



IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE ALOK AWASTHI

MISC. PETITION No. 804 of 2024

PRAMOD JAIN AND OTHERS

Versus

CHARUMITRA DANGIWALA AND OTHERS

.....
Appearance:

Ms. Sangeeta Choudhary - Advocate for the petitioner through VC.

Shri Deepesh Joshi - Advocate for the respondents through VC.
.....

Heard on : 19.08.2025

Pronounced on : 19.09.2025
.....

ORDER

This miscellaneous petition has been preferred by the petitioner under Article 227 of the Constitution of India, against the order dated 09.11.2023 passed by Member, State Consumer Disputes Redressal Commission, District Bhopal, in AEA/34/2023 wherein the appeal was dismissed affirming the order dated 03.10.2023 passed by the District Commission in EA No.30/2023 and calculated the interest @ 18% p.a. on the enhanced amount of Rs.2.00 lakhs with retrospective effect from the date of order (i.e. 19.01.2017) passed by District Commission.

2. Facts in nutshell leading to the miscellaneous petition are that the respondents/Complainants and petitioners have been under litigation since 2012. Firstly, the respondents approached District Consumer Dispute Redressal Commission-2 (hereinafter referred to as DCDRC-II), and got an order against petitioners on date 18-01-2017 wherein the petitioners were



ordered to pay Rs. 4,05,000/-. In compliance of which the petitioners have paid Rs.2,17,500/- in each of the 2 demand drafts bearing no.004596 and 004597 dated 21.06.2017 in favour of the respondents. Thereafter, the respondents approached the M.P. State Consumer Dispute Redressal Commission, Bhopal (for short MPSCDRC) vide appeal No. FA No.232/2017 and received an order dated 01-06-2023 wherein the appeal was partly allowed in the absence of the petitioners and the order of District Commission, Indore was modified by enhancing the amount awarded against compensation for reduction in built up area, from Rs. 2,00,000/- to Rs. 2,96,310/- and the other terms and conditions of the aforesaid order were affirmed.

3. In compliance of the aforesaid order the respondents preferred an Execution petition before the DCDRC-II on 26.06.2023 bearing no. EA/30/2023, wherein a claim of Rs.2,08,548/- was made by the respondents. Petitioners filed written statement and made oral arguments, on due consideration of the submissions and material available, the DCDRC-II directed the petitioners to pay Rs.96,310/- with 18% interest p.a., with effect from the date of earlier order i.e. from 18.01.2017. Petitioners paid Rs.1,02,100/- and Rs.1,10,511/- in favour of The President, District Consumer Dispute Redressal Commission-2, Indore vide demand drafts nos.085035 dated 03.10.2023 and 085081 dated 22.11.2023. Thereafter, petitioners filed an appeal against the order of the execution Court before the MPSCDRC, Bhopal which was decided against the petitioners vide order dated 09.11.2023. Being aggrieved by the aforesaid order the present petition has been preferred.



4. Learned counsel for the respondent raised his arguments on the question of maintainability of the petition. It is submitted that the supervisory jurisdiction of this High Court, as provided under Article 227 of Constitution of India, is available to the Petitioners only in respect of examining their jurisdictional error committed by the Subordinate Court or Tribunal which is patently reflected from the bare perusal of the impugned order. Whereas no such issue is canvassed by the petitioners in the instant petition, moreover where there is a necessity of examining the factual aspect of the matter, the exercise of supervisory jurisdiction is unwarranted.

5. Counsel further contended that the order dated 03.10.2023 passed in execution proceedings directing the petitioners to pay additional amount was also not challenged by the petitioners, instead they partly complied with the order by depositing part amount of Rs.1,02,100/-. However, the petitioners wrongly preferred an appeal under Section 73 of Consumer Protection Act, 2019 (in short 'the Act, 2019'), whereas Section 73 of 'the Act, 2019' provides that an appeal under the said provision can be preferred against the order passed under Section 72 of 'the Act, 2019'. The said being incompetent could not have been entertained by MPSCDRC, however, the same was dismissed on merits and thereafter the petitioner have paid another payment of Rs.1,10,511/-. Since the entire amount has been paid, the dispute pending between the parties do not survive and there is no order of penalty passed by the DCDRC, therefore, the instant petition challenging the order passed by MPSCDRC, is not maintainable.

