

## Auro Developers Vs Mala Mukherjee

**Court:** Calcutta High Court

**Date of Decision:** Dec. 23, 2011

**Acts Referred:** Arbitration and Conciliation Act, 1996 " Section 11, 2(e), 2(e), 21, 21(b)

Constitution of India, 1950 " Article 226, 227

Consumer Protection Act, 1986 " Section 12, 3

Limitation Act, 1963 " Section 14, 5

**Citation:** (2012) 1 CHN 543

**Hon'ble Judges:** Harish Tandon, J

**Bench:** Single Bench

**Advocate:** Partha Pratim Roy and S. Sinha Roy, for the Appellant; Aditya Kanodia and S. Mukherjee, for the Respondent

### Judgement

Harish Tandon, J.

This revisional application is directed against a judgment and order dated 9.7.2010 passed by State Consumer Disputes

Redressal Commission, West Bengal in S.O. Case No RC/44/2010 by which the original complaint application is directed to be heard afresh.

Briefly stated the facts are that the opposite party Nos. 1 and 2 entered into an agreement dated 17.11.2005 with the petitioners and other

opposite parties for purchase of a flat No. 4A, measuring more or less 1917 square fit super built up area comprising of the entire fourth floor

together with an open terrace measuring 278 square fit and one car parking space measuring 135 square fit on the ground floor at premises No.

487, Keyatala Road, Calcutta-700 029 at a consideration of Rs. 48,00,000/- (Forty Eight lakhs).

2. Thereafter they were intimated about the issuance of the completion certificate by the Kolkata Municipal Corporation with further demand for

payment of the balance consideration money. The possession of the said flat was taken in the year 2007.

3. In the year 2009 the opposite party Nos. 1 and 2 initiated a proceeding u/s 12 of the Consumer Protection Act before the District Consumer

Disputes Redressal Forum, Unit 1, Calcutta being CDF Case No. 91/2009 and prayed for an order of refund of a sum of Rs. 7,70,000/- (Rs.

Seven Lakhs and Seventy Seven Thousand) being the price of the difference in the measurement of the area and a further sum of Rs. Five lakhs

towards the damages and compensation. It is alleged in the said petition that in terms of the said agreement dated 17.11.2005 the petitioner along

with other opposite parties agreed to sell a flat measuring more or less 1917 square feet of super built up area but on verification it is found that

they have given lesser area of above 344 square feet and thus have departed from the agreement dated 17.11.2005.

4. The petitioners appeared before the Consumer District Disputes Redressal Forum (hereinafter referred to as District Forum for sake of brevity)

and filed an application under sections 5 and 8 of the Arbitration and Conciliation Act, 1996 for referring the matter to an Arbitral Tribunal.

5. The opposite party Nos. 1 and 2 opposed the said application but the District Forum vide Order Nos. 12 dated 18.12.2010 directed the

opposite party Nos. 1 and 2 to make necessary arrangements to send the matter to the competent arbitrator to resolve the disputes and such

arbitrator is to be engaged from the panel of Civil Engineers of Kolkata Municipal Corporation with other consequential directions.

6. The opposite party Nos. 1 and 2 assailed the said order before the State Consumer Dispute Redressal Commission (hereinafter referred to as

the State Commission for the sake of convenience) and by the impugned order the State Commission after setting aside the order passed by the

District Forum remitted the matter back to the District Forum for reconsideration on merit and dismissed the application under sections 5 and 8 of

the Arbitration and Conciliation Act, 1996 filed by the petitioner.

7. Assailing the said order passed by the State Commission the petitioners have filed the instant revisional application under Article 227 of the

Constitution.

8. It would be noteworthy that neither the District Forum nor the State Commission entertained the matter on merit but have considered the

maintainability of an application under sections 5 and 8 of the Arbitration and Conciliation Act, 1996 and as such the parties have not addressed

on merit in this revisional application.

9. The points, in my view emerged in this revisional application, are:

Firstly, whether an application u/s 5 and 8 of the Arbitration and Conciliation Act, 1996 is maintainable before the District Forum, exercising its

power under the Consumer Protection Act, 1986.

