courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 05/09/2026

(2000) 06 KAR CK 0056

In the Karnataka High Court

Case No : Writ Petition No. 32036 of 1995

Parmjit Singh APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 09-06-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Consumer Protection Act, 1986 — Section 27

Citation : (2000) 7 KarLJ 370

Hon'ble Judges : V. Gopala Gowda, J

Judgement

V. Gopala Gowda, J.-After hearing this writ petition, before proceeding to dictate the order on 26-5-2000, the matter was adjourned to enable the parties to settle the matter. It is reported by the learned Counsel for the petitioner Mr. G. Balakrishna Shastry that the matter is not settled. Therefore, this Court proceeds to pass the order on merits of this petition.

2. The petitioner has filed this writ petition seeking for issuance of a writ of certiorari to quash the proviso contained in Section 27 of the Consumer Protection Act, 1986 (hereinafter referred to "Act") as unconstitutional and further to issue a declaratory relief in his favour to declare that the powers contained in Section 27 of the Act is arbitrary and unreasonable, urging various facts and legal contentions.

3. Certain relevant facts which are necessary for considering the rival contentions urged by the parties are stated as hereunder:

3a. On the complaint submitted by the 4th respondent before the second respondent under the provisions of the Act, 1986 against M/s. Manjog Corporation (hereinafter referred to "Corporation" in short) an enquiry was conducted by it and an order was passed in favour of the 4th respondent directing the said "Corporation" in Case No. CDC 80 of 1995 to pay a sum of Rs. 2,55,000/- to the 4th respondent including costs of Rs. 500/- which will carry further interest at the rate of 24% p.a. from the date of the order till the date of realisation towards the amount awarded by the 2nd respondent-Consumer Forum. That said order was challenged by the "Corporation" before the Andhra Pradesh State Consumers Dispute Redressal Commission, Hyderabad (hereinafter referred to as "Commission") by filing an Appeal in F.A. No. 813 of 1995. That appeal was also dismissed by the said "Commission" affirming the order passed by the second respondent vide its order dated 22-1-1996. As on the date of filing the writ petition dated 26-8-1995, the order which was passed by the second respondent forum on the complaint submitted by the 4th respondent against which an appeal was pending before the "Commission". These facts are not stated in the writ petition by the petitioner and that either the 2nd respondent or the "Commission" are not inferior Tribunals of this Court for the purpose of exercising its power under Articles 226 and 227 of the Constitution of India. This writ petition was filed by the petitioner seeking for striking down the proviso to Section 27 urging various legal grounds for the reason that this Court had entertained a number of such writ petitions and granted stay orders. This petitioner had no cause of action much less against the 4th respondent for filing this petition and seeking the relief, as no order was passed against this petitioner personally holding him that he is liable to pay the amount awarded by the District Forum.

4. It is relevant to state in this order that this Court on the basis of the facts stated in the writ petition granted "Rule nisi" and granted interim conditional stay on 4-9-1995, subject to the condition that the petitioner has to deposit with the 2nd respondent-forum half of the amount decreed in each one of the complaints before the 2nd respondent-Forum within 4 weeks from that day, otherwise the interim order would stands vacated. Thereafter, a memo was filed by the learned Counsel Mr. S.M. Hegde seeking permission of this Court to retire from the case for the reasons stated therein. Thereafter the learned Counsel Smt. Tripuramba appearing along with Sri S.M. Hegde filed a memo on 23-3-1999 seeking permission of this Court to withdraw this writ petition for which the learned Counsel on behalf of the 4th respondent-Mr. H.V. Rajaram objected for grant of permission to withdraw the writ petition as desired by the learned Counsel for the petitioner. He had also presented an application under Section 340 of the Cr. P.C. which was treated as I.A. No. III requesting this Court for initiating criminal proceedings against the petitioner for having allegedly committed various offences punishable under the provisions of the IPC. For filing objections to the said application, the matter was posted on 23-3-1999. At the request of learned Counsel Sri S.M. Hegde since Smt. Tripuramba was already appearing on behalf of the petitioner, he was permitted to retire from the case. Therefore, the matter was adjourned at the request of the learned Counsel appearing on behalf of the petitioner from time to time for filing objections to the application in I.A. No. III and further on 30-6-1999 the petitioner was directed to file an affidavit disclosing the number of petitions filed by him for the same relief challenging the constitutional validity of Section 27 of the Act, 1986 by giving particulars. On 16-8-1999, connected writ petitions filed by the petitioner were directed to be

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/parmjit-singh-appellant-hash-union-…

listed on 23-8-1999 along with this petition, those petitions were already disposed of. On 7-3-2000, this matter was heard both on the application I.A. No. III as well as on the merits of the writ petition.

