2022 LiveLaw (SC) 168

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
HEMANT GUPTA; V. RAMASUBRAMANIAN, JJ.
FEBRUARY 15, 2022

I.A. NO. 99210 OF 2021 IN CIVIL APPEAL NO. 1842 OF 2021

ECGC LIMITED *VERSUS* **MOKUL SHRIRAM EPC JV**

Consumer Protection Act, 2019 - Section 67 Proviso - Onerous condition of payment of 50% of the amount awarded will not be applicable to the complaints filed prior to the commencement of the 2019 Act. (Para 34)

For Appellant(s): Mr. K.K. Venugopal, AG Mr. Rajshekhar Rao, Sr. Adv. Mr. Naval Sharma, Adv. Mr. Saket Satapathy, Adv. Mr. Rohan Batra, AOR Ms. Sonali Malik, Adv. Mr. Chinmayee Prasad, Adv. Mr. Harsh Vardhan Arora, Adv. Mr. Dhruv Sethi, Adv. Mr. Areebama N., Adv. Mr. Padmanabh Sethunath, Adv.

For Respondent(s): Mr. Nidhesh Gupta, Sr. Adv. Mr. Japneet Kaur, Adv. Ms. Pallavi Singh, Adv. Ms. Vriti Gujral, Adv. Mr. Madhav Gupta, Adv. Mr. Ravin Swarup, Adv. Mr. Devesh Tripathi, Adv. Mr. Anasuya Chaudhary, Adv. Mr. Faraz Anees, Adv. Mr. Mukeshwar Nath Dubey, Adv. Ms. Payal Swarup, Adv. Mr. Praveen Swarup, AOR

O R D E R

HEMANT GUPTA, J.

1. The present appeal is directed against an order passed by the National Consumer Dispute Redressal Commission [National Commission] whereby the appellant herein was directed to pay a sum of Rs. 265.01 Crores along with interest @ 10% p.a. from 19.9.2016 within a period of three months. In case of failure to deposit the said amount, the awarded amount would carry compensation in the form of simple interest @ 12% p.a. The appellant has filed an application (IA No. 99210 of 2021) *ex abundanti cautela* to entertain the appeal as per the provisions of the Consumer Protection Act, 1986 [For short, the '1986 Act']. It is the said application which is being decided by the present order.

2. The complainant was awarded a contract for construction of rain water drainage, heavy sewerage and municipal road system by the Government of Basra, Iraq. The complainant obtained two specific contracts (Letter of Credit Comprehensive Risks Policies) by paying a sum of ₹10,38,03,912/- as premium to the appellant. The grievance of the complainant was that the payment for invoices issued for the work done under the contract was suspended. Later, the contract also was withdrawn by the Government of Basra owing to some internal conflict. The appellant herein rejected the insurance claim of the

complainant and thus relief was sought before the National Commission by filing a complaint under Section 21(a)(i) of the 1986 Act. The said complaint was allowed on 27.1.2021.

3. The question now being examined here is as to whether the present appeal would be governed under the Consumer Protection Act, 2019 [For short, the '2019 Act'] or under the erstwhile 1986 Act.

4. In terms of Section 67 of the 2019 Act, no appeal against the order of National Commission shall be entertained by the Supreme Court unless the person has deposited fifty per cent of the amount required to be paid. Whereas, under the 1986 Act, by virtue of a proviso inserted vide Central Act 62 of 2002 w.e.f. 15.3.2003, the condition was that no appeal shall be entertained by the Supreme Court unless the person who is required to pay the amount deposits fifty per cent of the amount or fifty thousand, whichever is less. The two provisions read thus:

1986 Act	**2019 Act**
23. xx	67. xx
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.	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.

