

In The High Court At Calcutta

Civil Revisional Jurisdiction

Appellate Side

**CO 4268 of 2013**

**Gobinda Kumar Nag**

**-vs.-**

**Ranjit Kumar Banerjee**

Coram : The Hon'ble Justice Arijit Banerjee

For the petitioner : Mr. Biswajit Basu, Adv.

Mr. Santanu Das, Adv.

For the opposite party : Mr. Indrajit Dasgupta, Adv.

Mr. Manabendranath Bandyopadhyay,  
Adv.

Heard On : 23/02/2015

Judgment On : 10/04/2015

**Arijit Banerjee, J.:**

(1) This revisional application has been filed against an order dated 1<sup>st</sup> October 2013 passed by the State Consumer Disputes Redressal Commission, West Bengal in SC Case No. FA/427/13 whereby the State Commission refused to admit an appeal against the order dated 23<sup>rd</sup> August, 2010 passed by the District Consumer Disputes Redressal Forum at Siliguri passed in Case No.

CC/21/10, on the ground that the delay of 933 days in filing the appeal has not been sufficiently explained.

(2) The opposite party filed a complaint before the District Forum, Siliguri, being Case No. CC/21/10 wherein he contended that pursuant to an advertisement published by the petitioner to sell the ground floor of his residential house, the opposite party entered into an agreement with the petitioner on 29<sup>th</sup> July, 2008 for purchase of the said property. On 20<sup>th</sup> April, 2009, a deed of conveyance was executed by the petitioner in favour of the opposite party in respect of the said ground floor of the dwelling house of the petitioner. On 12<sup>th</sup> August, 2009 another agreement was entered into by and between the petitioner and the opposite party for mutual exchange of the ground floor of the said building with the first floor flat along with roof of the said house. In the complaint, the opposite party essentially prayed for enforcement of such exchange agreement and prayed for execution and registration of a deed of exchange by the petitioner conveying the first floor to the opposite party in exchange of the ground floor already purchased by the opposite party and a deed of

conveyance conveying the roof of the building in favour of the opposite party.

(3) The petitioner entered appearance in the said case and filed written objection wherein apart from disputing the case of the opposite party on merits, the petitioner also disputed the jurisdiction of the District Forum at Siliguri to entertain the said complaint.

(4) The petitioner contends that while contesting the said case he became seriously ill and could not keep contact with his Ld. Advocate till 21<sup>st</sup> June, 2012. Thereafter, when he inquired into the matter he came to learn that the Ld. District Forum at Siliguri, by a judgment and order dated 23<sup>rd</sup> August, 2010 had allowed the said consumer case ex parte directing the petitioner to execute and register the deed of exchange and the deed of conveyance as prayed for in the complaint in favour of the opposite party.

(5) The petitioner filed an application under Order 9 Rule 13 of the Code of Civil Procedure for setting aside the ex parte judgment and order of the Ld. District Forum accompanied by an application for condonation of delay in filing the application

under Order 9 Rule 13 of the Code of Civil Procedure. By an order dated 4<sup>th</sup> March, 2013 the Ld. District Forum dismissed the said application of the petitioner. Being aggrieved, the petitioner has challenged the said order dated 4<sup>th</sup> March, 2013 by filing an application under Article 227 of the Constitution of India in this Court which is still pending.

(6) The petitioner has also preferred an appeal before the State Commission, West Bengal, against the judgment and order dated 23<sup>rd</sup> August, 2010 passed by the Ld. District Forum at Siliguri being SC Case No. FA/427/13. The petitioner also filed an application under Section 15 of the Consumer Protection Act, 1986 praying for condonation of delay of 933 days in filing the appeal. By the judgment and order dated 1<sup>st</sup> October, 2013 which is impugned in this revisional application, the Ld. State Commission held that the inordinate delay of 933 days has not been sufficiently explained and, accordingly, rejected the application for condonation of delay. Consequently, the appeal was dismissed as time barred. Being aggrieved, the petitioner is before this Court by way of the instant revisional application.

(7) Appearing in support of the application Mr. Basu, Ld. Counsel referred to various Sections of the Consumer Protection Act, 1986 and pointed out the extent of jurisdiction of the District Forum as also the extent of the original and appellate jurisdiction of the State Commission and the National Commission and submitted that an appeal lies to the National Commission from an order passed in exercise of original jurisdiction by the State Commission but, not against an order of the State Commission passed in exercise of its appellate jurisdiction. He, however, fairly pointed out that a revision under Section 21(b) of the 1986 Act may lie to the National Commission against any order of the State Commission.

