

HIGH COURT OF DELHI**Date of Decision: April 03, 2024****BENCH : HON'BLE MS. JUSTICE SHALINDER KAUR**

CM(M) 1701/2019, CM APPL. 51535/2019—stay

M/S D S S BUILDTECH PVT LTD ... Petitioner**Versus****MANOJ KAYAL ... Respondent****Legislation:**

Article 227 of the Constitution of India

Consumer Protection Act, 1986, Section 19

Subject:

Challenge against the National Consumer Disputes Redressal Commission's (NCDRC) order requiring deposit of 100% decretal amount for stay in appeal, alleged to be contrary to Section 19 of the Consumer Protection Act, 1986.

Headnotes:

Consumer Protection Act, 1986 – Section 19 – Conditional Order of Stay – Appeal against the order of the National Consumer Disputes Redressal Commission (NCDRC) requiring the petitioner to deposit the entire decretal amount for a stay. High Court holds that this condition is contrary to Section 19 of the Consumer Protection Act, 1986, which stipulates deposit of either 50% of the amount or ₹35,000, whichever is less, for entertaining an appeal. [Paras 3, 4]

Procedure and Process – Mechanical Passing of Orders – Observation of the High Court on the mechanical passing of identical orders in different matters by the NCDRC, indicating non-application of mind. High Court expresses concern over identical templated orders in varying factual contexts. [Paras 5, 9]

Judicial Review – High Court's Power under Article 227 – Remand of Case – High Court exercises its supervisory jurisdiction under Article 227 of the Constitution of India. Sets aside the NCDRC's order demanding 100% deposit of the decretal amount and remands the matter for reconsideration in light of the parties' submissions. [Paras 1, 11]

Stay of Execution Proceedings – High Court's direction that the respondent shall not proceed with execution proceedings until the stay application is reconsidered by the NCDRC. The petitioner is directed to approach the NCDRC within two weeks. [Para 12]

Referred Cases: None.

Representing Advocates:
Mr. Aditya Malhotra for the petitioner
Mr. Swastik Verma for the respondent

J U D G M E N T

1. The present petition has been filed under Article 227 of the Constitution of India invoking the supervisory jurisdiction of this Court to impugn the order dated 30.10.2019 passed by the learned National Consumer Disputes Redressal Commission, New Delhi (“NCDRC”) in First Appeal bearing no. 1115 of 2019 titled as “*M/s. DSS Buildtech Pvt. Ltd & Ors vs. Manoj Kayal*” whereby the learned NCDRC partly heard the arguments on admission of the appeal and directed the appellants including the petitioner herein to deposit the entire decretal amount before the learned state commission as a condition for grant of stay. The petitioner herein is the appellant no. 1 before the learned NCDRC.

2. The petitioner is a company incorporated under the Companies Act with its office at 506, 5th Floor, Time Square Building, B block, Sushant Lok, Phase-1, Gurugram, Haryana, which is engaged in the Real Estate Development Sector. Mr. Paras Kumar Jain is the authorized representative of the petitioner company vide Board Resolution dated 27.05.2019, who has filed the present petition.

3. The short controversy that arises in the present petition pertains to the issue put forth by the petitioner herein that while the arguments on admission of appeal were pending before the learned NCDRC, it directed the petitioner (appellant therein), to deposit 100% of the decretal amount as a condition for grant of stay, which is agitated to be contrary to the statutory mandate under the Consumer Protection Act, 1986 specifically under section 19, which stipulates deposit of 50% or the amount of rupees thirty-five thousand, whichever is less with respect to the decretal amount as ordered by the State Commission. It is submitted that present matter is squarely covered by Section 19 of the Consumer Protection Act, 1986. Thus, such an order directing 100 % of the decretal amount cannot be passed by the learned NCDRC.

4. At this stage, it will also be apposite to extract the section 19 of the Consumer Protection Act, 1986 which reads as follows:

"19. Appeals.—Any person aggrieved by:, an order made by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 17 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed:

Provided that the National Commission 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 State Commission, shall be entertained by the National Commission unless the Petitioner has deposited in the prescribed manner **fifty per cent, of the amount or rupees thirty-five thousand, whichever is less.**"*

(Emphasis supplied)

5. Furthermore, it is also the case of the petitioner that the learned NCDRC has passed two identical orders in two completely different matters, one passed in the present case and the other passed in First Appeal No. 1032/2019 titled as *M/s Taneja Developers & Infrastructure v Varun Gupta*. *Ex-facie* the orders are identical in nature barring changes in the factual dates in the given cases. Also, the two orders have been passed on the same day and appear to have been passed in a mechanical manner which is not permissible in law.

6. It is submitted that the impugned order is not sustainable, thus, be set aside and the case be remanded back to the learned NCDRC to be reconsidered with respect to conditional order of stay and admission of appeal.

7. The learned counsel for the respondent has no objection in case the present matter is remanded back to the learned NCDRC.

8. Notably, on perusal of the record, it would appear that the learned NCDRC has not formulated an opinion as to admission of appeal or as to issuance of notice to the respondent since the arguments on the admission were only partly heard but had passed the conditional order of stay of the order of the State Commissioner subject to deposit of entire decretal amount.

9. The learned Predecessor Bench vide order dated 29.11.2019 has made certain specific observations with respect to the present case which read as follows:

*“4. The court has perused the impugned order of the NCDRC dated 30th October, 2019. As per the said order, the appeal of the Petitioner has not yet been admitted, as is clear from the sentence, reading “the said report shall inter alia be perused while concluding arguments on admission.” Thus, the admission of the appeal is yet to happen. The last but one paragraph of the order also makes it clear that no notice has been issued to the Respondent. However, the entire decretal amount has been directed to be deposited as a condition for stay, which *Id.* counsel submits is premature, inasmuch as unless and until the NCDRC takes a decision for admission of the appeal or issuance of notice, the condition for deposit cannot be made and, in fact, even stay cannot be granted.*

5. The identity of two orders in two completely different matters is absolutely startling. A perusal of the order of the same very date passed in FA No. 1032/2019 titled as M/s Taneja Developers & Infrastructure v Varun Gupta shows that the same is verbatim to the impugned order except as to some dates and a comparative table of the two orders is prepared.

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*“6. A perusal of the impugned order and the order extracted above shows that the NCDRC appears to be passing identical templated orders in such matters and the same is inexplicable. *Ld.* counsel for the Petitioner, after enquiring from the counsel in the Taneja case, submits that the factual context of these two cases, are completely different.*

“ 7. The passing of such identical templated orders by the NCDRC is a matter of grave concern as it may reflect upon non-application of mind. Considering the factual scenarios are different in the two matters, such orders by any forum would be wholly unacceptable.”

10. Further, the records of the two appeals were called for by the aforesaid order of learned Predecessor Bench and also stayed the operation of the impugned order passed by the learned NCDRC.

11. Having considered the submissions and the consent of the parties for remanding back the matter, the impugned order dated 30.10.2019 is set aside with respect to deposit of 100% of the decretal amount and learned NCDRC is requested to reconsider the same in the light of the submissions to be made by the parties.

12. As the proceedings were stayed by this Court, the petitioner herein to approach the learned NCDRC within two weeks from today and the respondent shall not proceed with execution proceedings till the stay application is taken up by the learned NCDRC.

13. Accordingly, the present petition, along with pending application, stands disposed of.

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