2023 SCeJ 0253
((2023-2)210 PLR 600 (SC)(SN)
= 2023 PLRonline 464602)

SUPREME COURT OF INDIA
Present : Justice J.B. Pardiwala and Justice Manoj Misra.
M/S UNIVERSAL SOMPO GENERAL INSURANCE CO. LTD. - Petitioners
Versus
SURESH CHAND JAIN & Anr. - Respondents
Special Leave Petition (Civil) No. 5263 of 2023.
26.07.2023

Consumer Protection Act, 1986, Section 21(a)(i), (ii) - Consumer Protection Act, 2019, Section 58(1)(a)(i), (ii) - Remedy of appeal to Supreme Court against orders passed by National Commission - There is no provision for filing any further appeal to the Supreme Court against the order passed by NCDRC on the appeal filed against the order of the SCDRC under the Act of 2016 or 2019 - Under the Act of 1986 and Act of 2019, the remedy of appeal to the Supreme Court is available only with respect to the orders passed by the NCDRC in exercise of its powers conferred by Section 21(a)(i) of the Act 1986 and 58(1)(a)(i) or 58(1)(a)(ii) of the Act 2019 - Both the Acts provide for the remedy of appeal to this Court only with respect to the orders which are passed by the NCDRC in its original jurisdiction or as the court of first instance (original orders) and no further appeal lies against the orders which are passed by the NCDRC in exercise of its appellate or revisional jurisdiction – Party to first approach the jurisdictional High Court either by way of a writ application under Article 226 of the Constitution or by invoking the supervisory jurisdiction of the jurisdictional High Court under Article 227 of the Constitution and then approach the Apex court under Artyicle 136 - Constitution of India, 1950, Articles 136, 226 and 227.

Held, appeal before the NCDRC was against the order passed by the SCDRC under Section 17(1)(a)(i) of the Act 1986. Such appeal to the NCDRC was maintainable, as provided under Section 21(a)(ii) of the Act 1986. As per Section 23 of the Act 1986, any person, aggrieved by an order made by the NCDRC in exercise of its powers conferred by Section 21(a)(i), may prefer an appeal against such order to this Court. Therefore, an appeal against the order passed by the NCDRC to this Court would be maintainable only in case the order is passed by the NCDRC in exercise of its powers conferred under Section 21(a)(i) of the Act 1986. No further appeal to this Court is provided against the order passed by the NCDRC in exercise of its powers conferred under Section 21(a)(ii) of the Act 1986. There is no provision for filing any further appeal against the order passed on the appeal filed against the order of the SCDRC. [Para 16, 17, 18]

We must ask the petitioner herein to first go before the jurisdictional High Court either by way of a writ application under Article 226 of the Constitution or by invoking the supervisory jurisdiction of the jurisdictional High Court under Article 227 of the Constitution. Of course, after the High Court adjudicates and passes a final order, it is always open for either of the parties to thereafter come before this Court by filing special leave petition, seeking leave to appeal under Article 136 of the Constitution.[Para 38]

Constitution of India, Article 136 - Jurisdiction of the Supreme Court to grant special leave to appeal can be invoked in very exceptional circumstances - The question of law of general public importance or a decision which shocks the conscience of the Court are some of the prime requisites for the grant of special leave - The provisions of Article 136 of the Constitution as such are not circumscribed by any limitation - But when the party aggrieved has alternative remedy to go before the High Court, invoking its writ jurisdiction or su-

pervisory jurisdiction as the case may be, this Court should not entertain petition seeking special leave thereby short-circuit the legal procedure prescribed - The limitation, whatever, they be are implicit in the nature and character of the power itself. It being an exceptional and overriding power, naturally it has to be exercised sparingly and with caution and only in very exceptional situations - The power will only be used to advance the cause of justice and its exercise will be governed by well-established principles which govern the exercise of overriding constitutional powers. [Para 24]

