
(2008) 03 CAL CK 0054
In the Calcutta High Court
Case No : Writ Petition No. 5036 (w) of 2008

Sri Bhakti Binod Samanta

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 26-03-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Consumer Protection Act, 1986 — Section 15, 17, 17(1), 24, 9

Employees State Insurance Act, 1948 — Section 74, 75

Citation : (2008) 2 ILR (Cal) 786

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Sudhindranath De and Monoleena Choudhuri, for the Appellant; Fazlul Haque, Supriya Roychowdhury for the State and Golam Mostafa, Tarasankar Samanta for 6th Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Jayanta Kumar Biswas, J.—The two Petitioners in this writ petition dated March 13th, 2008 taken out under Article 226 of the Constitution of India are seeking a writ of certiorari quashing (a) the Consumer Case No. 8 of 2005 that was allowed on contest by the Consumer Disputes Redressal Forum, Abasbari, Tamluk, Purba Medinipur by its final order dated December 29th, 2006, and (b) the Execution Case No. 6 of 2007 initiated before the forum for execution of its order dated December 29th, 2006.

2. The consumer case was registered on the basis of a complaint u/s 12 of the Consumer Protection Act, 1986 lodged by the third and fourth Respondents, Sri Asis Maji and Smt. Bela Rani Maji, with the forum on February 18th, 2005. The opposite parties in the complaint were the secretary and the chairman of one Garh Moyna Samabay Krishi Unnayan Samity Ltd., a co-operative society registered within the meaning of the provisions of the West Bengal Co-operative Societies Act, 1983. It was alleged that the opposite parties in the complaint

failed and neglected to pay the monies which had become payable once the fixed deposits of the complainants matured. The opposite parties in the complaint contested the case by giving their version of the case in writing. They took the plea that in view of the provisions in Sub-section 95 and 134 of the West Bengal Co-operative Societies Act, 1983 the forum had no jurisdiction to entertain the complaint. By the order dated December 29th, 2006 the forum rejected the plea and allowed the complaint. The opposite parties therein were directed to pay the amount with compensation, costs and interest. Since the amount was not paid, the complainants lodged an execution application dated February 19th, 2007. Consequently the execution case was registered. The Petitioners entered appearance and submitted before the forum that they were ready and willing to make payment in terms of its order, but they needed time. Under the circumstances, the forum made an order dated February 18th, 2008 directing them to pay the amount due upon the order and fixing the execution case for March 24th, 2008. At this stage the Petitioners took out this writ petition.

3. On receipt of notice of the complaint the opposite parties therein did not invite the forum to decide the question of maintainability of the complaint as a preliminary issue. They rather decided to get decision on the question at the time of final disposal of the case registered by the forum. They did not lodge any appeal to the state commission, though in view of the provisions of Section 15 of the Consumer Protection Act, 1986 they were entitled to do that Section 15 provides as follows:

15. Appeal.--Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed:

Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period:

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be entertained by the State Commission unless the Appellant has deposited in the prescribed manner fifty per cent of that amount or twenty-five thousand rupees, whichever is less."

The Petitioners participated in the execution case without raising the question of jurisdiction of the forum to initiate it. Against the order made in the execution case their remedy, if any, was once again before the state commission. They chose not to invoke the power of the state commission conferred on it by Section 17 of the Consumer Protection Act, 1986. Section 17(1) provides as follows:

17. Jurisdiction of the State Commission.-- (I) Subject to the other provisions of this Act, the State Commission shall have jurisdiction--

(a) to entertain--

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees twenty lakhs but does not exceed rupees one crore; and

(ii) appeals against the order of any District Forum within the State; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

They did not approach the state commission, and instead approached the writ court. They are contending that since the forum was lacking in the initial jurisdiction to entertain the complaint, they are entitled to approach the writ court. The questions are whether the writ petition is maintainable, and if maintainable, whether it should be entertained.

