that the State Commission has exercised its jurisdiction not vested in it by law or has failed to exercise its jurisdiction so vested or has acted in the exercise of his jurisdiction illegally or with material irregularity. Section 21 of the Act gives the power to the National Commission which are akin to the provisions of Section 115 of the Code of Civil Procedure.

Now the question arises whether in the circumstances when the remedy of revision is available to the litigants, whether writ jurisdiction can be exercised at this stage without availing the remedy of revision. The Apex Court in Swetambar Sthanakwasi Jain Samity and Anr. v. Alleged Committee or Management Shri R.J.I. College, Agra (1996) 2 SCC 11, held thus :--

"We are of the view that the High Court not only fell into patent error but also exceeded its jurisdiction under Article 226 of the Constitution of India. Though the jurisdiction of the High Court under Article 226 of the Constitution is not confined to issuing the prerogative writs, there is a consensus of opinion that the High Court will not permit this extra-ordinary jurisdiction to be converted into a Civil Court under the ordinary law. When a suit is pending between the two parties, the interim and miscellaneous orders passed by the Trial Court -- against which remedy of appeal or revision is available -- can not be challenged by way of a writ petition under Article 226 of the Constitution of India. Where the Civil Court has the jurisdiction to try a suit, the High Court can not covert itself into an Appellate or Revisional Court and interfere with the interim/miscellaneous orders of the Civil Court. The writ jurisdiction is meant for doing justice between the parties where it can not be done in any other forum."

The Apex Court in *Durga Prasad Vs. Naveen Chandra and Others*, , held thus :--

"On the last occasion when the matter had come up for admission, we had asked the learned Counsel as to how the writ petition is maintainable in the circumstances. The learned Counsel sought for and the matter was adjourned. Thus it has come up today. The appellant's Counsel contended that three remedies are open to the appellant under the CPC, namely, right of appeal u/s 96 or appeal under Order 43 read with Section 104 or a revision u/s 115, CPC. In view of the facts that the matter does not come within the four corners of any of the three remedies, the appellant is left with no other remedy except approaching the High Court under Article 226. It is true that the impugned order is not an appealable one, either u/s 96 or under Order 43 Rule 1 read with Section 104, CPC. But still a revision would be maintainable and whether the order could be revised or not is a matter to be considered by the High Court on merits. But instead of availing of that remedy the appellant has invoked jurisdiction under Article 226 which is not warranted and the procedure prescribed under the CPC can not be bypassed by availing of the remedy not maintainable under Article 226. Under these circumstances, we decline to interfere with the order. It is open to the appellant to avail of such remedy as is open under law."

Recently the Apex Court in *Surya Dev Rai Vs. Ram Chander Rai and Others*, , considering the law held :--

"In order to safeguard against a mere appellate or revision jurisdiction being exercised in the garb of exercise of supervisory jurisdiction under Article 227 of the Constitution, the courts have devised self-imposed rules of discipline on their power. Supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available to the person aggrieved. The High Court may have regard to legislative policy formulated on experience and expressed by enactments where the legislature in exercise of its wisdom has deliberately chosen certain orders and proceedings to be kept away from exercise of appellate and revisional jurisdiction in the hope of accelerating the conclusion of the proceedings and avoiding delay and procrastination which is occasioned by subjecting every order at every stage of proceedings to judicial review by way of appeal or revision. So long as an error is capable of being corrected by a Superior Court in exercise of appellate or revisional jurisdiction, though available to be exercised only at the conclusion of the proceedings, it would be sound exercise of discretion on the part of the High Court to refuse to exercise the power of superintendence during the pendency of the proceedings. However, there may be cases where but for invoking the supervisory jurisdiction, the jurisdictional error committed by the interior Court or Tribunal would be incapable of being remedied once the proceedings have concluded."

The law is well settled by the Apex Court in the aforesaid cases that where the remedy of appeal or revision is available to the party, the High Court should use

the power to issue writ of certiorari or supervisory jurisdiction sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Though it is a settled law by the Apex Court that existence of alternative remedy does not affect the jurisdiction of the Writ Court but it would be a good ground for not entertaining the petition or the alternative remedy is neither efficacious nor effective. But in this case the aforesaid has not been shown by the petitioner.

So far as the cases relied on by the petitioner in Shiv Shakti (supra), the Apex Court considered the scope of revision and appeal and has not considered the question of availability of alternative remedy. The aforesaid case is not applicable in the present set of facts of the petition. So far as the Division Bench judgment of this Court in Rewaram Hiralal (supra), the Division Bench of this Court held that it is always discretionary with the High Court to exercise its writ jurisdiction when another remedy equally efficacious is available to the party, but when the error on the part of an inferior Tribunal is manifest and patent the Court will be justified in stepping in to correct it instead of directing the aggrieved party to go through the tortuous way of a regular suit to have it corrected. But the similar position is not herein.

In my considered opinion, the petitioner is having efficacious alternative remedy by filing revision against the impugned order and the National Forum constituted under the Act is having jurisdiction to deal with the matter in exercising powers u/s 21 of the Act. I do not find it proper to entertain this petition at this stage and dismiss this petition with liberty to the petitioner to file revision against the impugned order.

At this stage, learned Counsel for petitioner submits that :--

- (i) The certified copy filed by the petitioner be returned to him so that the petitioner may file revision against the order passed by the State Commission.
- (ii) That the limitation be expanded to file revision as the prescribed limitation of 45 days has already expired.

This petition was filed on 18-2-2005 against the order of State Commission dated 24-1-2005. Certified copy of the order was delivered to the petitioner on 25-1-2005. This petition was filed immediately by the petitioner without wasting any time. This petition remain pending till today for adjudication. On filing revision of the petitioner before State Commission, the State Commissioner shall give due exclusion of the aforesaid period during which this petition remain pending in this Court. So far as return of certified copy of the State Commission (Annexure P- 6) is concerned, prayer is allowed. On filing of the Photostat copy of the order, office to return the certified copy of the order (Annexure P-6) to the petitioner after retaining the Photostat copy on record.

No order as to costs.