6. It is further submitted that the present petition is also otherwise not maintainable, as the order passed under Section 71 of 'the Act, 2019' is a



revisable order and the revision against the same ought to have been preferred before the MPSCDRC, under Section 47 of 'the Act, 2019', as there is no provision of an appeal in respect of an order passed either interlocutory or final in executing proceedings. Thus there is no illegality committed by the MPSCDRC in dismissing the appeal preferred by the Petitioners, which calls for an interference under Article 227 of Constitution of India.

7. Counsel for the respondent relied upon the judgment passed by Hon'ble Supreme Court in the case of *Nivedita Sharma vs. Cellular Operators Assn. of India [(2011)14 SCC 337]* and submitted that in para 11 of the aforesaid judgment it has been held as under:

"11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation-L. Chandra Kumar v. Union of India. However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

8. Counsel also relied upon the judgment passed by Hon'ble Apex Court in the case of *Cicily Kallarackal vs. Vehicle Factory [(2012)8 SCC 524]* in support of his contentions the relevant para no.9 reads as under:

"9. While declining to interfere in the present Special Leave Petition preferred against the order passed by the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, we hereby make it clear that the order of the Commission are incapable of being questioned under the



writ jurisdiction of the High Court, as a statutory appeal in terms of Section 27 A(1)(c) lies to this Court. Therefore, we have no hesitation in issuing a direction of caution that it will not be proper exercise of jurisdiction by the High Courts to entertain writ petitions against such orders of the Commission."

9. In view of the aforesaid judgments, since the remedy of appeal before National Commission is available to the petitioner, the present petition is not maintainable. Section 51 of 'the Act, 2019' provides that 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. Hence the instant Miscellaneous Petition is liable to be dismissed on the ground of maintainability alone.

10. On the other hand learned counsel for the petitioners opposed the prayer by submitting that Execution Recovery Petition (ERP) is not maintainable, however, an appeal may lie to the National Commission under Section 54(5) of 'the Act, 2019' in the case of *ex parte* order. In this case ERP was filed before the National Consumer Dispute Redressal Tribunal (hereinafter referred to as NCDRT), which was also reverted, hence this petition has been filed in the light of judgment passed by Hon'ble Supreme Court in the case of *Ibrat Faizan vs. Omaxe Build Home Pvt. Ltd.* [2022 Live Law (SC) 481]. An order in enforcement of final order in the consumer dispute cannot be construed to be orders passed in the 'consumer dispute'. In execution proceedings, the execution forum has only the jurisdiction to execute the decree and order in accordance with Order XXI of CPC.

11. Hon'ble Apex Court in the case of **Karnataka Housing Board vs.**



K.A. Naamani, (2019) 6 SCC 424, has made a distinction between the execution proceedings and original proceedings and held that the former are separate and independent. Adopting the aforesaid view, Hon'ble Supreme Court in the case of **M/s. Ambience Infrastructure Pvt. Ltd., vs. Ambience Island Apartment Owners and others (Civil Appeal Nos. 1213-1215 of 2017)** has held that having regard to Section 23 of the Consumer Protection Act 1986, an appeal will not lie to this court against an order which has been passed in the course of execution proceedings. The appeals are hence dismissed as not being maintainable. Learned counsel contended that as the appeal before the National Commission was under Section 58(1)(a)(iii) of the Act, 2019 there is no further appeal provided against the order of the National Commission, as provided to the Supreme Court under section 67 of 'the 2019 Act', against the order passed by the National Commission under Section 58(1)(a)(iii) of 'the 2019 Act', hence, a writ petition under Article 227 of the Constitution of India would be maintainable.

12. Learned counsel for the petitioners submitted that after receiving the amount of Rs.4,05,000/- with interest from the appellants, the respondents approached MPSCDRC against the order dated 18.01.2017 and received order dated 01.06.2023 where in MPSCDRC has partly allowed the appeal in the absence of the petitioners and enhanced the amount of deficiency in services awarded by DCDRC-II from 2 lakhs to Rs.2,96,310/- thereafter respondents proceeded for execution proceedings with DCDRC-II wherein they have claimed an amount of Rs.2,08,548/-. Petitioners came to know about the said order of MPSCDRC dated 26/9/2013 when bailable warrants were issued against them for appearance on 27/9/2013 before the DCDRC-II.



