

Manimalan Vs. K. Subrayan

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Court : Chennai

Decided On : Apr-19-2004

Reported in : AIR2004Mad446; (2004)3MLJ80

Judge : K. Gnanaprakasam, J.

Acts : [Consumer Protection Act, 1986](#); ;[Code of Civil Procedure \(CPC\) , 1908](#) - Sections 193 and 228; ;[Code of Criminal Procedure \(CrPC\) , 1973](#); [Constitution of India](#) - Article 227

Appeal No. : Civil Revision Petition No. 1695 of 2003, VCMP. No. 2883 of 2004 and CMP. No. 17744 of 2003

Appellant : Manimalan

Respondent : K. Subrayan

Advocate for Def. : S. Devika, Adv.

Advocate for Pet/Ap. : T. Dhanyakumar, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

K. Gnanaprakasam, J.

1. This Civil Revision Petition is directed against the order dated 21.10.2003, made in CMP.No.25 of 2003 in C.O.P.No.31 of 2003, on the file of the District Consumer Disputes Redressal Forum, Namakkal.
2. The respondent herein preferred a complaint before the District Consumer Disputes Redressal Forum, Namakkal and during the pendency of the complaint, the respondent filed an application to amend the name of the revision petitioner herein and the same was allowed. Aggrieved by the same, this revision has been filed.
3. Originally, the respondent herein filed the complaint against Manimalan in his individual capacity and thereafter he filed the application to change the petitioner as Managing Partner of the company and the said application was allowed and the same is challenged in this civil revision petition.
4. Heard the learned Advocate for the revision petitioner and the respondent.
5. The learned Advocate for the revision petitioner would contend that the Tribunal has no power to order amendment and therefore the order passed is vitiated.
6. On the contrary, the learned Advocate for the respondent would contend that though there is no express provision for the amendment of the complaint, but there is no prohibition also in the Act for amending the complaint.
7. Now let us consider whether the Tribunal has got power to allow the amendment sought for.
8. The [Consumer Protection Act, 1986](#) (Act 68 of 1986) was enacted to provide for entire protection of the interest of the consumers and for that purpose to make provision for their establishment of consumer counsel and other authorities for the settlement of Consumer Disputes and matters connected there with. As far as the procedure of dealing with the complaint is concerned, Section 13 of the Act prescribed certain procedures. Sub Clause(4) and (5) of Section 13 states that Civil Procedure Code, 1908 (5 of 1908), would be applicable as far as certain matters are concerned which are,

13. Procedure on admission of complaint-

(1).....

(2).....

(3).....

(4) For purposes of this, the District Forum shall have the same powers as are vested in Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:-

(i) the summoning and enforcing attendance of any defendant or witness and examining the witness on oath;

(ii) the discovery and production of any document or other material object producible as evidence;

(iii) the reception of evidence on affidavits;

(iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;

(v) issuing of any commission for the examination of any witness; and

(vi) any other matter which may be prescribed.

(5) Every proceedings before the District Forum shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860), and the District Forum shall be deemed to be a Civil Court for the purposes of Section 195, and Chapter XXVI of the Code of Criminal procedure, 1973(2 of 1974).

9. As there is no specific provision in this Sub section also, it is argued on behalf of the respondent that the District Forum has got a power to order amendment. A similar question arise for consideration by the Honourable Supreme Court in the case of M/s. Fair Air Engineers Pvt. Ltd., & another Vs . N.K. Modi : AIR 1997 SC533 , and the Supreme Court in dealing with the matter had observed that:

