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**(2013) 09 P&H CK 0310**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : C.R. No. 4949 of 2006**

P.C. Wadhwa

APPELLANT

Vs

Hanil Era Textiles Ltd.

RESPONDENT

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**Date of Decision :** 23-09-2013

**Acts Referred:**

**Citation :** (2014) 174 PLR 1

**Hon'ble Judges :** Paramjit Singh Patwalia, J

**Bench :** Single Bench

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## Judgement

Paramjeet Singh, J.—Instant revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 06.01.2006 (Annexure P/5) passed by learned Civil Judge (Junior Division), Chandigarh whereby application filed by the respondent u/s 11 read with Section 151 C.P.C. has been allowed and the suit of the petitioner has been dismissed. Brief facts relevant for disposal of this revision petition are that the petitioner-plaintiff filed a suit for recovery of Rs. 1442/- against the respondent-defendant. After notice, the respondent-defendant appeared and moved an application u/s 11 read with Section 151 CPC wherein it was averred that suit is barred by principle of res judicata because the issue involved had already been adjudicated on merit by the National Consumer Disputes Redressal Commission constituted under the Consumer Protection Act, 1986 (hereinafter referred to as the "CP Act"). The petitioner-plaintiff contested the application on the ground that although his complaint stands dismissed by the Consumer Fora but it does not bar the jurisdiction of civil court to try the suit for recovery. The Commission under the CP Act is quasi-judicial authority and the provisions of the CPC are not applicable. Section 3 of the CP Act specifically provides that the provisions of CP Act shall be in addition to and not in derogation of the provisions of any other law for time being in force. The trial Court ultimately, accepted the application of the respondent and dismissed the suit of the petitioner vide the impugned order (Annexure P/5). Hence, this revision petition.

2. I have heard learned counsel for the parties and perused the record.

3. The following important question arises for determination in this petition:--

Whether civil suit filed by a person is barred by principle of res judicata, when his complaint under the provisions of CP Act, 1986 for the same relief and on the same cause of action," has been dismissed?

4. Learned counsel for the petitioner vehemently contended that there is no such bar. The provisions of CPC are not applicable to the proceedings under the CP Act. Section 3 of the CP Act specifically states that the remedy under the CP Act is in addition to and not in derogation of any other law. Section 3 of the CP Act reads as under:-

3. Act not in derogation of any other law - The provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Therefore, the jurisdiction of the civil court cannot be deemed to have been excluded in respect of the suit of a person who has earlier approached the Consumer Fora for the same relief under the provisions of CP Act and the principle of res judicata will not apply. The proceedings before the Consumer Fora are summary in nature, as such, cannot be treated as a judgment having all the ingredients of civil court judgment and decree.

5. Per contra learned counsel for the respondents vehemently argued that the Fora created under the CP Act is deemed to be alternative forum to that of civil court and once a person chooses a forum and his claim has been dismissed, on the same cause of action he cannot approach the civil court and the jurisdiction of the civil court" in such a situation by implication would be deemed to be excluded and the principle of res judicata would apply, I have given thoughtful consideration to the arguments raised by the learned counsel for the parties.

6. Undisputedly, petitioner-plaintiff filed a complaint under the provisions of CP Act for the same relief and the same cause of action Which was dismissed upto the National Consumer Disputes Redressal Commission and on the same cause of action, the petitioner has filed the suit in question. It would be appropriate to consider the objects and reasons of the CP Act. The CP Act was enacted to provide for better protection of interests of the consumers and with a purpose to settle the consumer dispute in a summary manner. For the resolution of such disputes, District Consumer Disputes Redressal Forums, State Consumer Disputes Redressal Commissions and the National Consumer Disputes Redressal Commission have been created. Section 3 of the CP Act specifically states that the power u/s 3 is in addition to and not in derogation of any other law for the time being in force. It clearly indicates that the remedy under the CP Act is an additional remedy. Furthermore, the provisions of the CPC are applied only to limited extent. The provisions of CPC have not been made strictly applicable to the proceedings under the CP Act. The proceedings under the CP Act by no

stretch of imagination or of reasons can be equated with the civil suit.

7. In the light of above, now the question arises whether the jurisdiction of civil court u/s 9 of CPC would be deemed to have been excluded by necessary implication. The answer to this is contained in Section 3 of the CP Act reproduced above which makes it crystal clear that remedies under CP Act are in addition to other remedies provided in any other law. Therefore, the consumer can file a civil suit for claiming the same relief in a civil court under the provisions of ordinary civil law. Even if he has availed the remedy under the CP Act, it will not bar the jurisdiction of the civil court, the remedy under the CP Act being an additional remedy. The expression used in the CP Act such as "in addition" and "not in derogation of clearly shows that the legislature while enacting the CP Act did not intend to create a bar of civil suit. It is another thing that if a person approaches Consumer Fora, there may not be an occasion for him to approach the civil court. Even if it is accepted for the sake of argument that when the proceedings under the CP Act become final on being ultimately decided upto the National Consumer Disputes Redressal Commission, then bar to move the civil court would be created, but to my mind, this is also misconceived because the finality attained in the Consumer Fora does not in any way control or curtail the consumer from approaching a civil court for the same relief after being unsuccessful in those proceedings.

8. The objects and purpose of the principle of res judicata are enshrined in Section 11 of the CPC and the provision is to uphold the rule of conclusiveness of judgment as to the points decided earlier of fact or of law.

9. It would be appropriate to reproduce Section 11 of the Code of Civil Procedure, which reads as under;-

11. Res judicata - No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

10. The spirit of Section 11 CPC, which is referred to as principle of res judicata, envisages that a judgment of a court of concurrent jurisdiction directly a point would create a bar as regards a plea, between the same parties in some other suit in another court, where the said plea is sought to be raised afresh on the same very point that was determined in the earlier judgment. This section have some technical aspects

11. Admittedly, in the present case, parties are the same; cause of action is same and the relief claimed is the same, but the Consumer For a cannot be equated with civil court. CP Act does not provide anywhere that Consumer Fora shall be considered as civil court for the purpose of Section 11 CPC and it cannot be said that the judgments of the Consumer Court are judgments of court

concurrent jurisdiction directly upon a point which will result into attraction of the principle of res judicata. Hence, when the matter is decided by the Consumer Fora, the principle of res judicata will not apply to the civil court. There is inherent right in every person to bring a suit of civil nature unless the suit is barred by a statute. Civil suit for its maintainability requires no authority of law and it is enough that no statute bars the suit.

12. Similarly, the jurisdiction of civil court is also not barred. Since there is no statutory bar, the jurisdiction of civil court is not barred. The learned Trial Court, therefore, was not right in taking the view that principle of res judicata applies and suit should not have been dismissed since the jurisdiction of the civil court is not excluded as the remedy under the CP Act is an additional remedy. As such, suit of the plaintiff is maintainable.

13. For the reasons recorded herein above, present revision petition is accepted and the impugned order (Annexure P/5) passed by learned trial Court is set aside. The matter is remanded to the trial Court for hearing of the suit in accordance with law. No order as to costs. Parties through their counsel are directed to appear before the trial Court on 06.11.2013.