



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 11988 OF 2026
[Arising out of SLP (C) NO.19685 OF 2025]**

ASKARI HUSSAIN AND ORS.

...APPELLANTS

VERSUS

DINESH KUMAR AND ORS.

...RESPONDENTS

J U D G M E N T

DIPANKAR DATTA, J.

- 1.** Leave granted.
- 2.** This civil appeal takes exception to the judgment and order dated 11th December, 2024¹ of a Single Judge of the High Court of Judicature at Allahabad². *Vide* the impugned order, the Single Judge allowed an application under Article 227 of the Constitution³ of the first respondent by directing, *inter alia*, as follows:

“...21. In the present case, the order impugned has gone in excess of the powers conferred on the referring member. On the said limited ground, there being an improper exercise of jurisdiction by the

¹ impugned order

² High Court

³ Matters under Article 227 No. - 901 of 2024

member, to whom the question has been referred, the impugned order cannot be sustained and is quashed. The matter shall now be heard afresh by the 3rd member who shall give his opinion on the questions referred and send the matter back to the Division Bench of the National Commission to be decided accordingly.”

3. Facts reveal that the first respondent had carried an appeal⁴ to the National Consumer Disputes Redressal Commission, New Delhi⁵ from a final order dated 4th December, 2012 of the State Consumer Disputes Redressal Commission, Uttar Pradesh⁶ in Complaint No. 13 of 2006, lodged by the appellants. The SCDRC had allowed the complaint and awarded compensation of Rs.95 lakh to the appellants together with interest of 15%.
4. While hearing the appeal, the two members on the Bench⁷ of the NCDRC differed in their opinions. The presiding member allowed the appeal and dismissed the complaint lodged by the appellants by his order dated 19th March, 2021. However, the companion member while disposing of the appeal, *vide* his order of even date, modified the order under challenge by reducing the compensation and interest to Rs.93 lakh and 12%, respectively.
5. A reference accordingly followed under Section 58(3) of the Consumer Protection Act, 2019⁸. The third member, to whom the matter was referred, rendered his opinion on 9th January, 2024 disagreeing with the opinion of the presiding member of the referring Bench and

⁴ First Appeal No. 156 of 2013

⁵ NCDRC

⁶ SCDRC

⁷ referring Bench

⁸ CP Act

agreeing with the opinion of the companion member thereof. While so opining, the third member directed as follows:

"...23. With the aforesaid observations, these appeals are disposed off after concurring with the findings of the Hon'ble Member Mr. ***, with the modifications that the total compensation awardable to the Respondents/Complainants is now reduced from Rs. 95 lakhs to Rs. 93 lakhs, out of which, the personal share of the complainant No. 3 is reduced to Rs. 23 lakhs, while the entitlement of the Complainant No. 1 is retained at Rs. 20 lakhs, and the balance amount of Rs. 50 lakhs is found payable to the Complainant No. 2. It shall be paid to her directly if the concerned specialist Doctors in the Sanjay Gandhi Postgraduate Institute of Medical Sciences, Lucknow can certify that now her condition has now so improved that she is in a position to rationally and practically utilise the amount directly for her own welfare. If not, the same shall be paid to a Guardian of her own choice, if she is in a position to choose and communicate about her chosen Guardian personally, or otherwise, the payment shall be made to her husband (Complainant No. 1) in which event, needless to mention, his duty shall be to ensure that the said amount is strictly and faithfully utilised for her welfare and future treatment as warranted. The amount of interest on the compensation thus awarded in the case, which was reduced from 15% to 10% by Hon'ble Mr. ***, is retained from the date of passing of the impugned order by the state commission, i.e., 04.12.2012. In addition, litigation costs of Rs. 10,000/- are awarded in favour of the Complainant No. 1/respondent No. 1 in each of the appeals.

24. The complete compensation with up-to-date interest till the date of actual payment is to be paid by the Appellants to the complainants within three months from the date of this order, during which period the Complainants will secure the certificate from the specialist Doctors of the Sanjay Gandhi Postgraduate Institute of Medical Sciences, Lucknow regarding the mental and physical condition of the Complainant No. 2, after which the payment shall be made in accordance with the directions passed in the previous paragraph. Any outstanding payments beyond the time limit fixed by this Bench shall attract interest at the rate of 12% per annum till the date of final realisation."

6. Aggrieved thereby, the first respondent had approached the High Court. The fate of his application under Article 227 has been noted above.
7. The short question that emerges for decision in this appeal is, whether the third member was justified in deciding the appeal itself while

concurring with the opinion of the companion member of the referring Bench or, should he have, after recording his answers to the questions referred, returned the case to the referring Bench to pass an appropriate order resting on the majority opinion?

