

In The High Court At Calcutta  
Civil Revisional Jurisdiction  
Appellate Side  
**CO 3810 of 2013**  
**Dulichand Finance & Leasing Ltd.**  
**-Vs.-**

**Abbasur Rahaman & Anr.**

Present : The Hon'ble Justice Mr. Arijit Banerjee  
For the petitioner : Mr. Mainak Bose, Adv.  
Mr. Ramesh Chandra Paul, Adv.  
Ms. Tultul Das, Adv.  
For the opposite party : Mr. Shehnaz Tareq, Adv.  
Heard On : 08/01/2015 & 15/01/2015  
Judgment On : 12/02/2015

**Arijit Banerjee, J.:**

(1) In this revisional application the petitioner challenges an order dated 14<sup>th</sup> August, 2013 passed by the State Consumer Disputes Redressal Commission, West Bengal (in short 'State Commission') passed in SC Case No. FA/556 of 2012.

(2) The petitioner alleges that by and under a Hire Purchase Agreement dated 1<sup>st</sup> November, 2002, the petitioner agreed to let out on hire a 2002 model Bajaj Tempo to the respondent no. 1. The respondent no. 1 was required to pay a total hire purchase price of Rs. 1,36,620/-, in 22 equal monthly instalments of Rs. 6210/- each commencing on and from 21<sup>st</sup> December, 2002. The respondent no 1 defaulted in payment of the monthly hire charges and, as such, the petitioner in exercise of its contractual right repossessed the vehicle in March, 2003. Being aggrieved, the respondent no. 1 filed a complaint under Sections 12 and 13 of the Consumer Protection Act, 1986 before the District Consumer Disputes Redressal Forum,

Barasat being CDF Case No. 129 of 2003 claiming monetary compensation and other reliefs.

(3) The petitioner filed an application under Section 26 of the 1986 Act for dismissal of the complaint on, inter alia, the ground, that the respondent no. 1 is not a consumer within the meaning of the said Act. He has neither purchased any goods nor hired any service from the petitioner and, as such, the complaint was not maintainable. The said application was dismissed.

(4) Being aggrieved, the petitioner filed a revisional application under Section 17 of the said Act before the State Commission which was dismissed by an order dated 27<sup>th</sup> September, 2006. Against such order of dismissal, the petitioner filed a revisional application before this Court being CO No. 401 of 2007. On the said revisional application by an interim order dated 8<sup>th</sup> January, 2008 this Court stayed all further proceedings in CDF Case No. 219 of 2003 pending before the District Forum for a period of 12 weeks from the date of the order. Such interim order was communicated to the respondent by the petitioner's Advocate.

(5) During the subsistence of such interim order of stay all proceedings, the District Forum proceeded to hear the complaint and disposed of the same by an order dated 13<sup>th</sup> March, 2008. It is contended that the petitioner was not aware of such disposal of the complaint by the District Forum.

(6) By a Judgment and order dated 14<sup>th</sup> February, 2011, this Court disposed of the revisional application being CO No. 401 of 2007 by directing the parties to file their pleadings before the District Forum and by directing the District Forum to complete adjudication of the dispute within a period of four months from the date of the completion of the pleadings. Pursuant to such direction of this Court, the petitioner filed its counter/written version and the respondent no. 1 filed his rejoinder. The parties also adduced evidence before the District Forum. The matter was heard by the District Forum and the judgment was reserved.

(7) By an order dated 31<sup>st</sup> July, 2012 the District Forum disposed of the complaint proceeding in terms of its earlier order dated 13<sup>th</sup> March, 2008.

(8) Being aggrieved, the petitioner preferred an appeal before the State Commission being FA No. 556 of 2012 which was dismissed by the State Commission by the order dated 14<sup>th</sup> August, 2013 which is being impugned in the present revisional application.

(9) By its order dated 13<sup>th</sup> March, 2008 the District Forum had held that there is distinct deficiency of service on the part of the present petitioner. The Forum directed the present petitioner to pay to the opposite party no. 1/complainant a sum of Rs. 1 lakh towards compensation for causing harassment, mental agony, loss of business and litigation costs.

(10) Pursuant to this Court's order dated 21<sup>st</sup> January, 2011 passed in CO No. 401 of 2007 the District Forum re-heard the matter and passed an order dated 31<sup>st</sup> July, 2012 confirming its earlier order dated 13<sup>th</sup> March, 2008.

(11) The appeal preferred against the District Forum's order dated 31<sup>st</sup> July, 2012, was dismissed by the State Commission by its order dated 14<sup>th</sup> August, 2013. The State Commission held that the interim order of stay granted by this Court in CO No. 401 of 2007 staying further proceedings before the District Forum was never communicated to the District Forum and, as such, there was no irregularity in the District Forum passing the order dated 13<sup>th</sup> March, 2008. The State Commission further held that since CO No. 401 of 2007 was ultimately dismissed by a judgment and order dated 14<sup>th</sup> February, 2011, there is no ground to interfere with the District Forum's order dated 31<sup>st</sup> July, 2012 whereby it re-confirmed its order dated 13<sup>th</sup> 2008.