Secondly, whether the District Forum, while allowing an application under sections 5 and 8 of the Arbitration and Conciliation Act, 1996 was

competent to name the arbitral tribunal in contravention to the arbitral agreement

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Thirdly, whether the application under Article 227 of the Constitution is maintainable in view of the existence of the alternative remedy.

10. Learned Advocate appearing for the petitioner submits that the State Commission could not have held that the Arbitration and Conciliation

Act, 1996 does not apply to a proceeding under the Consumer Protection Act instituted before the special tribunal. He further submits that when

the parties have agreed to resolve the disputes by appointing an arbitrator, the State Commission cannot relegate the parties to a Consumer Forum

in contravention to the said agreement. He strenuously argued that although he has not challenged the order of the District Forum but before the

State Commission, he assailed the part of the order by which the District Forum has referred the matter to the arbitral tribunal by naming it in

complete contravention to section 11 of the Arbitration and Conciliation Act.

11. Learned Advocate appearing for the opposite party Nos. 1 and 2, the complainants before the District Forum, submits that the provisions of

Arbitration and Conciliation Act do not apply to the Consumer Forum.

12. In support of such contention he placed reliance upon the judgment of the Apex Court in case of M/s. Fair Air Engineers Pvt. Ltd. and another

Vs. N.K. Modi, .

13. It is further contended that the Consumer Protection Act, 1986 is in addition to the provision of the other act and as such the Consumer Forum

is competent to entertain the petition even there is an existence of an arbitration clause and placed reliance upon a three Judges Bench judgment of

the Apex Court in case of Skypak Couriers Ltd. Vs. Tata Chemicals Ltd., .

14. It is strenuously argued that this Court under Article 227 of the Constitution should not entertain the instant revisional application as there exists

efficacious alternative remedy before the National Commission and placed reliance upon a judgment of the Single Bench of this Court in case of

Dr. Mrs. Mridula Purakastha Vs. Kalika Singh and another, the Division Bench of this Court in case of United Bank of India vs. Hiral Mukherjee

& Ors. reported in 1995 (1) CHN 501 and another Single Bench judgment of this Court in case of ANZ Grindlays Bank and another Vs.

President, District Consumer Disputes Redressal Forum and others,

POINT NO. 1:

15. Admittedly the parties entered into an agreement on 17.11.2005 for sale of flat being flat No. 4A measuring 1917 square fit super built up

area, being the entire fourth floor together with an open terrace measuring 278 square feet and one car parking space measuring 135 square feet

on the ground floor at premise No. 487, Hemanta Mukhopadhyay Sarani, Calcutta - 700 029 for a total sum of Rs. 48 lakhs to be paid on diverse

dates as recorded therein. The said agreement contains an arbitration clause for resolution of the disputes regarding the construction, interpretation,

scope and effect of any of the terms and conditions which reads thus:

43. a) all disputes and differences between the parties hereto regarding the construction interpretation scope or effect or any of the terms and

conditions herein contained or in any way touching or concerning these presents and/ or determination of any liability shall be referred to the

Arbitration as provided in the Indian Arbitration act of the joint Arbitration one to be appointed by the Purchasers and another to be appointed by

the Owners and the Developer jointly under the provisions of the Arbitration and conciliation Act, 1996. If the joint Arbitrators differ, the Joint

Arbitrators will be at liberty to appoint an Umpire for taking his decision.

b) The Joint Arbitrators or the Umpire as the case may be shall have power to give interim awards and/or directions

c) The Joint Arbitrators or the Umpire as the case may be shall be entitled to give a speaking award and the parties have agreed to accept the

same and shall be bound by the same

d) The Joint Arbitrators or the Umpire as the case may be shall have summary powers.

16. It would be trite to mention that the opposite party Nos. 1 and 2 did not contend either before the District Forum or before the State

Commission that the subject-matter in the complaint petition filed under the provision of the Consumer Protection Act, 1986, is outside the scope

of arbitration agreement but have proceeded on the basis that the Arbitration and Conciliation Act, 1996 does not apply to a proceeding initiated

before the District Forum or the State Commission i.e. the special tribunal constituted under the Consumer Protection Act, 1986.

