

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Filing No. C.M.P. 9797 of 2024

BMW India Private Limited being represented by its duly authorized signatory Saransh Dewan, age 42 Yrs, S/o Vinay Dewan working for gain as Assistant General Manager Technical, Warranty and Customer Complaint at 2nd Floor, Oberoi Center, Building No.11, DLF Cyber City, Phase-II, P.O. Chakkarpur, P.S. DLF Phase II, District Gurugram, Haryana, PIN Code-122002. Petitioner

Versus

1. John Tapan Kongari, S/o P.L. Kongari, Age 54 years, resident of Flat No.802, Block-4, Sector-4, National Games Housing Complex, Khelgaon, P.O. Khelgaon, Hotwar P.S. Sadar, District Ranchi.

2. BMW Titanium Autos, having its office at NH-33, Opp. Birsa Munda Zoological Park, Chakla, P.O. Chakla, P.S. Ormanjhi, District Ranchi-835219. Opp. Parties

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioner : Mr. Rohit Sinha, Advocate
Mr. Shreyas Edupunganti, Advocate
Mrs. Neha Priya, Advocate
Mr. Anadi Brahma, Advocate

For the O.P. :

03/18.10.2024 The maintainability of the instant petition has been reported by the stamp reporter vide stamp reporting dated 21st September, 2024.

2. Learned counsel for the petitioner has submitted that the complainant has filed the complaint before the District Consumer Disputes Redressal Commission, Ranchi (hereinafter to be referred as the "Commission") and in that complaint, the petitioner was O.P. No.1 and the petitioner/O.P. No.1 at the very outset had moved the application before the District Consumer Disputes Redressal Commission, Ranchi under Section 151 CPC in regard to the pecuniary jurisdiction shown in the complaint. The learned District Consumer Dispute Redressal Commission, Ranchi by passing the impugned order dated 29th August, 2024 in spite of disposing of the application for jurisdiction has directed the petitioner to file the written argument and also directed that the case would attain finality, if the written argument were not filed. Since, the petitioner has challenged the pecuniary jurisdiction of the Commission which exceeding Rs.50 lacs, the same could have been decided by the Commission firstly without going into the merits of the complaint.

3. So far as the maintainability of this CMP is concerned, it would be

pertinent to reproduce herein the Article 227 of the Constitution of the India :-

"227. Power of superintendence over all courts by the High Court.

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises Jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may-

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces."

4. As per Section 2(e) of the Tribunals Reforms Act, 2021, Act No.33 of 2021, "Tribunal" means a Tribunal, Appellate Tribunal or Authority as specified in column (2) of the First Schedule and the Consumer Protection Act, 2019(Act No.35 of 2019) is also enshrined therein. The powers under Articles 226 and 227 of the Constitution of the India are the basic feature of Constitution of India and under Article 227 of the Constitution of India, the High Court has been given supervisory jurisdiction over all courts within its territorial jurisdiction including Tribunals also.

5. Though in the Consumer Protection Act, 1986 which was repealed in 2019, the statutory jurisdiction are altogether separate. **But so far as the jurisdiction of the High Court under Article 227 of the Constitution of the India is concerned i.e., only in regard to the jurisdictional error palpable procedural irregularity or perversity in the order by exercising the supervisory jurisdiction may be intervened.**

5.1 The Hon'ble Apex Court in the case of *Sneh Gupta v. Devi Sarup* reported in **(2009) 6 SCC 194** at paragraph 41 has held as under:

"41. The High Court moreover was exercising its jurisdiction under Article 227 of the Constitution of India. While exercising the said jurisdiction, the High Court had a limited role to play. It is not the

function of the High Court while exercising its supervisory jurisdiction to enter into the disputed question of fact. It has not been found by the High Court that the findings arrived at by the learned Additional District Judge were perverse and/or in arriving at the said findings, the learned Additional District Judge failed and/or neglected to take into consideration the relevant factors or based its decision on irrelevant factors not germane therefor. It could intervene, if there existed an error apparent on the face of the record or, if any other well-known principle of judicial review was found to be applicable. (See *Yeshwant Sakhalkar v. Hirabat Kamat Mhamai.*)"

5.2 The Hon'ble Apex Court in the case of ***Ibrat Faizan v. Omaxe Buildhome (P) Ltd.*** reported in ***(2023) 11 SCC 594*** at paragraphs 21 to 24 has held as under:

"21. No so far as the remedy which may be available under Article 136 of the Constitution is concerned, it cannot be disputed that the remedy by way of an appeal by special leave under Article 136 of the Constitution may be too expensive and as observed and held by this Court in *L. Chandra Kumar*, the said remedy can be said to be inaccessible for it to be real and effective. Therefore, when the remedy under Article 227 of the Constitution before the High Court concerned is provided, in that case, it would be in furtherance of the right of access to justice of the aggrieved party, may be a complainant, to approach the High Court concerned at a lower cost, rather than a special leave to appeal under Article 136 of the Constitution.