Cases Referred :-

1. *Associated Cement Companies Ltd. v. P. N. Sharma, AIR 1965 SC 1595.*
2. *Dhakeswari Cotton Mills Ltd. v. Commissioner of Income Tax, West Bengal, (1955) 1 SCR 941 : AIR 1955 SC 65.*
3. *Durga Shankar Mehta v. Raghuraj Singh, 1955 1 SCR 267 at p. 272: (AIR 1954 SC 520 at p. 522).*
4. *Estralla Rubber v. Dass Estate (P) Ltd., (2001) 8 SCC 97.*
5. *Garment Craft v. Prakash Chand Goel, 2022 SCC OnLine SC 29.*
6. *Ibrat Faizan v. Omaxe Buildhome Private Limited 2022 INSC 573.*
7. *Jyotendrasinhji v. S.I. Tripathi, 1993 Supp (3) SCC 389.*
8. *L. Chandra Kumar v. Union of India, (1997) 3 SCC 261.*
9. *Murtaza and Sons v. Nazir Mohd. Khan and Others reported (1970) 3 SCC 876.*
10. *Pritam Singh v. State 1950 SCC 189 : 1950 SCR 453.*
11. *S.G. Chemicals and Dyes Trading Employees' Union v. S.G. Chemicals and Dyes Trading Limited, (1986) 2 SCC 624.*
12. *State of Bombay v. M/s Ratilal Vadilal and Bros., (1961) 2 SCR 367.*
13. *Ujagar Singh v. State (Delhi Administration) (1979) 4 SCC 530.*

For the Petitioners :- Mr. Rajat Khattry, Mr. Varadarajan, Mr. Abhay Kumar, Advocates. For the Respondents :- Mr. S.K. Verma, Mr. Rajesh Singh Chauhan, Mr. Anil Kumar Singh, Advocates.

JUDGMENT

J.B. Pardiwala, J. - This petition seeking leave to appeal under Article 136 of the Constitution is at the instance of M/s Universal Sompo General Insurance Company Limited, Original appellant before the National Consumer Disputes Redressal Commission (for short, `the NCDRC') in the First Appeal No. 376 of 2016 by which the NCDRC dismissed the appeal filed by the petitioner herein thereby affirming the order passed by the State Consumer Disputes Redressal Commission (for short, `the SCDRC') of Delhi, holding that the respondent No. 1 /complainant was entitled to receive the claim amount and appropriate compensation from the petitioner and its joint venture partner viz. Allahabad Bank (respondent No. 2) for the goods stolen from the premises in question.

FACTUAL MATRIX

2. It appears from the materials on record that the respondent Bank, acting as an intermediary issued a Standard Fire and Special Perils Policy dated 05.12.2011 in favour of the complainant through the petitioner herein. Similarly, a Burglary Insurance Policy was also issued in favour of the complainant dated 08.12.2011. Both the policies covered a sum of Rs. 50 lakh for the risk of fire and burglary. The policies were for the period between 25.11.2011 and 24.11.2012.

3. By way of letter dated 28.03.2012, the complainant informed the respondent Bank that the construction of his new premises at Bawana, Delhi had been completed and he had transferred his stock to the above premises situated in Bawana from the premises situated in Rajgarh Ext., Gandhi Nagar, Delhi and Bhagirath Palace, Chandni Chowk, Delhi. In this letter the complainant had also instructed the Bank to inform the petitioner.

4. The respondent Bank acknowledged the aforesaid intimation and claims to have

informed the petitioner by way of letter dated 31.03.2012. The Bank claims to have also forwarded the letter dated 28.03.2012 of the complainant to the petitioner.

5. On 29.06.2012, a theft took place at the Bawana premises and for that FIR No. 213/2012 was lodged on 30.06.2012 at the PS Bawana. Both, the petitioner and the Bank were also informed about the theft. A surveyor was appointed by the petitioner to inspect the premises and on 01.07.2012, a formal complaint was lodged by the complainant with the petitioner.

