

Manohar Infrastructure And ... vs Sanjeev Kumar Sharma on 7 December, 2021

Author: M.R. Shah

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

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7098 OF 2021

Manohar Infrastructure and
Constructions Private Limited

...Appellant(s)

Versus

Sanjeev Kumar Sharma and Ors.

...Respondent(s)

With

CIVIL APPEAL NO. 7099 OF 2021

TDI Infrastructure Ltd.

...Appellant(s)

Versus

Jyoti Bhardwaj

...Respondent(s)

With

CIVIL APPEAL NO. 7100 OF 2021

M/s. TDI Infrastructure Ltd.

...Appellant(s)

Versus

Surender Sharma

...Respondent(s)

With

CIVIL APPEAL NO. 7101 OF 2021

M/s. TDI Infrastructure Ltd.

...Appellant(s)

Versus

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Ved Prakash
Natarajan
Date: 2021.12.07
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Reason:

...Respondent(s)

With
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CIVIL APPEAL NO. 7104 OF 2021

M/s. TDI infrastructure ltd.

...Appellant(s)

Versus

Kusum Gaur and Anr.

...Respondent(s)

With

CIVIL APPEAL NO. 7102 OF 2021

M/s. TDI Infrastructure ltd.

...Appellant(s)

Versus

Ved Prakash

...Respondent(s)

And

CIVIL APPEAL NO. 7103 OF 2021

M/s. TDI Infrastructure Ltd.

...Appellant(s)

Versus

Kabita Bhattacharya and Anr.

...Respondent(s)

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned order passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as “National Commission”) dated 27.09.2021 in I.A. No. 3621 of 2021 in First Appeal No. 330 of 2021 by which, the National Commission, while staying the order passed by the State Commission has directed the appellant to deposit the entire decretal amount with the State Commission, the original appellant – builder –

M/s. Manohar Infrastructure and Constructions Private Limited, has preferred the Civil Appeal No. 7098 of 2021.

2. Feeling aggrieved and dissatisfied with the impugned order passed by the National Commission dated 31.08.2021 passed in I.A. No. 5880 of 2021; I.A. No.5881 of 2021; I.A. No.5882 of 2021; I.A. No. 5883 of 2021 and I.A. No. 5884 of 2021 in respect of First Appeal Nos. 856 of 2020, 857 of 2020, 858 of 2020, 859 of 2020 and 860 of 2020 by which the National Commission has dismissed the said I.A.s and refused to modify or review or recall its earlier order dated 04.02.2021 by which, while admitting the respective appeals, the National Commission granted stay of the orders passed by the State Commission, subject to deposit of entire decretal amount with up-to-date interest, if any, the original appellant/applicant – builder – M/s. TDI Infrastructure Ltd. has preferred the present Civil Appeal Nos. 7099 to 7104 of 2021.

3. At the outset, it is required to be noted that feeling aggrieved and dissatisfied with the order passed by the State Commission directing the appellant(s) to refund the amount paid by the respective home buyers with interest, the appellant(s) have preferred the first appeals before the National Commission under Section 51 of the Consumer Protection Act, 2019 (hereinafter referred to as the “Act, 2019”). That in the said appeal(s), the respective appellant(s)/applicant(s) filed the said application(s) to stay the respective order(s) passed by the State Commission.

4. At this stage, it is required to be noted that as the said respective appellant(s) have deposited 50 per cent of the decretal amount by preferring the appeal(s), which the appellant(s) are required to deposit as a pre-deposit at the time of preferring the appeal(s) as required under Section 19 of the Act, 2019. But the National Commission has stayed the order passed by the State Commission on condition that the appellant(s) shall deposit the entire decretal amount with interest, if any, with the State Commission. Feeling aggrieved and dissatisfied with the order(s) passed by the National Commission passed on the stay application(s) directing the appellant(s) to deposit the entire decretal amount with interest, if any, while staying the respective order(s) passed by the State Commission, the original appellant(s) have preferred the present appeals.

5. Shri Sidharth Dave, learned Senior Advocate has appeared on behalf of the appellant in Civil Appeal No. 7098 of 2021 and Ms. Kanika Agnihotri, learned Advocate has appeared on behalf of the appellant – M/s. TDI Infrastructure Ltd. in Civil Appeal Nos. 7099 to 7104 of 2021.