17. In view of such stand, I am proceeding to decide the matter by taking into consideration that the subject-matter before the District Forum

covers the arbitration agreement.

18. Section 3 of the Consumer Protection Act, 1986 says that the provision of the said act shall be in addition to and not in derogation of the

provision of any other law for the time being in force. By referring section 3 it is tried to be contended by the opposite party Nos. 1 and 2 that the

commission under the Act are quasi judicial bodies and they are not authorized to refer the disputes for a consensual adjudication.

19. The three judges bench of the Supreme Court in the case of Sky Parking Carriers Ltd. vs. Tata Chemicals Ltd. (supra) while considering the

matter relating to deficiency in service observed that even there exists arbitration clause in the agreement the same would not denude the power of

the redressal agency constituted under the Consumer Protection Act to entertain the complaint as the said Act is in addition to and not in

derogation with any other law. In the said case the parties before the agreement intended to resolve the disputes through one of the retired judge of

the Supreme Court and the Commission has specifically recorded that such reference is not under the arbitration Act but by way of a consensual

adjudication and it further directed that after passing of the award, the retired Judge of the Supreme Court shall send the same to the Commission

for final orders. Thus, the point before the Supreme Court was not whether the Arbitration and Conciliation Act, 1986 applies to the Consumer

Forum or not.

20. The three judges bench in Sky Parking Carriers Ltd. vs. Tata Chemicals Ltd. (supra), did not take into consideration the earlier judgment of

the Supreme Court in case of Fair Air Engineers Put Ltd. vs. N.K. Modi (supra) where the point emerges as to whether the proceeding before the

Consumer Forum are the legal proceedings and the authorities have the trappings of the judicial authorities or a Court within the meaning of section

34 of the Arbitration and Conciliation Act, 1996 and the same has been answered in these words :-

16. It would, therefore, be clear that the legislature intended to provide a remedy in addition to the consentient arbitration which could be enforced

under the Arbitration Act or the civil action in a suit under the provisions of the Code of Civil Procedure. Thereby, as seen, section 34 of the Act

does not confer an automatic right nor create an automatic embargo on the exercise of the power by the judicial authority under the Act. It is a

matter of discretion. Considered from this perspective, we hold that though the District Forum, State Commission and National Commission are

judicial authorities, for the purpose of section 34 of the Arbitration Act, in view of the object of the Act and by operation of section 3 thereof, we

are of the considered view that it would be appropriate that these forums created under the Act are at liberty to proceed with the matters in

accordance with the provisions of the Act rather than relegating the parties to an arbitration proceedings pursuant to a contract entered into

between the parties. The reason is that the Act intends to relieve the consumers of the cumbersome arbitration proceedings or civil action unless

the forums on their own and on the peculiar facts and circumstances of a particular case, come to the conclusion that the appropriate forum for

adjudication of the disputes would be otherwise those given in the Act.

21. However, the point has been set at rest by the decision of the seven Judges bench of the Supreme Court in S.B.P. and Co. Vs. Patel

Engineering Ltd. and Another, . The majority view in the said judgment is that section 8 of the Arbitration and Conciliation Act contemplates a

judicial authority, before which a proceeding is initiated in respect of a subject-matter which is covered under the Arbitration agreement, should

refer the dispute to arbitration and held that the Court defined u/s 2(e) of the Arbitration and Conciliation Act includes within the special tribunal

like the Consumer Forum in these words:-

18. It is also not possible to accept the argument that there is an exclusive conferment of jurisdiction on the arbitral tribunal, to decide on the

existence or validity of the arbitration agreement. Section 8 of the Act contemplates a judicial authority before which an action is brought in a

matter which is the subject of an arbitration agreement, on the terms specified therein, to refer the dispute to arbitration. A judicial authority as such

is not defined in the Act. It would certainly include the Court as defined in section 2(e) of the Act and would also, in our opinion, include other

courts and may even include a special tribunal like the Consumer Forum [See M/s. Fair Air Engineers Pvt. Ltd. and another Vs. N.K. Modi, ].