5. Learned Attorney General appearing for the appellant submitted that the appeal has been preferred under Section 23 of the 1986 Act and not under the 2019 Act which came into force from 20.7.2020. It was stated that the condition of deposit of 50% of the amount is more onerous than what was provided under the 1986 Act. Therefore, keeping in view the principle that the law which is applicable at the time of initiation of the *lis* would be applicable, the provisions of 1986 Act would govern the present appeal and not the provisions of 2019 Act. The appellant has deposited ₹50,000/- vide demand draft in terms of second proviso to Section 23 of the 1986 Act while exercising its right of appeal under the 1986 Act. Hence, the present appeal be heard on merits.

6. The learned Attorney General *inter alia* argued that Section 107 of 2019 Act and Section 6 of the General Clauses Act, 1897 [For short, the 'General Clauses Act'] unequivocally operate against any question of retrospectivity. Sub- Section (2) of Section 107 of 2019 Act does not change the legal position as mentioned under Section 6 of the General Clauses Act. To appreciate the argument, Section 6 of the General Clauses Act and Section 107 of the 2019 Act are reproduced hereunder:

"Section 6 of the General Clauses Act

6. Effect of Repeal. - Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or any thing duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

xx xx xx

Section 107 of the 2019 Act

107. (1) The Consumer Protection Act, 1986 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

(3) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal."

7. Sub-section (2) of Section 107 of the 2019 Act protects the actions taken under the 1986 Act insofar as such actions are not inconsistent with the provisions of 2019 Act. Such actions shall be deemed to have been undertaken as per the corresponding provisions of 2019 Act. Sub-section (3) contemplates that the particular matters in sub-section (2) shall not prejudice or affect the general application of Section 6 of the General Clauses Act with regard to the effect of repeal. Referring to clause (c) of Section 6 of the General Clauses Act, it was argued that unless a different intention appears, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. Further, Clause (e) stipulates that the repeal shall not affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment which may be imposed as if the repealing Act or the Regulation has not been passed. It was thus argued that the repeal of enactment does not affect any right acquired or accrued under the enactment so repealed or affect any legal proceeding in respect of such a right. Such effect was to be construed only when a different intention appears from the repealing statute. It was thus

argued that the right to file an appeal under the 1986 Act has accrued in favour of the appellant in terms of Section 6(c) of the General Clauses Act and that no different intention is discernable from the repealing Act.

8. To support the above arguments, the learned Attorney General has relied upon Division Bench judgment of the Calcutta High Court reported as **Nogendra Nath Bose** v. **Mon Mohan Singha Roy & Ors.**[5] which was approved by this Court in a judgment reported as **Hoosein Kasam Dada (India) Ltd.** v. **State of Madhya Pradesh & Ors.**[6]. In **Hoosein Kasam Dada**, Hon'ble Mr. Justice S.R. Das speaking for the Bench with Hon'ble Mr. Justice M.C. Mahajan was examining a matter consequent to the amendment on 25.11.1949 by the Central Provinces and Berar Sales Tax (Second Amendment) Act (Act 57 of 1949) amending the Central Provinces and Berar Sales Tax Act, 1947. The proviso to Section 22(1) of the 1947 Act prior to the amendment as enacted provided that no appeal against an order of assessment shall be entertained unless it was satisfied that such amount of tax or penalty or both as the *appellant may admit to be due from him has been paid*. The amending act contemplated that no appeal shall be entertained unless an appeal is accompanied by a satisfactory proof of the *payment of the tax, with penalty, if any, in respect of which the appeal has been preferred*. Therefore, there was change in the condition of preferring an appeal from the amount admitted to be due by the assessee than the payment of the tax and penalty of in respect of which an appeal has been preferred.