5. It is also pertinent to note in this order that the memo and Annexure to it dated 4-9-1995 filed by Mr. S.M. Hegde who was appearing on behalf of the petitioner when the matter was listed for preliminary hearing and for consideration of the interim prayer, has furnished the details of the amount due as directed by the District Forum the 2nd respondent in the Annexure enclosed to the said memo, 13 persons'' names were furnished with all the particulars regarding the complaint numbers, amount claimed, actual amount due and the balance amount due to them. In the said Annexure to the memo filed by the petitioner''s Counsel it is stated under the heading ''Note'', that "All the above customers have already settled and receiving their amount in full settlement as per the agreement". Copy of the agreement is produced along with this petition as Annexure-A. On the basic of the documents at Annexures-A and D the memo, annexure to it and the note made therein this Court has granted conditional interim stay as stated supra in favour of the petitioner.

6. Filing of the said memo along with the Annexure by the petitioner giving particulars regarding the claim and amount awarded by the District Forum and amount due to various persons including to the 4th respondent is admitted by the petitioner in the statement of objections filed by him to the application I.A. No. III filed under Section 340 of the Cr. P.C., stating that in the memo he had only stated giving a list of cases filed against the petitioner and he had asserted that the claims of the complaints therein are settled as per the settlement referred to in the writ petition at Annexure-A which is purported to be the agreement between the "Corporation", the President and the Secretary of Real Estate Committee, Chippili which was alleged to have been constituted on 17-6-1989 and further stated in the said paragraph at 3 of the petition that various depositors and members of the "Corporation" formed an Association called "Real Estate Committee" the third respondent herein and they have agreed for their claims to be settled with the mediation of the Estate Committee which took over the properties of the "Corporation" to discharge its loans/debts to the various persons. It is stated that the 4th respondent was one of the signatories to the said agreement at Annexure-A. Therefore, it is stated that the claim of the 4th respondent before the 2nd respondent stands settled as per the above settlement and it is further stated that the petitioner did not assert in the memoreferred to above that the entire money decreed has been paid and discharged. Further, it is stated in the objection statement stating that the 4th respondent has made an attempt to misrepresent the facts as stated in the memo filed by the petitioner by filing the application to initiate the proceedings against him under Section 340 of the Cr. P.C.

7. I have perused the xerox copy of the alleged settlement produced at Annexure-A. The signatures found on behalf of the Real Estate Committee

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/parmjit-singh-appellant-hash-union-…

compared with the signature of the 4th respondent found in the Vakalat Nama, verifying affidavits of the applications filed by him which would clearly show that the 4th respondent has not signed the agreement referred to above upon which the petitioner has placed much reliance to show the amount awarded by the 2nd respondent in favour of the 4th respondent is settled.

@BODY-LSP = 8. On the basis of the Annexure-A, the memo, and the Annexure to it, this Court has granted conditional Interim Order of stay on 4-9-1995 directing the petitioner-Corporation to deposit half of the amount awarded by the 2nd respondent-District Forum. It is stated at the Bar that no material is produced by the petitioner to show that the conditional interim order of stay granted by this Court in this petition has been complied with by him. But on the other hand, as could be noticed from the order sheet and the memo filed by the petitioner''s Counsel, the petitioner wanted to withdraw the writ petition on 23-3-1999 which is recorded in the order sheet proceedings. This clearly goes to show that the petitioner had obtained the interim order, even though he had obtained the interim order he has not complied with the same as he has not deposited half of the amount as awarded by the District Forum, as directed by this Court. The petitioner has filed this petition which has been pending before this Court and he has filed memo on 23-3-1999 through his Counsel seeking permission of this Court for withdrawal of this petition, which would clearly goes to show that the petitioner has filed this petition with a deliberate intention to obtain interim order and stall the execution proceedings of the 4th respondent and other similar persons before the 2nd respondent.

9. The 4th respondent in the application I.A. No. III filed under Section 340 of the Cr. P.C. has alleged that the 2nd respondent-Forum directed the "Corporation" to pay a sum of Rs. 2,55,000/- to him within 2 months from the date of receipt of the order failing which the amount has to carry an interest at the rate of 24% against which order an appeal was filed by the "Corporation" before the "Commission", which was pending on the date of filing the writ petition.

