



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 19865/2023

1. Commissioner, Jaipur Development Authority, Ramkishore Vyas Bhawan, Indira Circle, Jawahar Lal Nehru Marg, Jaipur Rajasthan 302004
2. Deputy Commissioner Zone-12, Jaipur Development Authority, Rakishore Vyas Bhawan, Indira Circle Jawahar Lal Nehru Marg, Jaipur Rajasthan 302004

-----Petitioners

Versus

Rajeev Chaturvedi S/o D.S. Chaturvedi, Forest House, Opposite Civil Line Police Station, Jaipur Road, Ajmer Rajasthan- at Present Address N-13, Gandhi Nagar, Jaipur Rajasthan.

-----Respondent

For Petitioner(s) : Mr. Amit Kuri, Adv.
For Respondent(s) : Mr. Tanveer Ahamad, Adv. with
Mr. Manish Parihar, Adv.

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Order

19/01/2024

REPORTABLE

1. By way of filing this writ petition, the petitioners have challenged the impugned orders dated 14.06.2022 and 13.04.2023 passed by National Consumer Disputes Redressal Commission, New Delhi (for short 'the NCDRC').
2. By way of passing the aforesaid orders, the NCDRC has dismissed the appeal filed by the petitioners in default for want of prosecution. Subsequently, a restoration application filed by the petitioners against the order dated 14.06.2022 has also been rejected by the NCDRC vide order dated 13.04.2023.



**Submissions by the petitioners:-**

3. Counsel for the petitioners submits that the respondents filed a complaint case No.37/2017 against the petitioners before the Consumer Disputes Redressal Commission, Rajasthan at Jaipur Bench, Jaipur (for short 'the State Commission') and the same was allowed vide order dated 27.09.2018 and it has been held that the complainant is entitled to get Rs.46,40,400/- along with interest @9% interest from the date of each deposit. It is also held that the complainant is further entitled to get Rs. 2,00,000/- as compensation for mental agony and Rs.50,000/- as cost of the proceedings with interest @ 9% from the date of order. Counsel submits that aggrieved and dissatisfied by the impugned order dated 27.09.2018, the petitioners submitted an appeal before the NCDRC wherein an interim order dated 13.02.2020 was passed and the petitioners were directed to deposit amount of Rs.46,40,400/-. Counsel submits that pursuant to the interim order passed by the NCDRC, the aforesaid amount was deposited and, subsequently, the same was released in favour of the respondents. Counsel submits that one fine morning i.e. 14.06.2022, the appeal was dismissed in default for want of prosecution on the part of the petitioners. Counsel submits that the date fixed and posted in the appeal was not in the knowledge and notice of the petitioners and for want of presence of the counsel for the petitioners, the appeal was dismissed in default. Counsel submits that taking all these grounds, a restoration application was submitted before the NCDRC, however, the same was also rejected vide order dated 13.04.2023. Counsel submits that aggrieved by both orders dated 14.06.2022 and 13.04.2023





passed by the NCDRC, the petitioners submitted a Special Leave Petition (Civil) Diary No(s).30332/2023 and the same was decided by the Apex Court vide order dated 18.08.2023 in the light of the judgment passed by the Hon'ble Apex Court in **SLP (Civil) No.5263/2023** titled **M/s. Universal Somp General Insurance Co. Ltd. Vs. Suresh Chand Jain & Anr.** Counsel submits that referring the aforesaid judgment, the Apex Court granted liberty to the petitioners to approach the High Court for appropriate relief. Counsel submits that pursuant to the aforesaid order dated 18.08.2023 passed by the Apex Court, the petitioners have approached this Court by way of filing the instant writ petition. Counsel submits that a detailed explanation was given before the NCDRC about the non-appearance of petitioners but without considering the same, the restoration application filed by the petitioners was rejected. Counsel submits that the said application filed by the petitioners was rejected because of the non-appearance of the counsel. Counsel submits that if at all there was any mistake on the part of the counsel for the petitioners, the petitioners cannot be allowed to be made sufferer as the petitioners have already complied with the interim direction issued by the NCDRC and the amount in question i.e. Rs.46,40,400/- has already been deposited, hence, the matter is required to be posted and adjudicated on its merits. In support of his contention, counsel has placed reliance upon the judgment passed by the Division Bench of this Court in the case of **Om Prakash Vijay Vs. State of Rajasthan** reported in **2011 W.L.C. (Raj.) UC 684**. Counsel submits that under these circumstances, the impugned orders dated 14.06.2022 and 13.04.2023 be set aside.