(12) Mr. Mainak Bose, Ld. Counsel, appearing on behalf of the petitioner submitted that the order dated 13<sup>th</sup> March, 2008 was passed by the District Forum during the subsistence of the interim order dated 8<sup>th</sup> January, 2008 passed by this Court in CO No. 401 of 2007 whereby the proceedings before the District Forum were stayed. As such, the said order is void and non-est in the eye of law. He relied on a Division Bench judgment of this Court in the Case of *Hukum Chand Boid-vs.-Kamalanand*

*Singh reported in (1906) ILR 33 Cal 927. In particular Mr. Bose relied on paragraph 6 of the judgment which is set out hereunder:-*

*“6. There is however another ground upon which this application is sustainable. The original rule, which was granted under Section 545, directed that all further proceedings should be stayed. Notwithstanding such order and by reason of its not being communicated in time to the Lower Court execution proceeded and possession was given. Before the Lower Court gave possession this Court had ordered that it should not be done. It may however be contended on the authority of *Bessessuari Chowdhurany v. Hurro Sundar Mosumdar (1892) 1 C.W.N. 226*, that the order of this Court only takes effect, when communicated to the Lower Court and that proceedings in execution taken in ignorance of the order of stay are not void. It is to be observed that in that case the question as to the validity of the sale in execution arose in a suit between the alleged judgment-debtor and a third party purchaser, whereas in the present case the matter is between the parties themselves. But apart from this I must respectfully dissent from the decision. An order for stay is made on the day that it is pronounced and not on that on which it is drawn up (cf. *In re The Risca Coal and Iron Company; ex-parte Hockey (1861) 31 L.J. Ch. 429* or communicated. No doubt in the case of a prohibitory order by way of injunction, which also operates from the date of the order being made in the sense stated and which is directed to a party and not to a Court, communication is necessary, for the*

*Court will not punish a man for doing what he did not know it was forbidden to him to do. No such considerations here arise. And I can see no reason why the operation of an order of this Court is to be made contingent say upon the due performance of the duties of the Post-office. When the Court has said that execution of a decree is not to take place, from that moment the Court, to which application has been made for execution, has no authority to execute it and delivery of possession under the authority of an order, which was not then in force, but had been suspended upon a stay granted by a Superior Court, is in my opinion invalid. In this case therefore the delivery of possession being in contravention of the order staying proceedings cannot stand and it would have been necessary to direct the possession, which has been obtained, to be restored, were it not that the appellant is content that the possession should remain with the respondent upon his furnishing the security asked for. We accordingly discharge Rule 3423 without costs and make Rule 3413 absolute on the following terms.”*

(13) On the authority of the above judgment, Mr. Bose submits that the District Forum's subsequent order dated 31<sup>st</sup> July, 2012 is bad in law since it sought to re-confirm an earlier order which non-est in the eye of law. Accordingly, the State Commission should have allowed the appeal of the present petitioner.

(14) Mr. Bose also submitted that the District Forum should not have decided the case on merits in the absence of the parties. He contends that when the complaint

was sought to be disposed of by the District Forum and the order dated 13<sup>th</sup> March, 2008 was passed, none of the parties were present before the District Forum. In this connection, Mr. Bose relied on a decision of the Supreme Court in the case of *Ghanshyam Dass Gupta-vs.-Makhan Lal reported in (2012) 8 SCC 745*, paras 7 and 8. In that case the Supreme Court observed that explanation to Sub-Rule (1) of Rule 17 or Order 41 CPC was added by way of amendment of 1976 making it explicit that nothing in Sub-Rule (1) of Rule 17 of Order 41 should be construed as empowering the Appellate Court to dismiss the appeal on merits where the appellant remains absent or left the appeal unrepresented on the date fixed for hearing of the appeal. The reason for introduction of such an Explanation is that it gives an opportunity to the appellant to convince the Appellate Court that there was sufficient cause for non-appearance. Such an opportunity is lost if the Courts decided the appeal on merits in absence of the appellant's counsel.

(15) Appearing on behalf of the opposite party no. 1, Mr. Shehnaz Tareq, Ld. Counsel submitted that this Court's interim order of stay dated 8<sup>th</sup> January, 2008 was never communicated to the District Forum. It was the duty of the petitioner who had obtained such order of stay to communicate the order to the District Forum but it did not do so. The District Forum was completely unaware that the proceedings before it had been temporarily stayed by an interim order of this Court. Accordingly, by passing order to dispose of the complaint on 13<sup>th</sup> March, 2008, the District Forum did

not commit any irregularity and the order cannot be said to be non-est in the eye of law.