6. After the theft, the complainant informed that a fire had also broken out in the premises at Bawana on 18.10.2012, and the status report in that regard was issued by the fire department. Subsequently, the complainant filed claims for both, theft and fire amounting to Rs. 49 lakh. The petitioner repudiated the theft claim vide letter dated 22.08.2013 and the fire claim was closed on account of non-submission of documents by the complainant.

7. On 03.06.2013, the complainant aggrieved by the inaction on the part of the petitioner approached the SCDRC, Delhi under section 17 of the Consumer Protection Act, 1986 (for short, `the Act 1986'), by way of Complaint No. 357/2013. He prayed for his claim of Rs. 49 lakh to be processed along with compensation of Rs. 20 lakh and interest at the rate the respondent Bank was charging from the complainant, with costs of the complaint.

8. By order dated 18.03.2016, the SCDRC partly allowed the complaint holding that the petitioner and the respondent bank were jointly and severally liable for the deficiencies in providing services to the complainant and the complainant was entitled to be compensated for the theft of goods worth Rs. 41,31,180/- @ 12 % interest per annum from the date of the claim. The petitioner and the bank were also directed to pay Rs. 2 lakh to the complainant towards compensation for mental agony, harassment and deficiency in providing services. The petitioner was further directed to finalise the fire claim of Rs. 4 lakh of the complainant.

9. The petitioner herein feeling aggrieved with the order passed by the SCDRC challenged the same before the NCDRC by filing the First Appeal No. 376 of 2016 under Section 19 of the Act 1986. The petitioner prayed before the NCDRC to set aside the SCDRC's order in exercise of its appellate jurisdiction and grant costs against the complainant in favour of the petitioner.

10. By order dated 16.01.2023, the First Appeal filed by the petitioner herein came to be dismissed.

11. In such circumstances referred to above, the petitioner is here before this Court with the present petition, seeking special leave to appeal under Article 136 of the Constitution.

DISCUSSION

12. In the course of the hearing of this matter, manyfold contentions were raised on either side. However, the moot question that falls for our consideration is whether we should entertain this petition seeking special leave to appeal under Article 136 of the Constitution directly against the order passed by the NCDRC in exercise of its appellate jurisdiction or relegate the petitioner to avail the remedy of filing a writ petition under Article 226 of the Constitution or a petition invoking supervisory jurisdiction of the jurisdictional High Court under Article 227 of the Constitution?

13. Before, we proceed to answer the aforesaid question, we must look into the few relevant provisions of the Act 1986.

14. Section 21(a) of the Act 1986 is titled `Jurisdiction of the National Commission'. The same reads thus:

> "**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; ...."

15. Section 23 of the Act 1986 provides for an `Appeal'. The same reads thus:

> **"23. Appeal.-** Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 21, may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order:
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> 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 in the prescribed manner fifty per cent. of that amount or rupees fifty thousand, whichever is less."

(Emphasis Supplied)

16. The Consumer Protection Act, 1986 stood repealed on 20.07.2020 (Section 106, the Act 1986) and the Consumer Protection Act, 2019 (for short, `the Act 2019') came into force. In the instant case, the complaints were instituted under the Act 1986. However, we must highlight the relevant provisions of the Act 2019, which are pari materia to the provisions of the Act 1986.

> **"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;
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> (iii) appeals against the orders of any State Commission;
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> (iv) appeals against the orders of the Central Authority;.....
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> **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."

17. A plain reading of the aforesaid provisions of the Act 1986 and Act 2019, respectively would indicate that the remedy of appeal to this Court is available only with respect to the orders passed by the NCDRC in exercise of its powers conferred by Section 21(a)(i) of the Act 1986 and 58(1)(a)(i) or 58(1)(a)(ii) of the Act 2019. In other words, both the Acts provide for the remedy of appeal to this Court only with respect to the orders which are passed by the NCDRC in its original jurisdiction or as the court of first instance (original orders) and no further appeal lies against the orders

which are passed by the NCDRC in exercise of its appellate or revisional jurisdiction.