4. Mr. De, counsel for the Petitioners, relies on *Anjan Choudhury Vs. Anandaneer Co-operative Registered Housing Society and others*, ; *Haryana Seeds Development Corporation Ltd. v. Sadhu and Anr.*, *Haryana Seeds Development Corpn. Ltd. Vs. Sadhu and Another*, and *Kishore Lal Vs. Chairman, Employees State Insurance Corporation*, .Mr. Haque, counsel for the state, has relied on *M/s. Vikas Motors Ltd. Vs. Dr. P.K. Jain*, ; and *Duncans Industries Ltd. v. Hindola Dutta Roy*, 2006 (2) Cri LJ (Cal) 165 . Mr. Mustafa is appearing in a similar case which has been heard with this case, and he has relied on *Surendra M. Mittal and Another Vs. National Consumer Disputes Redressal and Another*, It is to be examined whether any of these authorities say anything regarding maintainability of a writ petition under Article 226 of the Constitution of India against an order made by a Consumer Disputes Redressal Forum established u/s 9 of the Consumer Protection Act, 1986. For convenience sake I propose to deal with the cited decisions in chronological order.

5. In the special bench decision in *Anjan Choudhury Vs. Anandaneer Co-operative Registered Housing Society and others*, nothing connected with the Consumer Protection Act, 1986 was decided. There the question was whether in view of the provisions in Section 134 of the West Bengal Co-operative Societies Act, 1983, with a dispute covered by Section 95 of that Act, one could approach the civil court, and it was held in the negative. In Sub-section 2 of Section 134 of the West Bengal Co-operative Societies Act, 1983 it has been provided that save as provide in the Act, no civil court or revenue court shall have jurisdiction in regard to, Inter alia, any dispute u/s 95 to be referred to the registrar.

In *M/s. Vikas Motors Ltd. Vs. Dr. P.K. Jain*, an order of the national commission was questioned before the apex court by filing SLP and at that stage the Appellant therein raised the plea that the district forum had no territorial jurisdiction to entertain the complaint. The plea was turned down by their Lordships on the ground that after participating in the proceedings and being

satisfied with the verdict regarding jurisdiction, the Appellant in that case was not entitled to raise the plea of jurisdiction before the apex court.

In *Haryana Seeds Development Corpn. Ltd. Vs. Sadhu and Another*, also the matter reached the apex court though SLP filed against an order of the national commission. In that case one of the opposite parties in the complaint contended before the district forum that on the facts the complaint was not maintainable against it, since, in so far as it was concerned, the complainant was not a consumer. The party taking this point was incidentally a co-operative society. Nothing was decided in that case regarding any right of a party to approach the writ court against an order made by a district forum constituted under the Consumer Protection Act, 1986.

In *SDO, Electricity and Anr. v. B.S. Lobana*, (2005)6 SCC 280 as a matter of fact no law was declared by their Lordships of the apex court. Their Lordships only said that instead of moving the district forum Lobana should have moved an application u/s 26(6) of the Indian Electricity Act, 1910.

In *Duncans Industries Ltd. v. Hindola Dutta Roy*, 2006 (2) Cri LJ (Cal) 165 a single bench of this Court was deciding a civil revision application under Article 227 of the Constitution of India, and in that context it was held that remedy of the Petitioner therein was under the provisions of the Consumer Protection Act, 1986, and not under Article 227. Incidentally his Lordship also referred to Article 226 of the Constitution of India, but there was no scope to examine such a question as has arisen in the present case.

In *Kishore Lal Vs. Chairman, Employees State Insurance Corporation*, one of the questions their Lordships of the apex court were examining was whether Section 74 read with Section 75 of the Employees' State Insurance Act, 1948 did oust the jurisdiction of the district forum over the subject matter involved in that case. After considering the nature of the dispute, their Lordships held that in that case the provisions of the Employees' State Insurance Act, 1948 did not oust the jurisdiction of the forum established under the Consumer Protection Act, 1986. There also the matter reached the apex court from an order of the national commission made in the revision application filed by Kishore Lal against the order of the state commission that had upheld the order of the district forum.

In *Surendra M. Mittal and Another Vs. National Consumer Disputes Redressal and Another*, such a question as has arisen in the present case did not arise for consideration. There questioning an order of the national commission Surendra filed a writ petition, which was dismissed by a Single Bench and against which an appeal was lodged before the Division Bench of the Delhi High Court. While dismissing the appeal on merits, their Lordships said that even if it was conceded and accepted that an order passed by the national commission in a first appeal could be made the subject matter of challenge in a writ court, Surendra's case was not one requiring exercise of the writ powers. It is therefore evident that the authorities given to me do not provide the answer to the question that has fallen

for consideration in this case.

