
(2014) 02 AP CK 0005

In the Andhra Pradesh High Court

Case No : Writ Petition No. 29434 of 2013

IVRCL Assets and Holdings Limited

APPELLANT

Vs

A.P. State Consumer Disputes Redressal Commission and
Another

RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226 227
Consumer Protection Act, 1986 — Section 14 17(1) 19 27A(1)(c)
Registration Act, 1908 — Section 17 17(1)(b) 49
Stamp Act, 1899 — Section 34 36 61

Citation : (2014) 4 ALD 1 : (2014) 5 ALT 93

Hon'ble Judges : M. Satyanarayana Murthy, J;Ashutosh Mohunta, J

Bench : Division Bench

Advocate : M. Ravindra Babu, for the Appellant; T.A. Kumar and Ms. G. Sudha, for the Respondent

Final Decision : Dismissed

Judgement

M. Satyanarayana Murthy, J.—I.V.R.C.L. Assets & Holdings Limited filed this Writ Petition questioning the impugned order passed by the 1st respondent-A.P. State Consumer Disputes Redressal Commission, for issue of a Writ of Mandamus declaring that the order impugned, passed in I.A. No. 1687 of 2013 in C.C. No. 95 of 2012 dated 06-08-2013 as illegal, improper, unjust and set aside the same as it is beyond the scope of Section 14 of the Consumer Protection Act, 1986 (for short, "the Act of 1986") and contrary to the law laid down by Apex Court in SMS Tea Estates Pvt. Ltd. Vs. Chandmari Tea Company Pvt. Ltd., and to direct the 1st respondent not to look into the contents of unregistered GPA-cum-JDA dated 24-03-2007 alleging that the order passed by the 1st respondent is against the law laid down by the Apex Court.

The 2nd respondent is the owner of plot No. 33, part of plot Nos. 29(p), 34(p) and 30(p), admeasuring 100 square yards in survey No. 77, Cyber Enclave, Madhapur Village, Serilingampally Mandal, R.R. District, and the 2nd respondent

is a member of Cyber Enclave Welfare Association. The 2nd respondent, along with neighbouring plot owners of the association, approached the petitioner for amalgamation of their individual plots with neighbouring plots to make it a big plot of land enabling the petitioner company to take up a profitable commercial and residential buildings/towers and entered into an unregistered GPA-cum-JDA with the petitioner on different dates. The members of the Cyber Enclave Welfare Association assured the petitioner company that all the plot owners have agreed and accepted for amalgamation of their plots for common development with a specific intention of getting additional built up area for common benefit of all the plot owners, thereby entered into GPA-cum-JDA with the petitioner company. The 2nd respondent also entered into an unregistered GPA-cum-JDA dated 24-03-2007 for the development of land within a period of 3 years with a grace period of 6 months but development could not be completed within the specified time due to various reasons and impediments, more particularly due to non-cooperation of adjacent land owners in entering into GPA-cum-JDA in time, submitting relevant papers to get U.L.C. clearance which is mandatory and pre-requisite to file papers, file consolidated building applications for obtaining permission from municipal authorities.

The project could not be commenced in time as agreed under GPA-cum-JDA. Thereupon, the 2nd respondent filed C.C. No. 95 of 2012 before the 1st respondent mainly in the nature of specific performance of contract and for recovery of arrears of assured monthly rent, for payment of future rent and for delivery of possession of commercial-cum-residential built up area together with compensation and costs invoking Clause 3.3 of the unregistered and not duly GPA-cum-JDA dated 24-03-2007.

2. When an opportunity is provided to the Writ Petitioner, it took a preliminary objection that the unregistered and not duly GPA-cum-JDA is inadmissible in evidence and basing on such document, no relief can be granted, with a request not to receive or mark such unregistered and unduly stamped GPA-cum-JDA on record but the 1st respondent, without considering the preliminary objection, allowed the 2nd respondent to mark the document as exhibit. It is contended that the document GPA-cum-JDA received in I.A. No. 1087 of 2013 in C.C. No. 95 of 2012 by the 1st respondent is unregistered document involving transfer of rights in immovable property from one party to another and it is compulsorily registrable document under the Registration Act, 1908 (for short, "the Act of 1908") and even as per the judgment of Apex Court in S.M.S. Tea Estates (1st supra) but the 1st respondent, without considering the objection, marked the same as exhibit on behalf of the 2nd respondent.

The Writ Petitioner mainly contended that in view of bar u/s 17(1)(b) read with Section 49 of the Act of 1908, the document is inadmissible in evidence and it cannot be admitted in evidence and at the same time, it is also not duly stamped. Thereby, without collecting stamp duty and penalty, the document cannot be received in evidence as it is a incurable defect. The trial Court, without

considering the admissibility of the document in evidence for want of registration and the agreement is stamped insufficiently, admitted the document in evidence and marked the same as exhibit on behalf of the 2nd respondent giving liberty to raise objections during hearing of the main C.C. No. 95 of 2012.