18. Adverting to the case at hand, the appeal before the NCDRC was against the order passed by the SCDRC under Section 17(1)(a)(i) of the Act 1986. Such appeal to the NCDRC was maintainable, as provided under Section 21(a)(ii) of the Act 1986. As per Section 23 of the Act 1986, any person, aggrieved by an order made by the NCDRC in exercise of its powers conferred by Section 21(a)(i), may prefer an appeal against such order to this Court. Therefore, an appeal against the order passed by the NCDRC to this Court would be maintainable only in case the order is passed by the NCDRC in exercise of its powers conferred under Section 21(a)(i) of the Act 1986. No further appeal to this Court is provided against the order passed by the NCDRC in exercise of its powers conferred under Section 21(a)(ii) of the Act 1986. There is no provision for filing any further appeal against the order passed on the appeal filed against the order of the SCDRC. In such circumstances, the petitioner has come before this Court under Article 136 of the Constitution.

SCOPE AND GRANT OF SPECIAL LEAVE UNDER ARTICLE 136 OF THE CONSTITUTION

19. This Court has held in ***Pritam Singh v. State reported in 1950 SCC 189 : 1950 SCR 453*** at p. 459: "Generally speaking this Court will not grant special leave, unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against". It was also said in that case that the view that once an appeal has been admitted by special leave the entire case is at large and that the appellant is free to contest all the findings of fact and raise every point which could be raised in the High Court is wrong. Only those points can be urged at the final hearing of the appeal which are fit to be urged at the preliminary stage when leave to appeal is asked for. This principle was stated, it is true, in a criminal case but it is of as much significance in civil cases as in the trial of criminal appeals. [See: ***Murtaza and Sons and Another v. Nazir Mohd. Khan and Others reported (1970) 3 SCC 876***].

20. A Constitution Bench of this Court in ***Dhakeswari Cotton Mills Ltd. v. Commissioner of Income Tax, West Bengal, reported in (1955) 1 SCR 941 : AIR 1955 SC 65*** made the following observations:

> "7. ... It is not possible to define with any precision the limitations on the exercise of the discretionary jurisdiction vested in this Court by the constitutional provision made in article 136. The limitations, whatever they be, are implicit in the nature and character of the power itself. It being an exceptional and overriding power, naturally it has to be exercised sparingly and with caution and only in special and extraordinary situations. Beyond that it is not possible to fetter the exercise of this power by any set formula or rule. All that can be said is that the Constitution having trusted the wisdom and good sense of the Judges of this Court in this matter, that itself is a sufficient safeguard and guarantee that the power will only be used to advance the cause of justice, and that its exercise will be governed by well established principles which govern the exercise of overriding constitutional powers. It is, however, plain that when the Court reaches the conclusion that a person has been dealt with arbitrarily or that a court or tribunal within the territory of India has not given a fair deal to a litigant, then no technical hurdles of any kind like the finality of finding of facts or otherwise can stand in the way of the exercise of this power because the whole intent and purpose of this article is that it is the duty of this Court to see that injustice is not perpetuated or per-

petrated by decisions of Courts and tribunals because certain laws have made the decisions of these Courts or tribunals final and conclusive. ..."

(Emphasis supplied)

21. In ***Ujagar Singh and Another v. State (Delhi Administration) reported in (1979) 4 SCC 530***, Y. V. Chandrachud, C.J., speaking for the Bench observed as under:

"1. ... There is hardly a case, civil or criminal, which does not raise some question of law or the other. But no question of law of general public importance is involved in these petitions. It is time that it was realised that the jurisdiction of this Court to grant special leave to appeal can be invoked in very exceptional circumstances. A question of law of general public importance or a decision which shocks the conscience of the Court are some of the prime requisites for the grant of special leave. ... "

(Emphasis supplied)

22. In the case of ***S.G. Chemicals and Dyes Trading Employees' Union v. S.G. Chemicals and Dyes Trading Limited and Another, (1986) 2 SCC 624***, this Court observed in para 6 as under:

"6. The Union has directly come to this Court in appeal against the said order of the Industrial Court without first approaching the High Court under Article 226 or 227 of the Constitution for the purpose of challenging the said order. The powers of this Court under Article 136 are very wide but as clause (1) of that article itself states the grant of special leave to appeal is in the discretion of the court. Article 136 is, therefore, not designed to permit direct access to this Court where other equally efficacious remedy is available and where the question is not of public importance...."