10. The appeal filed by the Corporation was also dismissed on 22-1-1996. That order became final. In the appeal filed before the said Forum, the "Corporation" has not stated about filing of this writ petition by this petitioner before this Court challenging the constitutional validity of the proviso to Section 27 of the Act. It is alleged that the petitioner by filing a memo dated 4-9-1995 along with the Annexure to it, furnishing the particulars of the persons to whom the amount is due by the Corporation in pursuance of the orders passed by the second respondent-Forum, the petitioner with a deliberate intention has falsely stated under the heading "Note" that the claims of the persons whose names mentioned in the Annexure to the memo was settled, the said false statement of fact was made by the petitioner only with a view to obtain the Interim Order of stay in this petition and to stall the execution proceedings before the 2nd respondent, and the conditional interim order granted by this Court in this petition has not

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/parmjit-singh-appellant-hash-union-…

been complied with by the petitioner. Therefore, it is alleged by the 4th respondent that Mr. Paramjit Singh S/o A.S. Gunjani has committed the offences punishable under Sections 193, 196, 199, 200, 202, 209, 406, 418, 419, 465 and 471 of the IPC. It is further alleged that as on the date of filing the writ petition, the petitioner Mr. Paramjit Singh referred to above was fully aware of the fact that the 2nd respondent has passed an order on the complaint submitted by the 4th respondent. The said relevant material fact has been deliberately and intentionally suppressed by him. Further, he has not stated against the said order an appeal was preferred by the "Corporation" before the "Commission". Dismissal of the said Appeal was also not brought to the notice of this Court by the petitioner though it was dismissed on 21-1-1996.

11. The learned Counsel appearing on behalf of the 4th respondent submits that this is a classic case for this Court for invoking its power under Section 340 of the Cr. P.C. and record a tentative finding in these proceedings against the petitioner, as it is expedient in the interest of justice, for the reason that the petitioner Mr. Paramjit Singh has committed the offences punishable under various provisions of the IPC referred to above, particularly under Section 193 where the petitioner has given a false statement of fact in the writ petition, knowing fully well that the facts which are stated by him in the petition, the memo and Annexure to it are false and he has falsely stated that the claim of the 4th respondent and other persons in respect of whom the 2nd respondent-District Forum passed an order directing the Corporation to pay the amount due to them has been settled with a view to see that the writ petition is entertained and to obtain the interim stay as granted by this Court on the basis of false statement of facts, even though the petitioner had the full knowledge of facts that were stated by him are false statement of facts in the writ petition proceedings and the same would be offences under the various provisions of the IPC and he would be liable for conviction and sentence, for the offences under the provisions of the IPC. Further, having regard to the undisputed facts referred to above, this is a fit case for this Court for recording a tentative findings under Section 340 of the Cr. P.C. In support of the case of the 4th respondent, the learned Counsel Mr. H.V. Rajaram has placed strong reliance upon the judgments of the Apex Court in the case of K. Karunakaran v T.V. Eachara Warrier, AIR 1978 SC 290, in the case of Chajoo Ram v Radhey Shyam and Another, AIR 1971 SC 1367, and in the case of Santokh Singh v Izhar Hussain and Another, AIR 1973 SC 2190.

12. The learned Counsel Mr. G. Balakrishna Shastry, appearing on behalf of the petitioner submits that the petitioner has already filed a memo requesting this Court for grant of permission, for withdrawal of this writ petition. Alternatively, he made submission contending that the application I.A. No. III filed by the 4th respondent cannot be entertained by this Court as there is no merit in the application for the reason that the memo dated 4-9-1995 along with Annexures giving the particulars of claim of the persons whose names are mentioned in it, stating to whom the amount was settled regarding their claim by way of an

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/parmjit-singh-appellant-hash-union-…

agreement produced at Annexure-A. Therefore, it is urged that there is no perjury committed by the petitioner as alleged by the 4th respondent. Hence, the petitioner''s Counsel has submitted that the application filed by the 4th respondent is liable to be rejected and he has requested this Court for grant of permission to withdraw the writ petition as prayed in the memo filed by the petitioner.

13. After hearing the learned Counsels appearing on behalf of the parties at length, I have perused the petition averments and the documents produced by the petitioner including the memo along with annexure to it dated 4-9-1995 filed by the petitioner and also memo filed by him seeking permission of this Court to withdraw the writ petition. I have also perused the application IA 3 and the documents produced by the 4th respondent along with his impleading application and the objection statement filed by the petitioner to the application I.A. No. III. Before recording a finding on I.A. No. III, by me, I have to consider the submission made on behalf of the first and fourth respondents regarding the maintainability of this writ petition as to whether the petition filed by the petitioner is maintainable before this Court on the ground whether there was cause of action or part of cause of auction as stated under Article 226(2) of the Constitution has arisen for the petitioner seeking the reliefs as prayed in this petition within this State for invoking the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