6. Shri Sidharth Dave, learned Senior Advocate on behalf of the respective appellant has vehemently submitted that the National Commission cannot pass an order to deposit the entire decretal amount and/or any amount higher than 50 per cent of the amount in terms of the order of the State Commission while entertaining the appeal in view of the second proviso to Section 51 of the Act, 2019. It is submitted that according to the statutory intent, the requirement of deposit at best can be 50 per cent of the decretal amount and not higher than that. Learned counsel appearing on behalf of the respective appellant(s) have heavily relied upon the number of orders passed by this Court against several orders passed by the National Commission granting stay of the order of the State Commission subject to deposit of the entire decretal amount with the State commission and this Court has disposed of the respective special leave petition(s) with the direction that the appellant(s)

shall deposit 50 per cent of the decretal amount in view of the second proviso to Section 51 of the Act, 2019.

6.1 It is further submitted that assuming that the National Commission can pass the order to deposit the entire amount and/or any amount higher than 50 per cent of the amount while staying the order passed by the State Commission, in that case also such order(s) on stay application(s) is/are not to be passed mechanically. It is submitted that power to grant stay are akin to power to grant stay of the decree passed by the Civil Court under the provisions of the Civil Procedure Code, 1908, namely Order XLI Rule 5.

6.2 It is submitted that a speaking order is required to be passed by the National Commission, if on facts, the National Commission proposes to pass an order to deposit the entire decretal amount and/or any amount higher than 50 per cent. It is submitted that directing the appellant(s) to deposit the entire decretal amount/entire amount would be unreasonable and taking away the right of the appellant/aggrieved party to challenge the order passed by the State Commission in an appeal under Section 51 of the Act, 2019.

6.3 It is submitted that considering second proviso to Section 51 of the Act, 2019, it can be said that the legislative intent is that before the appeal of the aggrieved party is considered by the National Commission on merits, he has to deposit 50 per cent of the decretal amount and it is sufficient that 50 per cent amount of the decretal amount is deposited and not higher than that.

7. Learned counsel appearing on behalf of the original complaint(s)- respondent(s) in the appeals preferred by the TDI Infrastructure Ltd. has vehemently submitted that as such the appellant - TDI Infrastructure Ltd. has not challenged the original order dated 04.02.2021 directing the appellant(s) to deposit the entire amount ordered by the State commission as a condition for grant of stay. It is submitted that thereafter by order dated 23.03.2021 the National Commission dismissed the respective appeal(s) for waiver of the condition of deposit of the entire decretal amount by earlier order dated 04.02.2021 and the same is also not challenged. It is submitted that what is challenged is the subsequent order dated 31.08.2021 passed in respective I.A. Nos. 5880 of 2021 to 5884 of 2021 in respective First Appeal Nos. 856 of 2020 to 860 of 2020, which were filed for modification of the earlier order dated 04.02.2021. It is therefore submitted that in the absence of any challenge to the earlier main National Commission's orders dated 04.02.2021 and 23.03.2021, the present appeal(s)/special leave petition(s) challenging only the order dated 31.08.2021 refusing to modify the earlier order dated 04.02.2021 is not maintainable and the same is not required to be entertained.

7.1 On merits, while opposing the present appeals, it is vehemently submitted that as such the order passed by the State Commission is akin to a money decree and therefore while staying the money decree the National Commission is absolutely justified in directing the appellant – judgment debtor to deposit the entire decretal amount while staying the order passed by the State Commission. It is submitted that even otherwise in the present case the order passed by the State Commission is to refund the amount to the respective home buyers, which they actually deposited and paid to the builder. It is therefore submitted that it is their money that the State Commission has directed to

refund. It is therefore submitted that as such the National Commission has rightly directed to deposit the entire decretal amount.

7.2 It is further submitted by the learned counsel appearing on behalf of the original complainant(s) that the issue, whether the National Commission can pass an order to deposit the entire amount and/or any amount higher than 50 per cent of the amount as such is no longer *res integra* in view of the decision of this Court in the case of *Shreenath Corporation and Ors. Vs. Consumer Education and Research Society and Ors.*, (2014) 8 SCC 657.