Submissions by the respondent:-

4. Per contra, counsel for the respondents opposed the arguments raised by the counsel for the petitioners and submitted that the petitioners were well aware about the date of hearing fixed by the NCDRC. Counsel submitted that the notice for physical hearing was issued to the petitioners on 25.03.2022 by sending an e-mail to the counsel for the petitioners. Counsel submitted that in spite of having sufficient knowledge and notice about the dates, intentionally and deliberately, the counsel for the petitioners did not appear, hence, the NCDRC has not committed any error in dismissing the appeal filed by the petitioners for want of prosecution. Counsel submitted that no sufficient reason about the delay and absence was mentioned in the restoration application, that is why, the NCDRC has rightly dismissed the restoration application filed by the petitioners. Counsel submits that this Court has no jurisdiction to entertain the writ petition filed by the petitioners against the impugned orders dated 14.06.2022 and 13.04.2023, as no cause of action has arisen within the State of Rajasthan and both the orders impugned have been passed by the NCDRC at New Delhi. Counsel submitted that the petitioners were supposed to approach Delhi High Court for redressal of their grievance. In support of his contention, the counsel has placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of **M/s. Puri Investments Vs. M/s. Young Friends and Co. and Ors. (Civil Appeal No. 1609/2022)**. He also placed reliance upon **the Rajasthan Law and Legal Affairs Department Manual, 1999**, wherein a



provision has been incorporated as regulation No.233 which deals with the duties of the Officer-in-Charge. Counsel submitted that, it is the duty of the Officer-in-Charge of the case to inform the Department concerned about the order and judgment particularly passed against the Government. Counsel submitted that in the instant case, the Officer-in-Charge of the case was negligent in discharge of his duties and he is liable and responsible for the order dated 14.06.2022. Counsel submitted that under these circumstances, interference of this Court is not warranted and the writ petition is liable to be rejected.

Analysis, Discussions and Reasonings:-

5. Heard and considered the submissions made at Bar and perused the material available on record.

6. This fact is not in dispute that the respondents filed a complaint against the petitioners before the State Commission and the same was allowed vide order dated 27.09.2018. It was held that the complainant is entitled to get amount of Rs.46,40,400/- and compensation of Rs.2,00,000/- and cost of Rs.50,000/- alongwith interest @9%. Aggrieved by the aforesaid order, the petitioners filed an appeal before the NCDRC and the same remained pending for adjudication and in the meantime, interim orders were passed by the NCDRC directing the petitioners to deposit the amount in question i.e. Rs.46,40,400/- vide order dated 13.02.2020. The petitioners complied with the said order, therefore, the aforesaid amount was released in favour of the respondent. It appears that the case was posted for the subsequent dates and even an e-mail was sent to the counsel for the petitioners for physical hearing for making arguments on the





appeal, however, the counsel for the petitioners did not appear and the appeal was dismissed for want of prosecution.

7. It is the well settled proposition of law that a party to litigation cannot be made sufferer for the mistake of his counsel's and since stake of huge amount is involved in the instant matter and the petitioners have made compliance of each and every direction issued by the NCDRC. The matter was required to be decided on its merits but in the instant case, the case was dismissed in default for want of prosecution and for want of presence of the counsel for the petitioners. The petitioners tried to justify the reasons of the absence by way of filing a restoration application, however, the same was rejected by the NCDRC vide impugned order dated 13.04.2023. This Court in the case of **Om Prakash Vijay** (supra) has categorically held that a litigant may not suffer due to the mistake of the counsel of parties. The instant case is an example where the petitioners are suffering for mistake on the part of their counsel.

8. Now this court proceeds further to decide the objection taken by the counsel for the respondent that "Whether this court has territorial jurisdiction to hear and decide the matter as the impugned order has been passed by the NCDRC at New Delhi. Now the issue remains for adjudication before this Court is that whether any cause of action or part cause of action has arisen in the State of Rajasthan, which gives right to the petitioner to invoke the extra ordinary jurisdiction of this Court by way of filing writ petition under Article 226 of the Constitution of India?"

9. Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitutes





the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.

10. Clause (2) of Article 226 of the Constitution of India reads thus :-

"226. (2) The power conferred by Clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

11. Section 20(c) of the Code of Civil Procedure reads as under :-

"20. Other suits to be instituted where defendants reside or cause of action arises. - Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction -
(a)-(b) * * *
(c) the cause of action, wholly or in part, arises."

12. Although in view of Section 141 of the Code of Civil Procedure, 1908, (for short 'the CPC') the provisions thereof would not apply to a writ proceedings, the phraseology used in Section 20(c) of the CPC and Clause (2) of Article 226 of the Constitution of India, being in pari materia, the decisions of this Court rendered on interpretation of Section 20(c) of CPC shall apply to





the writ proceedings also. Before proceeding to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a cause of action, as what is necessary to be proved before the petitioner can obtain a decree is the material facts. The expression material facts is also known as integral facts.

13. Keeping in view the expressions used is Clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter.

14. In **Union of India and Ors. v. Adani Exports Ltd. and Anr.** reported in **(2002) 1 SCC 567**, it was held that in order to confer jurisdiction on a High Court to entertain a writ petition it must disclose that the integral facts pleaded in support of the cause of action do constitute a cause so as to empower the court to decide the dispute and the entire or a part of it arose within its jurisdiction.

15. This Court finds no substance in the arguments raised by the counsel for the respondent that this Court has no jurisdiction to entertain the instant writ petition challenging the validity of the impugned orders dated 14.06.2022 and 13.04.2023 passed by the NCDRC for the reason that the original impugned order i.e. the order dated 27.09.2018 has been passed by the State Commission at Jaipur and that order was under challenged before the NCDRC at New Delhi in an appeal filed by the petitioner. Since the said appeal has been dismissed in default and the restoration has also been dismissed, the order passed by the State Commission at Jaipur has come into operation and in consequence thereof, the





respondent has submitted a contempt petition against the petitioners and the State Commission at Jaipur has issued bailable warrants for the personal appearance of the office bearer of the petitioners-Department, hence, under these circumstances, this Court has jurisdiction to entertain the present writ petition filed by the petitioners.

16. Recently, Hon'ble Apex Court in the case of **Ibrat Faizan Versus Omaxe Buildhome Private Limited** reported in **2022 LiveLaw (SC) 481** has held that an appeal against the order passed by the NCDRC would be maintainable before the Hon'ble Supreme Court only in case the order is passed by the National Commission in exercise of its powers contained under Section 58(1)(a)(i) or under Section 58(1)(a)(ii) of the Consumer Protection Act, 2019 (for short 'the Act of 2019'). No further appeals are provided against any other orders passed by the National Commission. Hon'ble Apex Court held that any other orders passed by the National Commission under Section 58(i)(a) (iii)(iv) can be challenged before the concerned High Court having jurisdiction under Article 226 of the Constitution.

17. Here in this case, the concerned High Court means this Court because all orders passed by the State Commission at Jaipur and the same were assailed by the petitioners before the National Commission by way of filing appeal and the same was dismissed in default for want of prosecution and later on the National Commission also rejected the restoration application and thereafter Hon'ble Apex Court granted liberty to the petitioners to approach the jurisdictional or concerned High Court. Hence, the petitioners have approached this Court by way of filing this



petition. This Court finds no substance in the argument of the counsel for the respondent that it only the Delhi High Court who has jurisdiction to entertain the writ petition because the order passed by the National Commission was under challenge and the NCDRC is situated at Delhi. The word 'concerned High Court' as observed by the Hon'ble Apex Court in the case of **Ibrat Faizan** (supra) means this Court who has jurisdiction to entertain the present petition.

Conclusion:-

18. In view of the discussions made hereinabove, the instant writ petition stands allowed and the impugned orders dated 14.06.2022 and 13.04.2023 passed by the NCDRC stands quashed and set aside. Consequences to follow. The appeal before the NCDRC is restored to its original number subject to payment of Rs.10,000/- by the petitioners to the respondents. The parties to the litigation are directed to appear before the NCDRC on 08.02.2024. It is expected from the NCDRC to expedite the proceedings of the pending appeal.

19. Stay application and all application(s) (pending, if any) also stand disposed of.

(ANOOP KUMAR DHAND),J

MR/243