

Ibrat Faizan vs Omaxe Buildhome Pvt. Ltd. on 13 May, 2022

Author: M.R. Shah

Bench: B.V. Nagarathna, M.R. Shah

REPORTABLE
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 3072 OF 2022

Ibrat Faizan

... Appellant

Versus

Omaxe Buildhome Private Limited

... Respondent

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned interim order passed by the High Court of Delhi at New Delhi dated 22.12.2021 passed in CM(M) No. 1196/2021, by which the learned Single Judge of the High Court has stayed order dated 9.12.2021 passed by the National Consumer Disputes Redressal Commission, New Delhi (for short, 'National Commission'), while hearing a writ petition filed under Article 227 of the Constitution of India, in which the respondent herein challenged the judgment and order passed by the National Commission in First Appeal No. 250/2021, the original respondent before the High Court has preferred the present appeal.

2. Pursuant to the earlier order passed by this Court dated 21.03.2022 in the special leave petition, by a detailed order dated 31.03.2022, the learned Single Judge of the High Court has answered the question of jurisdiction and has held that against the order passed by the National Commission dated 9.12.2021 in First appeal No. 250/2021, a writ petition would be maintainable under Article 227 of the Constitution of India. By way of Interlocutory Application No. 58657/2022, the appellant herein has sought permission to amend the special leave petition, which is allowed.

3. Feeling aggrieved and dissatisfied with the order passed by the High Court holding that against the order passed by the National Commission passed in an appeal under Section 58(1)(a)(iii) of the Consumer Protection Act, 2019 (hereinafter referred to as the '2019 Act'), a writ petition under Article 227 of the Constitution of India would be maintainable, the original respondent before the

High Court has preferred the present appeal before this Court.

4. The jurisdiction of the High Court under Article 227 of the Constitution of India, against the order passed by the National Commission, in an appeal under Section 58(1)(a)(iii) of the 2019 Act, is the moot question for consideration before this Court.

5. The facts leading to the present appeal in a nutshell are as under:

The appellant herein booked a flat in the project floated by the respondent herein. According to the appellant herein, despite the payment of sale consideration, the possession of the flat was not handed over and therefore the appellant filed a consumer complaint before the Delhi State Consumer Redressal Forum (for short, 'State Commission') on 10.08.2013 on the grounds of deficiency of service and unfair trade practice. By order dated 16.10.2020, the State Commission allowed the said complaint directing the respondent herein to handover possession of the flat booked by the appellant subject to their meeting the requirements. The State Commission also directed the respondent herein to pay to the complainant – appellant herein compensation for the delayed period in the form of simple interest at the rate of 9% for the period from the date of possession of the flat was due to be delivered till the delivery of the possession.

5.1 The appellant herein – original complainant filed an execution and contempt petition before the State Commission. Vide order dated 12.03.2021, the State Commission directed the decree holder – appellant herein to place on record the details of the bank accounts or the properties of the respondent herein which are to be attached for not implementing the judgment and order dated 16.10.2020 passed by the State Commission. Thereafter, the respondent-builder preferred an appeal before the National Commission. Vide order dated 30.03.2021, the National Commission granted stay of the State Commission's order, subject to deposit of the entire cost of the flat along with 9% interest on the amount paid till date in the Registry of the State Commission or face the execution action by the State Commission.

Feeling aggrieved and dissatisfied with the order dated 30.03.2021 passed by the National Commission, the respondent herein preferred writ petition before the High Court by way of Writ CM(M) No. 374/2021 under Article 227 of the Constitution of India contending, inter alia, that the National Commission ought not to have directed the builder to deposit the entire cost of the apartment along with the compensation awarded by the State Commission. The High Court, vide order dated 25.05.2021, stayed the operation of the order of National Commission dated 30.03.2021, subject to the builder depositing with the State Commission 50% of the amount directed to be deposited by way of interest towards compensation within four weeks. A further order came to be passed by the High Court on 17.08.2021 in Writ CM(M) No. 374/2021. Thereafter, the National Commission passed a final order in First Appeal No. 250/2021 vide order dated 09.12.2021 and confirmed the order passed by the State Commission dated 16.10.2020. 5.2 Feeling aggrieved

and dissatisfied with the final order dated 09.12.2021 passed by the National Commission, confirming the order dated 16.10.2020 passed by the State Commission, the respondent- builder again approached the High Court by way of present writ petition being CM(M) No. 1196/2021. By the impugned interim order dated 22.12.2021, till the next date of hearing, the High Court has stayed the operation of final order dated 09.12.2021 passed by the National Commission in First Appeal No. 250/2021.

