

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9317 OF 2019  
(Arising out of SLP (C) No. 18658 of 2018)

M/S. SHIUR SAKHAR KARKHANA PVT. LTD.

... Appellant(s)

VERSUS

STATE BANK OF INDIA

... Respondent(s)

O R D E R

Leave granted.

The judgment dated 03.05.2018 passed by the Aurangabad Bench of the High Court of Bombay in W.P. No. 2104 of 2017, entertaining the said writ petition against the order placing the respondent *ex parte*, passed by the Maharashtra State Consumer Disputes Redressal Commission, Mumbai Circuit Bench at Aurangabad (hereinafter, "the State Commission"), and setting aside the said order of the State Commission, has been called into question in this appeal.

The records reveal that the respondent-Bank was placed *ex parte* before the State Commission for failing to appear before it despite service of notice. Subsequently, an application was filed by the respondent-Bank to set aside the order placing it *ex parte*, which came to be dismissed by the State Commission on the ground that it does not have jurisdiction to recall its own prior order.

As against this order, the respondent herein approached the

High Court by filing a writ petition. Entertaining the same, the High Court passed the impugned order and set aside the order of the State Commission placing the respondent *ex parte*. A contention was raised before the High Court by the appellant herein that an alternative and efficacious remedy was available to the respondent in the form of an appeal before the National Consumer Disputes Redressal Commission (hereinafter, "the National Commission") as provided under Section 21 of the Consumer Protection Act, 1986 (hereinafter, "the Act").

However, the High Court concluded that an appeal may not lie before the National Commission under Section 21 of the Act and consequently there was no alternative remedy available to the respondent. Based on this, the High Court entertained the said writ petition and allowed the same by the impugned order.

In view of the above, the only question to be decided in this appeal by this Court is whether the National Commission has jurisdiction to set aside an order of the State Commission placing a party *ex parte*. In this context, it is relevant to note Section 21 of the Act, which reads as under :-

"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."

In our considered opinion, a plain reading of Section 21(a)(ii) read with Section 19 of the Act makes it clear that the National Commission has jurisdiction to entertain appeals against the orders passed by the State Commission. Section 21(a)(ii) does not state that appeals cannot be entertained against orders that have been passed *ex parte*. The plain and simple meaning of the said provision is that appeals will be entertained by the National Commission against any order passed by the State Commission. The word "orders" as used in Section 21(a)(ii) means and includes "any orders". Thus, an order of the State Commission placing a particular party *ex parte* can also be questioned before the National Commission.

In light of this, in our considered opinion, the High Court could have avoided to entertain the writ petition against the order of the State Commission, in view of the availability of an alternative and efficacious remedy to the respondent.

We may note at this juncture that the presence of an alternative and efficacious remedy is not an absolute bar on the jurisdiction of the High Court under Article 226 of the Constitution, and is a rule of discretion and self-imposed

limitation rather than that of law. However, entertaining a writ petition in such a case may be proper in certain circumstances, for instance when an order has been passed in total violation of the principles of natural justice, or has been passed invoking repealed provisions (see CIT v. Chhabil Dass Aggarwal, (2014) 1 SCC 603).

In the instant case, no such circumstance has been invoked. Thus, propriety required the respondent-Bank to have approached the National Commission in view of the availability of an alternative remedy under a specific legislation.

Thus, we propose to set aside the judgment of the High Court. Ordered accordingly. It is open for the respondent herein to file an appeal before the National Commission within four weeks from this day. In case such appeal is filed within four weeks, the question of limitation shall not be raised by the appellant or by the National Commission, and such appeal shall be decided on its own merits.

The appeal stands disposed of accordingly. There shall be no order as to costs.

....., J.  
(Mohan M. Shantanagoudar)

....., J.  
(R. Subhash Reddy)

New Delhi;  
December 04, 2019

ITEM NO.12

COURT NO.13

SECTION IX

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 18658/2018

(Arising out of impugned final judgment and order dated 03-05-2018  
in WP No. 2104/2017 passed by the High Court Of Judicature At  
Bombay At Aurangabad)

M/S. SHIUR SAKHAR KARKHANA PVT. LTD.

Petitioner(s)

VERSUS

STATE BANK OF INDIA

Respondent(s)

(FOR ADMISSION and I.R. and IA No.97279/2018-EXEMPTION FROM FILING  
C/C OF THE IMPUGNED JUDGMENT)

Date : 04-12-2019 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR  
HON'BLE MR. JUSTICE R. SUBHASH REDDY

For Petitioner(s) Mr. Amol Nirmalkumar Suryawanshi, AOR

For Respondent(s) Mr. Anil Kumar Sangal, AOR  
Mr. Siddharth Sangal, Adv.  
Mr. Nilanjani Tandon, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeal stands disposed of in terms of the signed  
reportable order. There shall be no order as to costs.

(GULSHAN KUMAR ARORA)  
COURT MASTER

(R.S. NARAYANAN)  
COURT MASTER

(Signed reportable order is placed on the file)