7.3 It is submitted that while considering the *pari materia* provision under the Consumer Protection Act, 1986 (hereinafter referred to as the “Act, 1986”) second proviso to Section 19, it is observed and held that the pre-deposit condition has no nexus with grant of interim order of stay. It is held that while considering the stay of the order passed by the State Commission, the National Commission can direct the appellant(s) to deposit the entire amount. It is submitted that deposit of 50 per cent of the amount awarded by the State Commission would be a pre-condition to entertain the appeal filed by the aggrieved party -appellant and that is the minimum mandatory requirement before the appeal and application for stay is considered on merits.

7.4 It is submitted that so far as the earlier orders passed by this Court directing the appellant(s) to deposit only 50 per cent of the amount is concerned, it is submitted that in none of the orders any law is laid down by this Court. It is submitted that on the contrary, the issue involved in the present appeal(s) is directly and squarely covered by the decision of this Court in the case of *Shreenath Corporation and Ors.* (supra) by which this Hon’ble Court has considered the issue in detail on merits and has considered the object and purpose of deposit of the amount as a pre-deposit. It is submitted that in the case of *Shreenath Corporation and Ors.*, this Court also considered the Order XLI Rule 5 and Order XXXIX Rule 1 of the CPC alongwith the object and purpose of the deposit of the amount as a pre-deposit before the appeal is entertained under Section 19 of the Act, 1986.

7.5 Making above submissions, it is prayed to dismiss the present appeals.

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

9. The short question which is posed for consideration of this Court is:

“Whether in an appeal under Section 51 of the Consumer Protection Act, 2019 and while considering the stay application to stay the order passed by the State Commission, the National Commission can pass an order to deposit the entire amount and/or any amount higher than 50 per cent of the amount in terms of the order of the State Commission while entertaining the appeal under Section 51 of the Act, 2019?”

10. While considering the aforesaid issue/question, Section 51 of the Consumer Protection Act, 2019 is required to be referred to, which reads as under:-

“51. Appeal to National Commission.—(1) Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) or (ii) of clause (a) of sub-section (1) of Section 47 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed:

Provided that the National Commission shall not entertain the appeal after the expiry of the said period of thirty days unless 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 State Commission, shall be entertained by the National Commission unless the appellant has deposited fifty per cent of that amount in the manner as may be prescribed. (2) Save as otherwise expressly provided under this Act or by any other law for the time being in force, an appeal shall lie to the National Commission from any order passed in appeal by any State Commission, if the National Commission is satisfied that the case involves a substantial question of law.

(3) In an appeal involving a question of law, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the National Commission is satisfied that a substantial question of law is involved in any case, it shall formulate that question and hear the appeal on that question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the National Commission to hear, for reasons to be recorded in writing, the appeal on any other substantial question of law, if it is satisfied that the case involves such question of law. (5) An appeal may lie to the National Commission under this section from an order passed ex parte by the State Commission.”

11. On a fair reading of Section 51 of the Act, 2019, more particularly, second proviso to Section 51, it appears that the appellant(s) in an appeal against the order passed by the State Commission may prefer an appeal, however, before the appeal is entertained by the National Commission, the appellant(s) has to deposit 50 per cent of the amount. So, it is the pre-condition to deposit 50 per cent of the amount as ordered by the State Commission before his appeal is entertained by the National Commission. Therefore, it is a condition precedent to deposit 50% of the amount before his appeal is entertained by the National Commission. However, that does not take away the jurisdiction of the National Commission to order to deposit the entire amount and or any amount higher than 50 per cent of the amount while considering the stay application to stay the order passed by the State Commission. Rules for entertainment of an appeal on deposit of 50 per cent of the amount ordered by the State Commission, which is a statutory pre-deposit and the grant of interim order on the stay application subject to deposit of further amount are distinct and different. Pre-deposit condition as per second proviso to Section 51 has no nexus with the grant of interim

order of stay by the National Commission subject to deposit of the amount awarded by the State Commission.

