

Nataraj Bore-well Services Vs. Water Development Society and Others

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Court : Andhra Pradesh State Consumer Disputes Redressal Commission
SCDRC Hyderabad

Decided On : Dec-29-1998

Judge : S. Parvatha Rao, President, the Honourable Mr. K. Ranga Rao, Member
& the Honourable Dr. (Mrs.) Mamata Lakshmana, Member

Appeal No. : OP. IA. No. 1429 of 1998 & OP. IA. No. 1430 of 1998

Appellant : Nataraj Bore-well Services

Respondent : Water Development Society and Others

Judgement :

S. Parvatha Rao, President:

1. Section 151 CPC has no application to the present proceedings because Section 151 refers to the inherent powers of a Civil Court being exercised by long practice. The Fora and the Commissions constituted under the Consumer Protection Act, 1986 (the Act for short) are not Civil Courts and the provisions of the Code of Civil Procedure, 1908 are not attracted to them except to the extent provided under Sub-section (4) of Section 13 of the Act. We may observe that in *Indian Bank v. Satyam Fibres (India) Private Limited*, (1996) 5 SCC 550=1997 (2) CPR 187 (SC), the Supreme Court held as follows :

The judiciary in India also possesses inherent power, specially under Section 151, Civil Procedure Code, to recall its judgment or order if it is obtained by fraud on

Court. In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers which are resident in all Courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the Tribunals or Courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the Courts business.

Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practised upon that Court. Similarly, where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order.

2. After observing that forgery and fraud were essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts, the Supreme Court held as follows :

The above principle will apply not only to Courts of law but also to statutory tribunals which, like the Commission (the National Commission under the Act), are conferred power to record evidence by applying certain provisions of the Code of Civil Procedure including the power to enforce attendance of the witnesses and are also given the power to receive evidence on affidavits. The Commission under the Consumer Protection Act, 1986 decides the disputes by following the procedure indicated in Section 22 read with Sections 12(4) and (5) of the Act.

3. Referring to Section 13(4) of the Act the Supreme Court observed that the Commission had jurisdiction not only to examine a witness on oath but also to receive evidence in the form of affidavits. This decision might have led the petitioner to conclude that the Tribunals under the Act possess all inherent powers including those under Section 151 of the Code of Civil Procedure, 1908. But Section 13(4) of the Act confers powers under the Code of Civil Procedure only in respect of certain matters specified therein. As regards the power to grant interim

directions/ orders pending disposal of the complaints, the Supreme Court clarified the position in *Morgan Stanley Mutual Fund v. Kartick Das*, II (1994) CPJ 7 (SC)=(1994) 4 SCC 225, after referring to Section 14 of the Act as follows :

A careful reading of the above discloses that there is no power under the Act to grant any interim relief or even an ad interim relief. Only a final relief could be granted. If the jurisdiction of the Forum to grant relief is confined to the four clauses mentioned under Section 14, it passes our comprehension as to how an interim injunction could ever be granted disregarding even the balance of convenience.

This has been reiterated by the Supreme Court in *Gulzari Lal Agarwal v. Accounts Officer*, III (1996) CPJ 12 (SC)=(1996) 10 SCC 590, as follows :

The Consumer Forum has no jurisdiction or power to pass any interim order pending disposal of original complaint filed before it.

4. In view of these decisions of the Supreme Court, the observation of another two Judges Bench of the Supreme Court in *Chief Executive Officer and Vice Chairman, Gujarat Maritime Board v. Haji Daud Haji Harun Abu and Ors.*, (1996) 11 SCC 23, that where a substantive power is conferred upon a Court or Tribunal, all incidental and ancillary power necessary for an effective exercise of the substantive power have to be inferred.

So far as the power to grant interim directions or orders pending disposal of the complaints is concerned such a power cannot be assumed by the Tribunals under the Act on the assumption that it is an incidental or ancillary power.

These applications are, therefore, dismissed.

Applications dismissed.

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