

**(2012) 04 UK CK 0002**

**In the Uttarakhand High Court**

**Case No : Writ Petition (M/S) No. 582 of 2012**

MSM Discovery Pvt. Ltd.

APPELLANT

Vs

Dr. Adesh Kumar

RESPONDENT

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**Date of Decision : 03-04-2012**

**Acts Referred:**

Consumer Protection Act, 1986 — Section 17(1)(b)

**Citation : (2012) 2 UC 1432**

**Hon'ble Judges : Brahma Singh Verma, J**

**Bench : Single Bench**

**Advocate : Amitesh Mishra and Mr. Pradeep Kumar Chauhan, for the Appellant;**

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**Judgement**

Brahma Singh Verma, J.

Stay Application No. 2863 of 2012

1. Heard learned counsel for the petitioner. By means of this writ petition, the petitioner has sought a writ in the nature of certiorari quashing the impugned order dated 20-3-2012 passed by the State Consumer Disputes Redressal Commission, Uttarakhand, Dehradun (for short the State Commission) in Revision Petition No. 15 of 2009.

2. The impugned order has been passed in revision u/s 17(1)(b) of the Consumer Protection Act, 1986, which was filed against the order dated 3-6-2009 passed by the District Consumer Redressal Forum Haridwar (for short the District Forum), whereby the District Forum had directed the revisionist to start its signal feed to the respondent No. 2.

3. The order dated 3-6-2009 was assailed in revision before the State Commission. The order under revision was passed by the Members of the District Forum and whereas the President of the District Forum vide separate order summarily dismissed the consumer complaint being not maintainable.

4. The facts giving rise to the present petition, briefly stated, according to the

revisionist-petitioner are that the complainant had taken a cable connection from the respondent No. 2. It was alleged by the complainant that the opposite parties were adopting the monopolistic attitude and were not providing trouble free cable service and that on 5-5-2009, the revisionist-petitioner suddenly stopped broadcast of the channels. In the complaint the complainant alleging unfair trade practice and deficiency in service on the part of the opposite parties, filed a complaint before the District Forum Haridwar. The District Forum by order dated 3-6-2009 issued directions as mentioned above. The said order was assailed in revision. The State Commission by order dated 20-3-2012 has dismissed the revision holding that no jurisdictional or legal error has been shown in the impugned order.

5. Learned counsel appearing on behalf of the petitioner has submitted that the signals of the respondent No. 2 were disconnected for want of payment of dues and public notice was published in the newspaper for disconnection of television signals of the respondent No. 2. Learned counsel for the petitioner also contended that in view of the default on the part of the respondent No. 2 in clearing the dues of the revisionist, the revisionist is unable to provide television signals to her and that there being a dispute regarding dues between the broadcaster (petitioner) and the cable operator (respondent No. 2), the consumer complaint was not maintainable before the District Forum and that the District Forum fell into error in entertaining the complaint and passing the order impugned under revision.

6. Learned State Commission after hearing the counsel for the respondent and after considering the judgment of the Apex Court on the maintainability of the consumer complaint in the case of *The Secretary, Thirumurugan Co-operative Agricultural Credit Society Vs. M. Lalitha (Dead) through Lrs. and Others*, wherein it has been held that the remedy provided under the Consumer Protection Act, 1986 is in addition to and not in derogation of other available remedies, observed that it cannot be held the consumer complaint is not maintainable before the Consumer Forum. The State Commissioner further held that no jurisdictional or legal error has been committed by the District Forum and that the order impugned under revision does not call for any interference for exercising power under the revisional jurisdiction.

7. Learned counsel for the petitioner has further contended that there is difficulty since the respondent No. 2-cable operator is not availing signals since 24-5-2008 as he is in default of payment, therefore, it would be very difficult to comply the interim order in view of the fact that how signals can be provided without any payment to a defaulter and that too in the absence of any agreement.

8. Since the interim order dated 3-6-2009 by the District Forum had been passed ex parte against the petitioner-revisionist and the petitioner directly assailed the order of the District Forum on the ground of jurisdiction before the State Commission and thereafter by means of this writ petition before this Court.

9. So far as the jurisdiction to entertain the complaint is concerned, I am in agreement with the view taken by the State Commission, therefore, I am not inclined to entertain the writ petition on the ground of maintainability of the consumer complaint and the writ petition is accordingly dismissed in limine. However, liberty is given to the petitioner to move an application before the District Forum Haridwar to recall the ex parte order and if such recall application is moved, the same shall be decided by the District Forum expeditiously, preferably within a period of four weeks after hearing both the parties in accordance with law. A certified copy of this order be issued to the learned counsel for the parties by tomorrow on payment of usual charges.