(Emphasis supplied)

23. This Court in ***Jyotendrasinhji v. S.I. Tripathi and Others, reported in 1993 Supp (3) SCC 389*** observed in para 16 as under;

"16. It is true that the finality clause contained in Section 245 I does not and cannot bar the jurisdiction of the High Court under Article 226 or the jurisdiction of this Court under Article 32 or under Article 136, as the case may be. But that does not mean that the jurisdiction of this Court in the appeal preferred directly in this Court is any different than what it would be if the assessee had first approached the High Court under Article 226 and then come up in appeal to this Court under Article 136. A party does not and cannot gain any advantage by approaching this Court directly under Article 136, instead of approaching the High Court under Article 226. This is not a limitation inherent in Article 136; it is a limitation which this Court imposes on itself having regard to the nature of the function performed by the Commission and keeping in view the principles of judicial review...."

(Emphasis supplied)

24. Thus, what is discernible from the aforesaid decisions of this Court is that the jurisdiction of the Supreme Court to grant special leave to appeal can be invoked in very exceptional circumstances. The question of law of general public importance or a decision which shocks the conscience of the Court are some of the prime requisites for the grant of special leave. The provisions of Article 136 of the Constitution as such are not circumscribed by any limitation. But when the party aggrieved has alternative remedy to go before the High Court, invoking its writ jurisdiction or supervisory jurisdiction as the case may be, this Court should not entertain petition

seeking special leave thereby short-circuit the legal procedure prescribed. The limitation, whatever, they be are implicit in the nature and character of the power itself. It being an exceptional and overriding power, naturally it has to be exercised sparingly and with caution and only in very exceptional situations. The power will only be used to advance the cause of justice and its exercise will be governed by well-established principles which govern the exercise of overriding constitutional powers.

25. Almost six decades back, this Court speaking through M. Hidayatullah, J. in the case of the ***State of Bombay v. M/s Ratilal Vadilal and Bros., reported in (1961) 2 SCR 367*** observed as under:

> "3. ... We have frequently noticed that all the remedies which are open to an appellant are not first exhausted before moving this Court. Ordinarily, this Court will not allow the High Court to be bypassed in this manner, and the proper course for an appellant is to exhaust all his remedies before invoking the jurisdiction of this Court under Article 136. ..."
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> (Emphasis supplied)

26. We shall now look into a very recent pronouncement of this Court in the case of ***Ibrat Faizan v. Omaxe Buildhome Private Limited reported in 2022 INSC 573***. In the said case, the appellant had booked a flat in the project floated by the respondent. The appellant paid the entire amount of consideration but the respondent did not hand over the flat within the time stipulated in the agreement. Therefore, the appellant filed a consumer complaint before the SCDRC on 10.08.2013, alleging deficiency of service on the part of the respondent. The SCDRC allowed the complaint filed by the appellant vide its order dated 16.10.2020. The SCDRC directed the respondent to hand over the flat to the possession of the appellant subject to their meeting the requirements. The SCDRC further directed the respondent to pay compensation for the deficiency of service of the respondent in the form of nine per cent simple interest till the date of delivery of the flat in possession of the appellant.

27. The appellant filed an execution and contempt petition against the respondent since he did not comply with the order of the SCDRC. Vide its order dated 12.03.2021, the SCDRC directed the respondent to produce the details of bank accounts or properties for the purpose of attaching the same and to implement the order passed by the SCDRC.