5.4 Feeling aggrieved and dissatisfied with the impugned interim order passed by the High Court in Writ CM(M) No. 1196/2021, under Article 227 of the Constitution of India, the original complainant has preferred the present appeal.

6. At the time of admission hearing via Video Conferencing on 21.03.2022, this Court passed the following order:

“The jurisdiction of the High Court, under Article 227 of the Constitution of India, against the order passed by the National Consumer Disputes Redressal Commission (NCDRC) is the moot question for consideration. As the matter is pending before the High Court and the next date of hearing is reported to be 29.03.2022, we request the High Court to decide the issue with respect to the jurisdiction of the High Court, under Article 227 of the Constitution of India, against the order passed by the National Consumer Disputes Redressal Commission (NCDRC) first which may be decided on or before 18.04.2022. The decision of the High Court on the jurisdiction shall be placed before this Court on or before the next date of hearing.

Put up on 21.04.2022.

It is agreed by learned counsel appearing for the respective parties that they shall not ask for any adjournment on any ground whatsoever before the High Court.”

7. That accordingly, by the impugned further order dated 31.03.2022, the learned Single Judge of the High Court has decided on the question of jurisdiction and it has held that against the order passed by the National Commission dated 09.12.2021 passed in First appeal No. 250/2021, impugned before it, a writ petition under Article 227 of the Constitution of India would be maintainable. By way of amendment, which was allowed, the subsequent order dated 31.03.2022 is also challenged and is now the subject matter before this Court in the present appeal.

8. Shri Sudeepta Kumar Pal, learned counsel appearing on behalf of the appellant has vehemently submitted that against the order passed by the National Commission in First Appeal No. 250/2021, a writ petition before the High Court under Article 227 of the Constitution of India would not be maintainable.

8.1 It is submitted that as such against the order passed by the National Commission, an appeal provided under Section 27A(1)(c) of the Consumer Protection Act, 1986 would be maintainable. It is contended that without exhausting the said remedy, the High Court ought not to have entertained

the writ petition under Article 227 of the Constitution of India, which was against the order passed by the National Commission in First Appeal No. 250/2021.

8.2 In the alternative, it is submitted that assuming that the writ petition under Article 227 of the Constitution of India against the order passed by the National Commission, impugned before the High Court, was maintainable, in that case also, in the limited jurisdiction available under Article 227 of the Constitution of India, the High Court ought not to have stayed the order passed by the National Commission dated 09.12.2021 passed in first appeal No. 250/2021.

9. Shri Karanjot Singh Mainee, learned counsel appearing on behalf of the respondent has vehemently submitted that as the appeal before the National Commission was under Section 58(1)(a)(iii) of the 2019 Act, there is no further appeal provided against the order of the National Commission, as provided to the Supreme Court under section 67 of the 2019 Act, against the order passed by the National Commission under Section 58(1)(a)(iii) of the 2019 Act. Hence, a writ petition under Article 227 of the Constitution of India would be maintainable. In support of his submission, learned counsel appearing on behalf of the respondent – original writ petitioner before the High Court has heavily relied upon the decision of this Court in the case of Associated Cement Companies Limited v. P.N. Sharma, AIR 1965 SC 1595 (paras 44 & 45), and the subsequent decision of this Court in the case of L. Chandra Kumar v. Union of India, (1997) 3 SCC 261.

9.1 Making the above submissions and relying upon the aforesaid decisions, it is submitted that the High Court has rightly observed and held that against the judgment and order passed by the National Commission, impugned before the High Court, a writ petition under Article 227 of the Constitution of India would be maintainable.

10. We have heard learned counsel for the respective parties at length.

As observed hereinabove, the short question which is posed for the consideration of this Court is, “whether, against the order passed by the National Commission in an appeal under Section 58(1)(a)(iii) of the 2019 Act, a writ petition before the concerned High Court under Article 227 of the Constitution of India would be maintainable?”

11. While answering the aforesaid issue/question, the relevant provisions of the 2019 Act, which are relevant for our purpose, i.e., Sections 58 and 67 are required to be referred to. Sections 58 & 67 of the 2019 Act read as under:

“58. Jurisdiction of National Commission.—(1) Subject to the other provisions of this Act, the National Commission shall have jurisdiction—

(a) to entertain—

(i) complaints where the value of the goods or services paid as consideration exceeds rupees ten crore:

Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit;

(ii) complaints against unfair contracts, where the value of goods or services paid as consideration exceeds ten crore rupees;

(iii) appeals against the orders of any State Commission;

(iv) appeals against the orders of the Central Authority; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

(2) The jurisdiction, powers and authority of the National Commission may be exercised by Benches thereof and a Bench may be constituted by the President with one or more members as he may deem fit:

Provided that the senior-most member of the Bench shall preside over the Bench.

