

(1995) 12 MAD CK 0053

In the Madras High Court

Case No : Writ Appeal No. 1286 of 1995

Mrs. Manonmani Muthuswamy

APPELLANT

Vs

State Consumer Disputes Redressal Commission and Others

RESPONDENT

Date of Decision : 05-12-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Consumer Protection Act, 1986 — Section 12, 17, 24

Citation : (1996) 1 CTC 17

Hon'ble Judges : Jayarama Chouta, J;Arunachalam, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant;

Final Decision : Dismissed

Judgement

Arunachalam, J.—Mrs. Manonmani Muthuswamy, appellant herein, challenges in this appeal the correctness of the order dated 17-11-1995 passed by Shivaraj Patil, J., in Writ Petition No. 15846 of 1995. Learned Single Judge rejected the writ petition, praying for issue of a Writ of Certiorarified Mandamus, to call for the records relating to E.P. No. 72 of 1995 in O.P. No. 121/92 on the file of the State Consumer Disputes Redressal Commission and quash the notice dated 1.11.95 issued by it (the first respondent) as invalid, even at the stage of admission.

2. Brief facts which led to the filing of the Writ Petition may have to be stated, Appellant was the first opposite party in O.P. No. 121 of 1992 before the State Consumer Disputes Redressal Commission. The first opposite party before the Commission was standing Housing Construction and Finance Company, represented by its Proprietrix Mrs. Manonmani. The State Commission was dealing with a complaint u/s 17 read with Section 12 of the Consumer Protection Act, instituted by respondents 2 and 3 before us, The first opposite party before the Commission, a flat promoter, had advertised for construction of a complex in Plot No. 4919, II Avenue, Anna Nagar, Madras. Respondents 2 and 3 were in

need of a flat and approached the appellant herein. A deed of sale was executed by the appellant, transferring an undivided share of 467 sq. ft., out of the total of 5600 sq. feet, in favour of the third respondent for Rs. 48,700/-. Another undivided extent of 223 sq. feet was sold in favour of the second respondent for a sum of Rs. 24,300/-. Agreements were duly entered into for construction of flats in the aforesaid plot. The flats were agreed to be completed within eight months, that is, on or before 30-6-1988. The entire consideration of Rs. 2,00,000/- was also paid by cheque.

3. In this writ appeal, we are not concerned with the conditions of the agreement. However, we must mention that the appellant and another agreed to provide certain amenities for a total cost of Rs. 1,87,000/-. The buildings were not completed in time and the flats were handed over only on 15.5.89, after a delay of 10-1/2 months. Respondents 2 and 3 claimed interest for 10-1/2 months on the construction amount and further interest on the said interest. Similarly, interest was claimed on Rs. 1,87,000/-. It was also the case of Respondents 2 and 3 that, contrary to the approved plan, a fourth floor was put up, causing considerable nuisance to them. Further, the ground floor stood used for commercial purposes and there was possibility of the Electricity Board collecting commercial rates from them in addition to nuisance of having a commercial complex in the ground floor. A compensation of Rs. 75,000/- was claimed.

4. On conclusion of enquiry, the State Consumer Disputes Redressal Commission, directed the opposite parties (Writ Appellant and another) to pay a compensation of Rs. 26,250/- being interest on the construction amount of Rs. 2,00,000/-, for the delay in handing over of the flats. It was further ordered that the opposite parties shall pay Rs. 24,543.75/- being interest on the amenities amount of Rs. 1,87,000/-, for the delay in providing amenities. It was further ordered that the opposite parties shall also pay Rs. 1,000/- as costs to Respondents 2 and 3. This order was passed on 24th November, 1992.

5. Aggrieved appellant and another, preferred First Appeal No. 144 of 1994 before the National Consumer Disputes Redressal Commission, New Delhi. The said appeal was preferred 53 days beyond the period of limitation. The National Consumer Disputes Redressal Commission, after scrutinising the application filed for condonation of delay, held that the application did not disclose any valid or satisfactory explanation for the long delay. The prayer for condonation of delay, therefore, was not granted and the appeal was rejected as time barred. This order was passed on 1st August, 1994. Thereafter, the State Consumer Disputes Redressal Commission, at the instance of the second respondent, has issued notice to the appellant and another, directing them to appear before the Commission, either in person or through authorised agents, along with evidence, documents etc., at 10:30 a.m. on 22.11.95 in connection with E.P. No. 72 of 1995 in O.P. No. 121 of 1992, failing which the Commission would dispose of the case in their absence. It is this notice, which the appellant wants to be quashed.

The notice was issued on 1.11.1995 by the State Consumer Disputes Redressal Commission.