It is further argued that issuance of Bailable Warrant for recovery of Rs. 4,10,000/- (Rs.2,05,000/-) from applicants herein was erroneous, illegal, irregular, arbitrary and unconstitutional. The petitioners have already paid Rs.4,00,000/- along with interest of Rs.30,000/- for delay in payment by 5 months, i.e. total Rs. 4,35,000/-, as they got the information about the said order belatedly against Deficiency in Service, Compensation and other costs. Counsel contended that if the DCDRC-II would have calculated exact amount of Deficiency in Service with the Report of the Engineer on record (on account of less Super Built-up area), the applicant herein would have paid the said enhanced amount on that date itself and the burden of paying interest would not have fallen on the petitioner. And in that case, petitioners would not have been made liable to pay interest @18% p.a. on the enhanced amount from the date of order of DCDRC-II which the respondents are claiming i.e., Rs.1,11,238/- (Interest amount), which is already more than the enhanced principal amount of Rs.96,310/-. The said amount of Rs.2,08,548/- as claimed by the respondent (enhanced amount Rs.96,310/- + Interest @ 18%-Rs.1,11,238/- and cost Rs.1000/-) was prepared by the respondents by stating the "as directed by Court", whereas MPSCDRC has not ordered any interest amount or any execution cost.

13. Counsel for the petitioners submitted that to keep interest unaffected in the order of State Forum does not mean that interest has to be paid from the date of subordinate forum while on that date enhanced amount was not in existence, therefore such observation and order passed by the District Commission is out of place and unwarranted. The petitioners herein are unnecessarily suffering to pay an amount which could have been already



paid if the DCDRC-II had calculated an exact amount, in the earlier award by DCDRC-II as (i) Deficiency in Service (ii) Compensation and (iii) interest @ 18% if the payment is delayed by 2 months. If the District Commission would have awarded it earlier, the Petitioner herein would have paid the said enhanced amount on that date itself and the burden of paying interest would not have fallen on the petitioner. The petitioners herein are burdened in two ways, firstly when the District Commission awarded abruptly compensation of Rs.2.00 lakhs and in addition, a high rate of interest of 18% p.a. was imposed on the due amount. The purpose of imposing high interest rate in the Consumer Commission is always with the intention to make the payee pay the principal amount as early as possible and not to make additional income to the consumer through the awards. Therefore, in the light of Doctrine of Unjust Enrichment, the impugned order is liable to be set aside.

14. Counsel further argued that before filing of the FA/232/2017 by the Respondents before the State Commission Bhopal, the whole due amount, as awarded by District Commission-II, Indore, was paid to the petitioners and therefore, 18% interest as per the principle of Doctrine of Merger as analysed in detail by Hon'ble Supreme Court in the case of *Kunhayammed vs. State of Kerala (2000) 6 SCC 359* will not be applicable to this enhanced amount from the date of order of DCDRC-II. Counsel further submitted that the MPSCDRC relying the case of *Kunhayammed vs. State of Kerala (2000) 6 SCC 359*, has wrongly interpreted the Doctrine of Merger, whereas the merging of decision of subordinate forum in decision of superior forum does not mean that interest on amount enhanced by the superior forum will be calculated from the date of the order of the subordinate forum.



15. Counsel for the petitioner further submitted that in the case of conflict between the two decisions of the Apex Court, Benches comprising of equal number of Judges, decision of earlier Bench is binding unless explained by the latter Bench of equal strength, in which case the later decision is binding. Decision of a Larger Bench is binding on smaller Benches. Therefore, the decision of earlier Division Bench, unless distinguished by latter Division Bench, is binding on the High Courts and the Subordinate Courts. Similarly, in presence of Division Bench decisions and Larger Bench decisions, the decisions of Larger Bench are binding on the High Courts and the Subordinate Courts. In support of her arguments, counsel has placed reliance upon the judgment of Hon'ble Apex Court in the case of *Jabalpur Bus Operators Association & Ors. vs. State of M.P. and Ors. (2003(1) MPLJ 513*. Merging of decision merely means that after passing of order by the superior forum, the enhanced / reduced amount as the case may be, passed by superior forum, will be made payable.