6. In my opinion, there is no reason to say that a writ petition under Article 226 of the Constitution of India is not at all maintainable against an order of Consumer Disputes Redressal Forum established u/s 9 of the Consumer Protection Act, 1986. As is known, under Article 226 a writ of certiorari can be issued against any inferior court or quasi-judicial tribunal, authority, agency, or body. The forum established u/s 9 of the Consumer Protection Act, 1986 is the lowest agency or body in the hierarchical quasi-judicial machinery set up by the Act for speedy and simple redressal of consumer disputes; it is a quasi-judicial body. I therefore hold that against an order of a district forum a writ petition under Article 226 can be filed before the High Court. But then, I am of the firm view that it is only in a very exceptional case that a writ petition against an order of a district forum constituted u/s 9 of the Consumer Protection Act, 1986 should be entertained by the High Court. It should be entertained only when the person approaching the writ court, for no fault of his own, is deprived of the remedies of appeal and revision provided by the provisions of Sub-section 15 and 17 of the Consumer Protection Act, 1986.

The Consumer Protection Act, 1986 is a special statute providing a three-level quasi-judicial machinery for speedy and simple settlement of consumer disputes, the three agencies are competent to entertain. Its Section 3 provides that the provisions in it shall be in addition to and not in derogation of the provisions of any other law for the time being in force. A party aggrieved by an order of a district forum is entitled to lodge an appeal u/s 15 with the state commission concerned. If the party alleges lack of jurisdiction of the district forum, he can invoke the revisional jurisdiction of the state commission especially conferred on it by the provisions of Section 17. If it is held that generally against an order of a district forum an aggrieved person is entitled to approach the writ court, then, in my view, such a proposition is to bound to defeat the special purposes for which the Consumer Protection Act, 1986 has been enacted. Having regard to the nature and character of the remedies available under Sub-section 15 and 17 thereof, I do not think it will be appropriate to see them as mere alternative remedies. Special revisional power has been conferred on the State commission to correct an error of jurisdiction of the district forum without loss of any time. Unless it is shown that this remedy is unavailable to one, in my opinion, one should not be permitted to approach the writ court under Article 226, even when it is alleged that the district forum has made the complained of order without jurisdiction. In the absence of compelling circumstances the writ powers should not be exercised to derail the proceedings initiated before the agencies. I therefore hold that it is only in an exceptional case that one should be permitted to approach the writ court against an order of a district forum established u/s 9 of the Consumer Protection Act, 1986.

7. In view of what I have said hereinbefore, I hold that this writ petition is maintainable. But then, the question is whether there are any exceptional

reasons for entertaining it. The only ground on which the writ jurisdiction has been invoked is that the district forum had no jurisdiction to entertain the complaint. This contention has been made by making reference to the provisions of Sub-section 95 and 134 of the West Bengal Co-operative Societies Act, 1983. The Petitioners accepted the decision of the district forum on the question of its jurisdiction to entertain the complaint. They did not lodge any appeal, and thus allowed the order of the district forum to attain finality in terms of the provisions in Section 24 of the Consumer Protection Act, 1986. The order was made as back as December 29th, 2006. Not only they did not lodge any appeal, they did not lodge any revision against the order of the district forum made in the execution case as well. Although they were entitled to call upon the district forum to decide the question of jurisdiction as a preliminary issue, they had never thought it appropriate to do that. They were quite conscious of the prohibition put by Section 134(2) only on the civil and revenue courts. The forum, a quasi-judicial body, is just none of them. Having suffered the final order made in the complaint by the district forum, they in no uncertain terms told the forum deciding the execution application that they would make payment in terms of its final order. On these facts, I do not see any reason to exercise my discretion in favour of entertaining the writ petition.

For these reasons, I dismiss the writ petition. There shall be no order for costs.

Urgent certified xerox copy of this order, if applied for, shall be supplied to the parties within three days from the date of receipt of the file by the section concerned.