28. The respondent filed an appeal before the NCDRC. On 30.03.2021, the NCDRC stayed the order of SCDRC subject to the deposit of the cost of entire flat along with nine per cent interest on the amount paid till date in the Registry of the SCDRC.

29. The respondent, being aggrieved against the order of NCDRC filed a writ petition before the High Court, challenging the order passed by the NCDRC. Before the High Court the respondent contended that the NCDRC ought not to have directed the respondent, the builder, to deposit the entire cost of the apartment along with the compensation awarded by the SCDRC. The High Court stayed the order of National Commission, vide its order dated 25.05.2021. The said stay order was issued subject to the condition that the respondent is to deposit with the State Commission fifty per cent of the amount directed to be deposited by way of interest towards compensation, within four weeks from the date of stay order issued by the High Court.

30. In the meantime, the NCDRC passed the final order, confirming the order passed by the State Commission, vide its order dated 09.12.2021. The respondent also filed a writ petition before the High Court, challenging the final order passed by the NCDRC. The High Court, in this petition, also granted interim stay vide its order dated 22.12.2021. Against this order the appellant filed an SLP before this Court. This Court vide its order dated 21.03.2022 directed the High Court to decide the jurisdictional

issue under Article 227 of the Constitution against the order passed by the NCDRC on or before 18.04.2022 and intimate the outcome to this Court. The High Court vide its order dated 31.03.2022 held that the writ petition before the High Court against the order of NCDRC was maintainable. This order was challenged by the appellant before this Court.

31. The appellant submitted the following before this Court:

(a) Against the order of NCDRC, a petition before the High Court under Article 227 of the Constitution is not maintainable.

(b) Only appeal is maintainable before this Court against the order of NCDRC as per the provisions of the Consumer Protection Act.

(c) Without exhausting the appellate remedy, the High Court ought not to have entertained the petition under Article 227 of the Constitution.

(d) The High Court ought not to have stayed the order passed by the NCDRC in the limited jurisdiction available under Article 227 of the Constitution.

32. The respondent submitted the following before this Court:

(a) The provisions of the Act 2019 do not have appeal provisions against the order of NCDRC passed in exercise of appellate/revisional jurisdiction and therefore writ petition under Article 226 or petition under Article 227, as the case may be, is maintainable before the High Court against the order of NCDRC.

(b) For the aforesaid purpose the respondent relied on the following judgments:

- ***Associated Cement Companies Ltd. v. P. N. Sharma, AIR 1965 SC 1595***; and
- ***L. Chandra Kumar v. Union of India, (1997) 3 SCC 261***.

33. This Court considered the question for its decision as to whether against the order passed by the NCDRC in an appeal under Section 58(1)(a)(iii) of the Act 2019, petition before the High Court under the Article 227 of Constitution of India would be maintainable.

34. After due analysis of the provisions of the Act 2019, which are pari materia to the provisions of the Act 1986, this Court in Ibrat Faizan (supra) held as under:

"11. ....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."

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14. ....while exercising the powers under Article 227 of the Constitution of India, 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."

(Emphasis supplied)

35. In Ibrat Faizan (supra), this Court took notice of its earlier decision in the case

of Associated Cement (supra), wherein, a Constitution Bench held as under:

> "9. ... Special matters and questions are entrusted to them for their decision and in that sense, they share with the Courts one common characteristic; both the courts and the tribunals are "constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions", (vide ***Durga Shankar Mehta v. Raghuraj Singh, 1955 1 SCR 267 at p. 272: (AIR 1954 SC 520 at p. 522)***. They are both adjudicating bodies and they deal with and finally determine disputes between parties which are entrusted to their jurisdiction. The procedure followed by the Courts is regularly prescribed and in discharging their functions and exercising their powers, the Courts have to conform to that procedure. The procedure which the tribunals have to follow may not always be so strictly prescribed, but the approach adopted by both the Courts and the tribunals is substantially the same, and there is no essential difference between the functions that they discharge. As in the case of Courts, so in the case of tribunals, it is the State's inherent judicial power which has been transferred and by virtue of the said power, it is the State's inherent judicial function which they discharge. Judicial functions and judicial powers are one of the essential attributes of a sovereign State, and on considerations of policy, the State transfers its judicial functions and powers mainly to the Courts established by the Constitution; but that does not affect the competence of the State, by appropriate measures, to transfer a part of its judicial powers and functions to tribunals by entrusting to them the task of adjudicating upon special matters and disputes between parties. It is really not possible or even expedient to attempt to describe exhaustively the features which are common to the tribunals and the Courts, and features which are distinct and separate. The basic and the fundamental feature which is common to both the Courts and the tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State.
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> 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 Art. 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 S. 10A of the Industrial Disputes Act, 1947, does not satisfy the test of a tribunal within Art. 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 S. 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 Art. 227 of the Constitution also, and I think that there also the word has the same meaning as in Art. 136."

