

(2000) 02 CAL CK 0014

In the Calcutta High Court

Case No : Civil Revisional Jurisdiction, C.O. No. 1921 of 1999

Mahadev Dhar and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 22-02-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 5, 151
Constitution of India, 1950 — Article 226, 227

Citation : (2000) 2 CALLT 264

Hon'ble Judges : Samarendra Nath Bhattacharjee, J

Bench : Single Bench

Advocate : Mr. Sriram Nayak and Mr. Sujit Sankar Koley, for the Appellant; Mr. Dipak Kr. Ghosh and Miss Gopa Barua, for the Respondent

Judgement

S.N. Bhattacharjee. J.

1. In this application under Article 227 of the Constitution of India the petitioners have Impugned the judgment and order of the District Consumer Forum, Murshidabad dated 18.3.99 passed in Cons. Prot. case No. Ex 70/98/187/97 whereby the earlier order dated 30.4.98 in CDF Case No. 187 of 1997 passed by the District Consumer Forum, Murshidabad was re-called.

2. The petitioners herein filed an application before the District Consumer Forum, Murshidabad alleging deficiency of service rendered by the Postal Authorities (respondent No. 3 herein) which withheld the amounts under MIS Account No. 6736834 in respect of Rs. 54,000/- and another MIS Account No. 6736835 in respect of Rs. 48,000/- opened by Satyanarayan Dhar since deceased although the petitioners being brothers of the deceased were recorded as nominees in respect of the said two accounts. The postal respondent entered into appearance and explained that the payment was not made to the petitioners in view of the Civil Suit No. 256 of 1997 was pending in the Court of the Civil Judge, Junior Division, 2nd Court at Behrampore but subsequently an order was passed for making the payment to the petitioners. The learned CDF directed the postal

authorities to make the payment within one month from 30.4.98 when the order was passed. An execution case No. 72 of 1998 was filed by the petitioners as the order was not complied with. The execution case however, was disposed of by order No. 8 dated 23.9.98 when the Post Master, Khagra filed withdrawal form showing payment of Rs. 1,17,470/- to the claimants.

3. The respondent No. 4 herein, the widow of the deceased Satyanarayan Dhar filed an application dated 25.9.98 u/s 151 CPC before the District Consumer Forum praying for a review of the order dated 30.4.98 passed in case No. 187/97 on the ground that the aforesaid order was obtained by suppressing the fact that the Civil Court in Title Suit No. 256 of 1997 directed the petitioners to furnish security under Order 38 rule 5 CPC. The learned CDF by its order dated 18.3.99, set aside the order passed in case No. 187 of 1997 on the ground that the order was obtained by the petitioners herein on practising fraud upon the Forum.

4. Being aggrieved the petitioners preferred an appeal against the aforesaid order dated 18.3.99 with the prayer for staying the operation of the order before the State Commission on 1.4.99 but as the State Commission is not functioning for want of members an effective and speedy remedy would not be available under the Act, the petitioners have come up with this application Invoking the supervisory jurisdiction of this High Court on the ground that the Impugned order is without jurisdiction.

6. The learned counsel appearing for the petitioners has submitted that the District Forum has no authority and jurisdiction to recall under the Consumer Protection Act, 1986 as there is no such provisions empowering the Forum to recall or review or set aside its own order and as such the impugned order dated 18.3.99 is without Jurisdiction and liable to be quashed. In support of his argument the learned counsel relied upon decision in *Jyotsana Arvind Kr. Shah & Ore. v. Bombay Hospital Trust* reported in VII (1999) SLT 146 (SC) in which Supreme Court has taken the view that the State Commission cannot recall the order passed by it ex-parte because the Consumer Protection Act has not specifically conferred this power on the Forum. He has also relied upon the decision of National Consumer Disputes Redressal Commission. *New Delhi M/s. Scooter India Limited v. Pradeep Kumar* reported in Vol. III (1999) CPJ holding similar view on the basis of the judgment of the Apex Court cited above. He has also cited the decision of a single Judge of this High Court in *M/s. Private Security Agency and Detective Works and Anr. v. Deepak Bama & Ors.* reported in (1999) WBLR (Cal) 1 wherein It has been held,

"that there is no dispute with the proposition of law that a right of review, like a right of appeal, is a creature of statute and unless a tribunal is vested with authority to entertain such application, a tribunal has got no inherent power."

6. The learned counsel for the respondent No. 4 has submitted that when the Central Government has created a Forum or Tribunal with a hierarchy of appeals the jurisdiction under Article 227 of the Constitution of India cannot be invoked

on the ground that the post of two members are lying vacant in the State Commission. His further argument is that the Forum, or a tribunal or any quasi-judicial authority has got Inherent power to recall its earlier order which is obtained by practising fraud on Court or by suppressing the materials fact. He relies upon a decision in Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd., .

7. It is now well-settled by numerous decisions of the Supreme Court as also of High Courts that existence of alternative remedy does not oust the jurisdiction of the High Court to exercise its power under Article 226 or 227 of the Constitution of India but normally the High Court does not Interfere by observing a self-imposed restriction when an equally efficacious alternative remedy is provided under the statute but in exceptional cases where the Courts find that the forum has acted without Jurisdiction, that the Act is not applicable to the complainant or that there are other situations compelling interference by the High Court, it can Interfere notwithstanding the fact that the Act provides for an appeal. (Dealwel Engineering Works v. V.V. Choudhury. (1993) 2 CPR 194 (200 A.P.H.C.). (Tulasi Enterprises Vs. Andhra Pradesh State Consumer Commission, Hyderabad and Another,).