6. Shivaraj Patil, J., after considering the submissions made by the appellant in person, has observed that several grounds were urged challenging the order passed by the State Consumer Disputes Redressal Commission on in O.P. No. 121 of 1992, as illegal, unjustified and without jurisdiction. Learned Single Judge observed that it was not open to this Court to examine the correctness of the order passed in O.P. No. 121 of 1992 and that if the petitioner stood aggrieved, the said order should have been challenged before the appropriate forum. It was further observed by the learned single Judge that since that order was in existence, execution proceedings were taken up and impugned notice were issued calling upon the parties to appear before the State Commission. In the opinion of the learned Single Judge, it was open to the appellant herein to appear before the first respondent in execution proceedings and explain, if she so desired. Learned Single Judge was also aware that one more Writ Petition in W.P. No. 21133 of 1993 stood filed before this Court by the appellant. He was unable to accept the argument of the appellant herein that in view of the aforestated writ petition, the first respondent has no jurisdiction to proceed in the matter.

7. The appellant appearing in person submitted before us that whenever injustice stood committed, be it by a Tribunal, Commission or Court, she would be entitled to challenge before this Court, under Article 226 of the Constitution, the invalidity of those orders. She also submitted, that orders passed by Criminal Courts or Civil Courts, can also be challenged before us under Article 226 of the Constitution, overlooking any other provision, for rendering of justice in any proceeding, must be taken to be paramount. She argued that in view of the pendency of W.P. No. 21133 of 1993 before this Court, challenging the order passed by the State Consumer Disputes Redressal Commission, in O.P. No. 121 of 1992, the said Commission has no jurisdiction to initiate proceedings in execution. She urged that in view of Section 24 of Consumer Protection Act, coupled with the pendency of the aforestated writ petition, there was no finality, of the order passed by the State Commission on 24-11-1992.

8. The appellant admitted that the State Consumer Commission held against her, on merits. The National Commission also rejected her appeal, on the ground that it was barred by limitation. When we pointed out to the appellant, that u/s 24, of the Act, every order of a District Forum, State Commission or National Commission, under the provisions of the Act, would become final, if no appeal stood preferred against such orders, she submitted that a wider interpretation should be given and we must hold that the order of the State Consumer Disputes Redressal Commission, has not yet become final, in view of the pendency of the writ petition. When we questioned her, she frankly admitted, that initially, through a W.M.P. in W.P. No. 21133 of 1993, the order of the State Commission stood stayed, but later, it was vacated. She also admitted, that a Writ appeal preferred by her, against vacating of the interim stay of proceedings before the

state Commission, was also dismissed. On her own admission, it is apparent, that all remedies open to her under the Consumer Protection Act stand exhausted. She also admitted that she had not moved the Supreme Court against the order of National Commission. She insisted that the State Consumer Commission has passed an order of detention and we must free her from the said order of detention. Neither in the writ petition, nor in the writ appeal, she has mentioned about any order of detention passed by the State Commission. When we questioned her about the nature of detention ordered, she only pointed out the notice issued by the State Consumer Commission in the E.P. afore stated, requiring her presence before the Commission. Such notice can hardly be stated to be an order of detention. When the initial stay ordered pending disposal of W.P. No. 21133 of 1993 stood vacated and such vacating was confirmed in writ appeal, nothing could bar the State Commission from proceeding with the enforcement of the order passed by it, in terms of Section 25 of the Consumer Protection Act. If the appellant has any cause to offer, she will certainly be entitled to offer such a cause before the state Consumer Commission, since the notice itself reads that the parties are directed to appear before it with evidence, documents, etc. As rightly pointed out by the learned single Judge, if the appellant has any grievance, it will always be open for her to put forth her grievance and explain the same before the State Consumer Disputes Redressal Commission in the Execution Proceedings. The pendency of W.P. 21133 of 1993 cannot affect enforcement of the order passed, so long as there is no stay of such enforcement proceedings. We entirely agree with the learned single Judge that it will not be open to this Court to examine the correctness of the order passed in O.P. No. 121 of 1992 by the State Consumer Disputes Redressal Commission, which stood confirmed by the National Consumer Disputes Redressal Commission, in view of non - entertaining of the appeal, on the ground of limitation bar.

9. While arguing before us in person as well as in her memorandum of grounds in appeal, appellant has chosen to use certain expressions, which verge on contempt of Court. She must have exercised restraint. Since she is a party in person, we have decided not to take serious note of the said expressions, on the ground, that she may not be aware of the legal consequences, for she had chosen to initiate action on her own, probably without obtaining legal advice.

10. We are unable to find any merit in this writ appeal. This Writ appeal shall stand dismissed in limine.