8. In making the order, impugned in this appeal, the Single Judge of the High Court placed reliance on two decisions of this Court, namely, ***Kesho Nath Khurana vs Union of India and Others***⁹ and ***Commissioner of Income Tax, Delhi & Bansi Dhar and Sons***¹⁰ and a Full Bench decision of the High Court in ***Shriram Industrial Enterprises Limited vs. The Union of India and Others***¹¹.
9. The High Court noted that the third member was required to answer the following five questions:

"1. Whether the Complainant/Respondent had been able to lead satisfactory documentary or oral evidence to link the association of the Appellant Doctor in FA/30/2013 with "Surya Medical Centre" where the Complainants wife was allegedly admitted, and then given improper treatment?

2. Whether the Complainant/Respondent had been able to lead satisfactory documentary evidence to establish that his wife had at all been admitted or operated upon in the said "Surya Medical Centre"?

3. Whether this Commission would be justified in drawing any conclusions on the basis of any oral explanations or circumstances being narrated by Complainant which were not referred to in the original Complaint, to overcome the apparent handicap of lack of satisfactory evidence?

4. Whether the Complainants submission that all the relevant medical documents supposed to have been issued to him by "Surya Medical Centre" were withheld from him, or that for some satisfactory reasons he had omitted to obtain such documents from the said Medical Centre?

5. Whether in the given circumstances, in a proceeding of summary nature would it have been proper to accept the uncontroverted oral

⁹ 1981 (Supp) SCC 38

¹⁰ (1986) 1 SCC 523

¹¹ 1994 SCC OnLine All 647

Affidavit of the Complainant's family member on the premise that they were not subjected to any cross-examination?"

- 10.** However, instead of only dealing with such questions and returning the matter with his answers to the referring Bench, the third member had proceeded to decide the appeal itself which, according to the High Court, amounted to an act in excess of jurisdiction.
- 11.** In ***Kesho Nath Khurana*** (supra), a Single Judge of the relevant high court before whom an appeal under Section 100 of the Code of Civil Procedure, 1908¹² came up for hearing had referred a particular question of law for the opinion of the Division Bench; thereupon, the Division Bench decided the second appeal on merits and dismissed it with costs. This Court held that the Division Bench was in error in following this procedure; it ought to have sent the appeal back to the Single Judge with the answer rendered by them to the question referred by the Single Judge and left it to the Single Judge to dispose of the second appeal according to law.
- 12.** ***Bansi Dhar*** (supra) is a decision arising out of a reference under the Income Tax Act, 1961. The question which this Court was seized of appears to be different. Upon a reference being made, whether interim relief of stay could be granted was the question and this was answered in the negative.

¹² CPC

13. In *State of Punjab v. Salil Sabhlok*¹³, a coordinate Bench of this Court had the occasion to deal with a matter where a Division Bench of the relevant high court had referred a couple of questions to a Full Bench for an answer, whereupon the Full Bench not only re-formulated the questions referred but also framed additional questions. An instructive passage from the concurring opinion of Hon'ble Madan B. Lokur, J. is worth reading. After noticing the precedents on the point, His Lordship had the occasion to observe thus:

137. The learned counsel supporting the appointment of Mr Dhanda submitted that the Full Bench could not expand the scope of the reference made to it by the Division Bench, nor could it frame additional questions.

138. Generally speaking, they are right in their contention, but it also depends on the reference made.

139. The law on the subject has crystallised through a long line of decisions and it need not be reiterated again and again:

139.1. The decisions include *Kesho Nath Khurana v. Union of India*, 1981 Supp SCC 38:

"1. ... The Division Bench ought to have sent the appeal back to the Single Judge with the answer rendered by them to the question referred by the Single Judge and left it to the Single Judge to dispose of the second appeal according to law."

139.2. *Kerala State Science & Technology Museum v. Rambal Co.*, (2006) 6 SCC 258:

"8. It is fairly well settled that when reference is made on a specific issue either by a learned Single Judge or Division Bench to a larger Bench i.e. Division Bench or Full Bench or Constitution Bench, as the case may be, the larger Bench cannot adjudicate upon an issue which is not the question referred to."

139.3. *T.A. Hameed v. M. Viswanathan*, (2008) 3 SCC 243:

"12. ... Since, only reference was made to the Full Bench, the Full Bench should have answered the question referred to it and remitted the matter to the Division Bench for deciding the revision petition on merits."

139.4. And more recently, *Saquib Abdul Hameed Nachan v. State of Maharashtra*, (2010) 9 SCC 93:

¹³ (2013) 5 SCC 1

“15. ... Normally, after answering the reference by the larger Bench, it is for the Reference Court to decide the issue on merits on the basis of the answers given by the larger Bench.”

140. There is no bar shown whereby a Bench is precluded from referring the entire case for decision by a larger Bench—it depends entirely on the reference made. In any event, that issue does not arise in this appeal and so nothing more need be said on the subject.