(16) As regards the District Forum disposing of the complaint on merits in the absence of the parties, Mr. Tareq drew this Court's attention to Rule 5 (8) of the West Bengal Consumer Protection Rules, 1987 which is set out hereunder:-

*“Rule 5. Procedure relating to the conduct of the meetings of the District Forum, its sittings and other matters-(8) If during the proceedings conducted under Section 13 the District Forum fixes a date for hearing of the parties, it shall be obligatory on the complainant and the opposite party or their authorised agents to appear before the District Forum on such date of hearing or any other date to which hearing could be adjourned. Where the complainant or his authorised agent fails to appear before the District Forum on such day, the District Forum may in its discretion either dismiss the complaint for default or decide it on merit. Where the opposite party or its authorised agent fails to appear on the day of hearing, the District Forum may decide the complaint ex parte.”*

(17) In view of the aforesaid Rule, Mr. Tareq submitted that the District Forum was expressly authorised to disposed of the complaint on merits even in the absence of the parties and the decision of the Hon'ble Supreme Court relied upon by the petitioner will have no manner of application.

(18) Mr. Tareq submitted that the order of the District Forum dated 13<sup>th</sup> March, 2008 was never challenged by the petitioner. What was appealed against before the State Commission was the District Forum's order dated 31<sup>st</sup> July, 2012, which appeal was dismissed by the State Commission's order dated 14<sup>th</sup> August, 2013 which is impugned herein.

(19) Mr. Tareq finally submitted that the instant application is not maintainable as there is an equally efficacious alternative remedy in the form of an appeal before the National Commission provided by Section 21 of the Consumer Protection Act, 1986. In this connection, Mr. Tareq relied on a Division Bench decision of this Court in the case of *United Bank of India-vs.-Hirak Mukherjee reported in (1995) 1 CLJ 124* wherein the Division Bench of this Court 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 that case the Division Bench dismissed the application under Article 227 of the Constitution of India preferred against the order of the State Commission and relegated the petitioner to the remedy of statutory appeal before the National Commission.

(20) Mr. Tareq also relied on the decisions of this Court reported in *2009 (1) CLJ 929 and 2009 (2) CLJ 685*. In the said decisions this Court while dealing with applications under Article 227 preferred against orders of the State Commission held

that since an alternative forum of appeal is available to the petitioner under the Consumer Protection Act and since the remedy by way of appeal is much more exhaustive, efficacious and speedy, the petitioner cannot invoke the jurisdiction of this Court under Article 227 of the Constitution of India.

(21) Mr. Tareq also relied on a decision of the Apex Court in the case of *Nivedita Sharma-vs.-Cellular Operators Association of India reported in (2011) 14 SCC 337* wherein the Supreme Court held that in view of the statutory alternative remedy of appeal provided in the Consumer Protection Act, the High Court should not have entertained an application under Article 227 of the Constitution of India.

(22) I have considered the rival contentions of the parties. No argument has been advanced before me on the merits of the complaint and indeed I have not permitted the parties to do so. The question is whether by passing the order dated 14<sup>th</sup> August, 2013, the State Commission acted beyond its jurisdiction or with such material irregularity that this Court should interfere in the exercise of its supervisory jurisdiction under Article 227 of the Constitution of India. It is well-established that it is only when an order of a Tribunal is violative of the fundamental basic principles of justice and fair play or where a patent or flagrant error in procedure or law has crept in or where the order passed results in manifest injustice that a Court can justifiably intervene under Article 227 of the Constitution of India. The power and duty of the High Court under Article 227 is essentially to ensure that the Courts and

Tribunals, inferior to High Court have done what they were required to do. Law is well-settled that the High Court can interfere under Article 227 in cases of Lower Court's and Tribunal's erroneous assumption of or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving at a finding which is perverse or based on no material or resulting in manifest injustice.

(23) The exercise of power under Article 227 of the Constitution involves a duty on the High Court to keep inferior Courts and Tribunals within the bounds of their authority and to see that they do duty expected or required by them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the Courts or Tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if High Court does not interfere, a grave injustice would remain uncorrected. It is also well-settled that the High Court while acting under this Article cannot exercise its power as an Appellate Court or substitute its own judgment in place of the subordinate court to correct an error which is not apparent on the face of the record (*Estralla Rubber- vs.-Dass Estate (P) Ltd.* reported in 2001 8SCC 97).

(24) Going by the above well-established principles of law regarding exercise of jurisdiction under Article 227 of the Constitution, I am not satisfied with the instant application raises an issue which warrants interference by this Court in exercise of its supervisory jurisdiction under Article 227. Additionally, the statute provides for a more exhaustive remedy by way of an appeal before the National Commission. This Court as well as Hon'ble Apex Court have repeatedly observed with particular reference to the Consumer Protection Act that since the statute provides for an appeal or a revision against an order of the State Commission to the National Commission, the High Court should not entertain an application under Article 227 against an order of the State Commission. All questions that the petitioner seeks to urge in the present application can be more conveniently agitated before the National Commission including any jurisdictional issue.

(25) For the reasons aforesaid this Court is not inclined to entertain this application. The application fails and is dismissed. The petitioner will be at liberty to approach the National Commission within a period of six weeks from the date of this order challenging the order of the State Commission sought to be impugned in this petition, if so advised. If the petitioner approaches the National Commission within the time stipulated herein, the National Commission will decide the same without being influenced by any observation in this order.

(26) This application is, thus, disposed of.

(Arijit Banerjee, J.)