14. Undisputedly, the 2nd respondent and the State Consumers Dispute Redressal Commission are not inferior Tribunals of this Court for the purpose of invoking its supervisory jurisdiction by this Court under Articles 226 and 227 of the Constitution of India and further, there is neither cause of action or a part of cause of action as defined under Section 20 of the CPC has arisen for the petitioner in the State of Karnataka for filing this petition, for the reason that the 4th respondent and other persons whose names are mentioned at annexure to the memo, filed by the petitioner would clearly go to show that complaints were filed by them before the 2nd respondent against the "Corporation". On the complaint of the 4th respondent, order came to be passed by it on 24-6-1995 in which proceedings the "Corporation" has participated. The petitioner is part of the said "Corporation". He was fully aware of the proceedings and order passed by the 2nd respondent directing the "Corporation to pay the sum due by it against which order an appeal was filed by the "Corporation" before the State Consumer Redressal Forum. Therefore, there is neither cause of action nor a part of cause of action has arisen either for the petitioner or for the "Corporation" within the jurisdiction of this Court as held by the Apex Court in the case in Oil and Natural Gas Commission v Utpal Kumar Basu, (1994)4 SCC 711. The Apex Court, has clearly enunciated the law with reference to Article 226(2) of the Constitution of India, considering the case-law on the point and also the provisions of Sections 20 and 21 of the CPC and examined the power of the High Court under Article 226 of the Constitution, and the Apex Court has succinctly laid down the law at paragraphs 8, 9, 10 and 11 which paragraphs are extracted

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/parmjit-singh-appellant-hash-union-…

as hereunder for proper appreciation and consideration of the case of the parties.

"8. From the facts pleaded in the writ petition, it is clear that NICCO invoked the jurisdiction of the Calcutta High Court on the plea that a part of the cause of action had arisen within its territorial jurisdiction. According to NICCO, it became aware of the contract proposed to be given by ONGC on reading the advertisement which appeared in the Times of India at Calcutta. In response thereto, it submitted its bid or tender from its Calcutta office and revised the rates subsequently. When it learnt that it was considered ineligible it sent representations, including fax, messages, to EIL, ONGC etc., at New Delhi, demanding justice. As stated earlier, the steering Committee finally rejected the offer of NICCO and awarded the contract to CIMMCO at New Delhi on 27-1-1993. Therefore, broadly speaking, NICCO claims that a part of the cause of action arose within the jurisdiction of the Calcutta High Court because it became aware of the advertisement in Calcutta, it submitted its bid or tender from Calcutta and made representations demanding justice from Calcutta on learning about the rejection of its offer. The advertisement itself mentioned that the tenders should be submitted to EIL at New Delhi; that those would be scrutinised at New Delhi and that a final decision whether or not to award the contract to the tenderer would be taken at New Delhi. Of course, the execution of the contract work was to be carried out at Hazira in Gujarat. Therefore, merely because it read the advertisement at Calcutta and submitted the offer from Calcutta and made representations from Calcutta would not, in our opinion, constitute facts forming an integral part of the cause of action. So also the mere fact that it sent fax messages from Calcutta and received a reply thereto at Calcutta would not constitute an integral part of the cause of action. Besides the fax message of 15-1-1993, cannot be construed as conveying rejection of the offer as that fact occurred on 27-1-1993. We are, therefore, of the opinion that even if the averments in the writ petition are taken as true, it cannot be said that a part of the cause of action arose within the jurisdiction of the Calcutta High Court.

9. In Subodh Kumar Gupta v Shrikant Gupta and Others, (1993)4 SCC 1, the facts revealed that he had instituted a suit in the Court of Senior Judge, Chandigarh, for dissolution of the firm in which he as partner had 20% share along with his father, brothers and one another. The head office of the firm was situate in Bombay where the firm was registered with the Registrar of Firms. Its factory was situate at Mandsaur where the father Rajaram Gupta lived with his sons and attended to the partnership business. The plaintiff-petitioner was also residing in Mandsaur till 1974 when he shifted to Chandigarh. He, however, visited Mandsaur often in connection with the business of the firm. The case pleaded by him was that after he shifted to Chandigarh, he used to call for and received the statements of accounts of the business carried on at Mandsaur. He had got letterheads printed indicating that the branch office of the firm was at Chandigarh and he claimed that he also booked orders for the firm at Chandigarh. It was also pleaded that certain disputes had arisen regarding the management of the partnership firm and in regard to the correctness of the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/parmjit-singh-appellant-hash-union-…

accounts which were discussed at the meeting in Bhilai at the end whereof an agreement was drawn up for the dissolution of the partnership and for distribution of assets amongst the partners to which the plaintiff was signatory. The suit filed in the Chandigarh Court was resisted on the preliminary contention that no part of the cause of action had arisen at Chandigarh and therefore that Court had no jurisdiction. The Chandigarh Court upheld the contention and this Court affirmed the said view. While dealing with the averment that the plaintiff was carrying on business of the Court held that there is no averment that the branch at Chandigarh was started with the consent of the other partners and intimation thereof was given to the Registrar of the Firms as required by Section 61 of the Partnership Act; the mere printing of stationery was neither here nor there and therefore no part of the cause of action could be said to have arisen within the territorial jurisdiction of the Chandigarh Court.