144. Much was sought to be made by the learned counsel for the writ petitioner that the “matter” (that is the entire matter) was referred to the Full Bench. It is difficult to agree that the entire “matter” was referred to the Full Bench. Firstly, the word “matter” must take colour from the context in which it was used, which is with reference only to the two questions placed before the Full Bench. Secondly, even the Full Bench did not think that the entire matter was referred to it and that is why after answering the reference the “matter” was remitted to the Division Bench for disposal in accordance with law.

145. To this extent, the learned counsel supporting the cause of Mr Dhanda are right that the Full Bench overstepped its mandate. But where does this discussion lead us to? The two questions were fully argued in this Court for the purposes of obtaining a decision on them, and no suggestion was made that the decision of the Full Bench on these questions be set aside because of a jurisdictional error and the Division Bench be asked to decide them quite independently. Therefore, this issue is only of academic interest so far as this appeal is concerned notwithstanding the law that a larger Bench should decide only the questions referred to it. Of course, if a subsidiary question logically and unavoidably arises, the larger Bench cannot be dogmatic and refuse to answer it. A common sense approach must be taken on such occasions.

(emphasis ours)

14. Law, therefore, seems to be well-settled that normally, the course that should be adopted by the referee Bench is to return the questions referred with the answers to the Bench that made the reference to facilitate the said Bench to decide the issues arising for decision bearing in mind such answers. However, as held in ***Salil Sabhlok*** (supra), the referee Bench may answer any subsidiary question that

may logically and unavoidably arise by adopting a common sense approach.

15. There is no provision in the CPC akin to Section 392 of the Code of Criminal Procedure, 1973 or Section 433 of the Bharatiya Nagarik Suraksha Sanhita, 2023. References arising in disputes governed by the CPC, therefore, need to be decided drawing guidance from the precedents referred to in the above passage.

16. However, insofar as the CP Act is concerned, guidance is provided by Section 58 thereof. Sub-section (3) being relevant is quoted below:

Section 58. Jurisdiction of National Commission.- ***

(3) Where the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it:

Provided that the President or the other member, as the case may be, shall give opinion on the point or points so referred within a period of two months from the date of such reference.

(emphasis ours)

17. On a plain reading of sub-section (3), it would *prima facie* seem that the third member did act in excess of jurisdiction by deciding the appeal. However, there is one significant aspect in the present case which cannot go unnoticed. Though, in cases arising out of the CP Act, the statutory mandate is to opine on the point or points on which the members of a Bench differ, in the present case, the members of the referring Bench did not state the point or points on which they differed; instead, the five questions, noted above, were formulated for an

answer by the third member. These questions, as formulated, in our opinion required a consideration of the facts alleged and rebutted on merits.

18. The objection as to scope of the reference, in our view, is technical.

While the statutory mandate under the CP Act requires the third member to confine himself to the point(s) of difference, the present case stands on a different footing. The referring order did not delineate the point(s) of difference; instead, it formulated questions which went to the root of the complaint and are inseparable from the evidence on record. The third member, necessarily, had to survey the entire gamut of material and the rival contentions raised before the referring Bench. It is in this backdrop that the third member, while answering the questions referred, also decided the appeal on merits based on the majority opinion (his opinion and the opinion of the companion member, being *ad idem*). Viewed thus, the approach of the third member does reflect a common sense approach, which this Court in ***Salil Sabhlok*** (supra) acknowledged is available in exceptional cases. We, therefore, ought not to disapprove the approach of the third member, at this distance of time.

19. On facts and in the circumstances, we hold that by not returning the reference with the answers to the question referred and, instead, by deciding the appeal itself, the third member did not commit such an

illegality that the situation warranted an interference in exercise of jurisdiction under Article 227 of the Constitution.

- 20.** It is true that the course of action adopted by the Single Judge finds support from the decision in ***Kesho Nath Khurana*** (supra) but regard being had to the foregoing discussion, more particularly in the light of Section 58(3) of the CP Act and the faltering reference made by the referring Bench, we see no reason to uphold the conclusions recorded in paragraph 21 of the impugned order.
- 21.** It has been brought to our notice that the Single Judge did not take exception to the answers given by the third member to the questions referred to him. Obviously, exception having been taken only in respect of the procedure adopted, the merits of the findings were not examined.
- 22.** In such view of the matter, it is now imperative that the High Court decides the application under Article 227 of the first respondent one way or the other, on its own merits.
- 23.** For the reasons aforesaid, the impugned order stands set aside. We, thus, allow the appeal by ordering a remand of the application under Article 227 to the High Court which may be decided afresh on its own merits and in accordance with law. All issues on facts and law are left open to be raised by the first respondent, the appellants and the other parties before the roster Bench for a decision by it.

- 24.** Since much time has lapsed, it would be eminently desirable that the application is decided at an early date.
- 25.** We have no doubt that the NCDRC will not proceed further till a final decision is given by the High Court in terms of this order.

.....J.
(DIPANKAR DATTA)

.....J.
(SHEEL NAGU)

**NEW DELHI;
AUGUST 24, 2026.**