The said order is challenged on various grounds, more particularly relying on the judgment of Apex Court referred supra and another judgment of this Court in *Yogendra Builders and Another Vs. Vidya Paradise Owners' Welfare Association and Another*, and prayed to set aside the impugned order passed by the 1st respondent directing the 1st respondent not to look into the document.

3. At the time of admission, learned counsel for the Writ Petitioner contended that the document GPA-cum-JDA received by the 1st respondent marked on behalf of the 2nd respondent is inadmissible in evidence as it requires registration u/s 17 and in view of the bar u/s 49 of the Act of 1908, the same cannot be received in evidence except for collateral purpose. At the same time, the document is insufficiently stamped and unless penalty and stamp duty is paid or impounded by competent authority, the document cannot be received and admitted in evidence but the 1st respondent, without considering the specific objection, received the document and marked the same giving liberty to the Writ Petitioner to raise objections regarding admissibility of the document during enquiry in C.C. No. 95 of 2012.

4. Learned counsel appearing for the 2nd respondent mainly argued that when once the document is admitted in evidence, the same cannot be questioned in view of the bar u/s 36 of Indian Stamp Act, 1899 (for short, "the Act of 1899"), and placed reliance on the judgment rendered in *Barium Chemicals Limited Vs. Vishwa Bharati Mining Corporation* (2009) 16 SCC 262. It is also further contended that an appeal is maintainable against any order passed by the State Commission to the National Commission u/s 19 of the Act of 1986. When a statutory, efficacious and effective remedy is available, Writ Petition under Article 226 of Constitution of India is not maintainable. On this ground alone, the Writ Petition deserves to be dismissed. Yet another contention raised by the learned counsel for the 2nd respondent is that a revision can be filed before a Court against which the appeal arises u/s 61 of the Act of 1899 but without preferring revision, a Writ Petition cannot be maintained. Apart from that, when liberty is given to question the evidentiary value of the document, GPA-cum-JDA during enquiry, the Writ Petition is not maintainable and finally prayed for dismissal of the Writ Petition.

5. In view of specific contentions, the questions that arise for consideration are as follows:

(1) Whether the insufficiently stamped GPA-cum-JDA dated 24-03-2007, which is received in evidence, can be rejected on the ground that it is insufficiently stamped document and unregistered?

(2) Whether the 1st respondent be directed not to look into the contents of GPA-

cum-JDA during enquiry in C.C. No. 95 of 2012 on the ground that it is unregistered document?

(3) Whether an alternative effective and efficacious remedy is available under the Act of 1986 by way of appeal to the National Commission, if so, whether this Court can exercise the extraordinary power of review under Article 226 of Constitution of India and the order passed by the 1st respondent be set aside?

6. In Re. Point Nos. 1 & 2:

The main contentions of the Writ Petitioner are that the document GPA-cum-JDA is inadmissible in evidence for want of registration and it is insufficiently stamped document but the State Commission did not consider this objection on the ground that Consumer Protection Act is a benevolent legislation for the benefit of consumers. The provisions of Stamp and Registration Act are not applicable, giving liberty to raise such objections during enquiry. Thus, it is clear from the order under challenge that the objection raised by the Writ Petitioner before the State Commission was not totally overruled but still the State Commission afforded an opportunity to raise such objection during enquiry and the admitted the same only for numerical purpose assigning number to the document. In *R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Another*, , the Apex Court held as follows

Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the

party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the said two types of objections in the later case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court. Since documents in the instant case were admitted in evidence without any objection, the finding by the High Court that these documents were inadmissible being photo copies, the originals of which were not produced, was not proper.

In view of the ratio laid down in the above judgment, the objection in regard to the admissibility of the document in evidence, on the ground it has not been duly registered in spite of the fact that the document has already been marked and admitted in evidence, during the course of enquiry before State Commission, such objection as to admissibility of the document is a matter of substantive law viz., Registration Act and Stamp Act. The State Commission rightly permitted the Writ Petitioner to raise such objection during the course of enquiry without totally disagreeing with the objection. In fact, admission of a document in evidence is not defined anywhere but according to this Court, admission of a document in evidence appearing in Section 34 of Stamp Act means "admitted in evidence after judicial consideration applying its mind to the document and disagreeing with the contention raised by the counsel as to admissibility of the document in evidence". Mere marking of a document assigning numerical number for reference by itself does not amount to admitting the document in evidence. In the order under challenge, the State Commission did not overrule the objection of the petitioner about admissibility of the document in evidence, in spite of the bar under Stamp Act and Registration Act. Therefore, mere marking of a document by itself is not a ground to challenge the order before this court. In the earlier judgment between Ram Rattan (Dead) by Lrs. Vs. Bajrang Lal and Others, a Full Bench of the Supreme Court in para No. 6 held as follows:

