

(2011) 01 KL CK 0221

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 12709 of 2008

Enathu Service Co-operative Bank Ltd.

APPELLANT

Vs

Consumer Disputes Redressal Forum

RESPONDENT

Date of Decision : 17-01-2011

Acts Referred:

Constitution of India, 1950 — Article 141
Consumer Protection Act, 1986 — Section 2, 3

Citation : AIR 2011 Ker 145 : (2011) 1 ILR (Ker) 423 : (2011) 1 KLJ 557 :
(2011) 1 KLT 573 : (2011) 2 RCR(Civil) 205 : (2011) 2 RCR(Civil) 205

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : V. Sethunath, for the Appellant; V. Philip Mathew, for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—The second Respondent is a member of the writ Petitioner; a co-operative society registered under the provisions of the Kerala Co-operative Societies Act, 1969, hereinafter the "KCS Act". He had entered into a transaction with the Petitioner society by joining a particular scheme. On the allegation that there was deficiency of service on the part of the society in relation to the said transaction, the second Respondent filed a complaint before the Consumer Disputes Redressal Forum, for short, the "C.D.R.F.", which is governed by the provisions of the Consumer Protection Act, 1986, hereinafter, the "C.P. Act". The society took the plea that those proceedings are barred in view of Section 69 of the K.C.S. Act and having regard to the exclusion of other remedies by the provisions of that Act, the only remedy available to the second Respondent was to have recourse to the provisions of that Act, since admittedly, he is a member of the writ Petitioner society; and not to make a complaint before the C.D.R.F. Pursuant to directions issued by this Court, the C.D.R.F. heard that issue and held as per the impugned Ext. P4 order, that the rights of the second Respondent as a consumer could be adjudicated within the format of the provisions of the C.P. Act and therefore, the proceedings initiated by him

before the C.D.R.F. is maintainable. The society challenges that decision.

2. The learned Counsel for the Petitioner society argued that in view the clear provisions in Section 69 of the K.C.S. Act, the parties who are bound by the provisions of that statute cannot but get confined to the remedies provided only therein, which are special remedies to the exclusion of other jurisdictions. He argued that, therefore, notwithstanding any provision contained in the C.P. Act, which may tend to indicate that the remedy would lie in relation to a matter falling under that Act, discipline should necessarily ordain priority to the redressal of remedies available under the K.C.S. Act. He hence argued that the impugned decision of the C.D.R.F. is unsustainable and is liable to be set aside in exercise of visitatorial jurisdiction.

3. Per contra, the learned Counsel appearing for the second Respondent - the complainant before the C.D.R.F. - argued that though his client may be a member of the writ Petitioner co-operative society whose activities and relation with its members may be governed by the provisions of the K.C.S. Act, the provisions of the C.P. Act have an overriding effect on the provisions of the K.C.S. Act and the remedies available under that central legislation cannot be excluded by any provision contained in the K.C.S. Act, which is a State enactment. He points out that the law is that the C.P. Act jurisdiction overrides, having regard to Section 3 of the that Act which provides that the provisions of thereof shall be in addition to and not in derogation the provisions of any other law for the time being in force. He therefore argued that the Writ Petition is without substance and the same is liable to be dismissed.

4. Going by its preamble, C.P. Act is a legislation to provide for better protection of the interests of consumers and for that purpose, it makes provision, among other things, for the settlement of the disputes of the consumers as against those answerable under the said legislation. Section 3 of that Act provides that the provisions thereof shall be in addition to and not in derogation of the provisions of any other law for the time being in force. The Apex Court stated in State of Karnataka Vs. Vishwabarathi House Building Coop. Society and Others, , that by reason of the provisions of Section 3 of the C.P. Act, it is evident that remedies provided thereunder are not in derogation of those provided under other laws and that the said Act supplements and not supplants the jurisdiction of the civil courts or other statutory authorities. The law so laid by the Apex Court and binding in terms of Article 141 of the Constitution is to be followed and that settles the issue in hand, beyond any controversy.

5. That position notwithstanding, going by Cl. (e) of Section 2, "consumer dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint; and the definition of "person" in Cl.(m) of Section 2 includes, in Sub-clause (iii), a co-operative society. This, by itself, is abundant statutory material to hold that a co-operative society is a person that could be subjected to an action before a C.D.R.F. by raising a consumer dispute against such person.

6. The only objection of the writ Petitioner society being on the basis of Section 69 of the K.C.S. Act, and not on any other provision of that Act or any provision of the C.P. Act, the question raised has to be answered only as above, affirming the impugned Ext. P4 decision of the C.D.R.F. and leaving the parties to agitate all their grievances on merits before the C.D.R.F.

7. Before parting, appropriately, it is recorded that the learned Counsel on either side had referred to different decisions and principles on interpretation and construction of statutes, including by the application of *mimasa* principles. It is not necessary to advert to and consider those aspects in the light of the clear statutory provisions and the law as laid by the Apex Court as noticed above, which is binding, having regard to the constitutional scheme.

In the result, (i) This Writ Petition is dismissed.

(ii) The C.D.R.F. is requested to expedite the final disposal of the application in relation to which the impugned order has been issued, unless of course, the writ Petitioner society deems it appropriate to settle the litigation on consensus, which would be, in its interest in the long run; for all co-operative ventures survive on confidence and mutuality.

(iii) The parties are directed to suffer their respective costs.