9. It may be relevant to mention that the Court also noticed the 5 AIR 1931 Cal. 100 6 AIR 1953 SC 221 argument of the learned counsel for the State that until actual assessment is made, there can be no *lis* and therefore, no right of appeal can accrue before that date. The Court observed that when assessee files a return, the *lis* may not immediately arise. The authority may assess the return under Section 11 of the 1947 Act, but if the authority is not satisfied as to the correctness of the return and call for evidence, a controversy arises. In the aforesaid case, the sales tax return was filed on 28.11.1947 and a notice by the Assistant Commissioner of Sales Tax was issued on 25.1.1949 i.e. prior to the amendment. This Court held as under:

"8. The above decisions quite firmly establish and our decisions in Janardan Reddy v. State [(1950) SCR 941] and in Ganpat Rai v. Agarwal Chamber of Commerce Ltd. [(1952) SCJ 564] uphold the principle that a right of appeal is not merely a matter of procedure. It is a matter of substantive right. This right of appeal from the decision of an inferior tribunal to a superior tribunal becomes vested in a party when proceedings are first initiated in, and before a decision is given by, the inferior court. In the language of Jenkins, C.J. in Nana bin Aba v. Shaik bin Andu to disturb an existing right of appeal is not a mere alteration in procedure. Such a vested right cannot be taken away except by express enactment or necessary intendment. An intention to interfere with or to impair or imperil such a vested right cannot be presumed unless such intention be clearly manifested by express words or necessary implication.

9. …. In our view the above observation is apposite and applies to the case before us. The true implication of the above observation as of the decisions in the other cases referred to above is that the pre-existing right of appeal is not destroyed by the amendment if the amendment is not

made retrospective by express words or necessary intendment. The fact that the pre-existing right of appeal continues to exist must, in its turn, necessarily imply that the old law which created that right of appeal must also exist to support the continuation of that right. As the old law continues to exist for the purpose of supporting the preexisting right of appeal that old law must govern the exercise and enforcement of that right of appeal and there can then be no question of the amended provision preventing the exercise of that right. The argument that the authority has no option or jurisdiction to admit the appeal unless it be accompanied by the deposit of the assessed tax as required by the amended proviso to Section 22(1) of the Act overlooks the fact of existence of the old law for the purpose of supporting the pre-existing right and really amounts to begging the question. The new proviso is wholly inapplicable in such a situation and the jurisdiction of the authority has to be exercised under the old law which so continues to exist. The argument of Sri Ganapathy Aiyer on this point, therefore, cannot be accepted.

10. Finally, Sri Ganapathy Aiyer faintly urges that until actual assessment there can be no "lis" and, therefore, no right of appeal can accrue before that event. There are two answers to this plea. Whenever there is a proposition by one party and an opposition to that proposition by another a "lis" arises. It may be conceded, though not deciding it, that when the assessee files his return a "lis" may not immediately arise, for under Section 11(1) the authority may accept the return as correct and complete. But if the authority is not satisfied as to the correctness of the return and calls for evidence, surely a controversy arises involving a proposition by the assessee and an opposition by the State. The circumstance that the authority who raises the dispute is himself the Judge can make no difference, for the authority raises the dispute in the interest of the State and in so acting only represents the State. It will appear from the dates given above that in this case the "lis" in the sense explained above arose before the date of amendment of the section. Further, even if the "lis" is to be taken as arising only on the date of assessment, there was a possibility of such a "lis" arising as soon as proceedings started with the filing of the return or, at any rate, when the authority called for evidence and started the hearing and the right of appeal must be taken to have been in existence even on those dates. For the purposes of the accrual of the right of appeal the critical and relevant date is the date of initiation of the proceedings and not the decision itself."

10. Subsequently, the Constitution Bench in a judgment reported as **Garikapati Veeraya** v. **N. Subbiah Choudhry & Ors;** AIR 1957 SC 540 approved the judgment in **Hoosein Kasam Dada,** though the issue was in respect of right of appeal to the Federal Court under the Government of India Act, 1935. The argument was that the appellant had a right to file an appeal as the suit, out of which the proceedings arose before this Court, was filed on 22.4.1949. Hence, he had acquired a vested right to appeal to the Federal Court which has since been replaced by the Supreme Court. It was the said argument which was accepted by the Constitution Bench when the following principles were delineated:

"23. From the decisions cited above the following principles clearly emerge:

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.