When the defendant to an action before a judicial authority raises the plea that there is an arbitration agreement and the subject-matter of the claim

is covered by the agreement and the plaintiff or the person who has approached the judicial authority for relief, disputes the same, the judicial

authority, in the absence of any restriction in the Act, has necessarily to decide whether, in fact, there is in existence a valid arbitration agreement

and whether the dispute that is sought to be raised before it, is covered by the arbitration clause. It is difficult to contemplate that the judicial

authority has also to act mechanically or has merely to see the original arbitration agreement produced before it, and mechanically refer the parties

to an arbitration. Similarly, section 9 enables a Court, obviously, as defined in the Act, when approached by a party before the commencement of

an arbitral proceeding, to grant interim relief as contemplated by the section. When a party seeks an interim relief asserting that there was a dispute

liable to be arbitrated upon in terms of the Act, and the opposite party disputes the existence of an arbitration agreement as defined in the Act or

raises a plea that the dispute involved was not covered by the arbitration clause, or that the Court which was approached had no jurisdiction to

pass any order in terms of section 9 of the Act, that Court has necessarily to decide whether it has jurisdiction, whether there is an arbitration

agreement which is valid in law and whether the dispute sought to be raised is covered by that agreement. There is no indication in the Act that the

powers of the Court re curtailed on these aspects, on the other hand, section 9 insists that once approached in that behalf, ""the Court shall have the

same power for making orders as it has for the purpose of an in relation to any proceeding before it."" Surely, when a matter is entrusted to a Civil

Court in the ordinary hierarchy of Courts without anything more, the procedure of that Court would govern the adjudication.

(Emphasis supplied)

22. In view of the judgment rendered by seven Judges bench of the Apex Court in case of SBP and Co. vs. M/s. Patel Engineering Ltd & Anr.

(supra), the conclusion is inevitable that the Arbitration and Conciliation Act, 1996 applies to a proceeding initiated before the Consumer Forum

provided the subject matter before the Forum is within the ambit of the arbitration agreement.

POINT NO. 2:

23. In an application u/s 5 and 8 of the Arbitration and Conciliation Act, 1996 filed by the petitioners before the District Forum for referring the

dispute to arbitration, the District Forum rightly held that the dispute which is a subject-matter in the proceeding before it, should be referred to

arbitration but while doing so proceeded further to direct the parties to engage the arbitrator from the panel of the civil engineers of Kolkata

Municipal Corporation and the Commissioner of Kolkata Municipal Corporation, in turn, was requested to appoint a competent civil engineer as

an arbitrator in the matter.

24. Before dealing with the competence of the District Forum in adopting such methodology it would be profitable to quote Section 5 and 8 of the

Arbitration and Conciliation Act, 1996 which runs thus:-

5. Extent of judicial intervention. - Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part,

no judicial authority shall intervene except where so provided in this Part.

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8. Power to refer parties to arbitration where there is an arbitration agreement. - (1) a judicial authority before which an action is brought in a

matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance

of the dispute, refer the parties to arbitration.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly

certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an

arbitration may be commenced or continued and an arbitral award made.

25. On perusal of the aforesaid provision, it is manifest that a party applying not later than submitting his first statement on the subject matter of

dispute if invites the attention of the judicial authority which unhesitatingly includes Consumer Forum, that the subject-matter in a proceeding before

it is a subject matter of arbitration of agreement then it is imperative to refer the parties to arbitration provided the original arbitration agreement or

a certified copy thereof is filed with the said application.

26. Section 11 of the Arbitration and Conciliation Act empowers the Chief Justice of the High Court to appoint an arbitrator provided the matter

falls within the provisions contemplated under the said section.

27. The power has not been conferred upon the judicial authority to appoint arbitrator but the same in exclusive domain of the Chief Justice. The

Judicial Officers cannot usurp the powers conferred by the statute upon a Chief Justice.

28. Thus, by no stretch of imagination the power to appoint arbitration by the Chief Justice can be exercised by the judicial authority. As has been

held in case of the Sky Parking Carriers Ltd. vs. Tata Chemicals Ltd. (supra) and SBP and Co. vs. Patel Engineering Ltd & Anr (supra) the

consumer Forum are the judicial authorities within the extended meaning of the Court u/s 2 (e) of the Arbitration and Conciliation Act, 1996 and

does not enjoin the power to appoint the arbitration u/s 11 of the said Act.

