

## Merlin Developers Vs Mrs. Nilam Choudhury and Others

**Court:** Calcutta High Court

**Date of Decision:** Sept. 30, 2013

**Citation:** (2013) 5 CHN 23

**Hon'ble Judges:** Prasenjit Mandal, J

**Bench:** Single Bench

**Advocate:** Jay Saha, Mr. Ranjan Deb, Mr. Asish Kumar Chakraborty, Mr. Sankarshan Sarkar and Mr. Navneet Mishra, for the Appellant; Saptangshu Basu, Aniruddha Chatterjee and Mr. Kaushik Mondal, for the Respondent

**Final Decision:** Disposed Off

### Judgement

Prasenjit Mandal, J.

These two applications are at the instance of the respondent and is directed against the judgment and order dated

June 20, 2013 passed by the Hon"ble State Consumer Disputes Redressal Commission, West Bengal in Complaint S.C. Case No. CC/08/65

thereby awarding payment of money, advance taken, litigation costs, etc. and they are disposed of by this common judgment and order. The

plaintiffs/opposite parties herein instituted a complaint case being S.C. Case No. CC/08/65 before the Hon"ble State Consumer Disputes

Redressal Commission, West Bengal (henceforth in short shall be called "State Commission") against the petitioner and the opposite party no. 3

praying for allotment of two flats with open car parking spaces at Premises No. 24, Prince Anwar Shah Road, Kolkata-700033 in terms of the

letter of allotment dated January 11, 2005 and other consequential reliefs.

2. The respondent/petitioner herein and the opposite party no. 3 contested the said complaint case. On the basis of the materials on record, the

Hon"ble State Commission allowed that application granting compensation of Rs. 20 lakh, litigation costs of Rs. 20,000/-, refund of advance

money of Rs. 1 lakh to the complainants within 45 days from the date of order failing which interest at the rate of 9% per annum shall accrue on the

aforesaid amount till realization in full.

3. The petitioner and the opposite party no. 3 have also been directed to pay punitive damages of Rs. 20 lakh to the complainants and to deposit a

sum of Rs. 5 lakh with the State Commission Welfare Fund within 45 days from the date of order failing which interest in the same manner. Being

aggrieved by such orders, the petitioner has preferred this application.

4. Now, the question is whether the impugned order should be sustained.

5. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that the complainants not being satisfied

with the said award preferred an appeal before the National Commission.

6. Mr. Jay Saha, learned Advocate appearing for the petitioner, has contended that while contesting the said complaint case before the Hon"ble

State Commission, the opposite parties of that complaint case (i.e., the petitioner and the opposite party no. 3 herein) filed an application being

M.A. No. 230 of 2012 contending, inter alia, that the said complaint case being CC/08/65 is not maintainable in view of the provisions of Sections

6 & 12A of the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993. Thus, the opposite parties

of the complaint case have specifically stated that the Hon"ble State Commission has no jurisdiction to entertain the said complaints.

7. Mr. Saha has also referred to the decision of C.O. No. 3111 of 2008 [Smt. Ritu Das v. Mrs. Jayashri Ghosh & ors.] and C.O. No. 25 of 2013

[Smt. Bithi Das & ors. v. Sri. Debabrata Majumdar & ors.] passed by this Bench and thus, he has stated that the Hon"ble State Commission

though discussed the matter in the impugned judgment but failed to address the said situation properly.

8. Mr. Saha has also contended that the another application filed u/s 35 of the Indian Stamp Act, 1899 was required to be adjudicated

immediately but not at the final hearing of the said complaint case. The impugned judgment and order does not lay down any finding regarding to

the said application u/s 35 of the Indian Stamp Act.

9. Mr. Saha has also contended that when any material point touching the jurisdiction of the Hon"ble State Commission is raised and when it is not

properly addressed, an application under Article 227 of the Constitution of India is quite maintainable for exercising the supervisory jurisdiction and

thus, it could be held that the Hon"ble State Commission has no jurisdiction to decide the complaint case in view of the provisions of Sections 6 &

12A of the said 1993 Act.

10. In support of his contention, Mr. Saha has referred to the following decisions:-

i) The decision in C.O. No. 3111 of 2008 dated December 14, 2011 [Smt. Rita Das v. Mrs. Jayashri Ghosh & ors.] to the effect that in view of

the specific embargo as embodied under Sections 6 & 12A of the 1993 Act, the Hon"ble State Commission is not competent to pass any order

and/or entertain the complaint of this nature.

ii) By a judgment and order dated August 2, 2013 passed by this Bench in C.O. No. 25 of 2013 [Smt. Bithi Das & ors. v. Sri. Debabrata

Majumdar & ors.], this Bench has also held that the judgments and order passed by the District Forum and the Hon"ble State Commission are not

sustainable.

iii) He has also referred to the decision of Achutananda Baidya Vs. Prafulla Kumar Gayen and others, and thus, he has submitted that when there

is an apparent error in arriving at a conclusion which is perverse or based on no material or resulting in manifest, injustice, High Court has the

power to interfere under Article 227 of the Constitution.

iv) He has also referred to the decision of Committee of Management and Another Vs. Vice Chancellor and Others, particularly paragraph no. 22

and thus, he has submitted that when there is an alternative Forum, i.e., to prefer an appeal against the order of the Hon"ble State Commission, yet

the High Court may exercise its writ jurisdiction.

v) He has also relied on the decision dated February 20, 2009 passed by a learned Single Bench of this Hon"ble Court in C.O. No. 3881 of 2008

[The Branch Manager New India v. Ranjit Kumar Pincha] and thus, he has held that an application of this nature under Article 227 of the

Constitution is quite maintainable.