24. In the case before us the suit was instituted on April 22, 1949, and on the principle established by the decisions referred to above the right of appeal vested in the parties thereto at that date and is to be governed by the law as it prevailed on that date, that is to say, on that date the parties acquired the right, if unsuccessful, to go up in appeal from the sub-court to the High Court and from the High Court to the Federal Court under the Federal Court (Enlargement of Jurisdiction) Act, 1947 read with clause 39 of the Letters Patent and Sections 109 and 110 of the Code of Civil Procedure provided the conditions thereof were satisfied. The question for our consideration is whether that right has been taken away expressly or by necessary intendment by any subsequent enactment. The respondents to the application maintain that it has been so taken away by the provisions of our Constitution."

11. In a three-Judge Bench judgment reported as **State of Bombay** v. **M/s. Supreme General Films Exchange Ltd. & Anr.**, AIR 1960 SC 980 the argument which arose for consideration was that the court fees payable on the memorandum of appeal would be as on the date of filing of the suit and not as per the amendment in the Court Fees Act, 1870 by Bombay Act 12 of 1954. The court fee on the memorandum of appeal was thus held to be payable as was applicable prior to the amendment of the Act. This Court held as under:

"12. It is thus clear that in a long line of decisions approved by this Court and at least in one given by this Court, it has been held that an impairment of the right of appeal by putting a new restriction thereon or imposing a more onerous condition is not a matter of procedure only; it impairs or imperils a substantive right and an enactment which does so is not retrospective unless it says so expressly or by necessary intendment."

12. The Constitution Bench in **Vitthalbhai Naranbhai Patel** v. **Commissioner of Sales Tax, M.P., Nagpur**, AIR 1967 SC 344 was considering a matter where the date on which sales tax returns were filed was not disclosed. In the absence of the date of filing of the return, this Court held as under:

"9. The decision in Hoosein Kasam Dada's case, 1953 SCR 987: (AIR 1953 SC 221), proceeded on the ground that when a lis commences, all rights get crystallised and no clog upon a likely appeal can be put, unless the law was made retrospective, expressly or by clear implication. From the record of this case, we cannot say when the lis commenced, and unless it can be proved conclusively that it was before the amendment of the law, the rule in Hoosein Kasam Dada's case, 1953 SCR 987: (AIR 1953 SC 221), cannot apply. There is no averment that right of appeal had vested, and has been wrongly taken away."

13. In another Constitution Bench judgment of this Court reported as **M/s. Hardeodas Jagannath** v. **The State of Assam & Ors.**, AIR 1970 SC 724 none of the previous judgments were referred to and thus, it prima facie appears to have taken a somewhat different view than what was held in the earlier Constitution Bench judgments. But if examined closely, the said judgment is not taking any contrary view and is in line with the earlier judgments of this Court. The issue was about an amendment dated 1.4.1958 in the Assam Sales Tax Act, 1947 requiring deposit of assessed tax and penalty as condition of filing of appeal. The assessee had filed half yearly returns for periods ending on 30.9.1956, 31.3.1957 and 30.9.1957 respectively. The premises of the assessee were searched on 6.3.1959 and the account books etc. were seized. A notice for reassessment was issued on 4.4.1959 under Section 19A of the Assam Sales Tax Act, 1947. It was in this background, this Court held as under:

"9. It was contended that the amendment came into force with effect from April 1, 1958 and it cannot be given retrospective effect so as to apply to assessment periods ending on September 30, 1956, March 31, 1957 and September 30, 1957. We are unable to accept this argument as correct because the assessments for these three periods were completed after the amending Act came into force i.e., after April 1, 1958. The appeals against the assessments were also filed after the amendment. It is therefore not correct to say that the amending Act has been given a retrospective effect and the Assistant Commissioner of Taxes was therefore right in asking the appellant to comply with the provisions of the amended Section 30 of the Act before dealing with the appeals."