(8) Mr. Basu pointed out that by virtue of a Notification No. 564-HIV/3P-8/04 dated 23<sup>rd</sup> August, 2005, the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 came into force in the areas within the jurisdiction of Siliguri Municipal Corporation in the Districts of Darjeeling and Jalpaiguri, West Bengal with effect from 1<sup>st</sup> September, 2005. He submitted that since the property in question is situated in Siliguri, the said Act would govern the relationship

between the parties to this proceeding. Section 12A of the said Act is a bar on jurisdiction of Civil Courts. It provides that no civil court shall have any jurisdiction to entertain or decide any question relating to matters arising under any provision of the said Act or the Rules made therein. Mr. Basu submitted that the Consumer Courts have been held to be Civil Courts and, as such, the jurisdiction of the Consumer Courts are also barred by Section 12A of the said Act. In this connection, Mr. Basu relied on a decision of this Court in the case of *Rita Das-vs.-Jayashri Ghosh reported in 2012 (1) CHN 272*. He also relied on an unreported decision of this Court in the case of *Krishna Abason Pvt. Ltd.-vs.-Krishna Sarkar (CO 2986 of 2013)*. Mr. Basu submitted that in view of the bar imposed on the Civil Courts by Section 12A of the 1993 Act, the District Forum had no jurisdiction to entertain or allow the complaint of the opposite party and the State Commission also erred in not appreciating the same. He also submitted that the State Commission acted illegally and with material irregularity in not granting the benefit of Section 14 of the Limitation Act to the petitioner. He submitted that the impugned order of the State

Commission as also the judgment and order of the District Forum should be set aside.

(9) Appearing on behalf of the opposite party, Mr. Dasgupta, Ld. Counsel submitted that this Court should not entertain this revisional application at all in view of the alternative remedy available to the petitioner in the form of preferring a revisional application to the National Commission under Section 21(b) of the Consumer Protection Act. He submitted that in view of such statutory alternative remedy the petitioner is not entitled to invoke this Court's jurisdiction under Article 227 of the Constitution of India. He relied on several decisions. Firstly, he relied on a decision of the Hon'ble Supreme Court in the case of *Cicily Kallarackal-vs.-Vehicle Factory reported in (2012) 8 SCC 524* wherein the Hon'ble Supreme Court held that it is not appropriate for the High Courts to entertain writ petitions against the orders passed by the National Commission as a statutory appeal lies to the Supreme Court under the provisions of the Consumer Protection Act. 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 by-pass the statutory appeal to

such higher court and entertain petition in exercise of power under Article 226 of the Constitution of India. In the penultimate paragraph of the judgment the Hon'ble Supreme Court issued a direction of caution that it will not be a proper exercise of jurisdiction by the High Courts to entertain writ petitions against orders of the National Commission. Secondly, Ld. Counsel relied on a decision of this court in the case of *M/s. Vindhya Projects Pvt. Ltd.-vs.-Alok Kumar Basu reported in (2013) 4 CHN 360*, wherein a Ld. Judge of this court held that if a party is not satisfied with the order of the State Commission passed in its appellate jurisdiction, there is a provision for revision before the National Commission under Section 21(b) of the 1986 Act. Thirdly, he relied on an unreported decision of this Court in the case of *Tamal Nag-vs.-Sukdeb Bhuiya (CO 1916 of 2013)* wherein a Ld. Judge declined to interfere in exercise of jurisdiction under Article 227 of the Constitution of India in view of availability of alternative statutory remedy under the Consumer Protection Act. Fourthly, he relied on an unreported decision of this Court in the case of *National Insurance Co. Ltd.-vs.-Consumer Disputes Redressal Forum (WP No. 228 of 2014)* wherein also a Ld. Judge of this Court declined to

entertain a writ petition against an order of the State Commission in view of the availability of alternative remedy.

(10) I have considered the rival contentions of the parties. As regards the point of bar of jurisdiction of Civil Courts created by Section 12A of the West Bengal Building (Regulation and Transfer by Promoters) Act, 1993. I do not find from records that this point was agitated by the petitioner before the District Forum or the State Commission. In any event, I am not inclined to entertain this application in view of an alternative statutory remedy being available to the petitioner in the form of a revisional application before the National Commission under Section 21(b) of the Consumer Protection Act. In the case of *Dulichand Finance and Leasing Ltd.-vs.-Abbasur Rahaman (CO 3810 of 2013)* this court took a similar view. In that case, this court relied on a Division Bench decision of this Court in the case of *United Bank of India-vs.-Hirak Mukherjee reported in (1995) 1 C.J.L 124* wherein the Division Bench held that the Consumer Protection Act is a self-contained code and where the statute itself provides for an alternative remedy exercise of jurisdiction under Articles 226 and 227 of the Constitution of India by the High Court may not be appropriate

and proper. In the case of *Nivedita Sharma-vs.-Cellular Operators Association of India* reported in (2011) 14 SCC 337 the Apex Court held that in view of the statutory alternative remedy of an appeal provided in the Consumer Protection Act, the High Court should not have entertained an application under Article 227 of the Constitution of India. I also bear in mind the direction of caution issued by the Hon'ble Supreme Court in the case of *Cicily Kallarackal (Supra)*.

(11) What has been challenged before this Court is the order of the State Commission refusing to condone the delay in filing appeal against the judgment and order of the District Forum. The petitioner is free to approach the National Commission to challenge such order. In view of the decisions referred to above I am not inclined to entertain this application. however, I make it clear that I have not gone into the merits of the case and if the petitioner approaches the National Commission challenging the State Commission's order dated 1<sup>st</sup> October 2013 by taking recourse to Section 21 of the Consumer Protection Act within six weeks from date, the National Commission shall decide such

proceeding in accordance with law uninfluenced by any observations made in this order.

(12) The revisional application is accordingly disposed of.

(Arijit Banerjee, J.)