POINT NO. 3:

29. The Court exercising power under Article 227 of the Constitution is under supervisory jurisdiction. The said power is embedded to the High

Court to be exercised in an appropriate case despite the existence of alternative remedy. It is the self imposed restriction by the Court to relegate

the parties to resort the efficacious remedy provided under the statute, The High Court is not denuded of its supervisory jurisdiction to mandate the

inferior Court or Tribunal to act within the statutory bounds.

30. As has been held in case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, that the alternative remedy cannot

operate as a bar, in at least, three contingencies namely, 1. writ is filed for enforcement for fundamental rights, 2. violation of principle of natural

justice and 3 where the order or proceeding are wholly without jurisdiction or the vires of the Act is challenged.

31. In case of STATE OF TRIPURA v. MANORANJAN CHAKRABORTY AND OTHERS, (2001) 10 SCC 740 that if it is found that gross

injustice is done even there is an existence of alternative remedy the writ court can exercise its jurisdiction to do complete justice.

32. The Division of this Court in case of Pranab Kumar Ray & Anr. vs. Reserve Bank of India & Ors., reported in 1992 (2) CLJ 289, held that in

spite of existence of alternative remedy the power under Article 227 of the Constitution can be invoked in exceptional circumstances if there is a



manifest injustice either in law or procedure.

33. The existence of an alternative remedy is not an absolute bar but is a self imposed restriction by the Court not to invoke such jurisdiction if the

dispute is capable of being redress by approaching the proper forum. It would be profitable to quote section 19 of the Consumer Protection Act,

1996 which provides that a person aggrieved by an order made by the State Commission under sub clause 1 of clause (a) of section 17 may

prefer an appeal before the National Commission. Section 19 reads thus:-

19. Appeals.-- Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (1) of clause

(a) of section 17 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 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 State Commission, shall be entertained

by the National Commission unless the appellant has deposited in the prescribe manner fifty per cent of the amount or rupees thirty-five thousand,

whichever is less.

34. Section 21 of the said Act defines the jurisdiction of the National Commission which reads thus:-

21. Jurisdiction of the National Commission.--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 and compensation, if any, claimed exceeds rupees one crore; and

(ii) appeals against the orders of any State Commission; 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.

35. On careful reading of the aforesaid provision an appeal before the National Commission may be preferred by a person aggrieved by an order

passed by the State Commission under sub-clause 1 of clause (a) of section 17.

36. Sub-clause 1 of clause(a) of section 17 depicts the original jurisdiction of the State Commission to entertain the complaint where the value of

the goods of service or compensation exceeds twenty lakhs but does not exceed one crore.

37. Section 21 of the said Act confers jurisdiction upon the National Commission to accept the appeals against the order of any State Commission

and also includes the power to call for the records and to pass the appropriate order in any Consumer Disputes which is pending or has been

decided by the State Commission if the National Commission is satisfied that State Commission has exercised the jurisdiction not vested in it or

vested to exercise jurisdiction so vested or acted in exercise of its jurisdiction illegal or with material irregularity.

38. Even if it is taken that there is a remedy by way of revision or appeal the same do not create an embargo upon the Court to exercise its

jurisdiction under Article 227 of the Constitution. In case of ANJ Grindlays Bank & Anr. vs. President District Consumer Disputes Redressal

Forum & Ors. (supra) the Single Bench was considering the question whether there is a deficiency in service rendered by the bank which came

into the initiation of the proceeding under the Consumer Protection Act. It is further held that the point which has been raised before this Court

under Article 226 of the Constitution was not raised before the forum and in such perspective it was held that the said point should be raised

before the forum first who is competent to decide relating to deficiency in service.