14. Since the returns were filed prior to the amendment but the notice for reassessment was issued after the Amending Act came into force, therefore, in view of the **Hoosein Kasam Dada**, the provisions of the Amending Act alone would be applicable and that is what has been held by this Court.

15. In a judgment reported as **K. Raveendranathan Nair & Anr.** v. **Commissioner of Income Tax & Ors.**, (2017) 9 SCC 355 it has been held that the relevant date for paying the court fee would be when the proceedings were initiated in the lowest court and not when the appeal was preferred before the High Court in view of the amendment in the Kerala Court Fees and Suits Valuation Act, 1959.

16. In **Anant Mills Co. Ltd.** v. **State of Gujarat & Ors.**, (1975) 2 SCC 175 a four-Judge Bench of this Court held that since the authority entertaining appeal has a jurisdiction to dispense with the compliance of requirement to deposit the amount of property tax, it is not onerous as discretion was vested with the appellate court. In another judgment reported as **Gujarat Agro Industries Co. Ltd.** v. **Municipal Corporation of the City of Ahmedabad & Ors.**, (1999) 4 SCC 468 the judgment in **Anant Mills** was followed.

17. This Court in a judgment reported as **Ramesh Singh & Anr.** v. **Cinta Devi & Ors.**, (1996) 3 SCC 142 held that an appeal under the Motor Vehicles Act, 1988 contemplating deposit of twenty-five thousand rupees or fifty per cent of the amount whichever is less will not be applicable to the claim applications filed under Motor Vehicles Act, 1939. Similar is the view of another Bench of this Court in a judgment reported as **M/s**

Gurcharan Singh Baldev Singh v. **Yashwant Singh & Ors.**, (1992) 1 SCC 428 wherein the right of appeal conferred under the Motor Vehicles Act, 1939 could not be said to be taken away after repeal of such Act by the Motor Vehicles Act, 1988.

18. Mr. Nidhesh Gupta, learned senior counsel appearing for the respondent submitted that the amendment is procedural in nature and thus always retrospective. Reliance was placed upon **Thirumalai Chemicals Limited** v. **Union of India & Ors.**, (2011) 6 SCC 739. It was averred that procedure includes the manner and form of filing of appeal, pre-deposit and limitation. The right of appeal is a statutory right which can be taken away by express provision of law, therefore, the conditions on which an appeal would lie is also within the legislative competence.

19. We find that the reliance on **Thirumalai Chemicals Limited** may not be correct as this Court held that Section 49 of FEMA does not seek to withdraw or take away the vested right of appeal in cases where proceedings were initiated prior to repeal of FERA on 01.06.2000 or after. The said judgment in fact held that liberal provision of condonation of delay as provided in the new Act would be applicable. It was held as under:

"28. Above discussion will clearly demonstrate that Section 49 of FEMA does not seek to withdraw or take away the vested right of appeal in cases where proceedings were initiated prior to repeal of FERA on 01.06.2000 or after. On a combined reading of Section 49 of FEMA and Section 6 of General Clauses Act, it is clear that the procedure prescribed by FEMA only would be applicable in respect of an appeal filed under FEMA though cause of action arose under FERA. In fact, the time limit prescribed under FERA was taken away under the proviso to sub-section (2) of Section 19 and the Tribunal has been conferred with wide powers to condone delay if the appeal is not filed within forty-five days prescribed, provided sufficient cause is shown. Therefore, the findings rendered by the Tribunal as well as the High Court that the Tribunal does not have jurisdiction to condone the delay beyond the date prescribed under FERA is not a correct understanding of the law on the subject.