10. The submission of the learned Counsel for NICCO was that clause (2) was introduced in Article 226 of the Constitution to enlarge the scope of the writ jurisdiction of the High Court. The Supreme Court in Election Commission, India v Saka Venkata Rao, AIR 1953 SC 210, while interpreting Article 226 as it then stood observed as under:

"The rule that cause of action attracts jurisdiction in suits is based on statutory enactment and cannot apply to writs issuable under Article 226 which makes no reference to any cause of action or where it arises but insists on the presence of the person or authority ''within the territories'' in relation to which the High Court exercises jurisdiction".

Thus, this Court ruled that in the absence of a specific provision in Article 226 on the lines of the Code of Civil Procedure, the High Court cannot exercise jurisdiction on the plea that the whole or part of the cause of action had arisen within its jurisdiction. This view was followed in subsequent cases. The consequence was that only the High Court of Punjab could exercise jurisdiction under Article 226 of the Constitution against the Union of India or any other bodies located in Delhi. To remedy this situation, clause (1-A) was inserted by the 15th Amendment Act, 1963 to confer on the High Courts jurisdiction to entertain a petition under Article 226 against the Union of India or any other body or authority located in Delhi if the cause of action has arisen, wholly or in part, within its jurisdiction. Clause (1-A) was later renumbered as clause (2) of Article 226. Therefore, the learned Counsel for NICCO is right that this amendment was introduced to supersede the view taken by this Court in the aforesaid case. But as stated earlier, on a plain reading of clause (2) of Article 226, it is clear that the power conferred by clause (1) can be exercised by the High Court provided the cause of action, wholly or in part, had arisen within its territorial limits.

11. Strong reliance was placed on the decision of this Court in the State of Rajasthan v M/s. Swaika Properties, AIR 1985 SC 1289: (1985)3 SCC 217, by the learned Counsel for ONGC. The facts of that case reveal that the respondent-

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/parmjit-singh-appellant-hash-union-…

company having its registered office at Calcutta owned a large chunk of land on the outskirts of Jaipur. The Special Officer, Town Planning Department, Jaipur, at the instance of the Improvement Trust, Jaipur issued a notice intimating that the State Government proposed to acquire a large part of the said parcel of land for a public purpose, namely implementation of a development scheme. The said notice was duly served on the respondents at their Calcutta Office. The respondents thereafter participated in the inquiry and contended that they proposed to use the land for constructing a three star hotel. The Special Officer, however, felt that the alleged need of the respondents was just a pretence and the land was not needed bona fide by them, but the real object was to get the land released from acquisition. Consequently, the requisite final notification for the acquisition of the land was issued. Thereafter an attempt was made to seek exemption in regard to the notified land under Section 20 of the Urban Lands (Ceiling and Regulation) Act, 1976, but in vain. Having failed to get the land released from acquisition, the respondents filed a writ petition under Article 226 of the Constitution in the High Court of Calcutta challenging the acquisition wherein rule nisi was issued an ad interim ex parte prohibitory order was granted restraining taking of possession of the acquired land, etc. The question which arose for consideration in the backdrop of the said facts was whether the High Court of Calcutta had jurisdiction to entertain the petition and grant ex parte ad interim relief. This Court observed that upon the said facts, the cause of action neither wholly nor in part arose within the territorial limits of the Calcutta High Court and therefore the learned Judge had no jurisdiction to issue rule nisi or to grant the ad interim ex parte prohibitory order. After extracting the definition of the expression "cause of action" from Mulla''s Code of Civil Procedure, this Court observed as under: (SCC p. 223 para 8)

"The mere service of notice under Section 52(2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e., within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land under Section 52(1) of the Act arose within the State of Rajasthan i.e., within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench"".

The facts of that case are clearly stated at paragraph 7. In that judgment, the respondent-Utpal Kumar Basu was the petitioner and he had contended that he was an applicant in pursuance of the notification issued by the ONGC. Though the notification was published in the ''Times of India'' which is the leading newspaper of the Country and which has got circulation in West Bengal, the petitioner a resident of Calcutta, submitted an application in pursuant to the notification published in the said Newspaper by the ONGC which has got the circulation at Calcutta City. Therefore, the respondent in that case has contended that a part of cause of action has arisen at Calcutta therefore he had justified his filing his writ petition before the High Court judicature at Calcutta. But the Apex Court has held that there is neither cause of action nor a part of cause of action

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/parmjit-singh-appellant-hash-union-…

for the respondent in that case for invoking the writ jurisdiction of that High Court. Dealing with the said legal contentions raised by the parties in the said case, the Apex Court has made strong observations against the Calcutta High Court at paragraph 12 for having entertained the writ petition of the respondent wherein the Apex Court has stated as hereunder:

"12. Pointing out that after the issuance of the notification by the State Government under Section 52(1) of the Act, the notified land became vested in the State Government free from all encumbrances and hence it was no necessary for the respondents to plead the service of notice under Section 52(2) for the grant of an appropriate direction or order under Article 226 for quashing the notification acquiring the land. This Court, therefore, held that no part of the cause of action arose within the jurisdiction of the Calcutta High Court. This Court deeply regretted and deprecated the practise prevalent in the High Court of exercising jurisdiction and passing interlocutory orders in matters where it lacked territorial jurisdiction. Notwithstanding the strong observations made by this Court in the aforesaid decision and in the earlier decisions referred therein, we are distressed that the High Court of Calcutta persists in exercising jurisdiction even in cases where no part of the cause of action arose within its territorial jurisdiction. It is indeed a great pity that one of the premier High Courts of the country should appear to have developed a tendency to assume jurisdiction on the sole ground that the petitioner before it resides in or carries on business from a registered office in the State of West Bengal. We feel all the more pained that notwithstanding the observations of this Court made time and again some of the learned Judges continue to betray that tendency. Only recently while disposing of appeals arising out of SLP Nos. 10065 and 10066 of 1993, Aligarh Muslim University v Vinay Engineering Enterprises (Private) Limited, (1994)4 SCC 710, this Court observed:

"We are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely no jurisdiction".

In that case, the contract in question was executed at Aligarh, the construction work was to be carried out at Aligarh, the contracts provided that in the event of dispute the Aligarh Court alone will have jurisdiction, the Arbitrator was appointed at Aligarh and was to function at Aligarh and yet merely because the respondent was a Calcutta based firm, it instituted proceedings in the Calcutta High Court and the High Court exercised jurisdiction where it had none whatsoever. It must be remembered that the image and prestige of a Court depends on how the members of that institution conduct themselves. If an impression gains ground that even in cases which fall outside the territorial jurisdiction of the Court, certain members of the Court would be willing to exercise jurisdiction on the plea that some event, however trivial and unconnected with the cause of action had occurred within the jurisdiction of the said Court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would lower the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/parmjit-singh-appellant-hash-union-…

dignity of the institution and put the entire system to ridicule. We are greatly pained to say so but if we do not strongly deprecate the growing tendency we will, we are afraid, be failing in our duty to the institution and the system of administration of justice. We do hope that we will not have another occasion to deal with such a situation".

15. Despite the law laid down by the Apex Court referred to supra, the petitioner, who has no right for filing this petition as he is not personally aggrieved of the order passed by the 2nd respondent has filed this writ petition even though he had no cause of action for seeking the declaratory relief where there is no cause of action arisen at all in respect of this petition within the jurisdiction of this Court. Either the cause of action or a part of cause of action has arisen insofar as this petitioner is concerned as the 2nd respondent has not passed order in favour of the 4th respondent against him, but it has passed an order against the "Corporation" which Forum is not within the territorial jurisdiction of this High Court for invoking the extraordinary, discretionary and supervisory jurisdiction of this High Court under Articles 226 and 227 of the Constitution of India and he had obtained an interim order of stay by stating false statement of facts and also suppressing the relevant important material facts which has got bearing on the issues that were raised in the petition such as, passing of an order by the District forum in favour of the 4th respondent against which an appeal was filed by "Corporation" and further he has falsely stated in the annexure to the memo dated 4-9-1995 referred to above and documents at Annexures-A and D to the writ petition the alleged settlement, of claim of the amount awarded by the District Forum to the 4th respondent and others falsely stating that their claim was settled. The petitioner had obtained the interim order which was beneficial for the Corporation and allowed the matter pending before this Court till 22-3-1999 on which date memo was filed by the learned Counsel for the petitioner seeking permission of this Court for withdrawal of this petition.

16. In my considered view, having regard to the law laid down by the Apex Court in the ONGC case referred to supra, invoking the jurisdiction of this Court by this petitioner not impleading the 4th respondent to these proceedings by him and impleading the 1st respondent-Union of India and the 3rd respondent-the Real Estate Committee which is neither a proper and necessary party to these proceedings has filed this petition with a deliberate intention to see that the order passed by the 2nd respondent-forum in favour of the 4th respondent and other persons against the Corporation. The petitioner himself has admitted at paragraph 4 of the petition stating that he had an office by name Manjog Corporation (Corporation) at Madanapalle and the said office was being managed by one person Mr. Shah, the petitioner with an oblique motive has filed this petition with a view to defeat the rights and to see that the fruits of the said order passed by the 2nd respondent and State Redressal Consumer Forum should not be realised by the 4th respondent and other persons. Therefore, this action of the petitioner is a clear case of abuse of the process of this Court by the petitioner, as he has deliberately stated false and incorrect statements as stated