When the document was tendered in evidence by the plaintiff while in witness box, objection having been raised by the defendants that the document was inadmissible in evidence as it was not duly stamped and for want of registration, it was obligatory upon the learned trial Judge to apply his mind to the objection raised and to decide the objection in accordance with law. Tendency sometimes is to postpone the decision to avoid interruption in the process of recording evidence and, therefore, a very convenient device is resorted to, of marking the document in evidence subject to objection. This, however, would not mean that the objection as to admissibility on the ground that the instrument is not duly stamped is judicially decided; it is merely postponed. In such a situation at a later stage before the suit is finally disposed of it would none-the-less be obligatory upon the Court to decide the objection. The endorsement made by the

learned trial Judge that "objected, allowed subject to objection", clearly indicates that when the objection was raised it was not judicially determined and the document was merely tentatively marked and in such a situation, Section 36 would not be attracted.

In the present case also, the State Commission did not decide the admissibility of the document by applying judicial mind but merely assigned a numerical number for reference affording an opportunity to raise such objection during enquiry. Therefore, it is evident from the impugned order under challenge that the State Commission did not determine the objection and it is open to the petitioner to raise such objection in view of the principles laid down in the above judgment. Thus, the impugned order under challenge did not overrule the objection and thereby, the order is not final. Such order would not affect the rights of the parties in total and the same cannot be questioned before this Court under Article 226 of Constitution of India to exercise its extraordinary power of judicial review. Hence, the Writ Petition is not maintainable on this ground.

One of the contentions of counsel for the Writ Petitioner is that it is the duty of the 1st respondent to decide the admissibility of document by applying mind, in view of the decisions of Apex Court and Division Bench of this Court referred supra, before marking. At the same time, learned counsel for the 2nd respondent contended that the document is already marked and admitted in evidence and the same cannot be returned in view of interdict u/s 36 of Stamp Act and relied on the judgment of Apex Court referred supra. The contentions of both the counsel would gain importance only when the document is admitted in evidence after applying judicial mind. There is a difference between marking and admitting in evidence. Marking of a document is only for convenient reference whereas admitting of a document is taking the document as evidence after applying judicial mind. In the impugned order, the 1st respondent postponed determination of admissibility but marked for reference. The procedure followed by the 1st respondent is almost following the principle laid down in *Bajran Lal and others* referred supra. Hence, the contention of both the counsel needs no consideration at this stage. Yet, learned counsel for the 2nd respondent contended that the Writ Petition is not maintainable as the admission of insufficiently stamped document is receivable u/s 61 of Stamp Act. Hence, the document is not admitted but marked assigning numerical number for reference. Hence, this contention would not stand to any legal scrutiny.

7. In Re. Point No. 3:

One of the contentions raised by the learned counsel for the 2nd respondent is that the Writ Petition is not maintainable when alternative efficacious, effective and statutory remedy is available. In *Om Prakash Saini Vs. DCM Ltd. and Others*, it was held that

High Court not justified in entertaining a petition under Article 226 or 227 of the Constitution if an effective alternative remedy is available to the aggrieved

person.

In another judgment between Cicily Kallarackal Vs. Vehicle Factory, the Supreme Court held as follows

Order of Commission were incapable of being questioned under writ jurisdiction of High Court, as a statutory appeal in terms of Section 27A(1)(c) of National Consumer Protection Act, 1986, lies to this Court. Therefore, Court had no hesitation in issuing a direction of caution that present would not be proper exercise of jurisdiction by High Courts to entertain writ petitions against such orders of Commission.

The view expressed by the Apex court in the above judgments is directly on the issue under Consumer Protection Act, 1986. Section 19 of the Act of 1986 provides an appeal to the National Commission against the order passed by the State Commission exercising original jurisdiction u/s 17(1) of Consumer Protection Act, 1986, and in similar situation, the Madras High Court in P. Subramanian Vs. Oriental Insurance Co. Ltd., held that

If a party is aggrieved by the order passed by the State Commission, his remedy is to approach the National Commission and not to invoke the jurisdiction of the High Court under Article 227 of the Constitution.

The judgment of Madras High Court though not a binding precedent, it has got persuasive value. However, by applying the principles laid down in the Apex Court's judgments referred supra, we hold without any hesitation that the Writ Petitioner is not entitled to seek relief under Article 226 of Constitution of India since the petitioner failed to exhaust statutory, effective and efficacious remedy available under the Act of 1986. On this ground, the Writ Petition is not maintainable. Accordingly, the point is held against the petitioner and in favour of the respondents.

8. In view of aforementioned reasons, we find that the Writ Petition is devoid of merits and deserves to be dismissed. In the result, the Writ Petition is dismissed. Pending miscellaneous petitions, if any, shall stand dismissed in consequence. No order as to costs.