(3) Where the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it:

Provided that the President or the other member, as the case may be, shall give opinion on the point or points so referred within a period of two months from the date of such reference.

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67. Appeal against order of National Commission.—Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (i) or (ii) of clause (a) of sub-section (1) of Section 58, may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty 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 National Commission shall be entertained by the Supreme Court unless that person has deposited fifty per cent of that amount in the manner as may be prescribed.” It is not in dispute that in the present case, the appeal before the National Commission was against the order passed by the State Commission under Section 47(1)(a) of the 2019 Act. Therefore, against the order passed by the State Commission passed in a complaint in exercise of its powers conferred under Section 47(1)(a) of the 2019 Act, an appeal to the National Commission was maintainable, as provided under Section 58(1)(a)(iii) of the 2019 Act. As per Section 67 of the 2019 Act, any person, aggrieved by an order made by the National Commission of its powers conferred by sub-clause (i) or (ii) of clause (a) of sub-section (1) of Section 58, may prefer an appeal against such order to the Supreme Court. Therefore, an appeal against the order passed by the National Commission to this Court would be maintainable only in case the order is passed by the National Commission in exercise of its powers conferred under Section 58(1)(a)(i) or under Section 58(1)(a)(ii) of the 2019 Act. No further appeal to this Court is provided against the order passed by the National Commission in exercise of its powers conferred under Section 58(1)(a)(iii) or under Section 58(1)(a)(iv) of the 2019 Act. In that view of the matter, the remedy which may be available to the aggrieved party against the order passed by the National Commission in an appeal under Section 58(1)(a)(iii) or Section 58(1)(a)

(iv) would be to approach the concerned High Court having jurisdiction under Article 227 of the Constitution of India.

12. Whether the National Commission can be said to be a tribunal for the purpose of exercise of powers under Article 227 of the Constitution of India by the High Court is concerned, has been considered by a Constitution Bench of this Court in the case of Associate Cement Companies Limited (supra), which is required to be referred to. In paragraphs 44 and 45, it is observed and held as under:

“44. An authority other than a court may be vested by statute with judicial power in widely different circumstances, which it would be impossible and indeed inadvisable to attempt to define exhaustively. The proper thing is to examine each case as it arises, and to ascertain whether the powers vested in the authority can be truly described as judicial functions or judicial powers of the State. For the purpose of this case, it is sufficient to say that any outside authority empowered by the State to determine conclusively the rights of two or more contending parties with regard to any matter in controversy between them satisfies the test of an authority vested with the judicial powers of the State and may be regarded as a tribunal within the meaning of Article 136. Such a power of adjudication implies that the authority must act

judicially and must determine the dispute by ascertainment of the relevant facts on the materials before it and by application of the relevant law to those facts. This test of a tribunal is not meant to be exhaustive, and it may be that other bodies not satisfying this test are also tribunals. In order to be a tribunal, it is essential that the power of adjudication must be derived from a statute or a statutory rule. An authority or body deriving its power of adjudication from an agreement of the parties, such as a private arbitrator or a tribunal acting under Section 10-A of the Industrial Disputes Act, 1947, does not satisfy the test of a tribunal within Article 136. It matters little that such a body or authority is vested with the trappings of a court. The Arbitration Act, 1940 vests an arbitrator with some of the trappings of a court, so also the Industrial Disputes Act, 1947 vests an authority acting under Section 10-A of the Act with many of such trappings, and yet, such bodies and authorities are not tribunals.

45. The word “tribunal” finds place in Article 227 of the Constitution also, and I think that there also the word has the same meaning as in Article

136.” Therefore, the National Commission can be said to be a ‘Tribunal’ which is vested by Statute the powers to determine conclusively the rights of two or more contending parties with regard to any matter in controversy between them. Therefore, as observed hereinabove in the aforesaid decision, it satisfies the test of an authority vested with the judicial powers of the State and therefore may be regarded as a ‘Tribunal’ within the meaning of Article 227 and/or 136 of the Constitution of India. Also, in a given case, this Court may not exercise its powers under Article 136 of the Constitution of India, in view of the remedy which may be available to the aggrieved party before the concerned High Court under Article 227 of the Constitution of India, as it is appropriate that aggrieved party approaches the concerned High Court by way of writ petition under Article 227 of the Constitution of India.

12.1 At this stage, another Constitution Bench decision of this Court in the case of L. Chandra Kumar (supra) is required to be referred to.