'Section 13 provides for the procedure after receipt of complaint and for disposal thereof. The details thereof are not material except sub-sections (4),(5) and (6) thereof which having cutting edge as material in this behalf. Sub-Section (4) postulates that for the purposes of that Section, the District Forum shall have the same powers as are vested in a civil court under the Codes of Civil Procedure, 1908, while trying a suit in respect of the enumerated matters, namely, (i) summoning and enforcing the attendance of any defendant or witness and examining the witness on oath, (ii) discovery and production of any document or other material object producible as evidence, (iii) the reception of evidence on affidavits, (iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source, (v) issuing of any commission for the examination of any witness, and (vi) any other matter which may be prescribed under the Rules framed under the Act. District Forums have got power to prescribe the procedure of collecting and discovering evidence. Under Sub-section (5), every proceedings before the District Forum shall be deemed to be a judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code and shall be deemed to be a civil court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. Sub-section (6) provides that where the complainant is a consumer referred to in sub-clause (iv) of clause (b) of sub-section (1) of Section 2, the provisions of Rule 8 of the Order 1 of the First Schedule to the Code of Civil Procedure, 1908 shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon. The finding of the District Forum is envisaged under Section 14 of the Act. If any person feels aggrieved by the order of the District Forum there is a right of appeal provided under Section 15 to the State Commission.'

After having observed so, it was further held:

'Thus, it would be seen that the District Forums, State Commission and National Commission have all the trappings of a civil court and judicial authority. The proceedings before them are legal proceedings. Similar controversy was considered by this Court in *The Bharat Bank Ltd., Delhi v. The Employees of the Bharat Bank*, : (1950)NULLLLJ921SC and in *Associated Cement Companies Ltd.,*

v. P.N.Sharma & Another : (1965)ILLJ433SC . In Sarojini Ramaswami v. Union of India, : [1992]2SCR615 , K.Ramaswamy, J had dealt with this aspect of the matter and held thus: 'The parliament while considering the motion for removal of the judge for deciding whether to adopt the motion or not takes into consideration the report as well as the dissenting opinion, if any, of the third member of the Inquiry Committee in case the majority opinion is that the Judge is guilty, along with the entire evidence received by in Inquiry Committee on which the finding of guilt of the Inquiry Committee is based. No doubt, the Parliament does not substitute its finding for that of the Inquiry Committee or supersede it in case it decides not to adopt the motion by the requisite majority so that the motion for removal of the Judge fails and the proceedings terminate but in doing so it does take the decision to not adopt the motion because it declines to accept and act on the finding of guilty recorded in the report of the Committee after debating the issue on the basis of the material before it.'

10. The Supreme Court had also taken into consideration the various other cases namely, Canara Bank v. Nuclear Power Corporation of India Ltd., & Ors., : [1995]2SCR482 , and Lucknow Development Authority v. M.K. Gupta, : AIR 1994 SC787 and ultimately held that the power of the District Forum is wide enough to use even to application for filing an amendment and as a matter of fact by allowing such an amendment, no prejudice has been complied of and in that view of the matter also, I do not find any impediment in entertaining an application for the amendment, even though there is no specific provision for amendment. As it has been rightly submitted by the learned Advocate for the respondent, though there is no specific provision, there is also no bar in allowing this petition and that therefore, I do not find any error in the said order passed by the District Forum.

11. That apart, the learned Advocate for the respondent contended as against the order passed by the District Forum, the petitioner has got a remedy to prefer appeal before the State Forum as provided under Section 17 which deals with the jurisdiction of the said Commission.

17. Jurisdiction of the State Commission:- (1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction,--

(a) to entertain -

(i).....

(ii) appeals against the orders of any District Forum within the State.

The provision is so clear if the petitioner is aggrieved, he should have filed an appeal before the State Forum and petition under Article 227 of the Constitution is not maintainable. When an alternative and efficacious remedy is available, the person aggrieved has to choose the alternative remedy available without referring to the Article 227 of the [Constitution of India](#). This is the view taken by this Court in the case of D. Roja and 7 others v. Commissioner, Corporation of Madras, Madras-3 and others : 1998(1)CTC338 , wherein it was held; ' It is settled law that the powers under Article 227 of the [Constitution of India](#) should not be invoked if there is an effective alternative remedy. When the National Forum is given such power, it is better the petitioners invoked the statutory remedy.'

12. Here, the State Commission has got ample power to entertain an appeal as against the order passed by the District Forum and therefore, the petitioner should have resorted to the said remedy and without doing so, has filed this petition which according to me is not sustainable.

13. In the result, the Civil Revision Petition is dismissed. Consequently, connected VCMP and CMPs are closed. No costs.

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