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/parmjit-singh-appellant-hash-union-…

supra in the memo and Annexure to it dated 4-9-1995 knowing fully well those facts are false. Therefore, this Court has to hold that the writ petition filed by him, having regard to the facts and the law declared by the Apex Court on the legal question that is raised by the contesting respondents contending that this writ petition is not maintainable before this Court. This petition is also not maintainable in law for another reason that 4th respondent claim before the 2nd respondent is against the "Corporation" and the order was passed against it, but not against this petitioner. The petitioner had no cause of action at all for filing this petition before this Court. For the reasons stated supra this is a fit case for this Court to award exemplary costs of Rs. 20,000/- against the petitioner, for having filed this vexatious petition by the petitioner and for having abused the process of this Court and thereby he had obtained interim order for the benefit of the Corporation, on account of this order, the persons who had the orders in their favour could not realise the fruits of the same by executing the orders before the District Forum.

17. The next question for consideration for this Court is as to whether this is a proper and fit case for this Court for passing an order under Section 340 of the Cr. P.C. as prayed by the 4th respondent having regard to the facts stated by the petitioner in the petition. I have carefully examined the undisputed facts stated by the parties of which I have narrated in detail in this order. It is an undisputed fact that this petition has produced the documents Annexures-A and D the alleged settlement documents contending that the claim of various claimants'', against the Corporation to clear its debt to them and the petitioners Counsel has filed a memo along with it Annexure on 4-9-1995 giving the particulars of the persons who had filed complaints before the 2nd respondent forum against the Corporation including the 4th respondent their claim, amount awarded by the 2nd respondent are also mentioned. In the said memo and the Annexure to it, it is falsely mentioned that the claim of the persons including the 4th respondent is settled. In support of this submission, a xerox copy of the agreement at Annexure-A and the alleged agreement purported to have been entered and passed by the 3rd respondent. I have already recorded a finding holding that the third respondent is neither a proper or necessary party to these proceedings. It is specifically stated in the objection statement at Paragraph 7 filed by the petitioner to the application in I.A. No. III stating that the 4th respondent is also a signatory to the agreement at Annexure-A. After comparing the signature of the 4th respondent with that of the signature found in the xerox copies of the documents at Annexures-A and D with reference to the verifying affidavits of I.A. Nos. I to III filed by him and the Vakalathnama executed in favour of his Counsel, I have to record a finding that the 4th respondent has not signed the agreement at Annexure-A and the document at Annexure-D to this petition as contended by the petitioner. Therefore, I have to record a finding of fact tentatively holding that the petitioner has stated false statement of facts both in the writ petition, the memo and annexure to it filed on 4-9-1995.

18. Apart from the aforesaid finding of fact recorded by me tentatively on the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/parmjit-singh-appellant-hash-union-…

basis of the undisputed facts of the case of the contesting parties referred to supra the said agreement has no binding character either upon the 4th respondent or upon any person/persons referred to in this agreement in respect of whom the petitioner is claiming that the matter was entrusted to the 3rd respondent for settling the claim of persons against the "Corporation", as it is due to them it is found that the matter has not been settled to the 4th respondent as falsely claimed by the petitioner. Further this Court prima facie believed and accepted the memo and Annexure to it dated 4-9-1995 as true and correct, this Court passed the conditional interim order in the petition which was beneficial to the Corporation for the reason that this matter was listed by this Court for preliminary hearing and for consideration of the interim prayer on that day. By filing the said memo and annexure referred to above, he has made this Court to believe prima facie, at that stage on 4-9-1995 by giving false statement of facts with a deliberate intention knowing fully well that those fact is false as he had the full knowledge of the fact that the matter was not settled with the fourth respondent, the petitioner has filed a memo with a view to see that he has to get the interim order in a writ petition for the benefit of the Corporation, though this petition could not be maintained by him in view of the law declared by the Apex Court in the cases referred to supra and he has no cause of action against the order passed by the 2nd respondent in favour of the 4th respondent and other complainants, those persons were not impleaded as party respondents. The petitioner had also obtained the interim order, availed the benefit and kept the matter pending before this Court. This Court has exercised its discretionary power after having satisfied with material facts and circumstances of this case, at that stage for grant of interim order and granted conditional interim order of stay. For the reasons stated supra it would be expedient in the interest of administration of justice and after having satisfied that there is a prima facie case of deliberate falsehood on a matter of substance and there is a reasonable foundation to file a complaint before the competent jurisdictional Magistrate Court and therefore this Court has ordered for prosecution of this petitioner for an offence under Section 193 of the IPC as the petitioner has stated falsehood on certain relevant facts as stated supra, he has also suppressed material facts knowing fully well that those statement of facts are false, the petitioner has intentionally given evidence by way of facts in the petition, which are verified and also filed memo and Annexure to it dated 4-9-1995 in these proceedings with a view to get interim order of stay in this proceedings, knowing fully well those statement of facts are false.