While dealing with the jurisdiction of the High Courts under Articles 226/227 of the Constitution of India in respect of powers of judicial review, it is observed and held in para 90 as under:

“90. We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review, the jurisdiction of the High Courts under Articles 226/227 cannot wholly be excluded. It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite

frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Articles 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.” That thereafter, it is observed and held that against the order passed by the tribunal, the aggrieved party may approach the concerned High Court under Article 227 of the Constitution of India.

12.2 We may also refer to the decision of this Court in *State of Karnataka vs. Vishwabharathi House Building Co-operative Society and Ors.*, (2003) 2 SCC 412. In the said case, the contest before this Court was with regard to the Constitutional validity of the Consumer Protection Act, 1986. The validity of the Act was challenged, inter-alia, on the ground that the Parliament, was not empowered to establish a hierarchy of Courts, which would operate parallelly with the Courts established under the Constitution. Upholding the validity of the Act, this Court observed that the very fact that a given party could always approach the High Court under Article 227, or the Supreme Court, as the case may be, against an order of a Commission constituted under the Act, was itself an adequate safeguard. The observations of this Court, to the effect that a party aggrieved by an order of a Commission constituted under the Act, could approach a High Court, or this Court, have been extracted as under:

“52. The very fact that in a given case a party under the said Act may approach upto this Court and or may otherwise take recourse to the remedy of judicial review, the interest of the parties must be held to have been sufficient safeguard.

53. The provisions relating to power to approach appellate court by a party aggrieved by a decision of the forums State Commissions as also the power of High Court and thus Court under Article 226/227 of the Constitution of India and Article 32 of this Court apart from Section 23 of the Act provide for adequate safeguards. Furthermore, primarily the jurisdiction of the forum/commissions is to grant damages. In the event, a complainant feels that he will have a better and effective remedy in a civil court as he may have to seek for an order of injunction, he indisputably may file a suit in an appropriate civil court or may take recourse to some other remedies as provided for in other statutes.”

13. No so far as the remedy which may be available under Article 136 of the Constitution of India is concerned, it cannot be disputed that the remedy by way of an appeal by special leave under Article 136 of the Constitution of India may be too expensive and as observed and held by this Court in the case of *L. Chandra Kumar* (supra), the said remedy can be said to be inaccessible for it to be real and effective. Therefore, when the remedy under Article 227 of the Constitution of India before the concerned High Court is provided, in that case, it would be in furtherance of the right of access to justice of the aggrieved party, may be a complainant, to approach the concerned High Court at a lower cost, rather than a Special Leave to Appeal under Article 136 of the Constitution.

14. In view of the above, in the present case, the High Court has not committed any error in entertaining the writ petition under Article 227 of the Constitution of India against the order passed by the National Commission which has been passed in an appeal under Section 58(1)(a)

(iii) of the 2019 Act. We are in complete agreement with the view taken by the High Court. However, at the same time, it goes without saying that while exercising the powers under Article 227 of the Constitution of India, the High Court subjects itself to the rigour of Article 227 of the Constitution and the High Court has to exercise the jurisdiction under Article 227 within the parameters within which such jurisdiction is required to be exercised.

14.1 The scope and ambit of jurisdiction of Article 227 of the Constitution has been explained by this Court in the case of *Estralla Rubber v. Dass Estate (P) Ltd.*, (2001) 8 SCC 97, which has been consistently followed by this Court (see the recent decision of this Court in the case of *Garment Craft v. Prakash Chand Goel*, 2022 SCC Online SC 29). Therefore, while exercising the powers under Article 227 of the Constitution, the High Court has to act within the parameters to exercise the powers under Article 227 of the Constitution. It goes without saying that even while considering the grant of interim stay/relief in a writ petition under Article 227 of the Constitution of India, the High Court has to bear in mind the limited jurisdiction of superintendence under Article 227 of the Constitution. Therefore, while granting any interim stay/relief in a writ petition under Article 227 of the Constitution against an order passed by the National Commission, the same shall always be subject to the rigour of the powers to be exercised under Article 227 of the Constitution of India.

16. In view of the above discussion and for the reasons stated above and subject to the observations made hereinabove, it cannot be said that a writ petition under Article 227 of the Constitution of India before the concerned High Court against the order passed by the National Commission in an appeal under Section 58(1)(a)(iii) of the 2019 Act was not maintainable. We are in complete agreement with the view taken by the High Court. As the matter on merits is yet to be considered by the High Court, we do not express anything on merits in favour of either of the parties. However, it is observed that while considering the question of interim relief/stay, the High Court will bear in mind the observations made hereinabove.

17. The present appeal is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

..... J.
[M.R. SHAH]

NEW DELHI;
MAY 13, 2022.

.....J.
[B.V. NAGARATHNA]