12. An identical question came to be considered by this Court in the case of Shreenath Corporation and Ors. (supra). In the aforesaid case, this Court was considering the pari materia provision under the Act, 1986 and second proviso to Section 19, which provided pre-deposit of amount specified therein, i.e., 50 per cent of the amount awarded by the State Commission or Rs.35,000/- whichever is less. In the aforesaid case, this Court had occasion to consider the object and purpose of pre-deposit condition while entertaining the appeal under Section 19 by the National Commission, against the order passed by the State Commission. In paragraphs 8 to 10, it is observed and held as under:-

“8. This Court in *State of Haryana v. Maruti Udyog Ltd.* [(2000) 7 SCC 348], while dealing with the case of waiver of “pre-deposit” in an appeal under first proviso to Section 39(5) of the Haryana General Sales Tax Act held:

(SCC p. 353, para 7) “7. ... There cannot be any dispute that right of appeal is the creature of the statute and has to be exercised within the limits and according to the procedure provided by law. It is filed for invoking the powers of a superior court to redress the error of the court below, if any. No right of appeal can be conferred except by express words. An appeal, for its maintainability, must have a clear authority of law. Sub-section (5) of Section 39 of the Act vests a discretion in the appellate authority to entertain the appeal if it is filed within sixty days and the amount of tax assessed along with penalty and interest, if any, recoverable from the persons has been paid. The aforesaid restriction is subject to the proviso conferring discretion upon the appellate authority to dispense with the deposit of the amount only on proof of the fact that the appellant was unable to pay the amount. Before deciding the appeal, the appellate authority affords an opportunity to the party concerned to either pay the amount or make out a case for the stay in terms of proviso to sub-section (5) of Section 39 of the Act. Once the conditions specified under sub-section (5) of Section 39 are complied with, the appeal is born for being disposed of on merits after hearing both the sides.”

9. The second proviso to Section 19 of the Act mandates pre-deposit for consideration of an appeal before the National Commission. It requires 50% of the amount in terms of an order of the State Commission or Rs 35,000, whichever is less for entertainment of an appeal by the National Commission. Unless the appellant has deposited the pre-deposit amount, the appeal cannot be entertained by the National Commission. A pre-deposit condition to deposit 50% of the amount in terms of the order of the State Commission or Rs 35,000 being condition precedent for entertaining appeal, it has no nexus with the order of stay, as such an order may or may not be passed by the National Commission. The condition of pre-deposit is there to avoid frivolous appeals.

10. It is not the case of any of the appellants that the Consumer Forum, including the State and National Commissions, has no power to pass interim order of stay.

If the National Commission after hearing the appeal of the parties in its discretion wants to stay the amount awarded, it is open to the National Commission to pass an appropriate interim order including conditional order of stay. Entertainment of an appeal and stay of proceeding pursuant to order impugned in the appeal stand on different footings, at two different stages. One (pre- deposit) has no nexus with merit of the appeal and the other (grant of stay) depends on prima facie case, balance of convenience and irreparable loss of party seeking such stay.”

13. We are in complete agreement with the view taken by this Court in the case of Shreenath Corporation and Ors. (supra). Therefore, it is held that National Commission can pass an order to deposit the entire amount and/or any amount higher than 50 per cent of the amount in terms of the order of the State Commission while staying the order passed by the State commission.

However, at the same time, while considering the stay application against the order passed by the State Commission and while passing the order to deposit the entire amount and/or any amount higher than 50 per cent of the amount, the National Commission has to assign some reasons and pass a speaking order why the conditional stay is being granted on condition of deposit of the entire amount and/or any amount higher than 50 per cent of the amount. Such an order on the stay application is not to be passed mechanically. Even in the case of Shreenath Corporation and Ors. (supra), it is observed that if the National Commission after hearing the appeal of the parties in its discretion wants to stay the amount awarded by the State Commission, it is open to the National Commission to pass an appropriate interim order including a conditional order of stay. The order passed by the State Commission directing the appellant to refund the amount and/or pay any amount higher than 50 per cent can be said to be akin to a money decree. Even as per Order XLI Rule 5, the general rule is that normally there shall not be any unconditional stay of a money decree, however, at the same time, the Appellate Court may pass an appropriate conditional order while staying the impugned decree depending upon the facts of the case and by giving cogent reasons. Therefore, while considering the stay application requesting to stay the order passed by the State Commission and as observed and held hereinabove, the National Commission can pass an order to deposit the entire amount and/or any amount higher than 50 per cent of the amount while staying the order passed by the State commission, however, the National Commission has to pass a speaking order giving some reasons why in the facts of the particular case the conditional stay of the order passed by the State Commission is to be passed subject to deposit of the entire amount and/or any amount higher than 50 per cent of the amount awarded by the State Commission and that too after giving an opportunity to the appellant as well as to the respondent. The order on the stay application is not to be passed mechanically. It must reflect an application of mind by the National Commission why the order passed by the State Commission is to be stayed on condition of deposit of the entire amount and/or any amount higher than 50 per cent of the amount awarded by the State Commission. However, at the same time, there is no discretion at all to stay the order passed by the State Commission subject to deposit of any amount less than 50 per cent of the amount which is required to be deposited as a pre-deposit before the appeal is entertained as per second proviso to Section 51 of the Act, 2019.