16. Counsel also relied upon the judgment of Hon'ble Apex Court in the case of *Suneja Towers (P) Ltd. vs. Anita Merchant, [2023 SCC Online SC 443]* and submitted that the above judgment makes it clear that the proposition of awarding compound interest is disapproved, meaning thereby the motive of Consumer Protection Laws is not to provide interest amount to the consumers, rather to protect their rights. It is also contended that in judgment of Hon'ble supreme Court passed in the case of *Experion Developers Pvt. Ltd., vs. Sushma Ashok Shiroor*, in Civil Appeal No. 6044 of 2019 decided on 07.04.2022 it has been held as under:

"22.2 At the same time, we are of the opinion that the interest of 9 per cent granted by the Commission is fair and



just and we find no reason to interfere in the appeal filed by the Consumer for enhancement of interest."

In the aforesaid judgment Hon'ble Apex Court has clearly stated that 9% interest is more than sufficient. As per the Section 3 of the Interest Act, 1978 the interest in case of recovery of any debt or damages or in any proceedings should be the current rate of interest and not more than that. Therefore the interest rate of 18% p.a imposed on the petitioners is unfair, being double of the current prevailing rate, hence the impugned order is liable to be set aside.

17. Counsel for the respondent vehemently opposed the contentions of the petitioners and submitted that the Petitioners have already deposited the amount calculated as per the order passed by the DCDRC-II and thereafter the Petitioners are required to deposit the balance amount along with interest. It is worthwhile to mention here that while modifying the order passed by the DCDRC-II, the State Commission, Bhopal has clarified that the amount awarded by the District Commission, Indore as Rs.2.00 Lakhs would be enhanced to Rs. 2,96,301/-, whereas the remaining order of interest passed by the DCDRC-II, Indore would be applicable for claiming interest on the said enhanced amount. The DCDRC-II Indore candidly ordered that the awarded amount would carry interest @ 18% in case if the same is not deposited within 2 months. Thus 2 reliefs were awarded by the DCDRC, Indore along with interest @ 18%. Rs. 2 Lakhs was awarded for the short area given by the Petitioners and Rs. 2 Lakhs was awarded as compensation for defective flat and for delay. Hence both the Petitioners were directed to pay Rs. 2 Lakhs along with interest @ 18% and the Petitioner No.1 was further directed to pay Rs. 2 Lakhs along with interest.



18. Counsel further contended that after the order being passed by the MPSCDRC, Bhopal, the total amount payable under both the heads stands modified to Rs. 2,96,310/- and Rs. 2 Lakhs, thus to Rs. 4,96,310/-. Admittedly, the Petitioners have deposited Rs.1,02,100/- only as against the enhanced amount of Rs. 96,000/- before the District Commission, Indore and the interest has not been properly calculated because the said amount was required to be calculated from the date as ordered by the DCDRC, Indore i.e. from the date of the order i.e. 18.01.2017 whereas the Petitioners have calculated the interest from the date of the order passed by the MPSCDRC, Bhopal i.e. from 01.06.2023 till the date of payment i.e. 30.09.2023. Therefore the proceedings of execution of the order have been rightly initiated and does not call for any interference.

19. It is further argued by counsel for the respondent that the petitioners have deposited Rs. 4,00,000/- in compliance of the order passed by the DCDRC-II Indore earlier. But since the enhanced amount has been awarded, therefore the said amount of Rs. 96,310/- would also be required to be paid along with interest from the date of the original order passed by DCDRC-II, Indore. Thus, there is no illegality in the order passed by the MPSCDRC, Bhopal. The Petitioners are trying to challenge the award passed by the DCDRC-II, which has never been assailed by them till date and in this Miscellaneous Petition, the only question which is under challenge is the calculation of the interest on the awarded amount, which has already been undergone by the DCDRC-II and thus the exercise of jurisdiction by this Hon'ble Court is unwarranted.

20. The order passed by the State Commission, Bhopal merges with the



order passed by the DCDRC-II and it would be deemed that the order was originally passed by the DCDRC-II, Indore and accordingly the interest would be calculated and the petitioners are required to pay the same to the respondents. There is no infirmity in the order passed by the MPSCDRC and by the DCDRC-II and as such, the present Petition itself is not maintainable and deserves to be dismissed. It is therefore humbly prayed that the instant Miscellaneous Petition be dismissed, in the interest of justice and fair adjudication of the matter.

