

(2007) 04 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

Sivakami

APPELLANT

Vs

G.V.N. HOSPITAL

RESPONDENT

Date of Decision : 24-04-2007

Acts Referred:

Citation : 2007 4 CPJ 298

Hon'ble Judges : K.Sampath , PonGunasekaran J.

Final Decision : Revision Petition dismissed

Judgement

1. THIS revision petition has been filed against the order of the District Forum, Tiruchirapalli in CMP 366/2006 in CDOP 158/2005 on its file.

2. THE facts leading to the revision petition are as under: THE revision petitioner/complainant had approached the opposite party Nos. 2 and 3 for her thyroid problem. After taking medicine as per the advice of the 3rd opposite party, the petitioner's condition improved. However, third opposite party, without any necessity, advised the petitioner to undergo surgery for removing thyroid gland with the second opposite party. THE second opposite party performed the surgery on 6.4.1999 and removed the thyroid gland. THE second opposite party, however, negligently had also removed the para-thyroid glands, essential for maintaining the calcium level in the body. Because of the negligent removal of para-thyroid glands, the petitioner suffered acute deficiency of calcium level and she was forced to spend Rs. 6,000 per month for her survival by maintaining her calcium level. She was also prevented from doing her daily routine and was practically crippled. Poor calcium level had also affected her vital organs, such as kidney and liver. In these circumstances, the complaint came to be filed before the District Forum. THE opposite party Nos. 2 and 3 filed their version denying the various averments made in the complaint. THE second opposite party had also categorically denied the removal of para-thyroid gland. Originally one Vivek Pathak of Kovai Medical Centre, who treated the petitioner, subsequently was willing to give expert evidence. However, he later on backed out. THE other alternative, according to the petitioner, left to her was to establish the negligence

of the opposite parties by cross-examining the opposite party who performed the surgery. In those circumstances, a petition for permission to cross-examine the opposite parties was filed before the District Forum. THE opposite parties naturally opposed the application contending that they could not be compelled to subject themselves to cross-examination. THE District Forum having dismissed the civil miscellaneous petition, the present revision has been filed. The learned Counsel for the revision petitioner submitted as follows: The District Forum had dismissed the petition on two grounds, viz., (1) the District Forum had no powers under Section 13(4) of the Consumer Protection Act, 1986 to subject the opposite parties to cross-examination, whereas they can only summon them to the Court in the absence of counter proof affidavit, (2) the opposite parties cannot be subject to cross-examination. The Act does not prohibit the Forum from passing such order to meet the ends of justice. The very act is a beneficial legislation and interpreting the provisions strictly would defeat the very object of the Act. The Counsel also relied on the judgments of National Commission in "II (1996) CPJ 209 (NC)", wherein it has been held that the party insists that he wants to cross-examine the deponent of the affidavit, natural justice requires that permission to cross-examine that witness should be given. In view of that, the District Forum ought to have granted permission and unless the petitioner is permitted, she would be put to great hardship.

Per contra R. Subramanian, learned Senior Counsel appearing for the opposite parties submitted as follows: The revision petition was not maintainable. The petitioner filed the petition making allegations against the doctor community stating that she could not procure any expert to give evidence to support her case. It was the duty of the petitioner to examine an expert and prove her allegations. Her inability to bring an expert could not give her any right to summon the opposite parties and direct them to submit themselves to cross-examination. Even according to the petitioner, records were available and the version of the opposite parties was also available in respect of her treatment. The opposite parties, if at all, could be required to give only rebuttal evidence if necessary. In the present situation, circumstances did not warrant that. Only when the opposite parties chose to give oral evidence, the petitioner would be entitled to cross-examine them and not otherwise. The petitioner also had no right under Article 20(3) of Indian Constitution. The Consumer Forum also did not have any right under the Act to compel the opposite parties to submit themselves for cross examination. It could only enforce the attendance of the opposite parties. The Senior Counsel also relied on the following judgments Union Bank of India, Tirunelveli Junction v. Muthiah, 1999 (1) MLJ 679; Jayaseelan v. Arul Rajan & two Ors., 2005 (3) LW 453; and Minor Arumugam v. State Bank of India & Ors., 2005 (4) MLJ 239.

3. WE have carefully gone through the materials on record. WE are satisfied that the revision is devoid of merits. The petitioner/complainant cannot compel the opposite parties to subject themselves to cross-examination unless they choose to file proof affidavit or let in oral evidence. The law on the point is pretty clear.

In a matter arising under the Rent Control Act, decided by the Madras High Court, *Union Bank of India, Tirunelveli Junction v. Muthiah* (supra), the landlord had applied for fixation of fair rent under the Rent Control Act. He applied for permission to examine the Chairman of the Union Bank of India, Bombay. The Rent Controller allowed the petition. Interfering with the order under Article 227 of the Constitution of India S.S. Subramani, J. held that the procedure adopted by the Court below was per se illegal and observed that the practice of summoning of the opposite party as a witness had to be deprecated. Again in *Jayaseelan v. Arul Rajan* (supra), under similar circumstances, the Madras High Court disapproved the practice of a party causing his opponent to be summoned as witness. The learned Judge observed that at best, the Trial Court could be urged to take adverse inference against the party concerned. Again in *Minor Arumugam v. State Bank of India* (supra), it has been held that compelling the parties who are real opponents to give evidence is not desirable. We are in entire agreement with the conclusion reached by the District Forum. The District Forum has rightly found that the request by the petitioner could not be conceded. The legal position is also against the complainant in this regard.

4. CONSEQUENTLY, we dismiss the revision petition as devoid of merits. However, we make it clear that it is open to the petitioner/complainant to urge all points available before the District Forum including the one relating to drawing of adverse inference against the opposite parties, if in law, she is entitled to do that. R.P. dismissed.