8. In Ram and Shyam Company Vs. State of Haryana and Others, the Apex Court held.

"Where the order complained against is alleged to be illegal or invalid as being contrary to law a petition at the Instance of person adversely affected by it, would lie to the High Court under Article 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer of the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between Jurisdiction and merits."

9. It is not disputed before me that the State Commission is not functioning with its normal strength and the vacancies remain unfilled. The contention of Mr. Ghosh on behalf of the respondent No. 4 is, therefore, without any merit.

10. It is not disputed that earlier to the application filed by the petitioners before district forum alleging deficient services against the Post Master, Khagra, the respondent widow already filed a civil suit No. 256 of 1997 before the 2nd Court, Civil Judge, Junior, Division, Behrampur wherein the learned Civil Judge directed the petitioners to furnish security under Order 38 Rule 5 CPC. This fact was not disclosed before the District Forum by the petitioners nor the widow of the deceased was impleaded as a party in the application before the Forum. Although the postal authority (herein respondent No. 3) Informed the Forum of the civil suit being pending It did not raise any objection against making the payment in favour of the petitioners and the Forum, therefore, had no occasion to go deep into the matter. Had It been disclosed by the petitioners that a dispute over the amounts under the MIS Accounts was pending before a Civil Court between the widow of the deceased and the nominees the District Forum would not have

entertained the application in order to avoid conflicting the judicial decisions and multiplicity of proceedings.

11. In *Oswat Fine Arts v. H.M.T., Madras* reported in (1991) 1 CPR II was held,

"When the matter was, thus, sub-Judice before the ordinary Civil Courts of the land, the Commission cannot and will not entertain any claim for compensation in respect of the Identical subject matter."

12. In *Special Machines v. Punjab National Bank*, reported in (1991) 1 CPR 52 it has been held,

"Where the subject matter of the complaint was sub-judice before the ordinary Civil Court a concurrent adjudication in respect of the same will not be conducted by the Commission under the Act. The objection was not really on the ground of lack of Jurisdiction but was one based on considerations of propriety and prudence keeping in view of the necessary for avoidance of conflicting decisions and multiplicity of proceedings."

13. In *Gomatt v. Director. State Insurance and G.P.F. Department* (1992) 1 CPJ 288 and also in *Continental Chemical Limited v. Oriental Insurance Company* (1991) 11 CPJ 354 complaint was dismissed on similar grounds.

14. The learned District Forum has set aside its own order on the ground that the petitioners during pendency of this civil suit over the same matter obtained the order from the Forum by suppressing the fact that the order of furnishing security was operating against them. It is true that the power analogous to section 151 CPC has not been conferred upon the Forum nor there is any provision empowering the Forum to recall its own order even passed ex-parte but that does not mean that the Forum has no power to recall or set aside its order obtained by practising fraud upon it or when the order is passed in abuse of the process of Justice. Every Court, Including revenue Court and tribunal has got Inherent power to prevent abuse of process of justice as the Court exists for that purpose, such power is Inherent in every Court by virtue of its duty to do justice between the parties otherwise the tribunals will be rendered important against" the fraudulent actions of any of the parties before it.

15. The Apex Court in *Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd.*, had an occasion to deal with a similar case under Consumer Protection Act, 1986 where a review of National Commissioner's order was sought on the ground of fraud/forgery. Their Lordships held. In paras 21, 22 and 23 of the Judgment,

"21 in *Smith v. East Elloe Rural Distt. Council* the House of Lords held that the effect of fraud would normally be to vitiate any act or order. In another case, *Lazarus Estates Ltd. v. Beasley* (QB at p. 712), Denning L.J. said :

"No Judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

22. The Judiciary in India also possesses inherent power, specially u/s 151 CPC,

to recall its Judgment or order if it is obtained by fraud on Court. In the case of fraud on a party to the suit or proceedings the Court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers which are resident in all Courts, especially of superior Jurisdiction. These powers spring not from legislation but from the nature and the Constitution of the tribunals or Courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from Indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the Court's business.

23. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of the Court, the Courts have been held to have Inherent power to set aside an order obtained by fraud practised upon that Court. Similarly, where the Court is misled by a part for the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order."

16. The learned counsel for the petitioners has submitted that this decision has not been followed by the Supreme Court in its later decision in *Jyotsana Arvind Kumar Shah & Ors.* (supra) in which the Supreme Court has taken the view that the State Commission cannot recall an order passed by it *ex parte* because the Consumer Protection Act has not specifically conferred this power on the Commission. This was also relied upon by National Consumer Disputes Redressal Commission in *M/s. Scooter India limited* case. The facts in subsequent decisions are, however, quite different from *Satyam Fibres*" case in subsequent decisions relied upon by the learned counsel for the petitioners the *ex-parte* order was not recalled on the ground of the same being obtained by fraud.

17. The learned District Consumer Forum set aside its order on the ground that the Civil Court is in seisin of the matter and the order of the Civil Court directing to deposit securities has been suppressed. The purpose which was sought to be arrested by the Civil Court has been achieved by the petitioners by playing fraud on the District Forum which has been misled to pass an order contradictory to that of the Civil Court dealing with entitlement of the parties to get the amount under the MIS Accounts. Such order has been passed on a detailed discussion of various Judicial decisions and on stating reasons which do not appear to be illegal and without Jurisdiction. This Court does not think it fit to interfere with the same. Accordingly, the application is dismissed with costs. The parties are relegated to the Civil Court which is in seisin of the matter.

18. Application dismissed