21. I have heard the arguments advanced by learned counsel for the parties and perused the record.

22. The basic issue that has been raised in this petition is with regard to the maintainability of the present petition.

23. The respondents/Complainants had filed a complaint under Section 12 of 'the Act, 1985' before the DCDRC-II Indore and against the order dated 03.10.2023, passed by in Execution petition, petitioners preferred an appeal under Section 47(1)(b) of 'the Act, 2019 and thereafter filed a revision under Section 58(1)(a)(iii) of 'the Act, 2019' before the National Consumer Dispute Redressal Commission (NCDRC). In this regard the observations of Hon'ble Apex Court in para 11 of the judgment in the case of *Ibrat Faizan vs Omaxe (Supra)* is worth reproducing here under:

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

As observed hereinabove, the short question which is posed for the consideration of this Court is, "whether, against the order passed by the National Commission in an appeal under Section 58 (1)(a)(iii) of the 2019 Act, a writ petition before the concerned High Court under Article 227 of the Constitution of India would be maintainable?"



11. While answering the aforesaid issue/question, the relevant provisions of the 2019 Act, which are relevant for our purpose, i.e., Sections 58 and 67 are required to be referred to. Sections 58 & 67 of the 2019 Act read as under:

“58. Jurisdiction of National Commission.—(1) 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 paid as consideration exceeds rupees ten crore:

Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit;

(ii) complaints against unfair contracts, where the value of goods or services paid as consideration exceeds ten crore rupees;

(iii) appeals against the orders of any State Commission;

(iv) appeals against the orders of the Central Authority; 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.

(2) The jurisdiction, powers and authority of the National Commission may be exercised by Benches thereof and a Bench may be constituted by the President with one or more members as he may deem fit:

Provided that the senior-most member of the Bench shall preside over the Bench.

(3) Where the members of a Bench differ in opinion on any point, the points shall be decided



according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it:

Provided that the President or the other member, as the case may be, shall give opinion on the point or points so referred within a period of two months from the date of such reference.

xxx xxx xxx

67. Appeal against order of National Commission.—Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (i) or (ii) of clause (a) of sub-section (1) of Section 58, may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order:

Provided that the Supreme Court 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 National Commission shall be entertained by the Supreme Court unless that person has deposited fifty per cent of that amount in the manner as may be prescribed.” It is not in dispute that in the present case, the appeal before the National Commission was against the order passed by the State Commission under Section 47(1)(a) of the 2019 Act. Therefore, against the order passed by the State Commission passed in a complaint in exercise of its powers conferred under Section 47(1)(a) of the 2019 Act, an appeal to the National Commission was maintainable, as



provided under Section 58(1)(a)(iii) of the 2019 Act. As per Section 67 of the 2019 Act, any person, aggrieved by an order made by the National Commission of its powers conferred by sub-clause (i) or (ii) of clause (a) of sub-section (1) of Section 58, may prefer an appeal against such order to the Supreme Court. Therefore, an appeal against the order passed by the National Commission to this Court would be maintainable only in case the order is passed by the National Commission in exercise of its powers conferred under Section 58(1)(a)(i) or under Section 58(1)(a)(ii) of the 2019 Act. No further appeal to this Court is provided against the order passed by the National Commission in exercise of its powers conferred under Section 58(1)(a)(iii) or under Section 58(1)(a)(iv) of the 2019 Act. In that view of the matter, the remedy which may be available to the aggrieved party against the order passed by the National Commission in an appeal under Section 58(1)(a)(iii) or Section 58(1)(a)

(iv) would be to approach the concerned High Court having jurisdiction under Article 227 of the Constitution of India.