(Emphasis supplied)

36. Having regard to the aforesaid, this Court in Ibrat Faizan (supra) observed as under:

"12. ... 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. ..."

(Emphasis supplied)

37. This Court in Ibrat Faizan (supra), while explaining the importance of approaching the High Court, more particularly when a remedy is available by way of a writ petition under Article 226 of the Constitution or by way of a petition under Article 227 of the Constitution (supervisory jurisdiction) observed as under:

"12. ....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.

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13. Now so far as the remedy which may be available under Article 136 of the Constitution of India is concerned, it cannot be disputed that the remedy by way of an appeal by special leave under Article 136 of the Constitution of India may be too expensive and as observed and held by this Court in the case of L. Chandra Kumar (supra), 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 of India before the concerned High Court 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 concerned High Court at a lower cost, rather than a Special Leave to Appeal under Article 136 of the Constitution.

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14.1. The scope and ambit of jurisdiction of Article 227 of the Constitution has been explained by this Court in the case of ***Estralla Rubber v. Dass Estate (P) Ltd., (2001) 8 SCC 97***, which has been consistently followed by this Court (see the recent decision of this Court in the case of ***Garment Craft v. Prakash Chand***

> ***Goel, 2022 SCC OnLine SC 29***). 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 of India, 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 of India."
>
> (Emphasis supplied)

38. In the aforesaid view of the matter, we have reached to the conclusion that we should not adjudicate this petition on merits. We must ask the petitioner herein to first go before the jurisdictional High Court either by way of a writ application under Article 226 of the Constitution or by invoking the supervisory jurisdiction of the jurisdictional High Court under Article 227 of the Constitution. Of course, after the High Court adjudicates and passes a final order, it is always open for either of the parties to thereafter come before this Court by filing special leave petition, seeking leave to appeal under Article 136 of the Constitution.

39. We take notice of the order passed by this Court dated 29.03.2023 which reads thus:

> "2. In the meantime, there shall be stay of the impugned judgment and order, subject to deposit of 50 per cent of the awarded amount in this Court."

40. However, in the aforesaid context, it is also necessary for us to look into the office report dated 03.07.2023, which reads thus:

> "It is further submitted that Dr. S.K. Verma, Advocate for respondent no.1 has on 28.06.2023 filed an application for release of deposited amount made by the Petitioner. However, the same is defective as original property papers are not filed. Also, the documents relating to valuation of property are not filed as in the lease papers the amount mentioned is Rs. 6,30,000/-. Hence, the amount was not disbursed to the respondent no.1."

41. It appears from the aforesaid that the complainant was not in a position to withdraw the fifty per cent amount deposited by the petitioner herein. It further appears that the amount deposited by the petitioner herein is still with the Registry of this Court. Since we are not entertaining this petition on merits, we direct the Registry to refund the amount to the petitioner after due and proper verification.

42. In the result, this petition is disposed of with liberty to the petitioner to approach the jurisdictional High Court and challenge the order passed by the NCDRC, in accordance with law.

43. It is needless to clarify that we have not expressed any opinion on the merits of the case. The merits of the case shall be looked into by the jurisdictional High Court.