

(1992) 12 NCDRC CK 0019

In the National Consumer Disputes Redressal Commission

K. TAGORE

APPELLANT

Vs

AVULA GOPAL RAO

RESPONDENT

Date of Decision : 05-12-1992

Acts Referred:

Citation : 1993 1 CPJ 329

Hon'ble Judges : A.Venkatarami Reddy , Pothuri Venkateswara Rao J.

Final Decision : Revision dismissed

Judgement

1. THIS Revision Petition is filed under Section 17(2)(b) of the Consumers Protection Act, 1986 against the order passed by the District Forum, West Godavary District at Eluru in I-A. No. 48/91 whereby the revision petitioner viz., Dr. K. Tagore was impleaded as an opposite-party to C.D. No. 313 of 1990.

2. BRIEFLY stated, the complaint was filed by one Avula Gopala Rao, alleging that his son Annavarapu Satyanarayana, as he was suffering from fever on 8.7.90 and 9.7.90 was taken to T.N. Reddy Memorial Hospital, Tadepalligudem and was treated by Dr. T. Jayaprakash Reddy. Due to negligence and carelessness, his son became unconscious and he was taken on 9.7.90 to Kakinada Nursing Home at 1.30 p.m. and was admitted and he was treated by Dr. K. Tagore, the revision petitioner herein. But his son died on 10.7.90 at about 11.00 p.m. On these allegations, the complaint-C.D. No. 331/90 was initiated by making Dr. T. Jaya Prakash Reddy only as an oppose party. Stating that although an allegation was made in the complaint that his son was taken to Kakinada was treated by Dr. K. Tagore, the revision-petitioner herein, the said Doctor was not made a party due to illiteracy and lack of knowledge and mistake on the part of the complainant, the complainant, filed an application I.A. No. 48/91 in C.D. No. 313/90 to make the petitioner herein also as a 2nd opposite party.

The revision-petitioner herein filed a counter and opposed the said application. It was stated in the counter that there was no allegation against him or about the services rendered by him or that there was any negligence in treating the patient and that therefore there was no deficiency of service rendered by him. It was

also stated that the District Forum has no jurisdiction to entertain the case and impleading him as an opposite party would result in chaining the cause of action and the District Forum has no territorial Jurisdiction as he is a resident of East Godavary District.

3. AFTER hearing both the sides, the District Forum held that as the affidavit of the complainant discloses that the deceased was also treated by the opposite party sought to be impleaded and to avoid multiplicity of proceedings and to decide the case, allowed I.A. No. 48/91 and impleaded the revision- petitioner herein as 2nd opposite party. Questioning the aforesaid order, the above revision petition is filed.

4. IT is firstly submitted that in the original complaint, there are no allegations against the revision-petitioner and therefore he cannot be made a party. But a perusal of the complaint shows that it was mentioned therein that the complainant's son was admitted in the Nursing Home at Kakinada in which the revision-petitioner is the Doctor and his son died there. Since necessary facts are already mentioned, there is no merit in the contention that the complaint does not disclose any facts relating to the revision-petitioner and therefore this contention is not sustainable. Next, it is submitted that since the revision-petitioner resides at Kakinada in East Godavary District, the District Forum, West Godavary at Eluru has no territorial Jurisdiction to entertain any complaint against the revision-petitioner. This contention is untenable in view of the provisions contained in Clause (c) of Sub-section (2) of Section 11 of the Consumer Protection Act, 1986. In the said Clause, it was clearly mentioned that the District Forum within whose jurisdiction the cause of action arises in part also can entertain the complaint. Evidently, the deceased was treated by both the Doctors, one at Tadepalligudem and the other at Kakinada. Indisputably, part of cause of action arose within the Territorial Jurisdiction of the District Forum, West Godavary at Eluru. Hence, the complaint and the application for amendment are maintainable in the District Forum, West Godavary at Eluru. Hence, this contention is rejected. Thirdly, it is submitted that by impleading the party, the cause of action changes and hence the order of the District Forum is not tenable. I am not inclined to agree with this contention. All the necessary facts which constitute cause of action were already mentioned in the complaint. It is by mistake and due to ignorance, the revision-petitioner was not made a party in the beginning itself and no fresh cause of action arises by impleading the revision-petitioner as a party.

5. IT is also submitted that the District Forum has no jurisdiction to entertain the complaints against Doctors for deficiency of services etc. IT is mentioned in the affidavit filed in support of the application for impleading the proposed opposite party, that fees was paid for treating the complainant's son and a Division Bench of the High Court of Andhra Pradesh in Writ Appeal No. 1402/91 and Batch Dr. A.S. Chandra v. Union of India (1) held that the services rendered by Doctors on collecting fees will come within the purview of the Consumer Protection Act,

1986. Hence, the aforesaid submission is, devoid of any merits. Lastly, it is contended that only certain provisions of Civil Procedure Code which are enumerated in Sub-section (4) of Section 13 of Consumer Protection Act are applicable and not the other provisions of Civil Procedure Code and that therefore the application filed under Order 1 Rule 10 and Sec. 151 CPC is not maintainable. No doubt the provisions of Order 1 Rule 10 of Civil Procedure Code are not specifically made applicable to the proceedings before the District Forum. But it inheres in the jurisdiction of any Tribunal, the power, to make a person a party respondent whose presence is necessary for complete adjudication of the dispute raised. In the instant case, the revision petitioner is a necessary and proper party for complete adjudication of the dispute raised in the complaint. Hence, the District Forum had jurisdiction to make the revision petitioner as an opposite party to the complaint.

6. IN the result, the Revision Petition is dismissed. No order as to costs. Revision dismissed.