

(2004) 03 MAD CK 0093

In the Madras High Court

Case No : Civil Revision Petition (N.P.D.) No's. 261 and 1439 of 2001

Eureka Forbes Ltd.

APPELLANT

Vs

District Consumer Disputes Redressal Forum (S) and Dr.
Rangaraj Jain, Rosewell Pharma Distributors

RESPONDENT

Date of Decision : 18-03-2004

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2004) 03 MAD CK 0093

Hon'ble Judges : S. Sardar Zackria Hussain, J

Bench : Single Bench

Advocate : M. Kalyanasundaram and K. Radhakrishnan, for the Appellant;
District Consumer Disputes Redressal Forum (S), for the Respondent

Final Decision : Dismissed

Judgement

1. The opposite party in O.P.No.522 of 1995 on the file of the District Consumer Redressal Forum(South), Chennai is the revision petitioner. This

revision is directed against the order of the said Forum dated 14.3.2000, as per which the revision petitioner was directed to pay Rs.25,000/- for

deficiency in service and adopting unfair trade practice and Rs.5,000/- towards mental agony and hardship and Rs.560/- being the difference of

the price and Rs.1,000/- towards cost.

2. The second respondent/complainant purchased an Aquaguard ST 2000 water filter-cum-purifier from the revision petitioner company/opposite

party on 5.12.1994 for Rs.4,300/- and on noticing in the box, the maximum retail price is inclusive of all taxes mentioned as Rs.3,760/-, preferred

the complaint to collect the sum of Rs.560/- being the excess amount collected, in that the opposite party adopted unfair trade practice. Further the

sum of Rs.25,000/- was claimed as compensation and Rs.5,000/- for mental agony besides Rs.1,000/- towards cost.

3. In the said O.P. though the revision petitioner company remained ex parte, the complaint was dismissed on 19.2.1996 as not maintainable since

the complainant purchased the Aquaguard for the business concern and as such for commercial purpose, in which case, the complaint is not

contracted u/s 2(1)(d) of the Consumer Protection Act. The order was challenged by the complainant before the State Consumer Disputes

Redressal Commission, Chennai in A.P.No.523 of 1996 and the State Consumer Disputes Redressal Commission as per order dated 13.8.1998

remanded the matter back to the District Consumer Disputes Redressal Forum for fresh consideration. After remand, the District Consumer

Disputes Redressal Forum considering the Exs.A-1 to A-6 filed on the side of the complainant passed the above said impugned order dated

14.3.2000 making the revision petitioner to file this Civil Revision Petition.

4. The learned counsel for the revision petitioner contended that no notice was served on the revision petitioner company in O.P. after the matter

was remanded back to the District Consumer Disputes Redressal Forum by the State Consumer Disputes Redressal Commission as per order

dated 13.8.1998 made in A.P.No.523 of 1996 and therefore, the learned counsel for the revision petitioner argued that the matter is to be

remitted back to the District Consumer Disputes Redressal Forum to dispose the matter on merits affording an opportunity to the revision

petitioner company.

5. The complaint preferred by the second respondent herein in O.P.No.522 of 1995 claiming compensation of Rs.25,000/- for unfair trade

practice and Rs.5,000/- for mental agony in addition to Rs.560/- towards excess amount collected in the purchase of the Aquaguard water filter

from the revision petitioner was dismissed as not maintainable by the District Consumer Disputes Redressal Forum on 19.2.1996. In appeal

A.P.No.523 of 1996, the State Consumer Disputes Redressal Commission remitted the matter back to the District Consumer Disputes Redressal

Forum. Before the State Consumer Disputes Redressal Commission, the revision petitioner was represented by Mr.P.B.Ramanujam, Advocate.

After remand, it appears, the matter was taken on file by the District Consumer

Disputes Redressal Forum and notice to both parties were ordered

to 28.1.1999 and again for the hearing on 22.3.1999 on which date, the opposite party viz., the revision petitioner, was set ex parte though notice

sent to the opposite party was returned as ""left"". The order was passed by the District Consumer Disputes Redressal Forum on 14.3.2000

considering the Exs.A-1 to A-6 marked on the side of the complainant. So, according to the learned counsel for the revision petitioner that order is

to be set aside being ex parte in nature.