12. Whether the National Commission can be said to be a tribunal for the purpose of exercise of powers under Article 227 of the Constitution of India by the High Court is concerned, has been considered by a Constitution Bench of this Court in the case of Associate Cement Companies Limited (supra), which is required to be referred to. In paragraphs 44 and 45, it is observed and held as under:

“44. An authority other than a court may be vested by statute with judicial power in widely different circumstances, which it would be impossible and indeed inadvisable to attempt to define exhaustively. The proper thing is to examine each case as it arises, and to ascertain whether the powers vested in the authority can be truly described as judicial functions or judicial powers of the State. For the purpose of this case, it is sufficient to say that any outside authority empowered by the State to determine conclusively the rights of two or more contending parties with regard to any matter in controversy between them satisfies the test of an authority vested with the



judicial powers of the State and may be regarded as a tribunal within the meaning of Article 136. Such a power of adjudication implies that the authority must act judicially and must determine the dispute by ascertainment of the relevant facts on the materials before it and by application of the relevant law to those facts. This test of a tribunal is not meant to be exhaustive, and it may be that other bodies not satisfying this test are also tribunals. In order to be a tribunal, it is essential that the power of adjudication must be derived from a statute or a statutory rule. An authority or body deriving its power of adjudication from an agreement of the parties, such as a private arbitrator or a tribunal acting under Section 10-A of the Industrial Disputes Act, 1947, does not satisfy the test of a tribunal within Article 136. It matters little that such a body or authority is vested with the trappings of a court. The Arbitration Act, 1940 vests an arbitrator with some of the trappings of a court, so also the Industrial Disputes Act, 1947 vests an authority acting under Section 10-A of the Act with many of such trappings, and yet, such bodies and authorities are not tribunals.

45. The word “tribunal” finds place in Article 227 of the Constitution also, and I think that there also the word has the same meaning as in Article

136.” Therefore, the National Commission can be said to be a ‘Tribunal’ which is vested by Statute the powers to determine conclusively the rights of two or more contending parties with regard to any matter in controversy between them. Therefore, as observed hereinabove in the aforesaid decision, it satisfies the test of an authority vested with the judicial powers of the State and therefore may be regarded as a ‘Tribunal’ within the meaning of Article 227 and/or 136 of the Constitution of India. Also, in a given case, this Court may not exercise its powers under Article 136 of the Constitution of India, in view of the remedy which may be available



to the aggrieved party before the concerned High Court under Article 227 of the Constitution of India, as it is appropriate that aggrieved party approaches the concerned High Court by way of writ petition under Article 227 of the Constitution of India.

12.1 At this stage, another Constitution Bench decision of this Court in the case of L. Chandra Kumar (*supra*) is required to be referred to.

While dealing with the jurisdiction of the High Courts under Articles 226/227 of the Constitution of India in respect of powers of judicial review, it is observed and held in para 90 as under:

“90. We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review, the jurisdiction of the High Courts under Articles 226/227 cannot wholly be excluded. It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial



jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Articles 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.” That thereafter, it is observed and held that against the order passed by the tribunal, the aggrieved party may approach the concerned High Court under Article 227 of the Constitution of India.

24. Article 227 of the Constitution of India grants High Courts the power of superintendence over all courts and tribunals within their territorial jurisdiction, allowing them to maintain judicial discipline, call for returns, prescribe rules for practice and proceedings, and examine orders in cases of miscarriage of justice or excess of jurisdiction. This is a judicial and administrative supervisory power, exercised sparingly, and it does not apply to courts or tribunals constituted under laws relating to the Armed Forces.

25. Other issue before this Court is whether an appeal lies before National Commission. It is apposite to refer Section 51 of 'the Act, 2019' which is reproduced here 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.

26. A thorough examination of the term 'ex parte' is warranted in light of Section 51(5) of 'the Act, 2019'. An *ex parte* hearing is a legal proceeding in which the court proceeds to hear and decide a matter when one party—usually the defendant—is absent, having failed to respond to a due notice or summons. The judgment that results from such a hearing is known as an *ex parte* decree

27. Circumstances for Ex Parte Proceedings:

(a) Defendant's Non-Appearance: If the defendant fails to appear on the date fixed for hearing despite proper service of



summons, the court may proceed ex parte.

(b) Plaintiff's Appearance: The plaintiff must be present and ready to proceed with their case.

(c) Proof of Service: The court must be satisfied that the summons was duly served to the defendant in sufficient time for them to appear and answer.

(d) Sufficient cause for non-appearance: If the defendant can demonstrate a valid and compelling reason that prevented their appearance when the suit was called for hearing (e.g., illness, accident, unavoidable circumstances).