39. The Division Bench in case of United Bank of India vs. Hiralal Mukherjee & Ors. (supra) on the facts and circumstances of the said case held

that no case is made out of such nature which attracts Article 227 of the Constitution in these words :-

3. On the facts and circumstances of the present case when we examined the various points raised, we find that there is no such mistake of the

nature which attracts Article 227 of the Constitution making it a case fit for our interference. The petitioner should go to the National Commission

and raise all these questions of law and facts which have been raised here. Since the period of limitation for preferring the appeal to the National

Commission of 30 days has expired, the learned Counsel for the opposite parties prayed for extension of that period till 31.8.94. If the appeal is

filed within that period, the National Commission would consider the request for condonation of the delay u/s 5 of the Limitation Act read with

section 14 of the said Act.

40. Another Single Bench in case of Dr. Mrs. Mridula Purkayastha vs. Kalika Singha (supra) held that unless a case of exceptional nature is made

out the invocation of powers under Article 227 of the Constitution should not be exercised.

41. Thus, in all the three above reports it has not been held that the jurisdiction under Article 227 of the Constitution cannot be invoked in view of

the existence of alternative remedy.

42. On identical facts the Single Bench in case of Indusind Bank Ltd. vs. Gadadhar Banerjee (CO. 223/2009) in an unreported judgment decided

the point of maintainability of a revisional application under Article 227 of the Constitution where the challenge was made against the order passed

by the State Commission, held:

In reply to the said submission of Mr. Talukdar, Mr. Ghosh, learned Advocate appearing for petitioner submitted that availability of an alternative

remedy by itself cannot be a ground the High Court to refuse to exercise this jurisdiction particularly an order was passed an authority without

jurisdiction. According to Mr. Ghosh section 8 of the Arbitration and Conciliation Act, 1996 bars jurisdiction of the Forum and/or the Commission

to decide dispute which is covered under the arbitration agreement between the parties and particular when one of the parties to the agreement

applies for such reference to arbitration for resolution of such dispute u/s 8 of the said Act, he, thus, submitted that entertainment of application

under Article 227 of the Constitution of India cannot be denied merely because availability of alternative remedy by way of revision u/s 21(b) of

the said Act as legality of the impugned order is under challenge in this application on the ground of competence of the Forum/Commission to pass

such order. Or in other words, when jurisdiction of the Form to proceed with the said complaint case and/or to pass the impugned order is under

challenge, the high court cannot refuse to entertain an application under Article 227 of the Constitution of India merely because of availability of

alternative remedy by revision before National Forum. In support of such submission he relied upon a decision of the Hon"ble Supreme Court in

the case of Committee and Management & Anr. vs. Vice Chancellor & Ors, reported in 2009 (2) SCC 630.

On perusal of the said decision this court finds that the Hon"ble Supreme Court has decided therein that availability of an alternative remedy by

itself may not be a ground for high court to refuse to exercise its jurisdiction under certain circumstances which are as follows:-

1. in a case where such alternative remedy would not be an efficacious one
2. When an order has been passed by an authority without jurisdiction
3. When an order has been passed by an authority in violation of the principles of natural justice.

43. The District Forum while arriving at a conclusion that the dispute should be referred to arbitration, adopts a methodology by appointing the

arbitrator de hors the statutory mandate u/s 11 of the Arbitration and Conciliation Act, 1996 whereas the State Commission held that the

Arbitration and Conciliation Act does not apply before the Consumer Forum. The order of the State Commission is wholly without jurisdiction in

view of the seven judges bench judgment of the Supreme Court rendered in case of SBP and Co. vs. Patel Engineering Ltd & Anr. (supra).

44. However, it is equally true that the order of the District Forum by which the parties are directed to approach the Commissioner of Kolkata

Municipal Corporation, is also wholly without jurisdiction in view of the law enunciated by the Apex Court, as indicated above. The power under

Article 227 of the Constitution is not fettered by mere existence of alternative remedy as has been laid down in case of Whirlpool (supra).

Therefore, the orders impugned before District Forum is wholly without jurisdiction and as such the application under Article 227 of the

Constitution is maintainable.

45. In view of the above, the order of the state Commission is hereby set aside. The portion of the order of the District Forum by which it directed

the parties to approach the Commissioner, Kolkata Municipal Corporation, who was requested to appoint an arbitrator, is also set aside.

46. The revisional application is disposed of.

47. There shall be no order as to costs. Urgent photostat certified copy of this judgment, if applied for, be given to the parties on priority basis.