22. In view of the above, in the present case, the High Court has not committed any error in entertaining the writ petition under Article 227 of the Constitution against the order passed by the National Commission which has been passed in an appeal under Section 58(1)(a)(iii) of the 2019 Act. We are in complete agreement with the view taken by the High Court. However, at the same time, it goes without saying that while exercising the powers under Article 227 of the Constitution, the High Court subjects itself to the rigour of Article 227 of the Constitution and the High Court has to exercise the jurisdiction under Article 227 within the parameters within which such jurisdiction is required to be exercised.

23. The scope and ambit of jurisdiction of Article 227 of the Constitution has been explained by this Court in *Estralla Rubber v. Dass Estate (P) Ltd.*, which has been consistently followed by this Court (see the recent decision of this Court in *Garment Craft v. Prakash Chand Goel*). Therefore, while exercising the powers under Article 227 of the Constitution, the High Court has to act within the parameters to exercise the powers under Article 227 of the Constitution. It goes without saying that even while considering the grant of interim stay/relief in a writ petition under Article 227 of the Constitution, the High Court has to bear in mind the limited jurisdiction of superintendence under Article 227 of the Constitution. Therefore, while granting any interim stay/relief in a writ petition under Article 227 of the Constitution against an order passed by the National Commission, the same shall always be subject to the rigour of the powers to be exercised under Article 227 of the Constitution.

24. In view of the above discussion and for the reasons stated above and subject to the observations made hereinabove, it cannot be said

that a writ petition under Article 227 of the Constitution before the High Court concerned against the order passed by the National Commission in an appeal under Section 58(1)(a)(iii) of the 2019 Act was not maintainable. We are in complete agreement with the view taken by the High Court. As the matter on merits is yet to be considered by the High Court, we do not express anything on merits in favour of either of the parties. However, it is observed that while considering the question of interim relief/stay, the High Court will bear in mind the observations made hereinabove.”

5.3 The Hon'ble Apex Court in the case of ***Madras Bar Assn. v. Union of India*** reported in ***(2021) 7 SCC 369*** at paragraph 5 has held as under:

5.The judgment in S.P. Sampath Kumar was referred to a larger Bench for reconsideration in view of later rulings, notably R.K. Jain v. Union of India³ which had called for a review with respect to functioning of tribunals. In L. Chandra Kumar v. Union of India, this Court held that the power of judicial review vested in the High Courts and this Court under Articles 226 and 227, and 32 is a part of the basic structure of the Constitution. Therefore, the Court held that the tribunals cannot act as substitutes of the High Courts and this Court, and that their functioning is only supplementary and that all decisions of Administrative Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. Addressing the issue of the dependence of tribunals on the Executive for administrative requirements, a recommendation was made for creation of a single umbrella organisation which will be an independent supervisory body to oversee the working of the tribunals. This Court was also of the opinion that the Ministry of Law and Justice, Government of India should be the nodal Ministry.

6. As such, the High Court has jurisdiction to entertain the CMP and the stamp reporting given by the stamp reporter is, hereby, set aside.

7. This CMP is admitted.

8. By way of this CMP, the impugned order dated 29th August, 2024 passed by the District Consumer Disputes Redressal Commission, Ranchi in Complaint Case No.CC/211/2022 is being assailed by the petitioner.

9. On behalf of the petitioner, it has been contended that the Commission had no pecuniary jurisdiction to entertain the compliant and this issue should have been decided by the Commission at the very outset without going into the merits of the case.

10. Herein it would be pertinent to reproduce **Section 21** of the **CPC** which reads as under:

21. Objections to jurisdiction .-

(1)No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all

cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.

11. In view of Section 21 of the CPC, the question in regard to jurisdiction should be decided by the Court or the Tribunal as a preliminary issue.

12. The learned counsel for the petitioner has admitted that in the complaint pending before the Commission the written statement was also filed by the petitioner and the evidence has also been concluded.

13. Even if the evidence has also been concluded, the question of jurisdiction i.e., in regard to pecuniary jurisdiction of the Commission has to be decided first, as such, the impugned order by which the Commission has directed the petitioner to file the written argument without deciding the issue of pecuniary jurisdiction first has committed palpable procedural irregularity in passing the impugned order and same can be intervened by invoking Article 227 of the Constitution of the India.

14. The impugned order dated 29th August, 2024 is set aside and the District Consumer Disputes Redressal Commission, Ranchi is directed to decide the issue of pecuniary jurisdiction of the Commission first.

15. Accordingly, this CMP stands disposed of.

16. Pending interlocutory application, if any, also stands disposed of.

Rohit/AFR

(Subhash Chand, J.)