(e) The burden of proving "sufficient cause" lies with the defendant, and mere negligence or deliberate avoidance is not considered a sufficient cause. An application to set aside an ex parte decree should generally be filed within 30 days of the date of knowledge of the decree, or from the date of its execution if summons were not served.

(f) An ex parte decree is a valid and enforceable decree, similar to any other decree, unless it is set aside by the court on valid grounds.

28. In the instant case, the petitioner was proceeded against ex parte by the SCDRC in an appeal arising from execution proceedings. Pursuant to Section 51(5) of the Consumer Protection Act, 2019, an appeal against such an ex parte order is maintainable before the National Commission. It is



relevant to refer the judgment of Hon'ble Supreme Court in **Karnataka Housing Borad (Supra)** wherein it has been held that a revision petition before National Commission against an appellate order passed by the State Commission in execution proceeding is not maintainable. Further in the case of *Ibrat Faizan vs. Omaxe (Supra)* the Hon'ble Apex Court has held that a party can approach the 'concerned' High Court under Article 227 of the Constitution of India, against the order passed by the National Commission in its appellate jurisdiction. A similar view has been expressed in the case of *M/s. Universal Sompo General Insurance Co. Ltd. vs. Suresh Chand Jain & Anr.* reported as *2023 SCC OnLine SC 877* wherein Hon'ble Apex Court has held that against the order of the National Commission, remedy is to file a petition under Article 227 of the Constitution of India before the jurisdictional High Court.

29. It is relevant to refer to the recent judgment of the Hon'ble Supreme Court in the case of *Palm Groves Cooperative Housing Society Ltd. vs. M/s. Magar Grime and Gaikwad Associates Etc.*, reported as *2025 LiveLaw(SC)826* wherein at para no.37 it was held that:

"As no remedy will be available against the first appellate order passed by the State Commission in execution proceedings filed before the District Forum, the aggrieved party will be at liberty to avail of the appropriate remedy in accordance with law."

And the conclusion arrived at in para 38.2 runs as under:

"Against an order passed by the State Commission in the execution petition, no further appeal or revision shall lie."

30. In the light of the aforesaid judgments cited above, no further appeal or revision shall lie against the order passed by the State Commission



in the execution petition, therefore, the aggrieved party will be at liberty to avail the appropriate remedy in accordance with law. Accordingly, this court is of the view that the present miscellaneous petition is maintainable.

31. Another issue raised by the petitioner is with respect to the interest rate and the calculation of interest from the initial award.

32. On perusal of the material available on record it is evident that State Commission had calculated enhanced the compensation amount on the basis of a report submitted by Civil and architectural consultant Mr. Ashok Pawar and accordingly the order of District Commission was modified to that extent. In the impugned order dated 09.11.2023, in AEA-34/2023, an appeal preferred by the petitioners against the order dated 03.10.2023, the SCDRC relying upon the principle propounded in the decision of *Kunhayammed vs. State of Kerala, (Supra)* has held that the order of the Appellate Court has overriding effect on the order of the District Court. In the case of *Kunhayammed vs. State of Kerala (Supra)* in the conclusion para no. 44(i), Hon'ble Supreme Court has held as under:

44(i) To sum up our conclusions are :-

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

33. The MPSCDRC in its order dated 01.06.2023 has held as under:



"9. Accordingly, the appeal is partly allowed. The impugned order stands modified to the aforesaid extent. The rest of the impugned order in regard to the interest and cost shall remain unaffected."

34. The judgment relied upon by the non-applicant in the case of *Suneja Towers (P) Ltd. Vs. Anita Merchant, 2023 SCC, Online SC 443* is in relation to 'Compound interest', compound interest is the interest earned on interest and hence the said precedent will not be applicable in the present case because in this case, 'interest on interest' has not been taken but the respondents/plaintiffs have been held to be entitled to interest only on the principal amount which they were entitled to receive. In the light of the aforesaid principle, the interest rate as held by MPSCDRC vide order dated 01.06.2023 is hereby affirmed. Accordingly, the impugned order dated 09.11.2023 passed by MPSCDRC in AEA/23/34 and the order dated 03.10.2023 passed by DSCDRC in EA/30/2023 are just and proper and does not warrant any interference.

35. Resultantly, the miscellaneous petition stands dismissed.

(ALOK AWASTHI)
JUDGE

sumathi