14. Now in so far as the various orders passed by this Court relied upon by the learned counsel for the respective appellant(s) by which, the special leave petition(s) have been disposed of directing the appellant(s) to deposit only 50 per cent of the amount as ordered by the State Commission are concerned, at the outset, it is noted that in none of the cases any law has been laid down by this Court. It appears that while issuing a notice(s), the appellant(s) was/were directed to deposit 50 per cent of the amount as ordered by the State Commission and thereafter without discussing any law and/or considering anything on merits and the scheme of the Act, 2019, more particularly, Section 51 of the Act, 2019, the special leave petition(s) has/have been disposed of. On the contrary, there is a direct binding decision of this Court in the case of Shreenath Corporation and Ors. (supra) laying down the law after discussing the scheme, object and purpose of pre-deposit and the power of the National Commission to grant conditional stay of deposit of the entire amount and/or any amount higher than 50 per cent of the amount.

15. The sum and substance of the above discussion and our conclusions would be that:-

(i) pre-deposit of 50 per cent of amount as ordered by the State Commission under second proviso to Section 51 of the Consumer Protection Act, 2019 is mandatory for entertainment of an appeal by the National Commission;

(ii) the object of the said pre-deposit condition is to avoid frivolous appeals;

(iii) the said pre-deposit condition has no nexus with the grant of stay by the National Commission;

(iv) while considering the stay application in staying the order passed by the State Commission, the National Commission can grant a conditional stay directing the appellant(s) to deposit the entire amount and/or any amount higher than 50 per cent of the amount in terms of the order of the State Commission;

(v) however, at the same time, the National Commission has to assign some cogent reasons and/or pass a speaking order when the conditional stay of the order passed by the State Commission is passed subject to deposit of the entire amount and/or any amount higher than 50 per cent of the amount either as an ex parte order or after hearing both sides and considering the facts and circumstances of the case.

(vi) Thus, the National Commission can grant a conditional stay of the order passed by the State Commission on deposit of the entire amount and/or any amount higher than 50 per cent of the amount as ordered by the State Commission in the aforesaid manner.

16. Considering the impugned order(s) passed by the National Commission, it appears that the said order(s) on the I.A.(s)/stay application(s) directing the appellant(s) to deposit the entire decretal amount while staying the respective order(s) passed by the State Commission have been passed mechanically and without assigning any reason(s) and/or no speaking order is passed. Therefore,

the matters are remanded to the National Commission to decide the said application(s) afresh and pass an appropriate order on the said application(s) in light of the observations made hereinabove. Till then, the respondent(s) herein shall not take any coercive steps against the appellant(s) herein

17. In view of the above discussion and for the reasons stated above, all the appeals succeed in part. The respective I.A.(s) in respective appeal(s) are ordered to be restored to the file of the National Commission and the National Commission to pass fresh orders on the respective I.A.(s)/stay application(s) and pass speaking order/reasoned order considering the observations made hereinabove. It will be open for the original complainant(s) to submit that as it is a money decree and the order passed by the State Commission is to refund the amount deposited by them as a home buyer, therefore, the appellant(s) be directed to deposit the entire amount and/or any amount higher than 50 per cent of the amount and the same may be considered by the National Commission after giving opportunity to the appellant(s). At the same time, it will also be open for the appellant(s) to pray for an unconditional stay without deposit of the entire amount and/or any amount higher than 50 per cent of the amount. The said contentions may be considered by the National Commission while exercising the discretion and considering the respective stay application(s). The aforesaid exercise has to be completed within a period of eight weeks from today. Either of the parties to place a copy of the present judgment and order before the National Commission forthwith.

All these appeals are partly allowed to the aforesaid extent only with the law laid down on the powers of the National Commission to grant conditional stay of the order passed by the State Commission on condition of deposit of the entire amount and/or any amount higher than 50 per cent of the amount as observed hereinabove.

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

NEW DELHI;
DECEMBER 07, 2021.

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