

CICILY KALLARACKAL

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vs.

VEHICLE FACTORY

(S.L.P (C) Nos. 24228-24229 of 2012)

AUGUST 6, 2012

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[DR. B.S. CHAUHAN AND SWATANTER KUMAR, JJ.]

Limitation – Special Leave Petition (SLP) – Delay in filing – Condonation of the delay – Held: On facts there was inordinate unexplained delay in filing the SLP – Condonation of such delay would amount to substituting the period of limitation prescribed by the legislature for filing SLP – Petition dismissed on the ground of delay – Constitution of India, 1950 – Article 136.

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Anshulal Aggarwal v. NOIDA (2011) CPJ 63 (SC) – relied on.

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Constitution of India, 1950 – Article 226 – Writ jurisdiction – Challenge to the order of National Consumer Disputes Redressal Commission – Maintainability of – Held: Orders of the Commission are incapable of being questioned under the writ jurisdiction of High Court, because a statutory appeal in terms of s. 27A(1)(c) of the Consumer Protection Act lies to Supreme Court – Consumer Protection Act, 1986 – s. 27A (1)(c).

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Mohammad Swalleh and Ors. v. Illrd All. District Judge, Meerutand Anr. AIR 1988 SC 94: 1988 (1) SCR 840 – referred to.

Case Law Reference:

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1988 (1) SCR 840 Referred to Para 2

(2011) CPJ 63 (SC) Relied on Para 4

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A CIVIL APPELLATE JURISDICTION : Special Leave
Petition (C) No. 24228-24229 of 2012.

From the Judgment & Order dated 16.09.2008 and
17.12.2009 of the High Court of Kerala at Ernakulam in W.A.
No. 2518 of 2007 and RP No. 380 of 2009.

B Tulika Prakash, M. Khairati, K. Rajeev for the Appellant.

The following Order of the Court was delivered

ORDER

C 1. These special leave petitions have been filed against
the impugned judgments and orders dated 16.9.2008 in Writ
Appeal No. 2518 of 2007 and 17.12.2009 in Review Petition
No. 380 of 2009. In order to decide the controversy it is not
D necessary to make the reference to the factual controversy
involved herein.

The basic issue has been raised in the petitions that the
Kerala High Court did not have jurisdiction to entertain the writ
petition against the judgment and order passed by the National
Consumer Disputes Redressal Commission (hereinafter called
E 'the Commission'). The said order could be challenged only
before this Court in view of the provisions of National Consumer
Protection Act, 1986, thus, the order passed by the High Court
impugned herein is a nullity for want of jurisdiction.

F 2. So far as the issue of jurisdiction is concerned, the
learned counsel for the petitioner is right that the High Court
had no jurisdiction to deal with the matter against the order of
the Commission. However, while dealing with a similar issue
this Court in *Mohammad Swalleh & Ors. v. Illrd All. District*
G *Judge, Meerut & Anr.*, AIR 1988 SC 94, observed:

"7. It was contended before the High Court that *no appeal*
lay from the decision of the Prescribed Authority to the
District Judge. The High Court accepted this contention.
(sic no appeal lay)... On that ground the High Court
H *declined to interfere with the order of the learned District*

Judge. It is true that there has been some technical breach because if there is no appeal maintainable before the learned District Judge, in the appeal before the learned District Judge, the same could not be set aside. But the High Court was exercising its jurisdiction under Art. 226 of the Constitution. The High Court had come to the conclusion that the order of the Prescribed Authority was invalid and improper. The High Court itself could have set it aside. Therefore in the facts and circumstances of the case justice has been done though, as mentioned hereinbefore, *technically the appellant had a point that the order of the District Judge was illegal and improper.* If we reiterate the order of the High Court as it is setting aside the order of the Prescribed Authority in exercise of the jurisdiction under Art. 226 of the Constitution then no exception can be taken. As mentioned hereinbefore, justice has been done and as the improper order of the Prescribed Authority has been set aside, no objection can be taken." (Emphasis added)

In view of the above, it is not always necessary to set aside an order if found to have been passed by an authority/court having no jurisdiction.

Despite this, we cannot help but to state in absolute terms that it is not appropriate for the High Courts to entertain writ petitions under Article 226 of the Constitution of India against the orders passed by the Commission, as a statutory appeal is provided and lies to this Court under the provisions of the Consumer Protection Act, 1986. Once the legislature has provided for a statutory appeal to a higher court, it cannot be proper exercise of jurisdiction to permit the parties to bypass the statutory appeal to such higher court and entertain petitions in exercise of its powers under Article 226 of the Constitution of India. Even in the present case, the High Court has not exercised its jurisdiction in accordance with law. The case is one of improper exercise of jurisdiction. It is not expected of

A us to deal with this issue at any greater length as we are dismissing this petition on other grounds.

B 3. So far as these petitions are concerned, there is an inordinate unexplained delay of 1314 days in filing the petition against the order dated 16.9.2008 and of 851 days against the order dated 17.12.2009. Cause shown for not approaching this Court within limitation is stated that petitioner was not physically fit and for **some days** remained in hospital. The cause shown is not sufficient as it was not necessary for the petitioner to come here personally.

C 4. This Court in *Anshul Aggarwal v. NOIDA*, (2011) CPJ 63 (SC) has explained the scope of condonation of delay in a matter where the special courts/tribunals have been constituted in order to provide expeditious remedies to the person aggrieved and Consumer Protection Act, 1986 is one of them. Therefore, this Court held that while dealing with the application for condonation of delay in such cases the court must keep in mind the special period of limitation prescribed under the statute (s).

E 5. In the instant case, condoning such an inordinate delay without any sufficient cause would amount to substituting the period of limitation by this Court in place of the period prescribed by the legislature for filing the special leave petition. Therefore, we do not see any cogent reason to condone the delay.

F 6. Hence, in the facts and circumstance of the case as explained hereinabove, we are not inclined to entertain these petitions. The same are dismissed on the ground of delay.

G 7. While declining to interfere in the present Special Leave Petition preferred against the order passed by the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, we hereby make it clear that the order of the Commission are incapable of being questioned under

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the writ jurisdiction of the High Court, as a statutory appeal in terms of Section 27 A(1)(c) lies to this Court. Therefore, we have no hesitation in issuing a direction of caution that it will not be proper exercise of jurisdiction by the High Courts to entertain writ petitions against such orders of the Commission.

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A copy of this order may be sent to the Registrar General of all the High Courts, for bringing the same to the notice of Hon'ble the Chief Justices and Hon'ble Judges of the respective High Courts.

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K.K.T.

SLPs dismissed.