29. We, therefore, hold that the Appellate Tribunal can entertain the appeal after the prescribed period of 45 days if it is satisfied, that there was sufficient cause for not filing the appeal within the said period. We are therefore inclined to set aside the orders passed by the Tribunal and the High Court and remit the matter back to the Tribunal for fresh consideration in accordance with law on the basis of the findings recorded by us…"

20. Mr. Gupta also referred to the three-Judge Bench judgment of this Court reported as **Newtech Promoters and Developers Pvt. Ltd.** v. **State of UP & Ors.**, 2021 SCC On Line SC 1044 wherein pre-deposit was required to be made while filing an appeal under the Real Estate (Regulation and Development) Act, 2016. The said judgment is not applicable as while framing the statute, Section 43(5) contemplating predeposit was part of the initially enacted provision. Similarly, another judgment reported as **Tecnimont Pvt. Ltd.** v. **State of Punjab & Ors.**, 2019 SCC On Line SC 1228 is also in respect of right of appeal on pre-deposit which was enacted originally in the Punjab Value Added Tax Act.

21. The learned counsel for the respondent has also relied upon Division Bench judgments in **Sri Satya Nand Jha** v. **Union of India & Ors.**, 2016 SCC OnLine Jhar 2323 and

M/s. Indian Oil Corporation v. **Orissa Sales Tax Tribunal, CTC & Ors.**, 2009 SCC OnLine Ori 353. It is to be noted that the Orissa High Court in **Indian Oil Corporation** was in fact considering the reverse proposition wherein condition of pre-deposit of 50% of the deposited amount of tax was deleted. The writ petition was filed by the assessee to challenge the notice issued by the State to deposit 50% of the deposited amount after the amendment. The Division Bench held as under:

"24. The Apex Court time & again held that right of appeal is a substantive right, but how the appeal is to be decided is a matter of procedure. The rules of procedure are intended to advance justice & not to defeat it. "Procedural law is intended to facilitate & not to obstruct the course of substantive justice." (vide Hoosein Kasam Dada (India) Ltd. v. State of M.P. , AIR 1953 SC 221; Garikapati Veeraya v. N. Subbiah Choudhry ; AIR 1957 SC 540; M/s. Ganesh Trading Co. v. Moji Ram, (1978) 2 SCC 91 : AIR 1978 SC 484; Harcharan v. State of Haryana, (1982) 3 SCC 408 : AIR 1983 SC 43; & Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers, (2003) 6 SCC 659 : AIR 2003 SC 2434).

25. In the instant case, as the provision of the pre-deposit condition for entertaining the appeal has been deleted prior to entertaining the appeal being a procedural matter, the amendment would apply retrospectively. The instant case is squarely covered by the Judgment of the Hon'ble Supreme Court in Lakshmi Rattan Engineering Works Ltd. (supra)."

22. The High Court of Jharkhand in **Sri Satya Nand Jha** was dealing with the amendment in Section 35 of the Central Excise Act, 1944 by Section 105 of the Finance Act, 2014 prescribing that 7.5% or 10% of the duty demand or penalty levied is to be deposited. In the said case, the pre-amended provision was that if the appellate authority on being satisfied that the deposit of the duty demanded or penalty levied would cause undue hardship, then the condition of pre-deposit could be dispensed with. But subsequent to the amendment, 7% of the duty assessed and 10% of the penalty levied was made mandatory to be deposited. It may be noticed that the second proviso clarified that the provisions of the amended Section 35 shall not be applied to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance Act, 2014. Therefore, the issue arising in the said case was of legality and validity of the predeposit and not the retrospectivity of the said provision.

23. Mr. Gupta has relied upon the judgment of this Court in **Manohar Infrastructure and Constructions Private Limited** v. **Sanjeev Kumar Sharma & Ors.**, Civil Appeal No. 7098 of 2021 with Ors. decided on 7.12.2021 in which the dispute was that the NCDRC had granted stay subject to deposit of the entire decretal amount. No argument was raised or decided for retrospectivity of Section 51 of the 2019 Act but the question raised was whether the NCDRC could direct such deposit of the entire decretal amount pending appeal though the statute prescribes pre-deposit of 50% of the amount in dispute.