11. On the other hand, Mr. Saptangshu Basu, learned Senior Advocate appearing for the opposite parties, has referred to the decision of K.S.

Rashid and Son Vs. The Income Tax Investigation Commission etc., particularly the paragraph no. 4 and thus, he has submitted that the remedy

provided under Article 226 of the Constitution is a discretionary remedy and the High Court has always the discretion to refuse to grant any writ, if

it is satisfied that the aggrieved party have an adequate or suitable relief elsewhere.

12. He has also referred to the decision of K.K. Shrivastava and Others Vs. Bhupendra Kumar Jain and Others, and thus, he has stated that when

there is an alternative remedy, High Court should not entertain petitions challenging elections to Bar Council, when a remedy of challenge before

Tribunal is provided.

13. He has also referred to the decision of Om Prakash Saini Vs. DCM Ltd. and Others, and thus, he has contended that if the complaint is

decided by the Hon"ble State Commission, as in the instant case, the aggrieved party can file an appeal before the National Commission and when

an appeal is pending, the learned Single Judge was not justified at all in entertaining an application under Article 227 of the Constitution of India.

Thus, he has contended that since an appeal is pending before the National Commission, this application should not be entertained.

14. Having considered the submissions of learned Advocates of both the sides, the decisions referred and also the materials on record, I find that

there is no dispute that an appeal has been preferred by the complainants before the National Commission against the judgment and order dated

June 20, 2013 and the said appeal is still pending. The petitioner did not prefer any appeal against the impugned judgment and order but has filed

this case. The judgments and orders delivered by another learned Single Bench in C.O. No. 3111 of 2008 referred to above and by this Bench in

C.O. No. 25 of 2013 (supra) are based on several decisions of the Apex Court and also the provisions of Sections 6 & 12A of the 1993 Act.

15. No doubt, the exercise of jurisdiction under Article 227 of the Constitution is discretionary, when alternative remedy is available. But, in the

instant case, I find that the complainants have filed the appeal being not satisfied against the judgment and order before the National Commission.

When an appeal is preferred against the judgment and order passed by the Hon"ble State Commission on a complaint, according to Section 19 of

the Consumer Protection Act, such an appeal is quite maintainable to the National Commission. In an appeal, all the grounds taken by the parties

in the complaint could well be considered for a decision and thus, an appeal has a greater scope than that of the Revisional Court on an application

under Article 227 of the Constitution. If the question of jurisdiction is involved in the impugned judgment and order, no doubt this Hon"ble Court

can exercise the jurisdiction under Article 227 of the Constitution. Since an appeal has been preferred to the National Commission that has to be

disposed of independently on all points that have been taken before the Hon"ble State Commission. But the High Court can entertain an

application under Article 227 on the limited scope, such as, want of jurisdiction as contended in the case.

16. No doubt, since the challenge in this application is on jurisdiction point, the High Court is competent to deal with the matter but if this

application is disposed of on merits before this Court and the appeal preferred by the complainants before the National Commission is also

disposed of independently in the usual course, there is a likelihood of conflict of decisions by the Court and Forum respectively against the same

judgment and order. Since in an appeal, all the points raised in the complaint matter could be taken up, I am of the opinion that instead of

proceeding with this revisional application, it will be better for the parties to proceed before the National Commission.

17. Mr. Jay Saha has contended that his client did not file any appeal, but the complainants filed the appeal. While an appeal is pending, as stated

earlier, in my view, there is no bar to entertain all the grounds taken by the respective parties. With due respect to Mr. Saha, I am of the opinion

that if separate judgment and order is passed, there may be a chance of conflict between the decisions to be rendered by this Bench and the

Appellate Forum. In order to avoid, such a situation, in my view, it will be fit and proper for this Bench not to dispose of the revisional applications

on merits. The petitioner should be given a liberty to file an appeal if it likes to the National Commission, in accordance with law.

18. Under such circumstances, though this Bench dealt with similar matter in C.O. No. 25 of 2013, facts and circumstances as indicated above

being a completely different one, I am of the view that this Bench should not dispose of this application on merits.

19. Mr. Saha has stressed much on the provisions of Sections 6 & 12A of the 1993 Act and the application u/s 35 of the Indian Stamp Act for

entertaining this application and from the judgment and order I also find that those matters were also under consideration at the time of the disposal

of the said complaint by the Hon"ble State Commission.

20. Therefore, the petitioner is at liberty to agitate the points referred to above particularly the jurisdiction of the Hon"ble State Commission to

entertain the petition of complaint in view of the provisions of Sections 6 & 12A of the 1993 Act before the National Commission. Similarly, they

are free to agitate the grounds as taken in their application u/s 35 of the Indian Stamp Act, in an appeal, if filed as indicated above, by the

petitioner.

21. In that view of the matter, this Bench thinks it fit and proper to dispose of these applications without considering the merits of the same. Liberty

is given to the petitioner to file an appropriate appeal before the National Commission, if so advised, in accordance with law.

22. These two applications are disposed of in the manner indicated above.

23. Considering the circumstances, there will be no order as to costs.

24. It is also recorded that the C.O. No. 2689 of 2013 was filed on July 24, 2013 and the C.O. No. 2698 of 2013 was filed on July 25, 2013

and both are disposed of today (30.09.2013). Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for

the parties on their usual undertaking.