

**Biswanath Alias Debkumar Pathak Vs. Shyamal Kumar Pathak and ors.**

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**Court :** Kolkata

**Decided On :** Dec-16-1994

**Reported in :** (1995)1CALLT127(HC),[2001]103CompCas479(Cal)

**Judge :** Nisith Kumar Batabyal, J.

**Acts :** [Consumer Protection Act, 1986](#) - Sections 14(3) and 15; ;[Constitution of India](#) - Article 227

**Appeal No. :** Civil Order No. 3054 of 1993

**Appellant :** Biswanath Alias Debkumar Pathak

**Respondent :** Shyamal Kumar Pathak and ors.

**Advocate for Def. :** Jiban Chatterjee, ;G.S. Pal and ;K.K. Datta, Advs.

**Advocate for Pet/Ap. :** Ranabir Mahapatra and ;Jagadish Das, Advs.

**Disposition :** Application dismissed

**Judgement :**

**Nisith Kumae Batabyal, J.**

1. This hearing arises out of an application under Article 227 of the [Constitution of India](#), and is directed against the order dated March 12, 1993, passed in S. C. Case No. 59/A of 1993 in the State Consumer Disputes Redressal Commission,

West Bengal, affirming an order dated December 23, 1992, and setting aside an order dated February 4, 1993, passed by the Calcutta District Consumer Disputes Redressal Forum in C. D. F. Case No. 1507 of 1992.

2. The appeal arose out of an order dated February 4, 1993, for reopening a disposed of case being C. D. F. Case No. 1507 of 1992 on the application of the petitioner herein Biswanath Pathak who was O. P. No. 3 in the C.D.F. case stated above. The main contention of the petitioner herein (Biswanath) is that order dated December 23, 1992, disposing of the C. D. F. Case was passed without notice to him. On the said application filed by the petitioner herein, Biswanath, the Calcutta District Forum passed the order dated February 4, 1993, directing to serve notice upon respondent No. 1 herein, Shyamal Kumar Pathak, for hearing why the ex parte order dated December 23, 1993, would not be set aside. Immediately, thereafter, respondent No. 1 herein, Shyamal Kumar Pathak filed the appeal being S. C. Case No. 59/A/93. The learned State Commission has been pleased to hold that the District Forum had no jurisdiction to reopen a disposed of case and hence the order dated February 4, 1993, passed by the State Forum was beyond its jurisdiction. The learned State Commission has further found on a perusal of the record of C. D. F. Case No. 1507 of 1992 that no order dated February 4, 1993, nor any application dated February 4, 1993, filed by respondent No. 1 was there in the record. The learned Commission came to the finding that the order dated February 4, 1993, was procured by the petitioner herein, Biswanath Pathak by corrupt practice.

3. Being aggrieved by and dissatisfied with the impugned order dated March 12, 1993, the petitioner herein, Biswanath Pathak has come before this court alleging, inter alia, that the order passed by the learned State Commission is biased and without jurisdiction and that the learned Commission failed to take note of the legal ramifications of the order passed by the District Forum which was sought to be reopened by Biswanath Pathak. The revisional application is hotly contested by respondent No. 1, Shyamal Kumar Pathak. He has filed an affidavit-in-oppositions denying the material allegations made in the revisional application. An affidavit-in-opposition has also been filed on behalf of the CESC, respondent No. 3.

4. The only point for consideration is whether the impugned order is liable to be quashed.

5. At the outset the learned advocate for respondent No. 1, Shyamal Pathak has submitted that the revisional application is not maintainable and in support of his contention he has referred to the principles laid down in *Miss Maneck Custodji Surarji v. Sarafuzali Nawabali Mirza* : AIR 1976 SC2446 , *Shrivastava (K. K.) v. Bhupendra Kumar Jain* : AIR 1977 SC1703 , *Titaghur Paper Mills Co. Ltd. v. State of Orissa* : [1983]142ITR663(SC) , and the unreported decision of this High Court in C. O. No. 2015 of 1992. Learned advocate for respondent No. 1 has further argued that the petitioner herein could have gone on appeal against the order of the learned State Commission before the National Commission and hence the application under Article 227 of our Constitution does not lie. The learned advocate for the petitioner herein has submitted that the jurisdiction conferred upon the High Court under Article 227 of the [Constitution of India](#) cannot be taken away by any statute and the rule that where there are alternative remedies the High Court should not entertain an application under Article 227 of the Constitution is not a rule of exclusion but a rule of discretion. Therefore, the High Court cannot be said to be deprived of its jurisdiction to entertain a matter under Article 227 of the Constitution when the case can otherwise come within the ambit of the said article.

6. Considered the submissions made by the learned advocates of both sides.

7. In *Miss Maneck Custodji Surarji's case*, : AIR 1976 SC2446 , B who was inducted under an agreement with A, as a paying guest sought to take advantage of the amendment in the Bombay Rent Control Act, by the introduction of Section 15-A which gave protection against eviction to persons in possession of premises as licensees by deeming them to be tenants and filed a suit in the small cause court claiming that he was a deemed tenant. B also obtained an ex parte injunction from the court restraining A from taking forcible possession of the portion of A's flat in B's possession. A thereupon filed a suit in the city civil court for recovery of possession on the ground that B was a paying guest and the period of his agreement had come to an end. The preliminary issue