6. To prove that the revision petition is maintainable, the learned counsel for the revision petitioner has relied on the following decisions:-

(1) Baby - vs. - Travancore Devaswom Board and another reported in (1998) Supreme Court Cases 310. The said judgment is relating to the

trial of land reforms Act. In the decision, the Supreme Court ruled:-

Revisional power of High Court under against a final order of land revenue authority ""either decided erroneously, or failed to decide, any question

of law"" does not cover the situation of non-consideration of relevant and material documents including relevance of certain judicial proceedings as

could have led to an opposite conclusion on facts. Further held, such order was however amenable to correction under High Court's supervisory

power under Article 227 of the Constitution of India.

(2) Harbanslal Sahnia and another - vs. - Indian Oil Corporation Ltd., and others reported in 2003(1) CTC 189, in which, the Apex Court ruled

in paragraph 7:-

So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore

the writ petition filed by the appellants was liable to be dismissed, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of

an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the

High Court may still exercise its writ jurisdiction in at least three contingencies; (i) where the writ petition seeks enforcement of any of the

Fundamental rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction

or the vires of an Act and is challenged. The present case attracts applicability of first two contingencies In such circumstances, we

feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.

7. As per Section 15 of the Consumer Protection Act, 1986 the revision petition itself is not maintainable, in that only an appeal will lie to the State

Consumer Disputes Redressal Commission in respect of the order of the District Consumer Disputes Redressal Forum under challenge. In the

decision *K.V. Padmanabhan Vs. The Consumer Dispute Redressal Forum, Ernakulam and Others*, , it is held:-

The High Court is not a statutory, appellate or revisional authority under the provisions of the Act. An order made by the District Forum is

appealable u/s 15 only before the State Commission. An order passed by the State Commission is appealable only before the National

Commission u/s 19 and the order of the National Commission could be challenged in appeal only before the Supreme Court u/s 23.

8. The revision petition is filed against the order of the District Consumer Redressal Forum in O.P.No.522 of 1995 directing the revision petitioner

to pay a sum of Rs.25,000/- for deficiency in service and adopting unfair trade practice and Rs.5,000/- towards mental agony and hardship and

Rs.560/- being the difference of the price and Rs.1,000/- towards cost. The order is dated 14.3.2000. Hence, only appeal will lie against such

order of the District Consumer Redressal Forum before the State Consumer Disputes Redressal Commission. As such the revision as filed is

clearly not maintainable.

9. It appears, the revision petitioner filed the petition to set aside the order stating that it is an ex parte in nature claiming that no notice was served

to the revision petitioner after remand of matter by the State Consumer Disputes Redressal Commission. It appears, notice sent to the revision

petitioner was returned as ""left"". According to the learned counsel for the revision petitioner, it is because of the fact that the office of the revision

petitioner was shifted as early as in 1995 to No.14, Burkit Road, T.Nagar from 758 Mount Road, and notice was taken to the old address, viz.,

No.758, Mount road Office, such notice was returned as ""left"" and the revision petitioner came to know about the decree only after filing of E.P. in

which he filed counter and also filed petition to set aside the ex parte decree

which was returned as not maintainable, since final order was passed.

It may be, that the petition was returned as not maintainable. From that it cannot be said that the revision petition as filed is maintainable. The

contention which the revision petitioner wants to urge can be raised before the State Consumer Disputes Redressal Commission being the

Appellate Forum u/s 15 of the Consumer Protection Act, 1986. Therefore, the revision petition filed under Article 227 of the Constitution of India

is to be dismissed as not maintainable, in that specific remedy is available by way of appeal as contemplated u/s 15 of the Consumer Protection

Act, 1986.

10. In the result, this Civil Revision Petition is dismissed with costs as not maintainable. Consequently, the petition C.M.P.No.1439 of 2001 is closed.