24. It was contended that the consumer protection legislation is a beneficial legislation, therefore, the interpretation which benefits the consumer should be preferred as held by this Court in **Neena Aneja & Anr.** v. **Jai Prakash Associates Ltd.**, 2021 SCC OnLine SC 225**.**

25. It is to be noted that in **Neena Aneja,** this Court held that right to forum is not an accrued right. Section 6(e) of the General Clauses Act protects the pending legal proceeding for enforcement of the accrued right from the effect of repeal; it does not mean the legal proceeding at a particular forum was saved from the effect of repeal. This Court found that there was no express intention in the repealing enactment that all pending cases would stand transferred to the fora created under 2019 Act. This Court held as under:

"78. Having stated the above position, we need to harmonize it with the principle that the right to a forum is not an accrued right, as discussed in Part C of this judgement. Simply put, while Section 6(e) of the General Clauses Act protects the pending legal proceedings for the enforcement of an accrued right from the effect of a repeal, this does not mean that the legal proceedings at a particular forum are saved from the effects from the repeal. The question whether the pending legal proceedings are required to be transferred to the newly created forum by virtue of the repeal would still persist. As discussed, this Court in New India Assurance (supra) and Maria Christina (supra) has held that forum is a matter pertaining to procedural law and therefore the litigant has to pursue the legal proceedings at the forum created by the repealing act, unless a contrary intention appears. This principle would also apply to pending proceedings, as observed in Ramesh Kumar Soni (supra), Hitendra Kumar Thakur (supra) and Sudhir G Angur (supra). In this backdrop, what is relevant to ascertain is whether a contrary intent to the general rule of retrospectivity has been expressed under the Act of 2019 to continue the proceedings at the older forum.

79. Now, in considering the expression of intent in the repealing enactment in the present case, it is apparent that there is no express language indicating that all pending cases would stand transferred to the fora created by the Act of 2019 by applying its newly prescribed pecuniary limits. In deducing whether there is a contrary intent, the legislative scheme and procedural history may provide a relevant insight into the intention of the legislature.

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84. … The legislature cannot be attributed to be remiss in not explicitly providing for transfer of pending cases according to the new pecuniary limits set up for the fora established by the new law, were that to be its intention. The omission, when contextualized against the statutory scheme, portends a contrary intention to protect pending proceedings through Section 107(2) of the Act of 2019. This intention appears likely, particularly in light of previous decisions of the NCDRC which had interpreted amendments that enhanced pecuniary jurisdiction, with prospective effect. The NCDRC, in Southfield Paints and Chemicals Pvt. Ltd. v. New India Assurance Co. Ltd. , Consumer Case No. 286 of 2000 (NCDRC) construed amending Act 62 of 2002 by which the pecuniary limits of jurisdiction were enhanced with effect from 15 March 2003 as prospective by relying on its earlier decision in Premier Automobiles Ltd. v. Dr. Manoj Ramachandran, Revision Petitions Nos. 400 to 402 of 1993, where the NCDRC held that the amendments enhancing the pecuniary jurisdiction are prospective in nature [albeit on a reliance of the principle in Dhadi Sahu (supra)]. Parliament would be conscious of this governing principle and yet chose not to alter it in its application to the consumer fora."

26. Having said so, this Court held that serious hardship would be caused to the consumers if the cases already instituted before National Consumer Disputes Redressal

Commission were required to be transferred to the State Consumer Disputes Redressal Forum. Thereafter, the proceedings instituted before the commencement of 2019 Act would continue before the fora corresponding to the provisions under the 1986 Act.

27. Reliance was also placed upon judgment of this Court reported as **New India Assurance Co. Ltd.** v. **Smt. Shanti Misra**, (1975) 2 SCC 840 wherein the change in forum was said to be covered under procedural law. In the said referred judgment, there was change of forum of filing of a claim application under the Motor Vehicle Act, 1939 from that of a civil suit. It was held that change of forum would apply retrospectively. It was held that claimant have a vested right of action and not of forum. Such is not the question posed before us in the present appeal.