19. Therefore, having regard to the law laid down by the Apex Court in K. Karunakaran''s case, Chajoo Ram''s case, Santokh Singh''s case, in these cases referred to above and in support of the contention urged on behalf of the 4th respondent at paragraphs 20, 21 and 22 prima facie, this Court is of the tentative view having regard to the law laid down in the above said cases by the Apex Court with all fours are applicable to the facts of this case. The said paragraphs at 20 to 22 in K. Karunakaran''s case, are extracted hereunder for

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/parmjit-singh-appellant-hash-union-…

proper appreciation of the case and to hold that the prayer made in I.A. No. III by the 4th respondent has to be granted and this Court has exercised its discretionary powers for the reasons stated supra and pass an order for prosecuting the petitioner before the competent jurisdictional Chief Metropolitan Magistrate Court for the offence punishable under Section 193 of the IPC. The relevant paragraphs 20, 21 and 22 of the Apex Court referred to above is extracted as hereunder:

"20. Whether, suo motu, or on an application by a party under Section 340(1) of the Cr. P.C. a Court having been already seized of a matter may be tentatively of opinion that further action against some party or witness may be necessary in the interest of justice. In a proceeding under Section 340(1) of the Cr. P.C. the reasons recorded in the principal case, in which a false statement has been made, have a great bearing and indeed action is taken having regard to the overall opinion formed by the Court in the earlier proceedings.

21. At an enquiry held by the Court under Section 340(1) of the Cr. P.C., irrespective of the result of the main case, the only question is whether a prima facie case is made out which, if unrebutted, may have a reasonable likelihood to establish the specified offence and whether it is also expedient in the interest of justice to take such action.

22. The party may choose to place all its materials before the Court at that stage, but if it does not, it will not be estopped from doing so later in the trial, in case prosecution is sanctioned by the Court".

20. This Court is satisfied prima facie at this stage that this is a fit case for directing the Registrar Judicial of this Court for filing the complaint against the petitioner before the Jurisdictional Chief Metropolitan Magistrate Court for prosecuting the petitioner and try him for the offences under Section 193 of the IPC. For the reasons and the tentative findings recorded by me on the facts of this case the submission made on behalf of the 4th respondent are well-founded and the same must be accepted by this Court. For the aforesaid reasons the submissions made on behalf of the petitioner''s Counsel cannot be accepted, accordingly the same are rejected as his submissions are wholly untenable in law.

21. For the reasons stated supra the prayer of the petitioner''s Counsel seeking permission to withdraw this petition is also rejected as the petitioner, with utter disregard to the law laid down by the Apex Court, despite the fact that there is a Consumer Redressal Forum order passed in favour of the 4th respondent in which proceedings the Corporation is a party and even though the second respondent and the State Consumer Redressal Forum are not subjected to the territorial jurisdiction of this Court, has filed this Writ petition, a memo and annexure to it as stated above is filed suppressing many relevant material facts and stated false statements knowing fully well that those statements are false and he has abused the process of power of this Court. Therefore, this Court shall not allow such persons to withdraw this writ petition, for the reason that the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/parmjit-singh-appellant-hash-union-…

petitioner has intentionally and deliberately abused the process and power of this Court and his conduct is not good as he has suppressed the relevant facts and stated false statements with a deliberate intention to get interim order and to see that the order passed by the second respondent in favour of the 4th respondent and other persons is defeated. Hence I pass the following order.

@BODY-LSP = 22. Writ petition is rejected with cost of Rs. 20,000/- out of which Rs. 10,000/- shall be paid to the 4th respondent and the other Rs. 10,000/- shall be credited to the State Legal Services Authority within 6 weeks from today. I.A. No. III is allowed. The Registrar Judicial of this Court is directed to file a complaint before the Chief Metropolitan Magistrate, Bangalore against the petitioner to prosecute him and to try for the alleged offence said to have been committed under Section 193 of the IPC and the learned CMM or Additional CMM is further directed that the trial must be expeditiously conducted not later than six months from the date of receipt of the complaint. The Registrar Judicial of this Court is directed to transmit this file immediately alongwith the complaint to the Jurisdictional Chief Metropolitan Magistrate to comply with the directions of this Court.

23. Sri A. Padmanabhan appearing on behalf of the first respondent is permitted to file a memo of appearance within 4 weeks.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/parmjit-singh-appellant-hash-union-…