relating to jurisdiction of the city civil court to try the suit was decided in favour of A and the decision was confirmed in appeal by the High Court. B, thereafter, filed an application in the city civil court for stay of the suit under Section 10 of the Civil Procedure Code. The city civil court rejected the application and ultimately decreed the suit in favour of A. B instead of preferring an appeal to the High Court against the decree filed an application under Article 227 of the Constitution for quashing the decree before the High Court. The High Court in disposing of the application finally under Article 227 did not interfere with the decree passed by the city civil court but merely directed stay of execution of the decree until the earlier suit filed by B was decided by the small cause court and observed that the decision of the city civil court should not be regarded as binding on the parties in the adjudication of the case before the small cause court. In appeal before the Supreme Court it was held that the respondent had clearly a legal remedy available to him by way of an appeal against the decree of the city civil court and that remedy was not only adequate but was more comprehensive than the one under Article 227 of the Constitution. It is true that despite the existence of an alternative legal remedy, the High Court may interfere in favour of an applicant under Article 227 of the Constitution but this was certainly not one of such extraordinary cases. It was not proper for the High Court to entertain an application under Article 227 against a decree passed by a subordinate court when the procedural law allows an appeal against it and that appeal lay to the High Court itself. It was further held that the jurisdiction under Article 227 of the Constitution is an extraordinary jurisdiction which is to be exercised sparingly and in appropriate cases and it is not to be exercised as if it were an appellate jurisdiction or as if it gave unfettered and unrestricted power to the High Court to do whatever it liked.

8. In K.K. Shrivastava's case, : AIR 1977 SC 1703 , it was held that where there is an appropriate or equally efficacious remedy the court should keep its hands off. This is more particularly so where the dispute relates to an election. Still more so where there is a statutorily prescribed remedy which almost reads in mandatory terms. It was further held that merely because the challenge is to a plurality of returns of elections, a writ petition will not lie. It was further held that where the election petition under rule 31 of the Election Rules framed by the Bar Council of Madhya Pradesh was pending, it was held that the writ petition in respect of the

same subject matter should not have been entertained. It was further held that there is no foundation whatever for thinking that where the challenge is to an 'entire election' then the writ jurisdiction springs into action. Decision of the Madhya-Pradesh High Court was reversed.

9. In Titaghur Paper Mills Co. Ltd.'s case, : [1983]142ITR663(SC) , it was held that in the instant case against the order of assessment made by the Sales Tax Officer under the Orissa Sales Tax Act, the petitioners assesseees, can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the prescribed authority under Sub-section (1) of Section 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under Sub-section (3) of Section 23, and then ask for a case to be stated upon a question of law for the opinion of the High Court under Section 24. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well-recognised that where a right or liability is created by a statute which gives a special remedy for enforcement, the remedy provided by that statute only must be availed of.

10. The learned advocate has also referred to the unreported decision of a Division Bench of this court in C. O. No. 2015 of 1992. In that case a writ petition under Article 227 of the Constitution was filed against the judgment of the State Consumer Disputes Redressal Commission, West Bengal. A preliminary objection was raised by learned counsel for the opposite parties that since an appeal lay against the order under Section 17 of the Consumer Protection Act, the High Court may not interfere in this writ petition. That contention was ultimately upheld, relying upon the principles laid down in K.K. Shrivastava's case, : AIR 1977 SC1703 , Miss Maneck Custodji Surarji's case, : AIR 1976 SC2446 and Shyam Kishore v. Municipal Corporation of Delhi, : AIR 1992 SC2279 . In the last-mentioned case the Supreme Court held that if alternative remedy is a suitable solution available on the terms of the statute itself the exercise of jurisdiction under articles 226 and 227 of the [Constitution of India](#), by way of writ petition may not be appropriate and proper.

11. Section 15 of the [Consumer Protection Act, 1986](#), deals with appeals against the orders of District Forum. The limitation is 30 days but the State Commission can extend the time on sufficient cause. Any person aggrieved by an order made by the District Forum may prefer an appeal against such order . . .' Therefore, there is no limitation on the nature of the order in the text of the statute under Section 17 of the said Act, the State Commission has jurisdiction to entertain appeals against the orders of any District Forum within the State.

12. It is clear, therefore, that the Act provides for a complete machinery to challenge the orders of the District Forum. The appellate forum has more powers than a revisional or supervisory forum. In the factual set up of the case there are no special circumstances for invocation of the extraordinary jurisdiction under Article 227 of the Constitution. In view of the catena of decisions of the apex court of our country referred to above, where the alternative remedy provided by the statute is a suitable solution, exercise of jurisdiction under Article 227 of the Constitution is not proper. So the contention of the learned lawyer for the petitioner here is rejected.

13. This is sufficient to dispose of the matter. There is also no merit in the petitioner's case. The learned State Commission in the impugned order has observed at one place that the District Forum has no power to set aside an ex parte order. The same question fell for decision in *Majestic Auto Ltd. v. K. Kant* [1991] 2 CPR 467 ; [1991] 2 CPJ 466 (NCDRC).

14. In that case, it was held that the District Forum was not right in holding that the Act did not make any provision for setting aside an ex parte order by the District Forum. This view was based on the analogy of the powers of the Industrial Tribunal as taken by the apex court of our country in *Satnam Verma v. Union of India* [1985] 66 FJR 221. In my humble view, the Supreme Court in the case was not called upon to decide the powers of the District Forum under the [Consumer Protection Act, 1986](#). So the extension of the ratio decidendi in that case in the context of an Act not in pari materia with the [Consumer Protection Act, 1986](#), by analogy is rather fallacious.

15. Section 14(3) of the [Consumer Protection Act, 1986](#), lays down that subject to the provisions of the Act, the procedure relating to the conduct of the members of the District Forum, its sittings and other matters shall be such as may be prescribed by the State Government. Under 1987 rule, the District Forum may decide a complaint ex parte. But no power has been given to the District Forum to set aside or review its own order. As a District Forum is a creature of statute it cannot have a jurisdiction with which it has not been clothed. So the learned State Commission took the correct view.

16. In view of the decisions made above the application under Article 227 of the [Constitution of India](#) is dismissed. No order as to costs.

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