28. The change of forum and period of limitation have been held to be procedural law even in the judgments reported in **Videocon International Limited** v. **Securities and Exchange Board of India**, (2015) 4 SCC 33 and **Maria Cristina De Souza Sodder & Ors.** v. **Amria Zurana Pereira Pinto & Ors.**, (1979) 1 SCC 92.

29. Mr. Gupta has also relied upon **Harihar Polyfibres** v. **Regional Director, ESI Corporation**, (1984) 4 SCC 324; **Spring Meadows Hospital & Anr.** v. **Harjol Ahluwalia & Anr.**, (1998) 4 SCC 39; **Kishore Lal** v. **Chairman, Employees' State Insurance Corpn.**, (2007) 4 SCC 579 and **K.H. Nazar** v. **Mathew K. Jacob & Ors.**, (2020) 14 SCC 126 to contend that in respect of beneficial legislations, the interpretation which support the intention of law should be accepted.

30. In **Harihar Polyfibres**, this Court was examining the scope of expression wages in the Employees' State Insurance Act, 1948. It was held that the Act in question was a beneficial legislation and thus any ambiguous expression was bound to receive a beneficial construction. The present dispute is not of any ambiguity, therefore principles laid down in this case are not applicable.

31. In **Spring Meadows Hospital,** this Court held that the definition clause of Section 2(1)(d)(ii) of the 1986 Act is wide enough to include not only the person who hires the services but also the beneficiary of such services. Thus, both the parents of the child as well as the child would be consumer under the 1986 Act to claim compensation under the Act. In **Kishore Lal,** this court held that the definition of 'consumer' in the 1986 Act is apparently wide enough and encompasses within its fold not only the goods but also the services, bought or hired for consideration. In **K.H. Nazar,** the question was, whether a rocky land which was used for quarrying purposes can be treated as a "commercial site", thus exempt from the purview of the Kerala Land Reforms Act, 1963. We are not concerned with interpretation to be given to a clause in the statute as in the judgments referred to by the respondents but only with the effect of substitution of a provision than earlier provisions.

32. The Division Bench of the Madras High Court in **M/s. Dream Castle & Anr.** v. **Union of India & Ors.**, W.P. No. 13431 of 2015 etc. decided on 18.4.2016 dealing with amended Section 35 of the Central Excise Act by Finance Act No. 2 of 2014 held that when the unamended

condition gave only a chance or hope for an assessee to get a total waiver at the discretion of the Appellate Authority, the same cannot be equated to a vested right or stated to be retrospective, unless it is definitely shown that the amended condition is more onerous than the unamended condition. It was held as under:

"54. Therefore, it is well settled that the right of appeal is a creature of statute and the legislature is well within its competence to impose conditions for the exercise of such a right subject only to the restriction that the conditions so imposed are not so onerous as to amount to unreasonable restrictions rendering the right almost illusory.

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59. Therefore, if one condition that was already available in the statute for the exercise of a right of appeal, is merely replaced by another condition, the same cannot be said to be retrospective, unless it is definitely shown that the amended condition is more onerous than the unamended condition. When the unamended condition gave only a chance or hope for an assessee to get a total waiver at the discretion of the Appellate Authority, the same cannot be equated to a vested right. A mere chance of convincing the Appellate Authority to exercise the discretion for the grant of a total waiver is no vested right. The amendment, in our considered view, did not take away a right vested, but merely made a chance divested. What has now gone, is not the right, but the chance or hope. Therefore, the first contention of the learned Senior counsel for the petitioner is liable to be rejected."

33. There is another line of judgments taking a view that right of appeal is a creation of statute and the legislature is competent to determine the conditions on which an appeal would lie. These are not the cases of amending or repeal of a statute, therefore, such judgments are not applicable to the questions arising in the present application.

34. In view of the binding precedents of the Constitution Bench judgments referred to above, we hold that onerous condition of payment of 50% of the amount awarded will not be applicable to the complaints filed prior to the commencement of the 2019 Act. Therefore, the I.A. is allowed.
