

(2013) 01 SHI CK 0073
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 341 of 2012-F

The Bilaspur District Truck Operators Co-operative Transport Society Ltd. APPELLANT

Vs

The District Consumer Redressal Forum, Bilaspur RESPONDENT

Date of Decision : 09-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227
Consumer Protection Act, 1986 — Section 12, 15, 17, 21, 23

Citation : AIR 2013 HP 34

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Advocate : Ashwani Pathak, for the Appellant;

Judgement

Kuldip Singh, Judge

1. This judgment shall dispose of CMPMO Nos. 341, 367, 368, 369, 370 and 371 of 2012-F, as common questions of facts and law are involved in these petitions. The facts are given from CMPMO No. 341 of 2012-F. It has been stated that petitioner is a registered Cooperative Society under the H.P. Co-operative Societies Act, 1968 (for short, 1968 Act). Any dispute to get membership in the society or to settle the dispute with respect to membership is strictly governed under the 1968 Act, Rules and Bye-laws. The respondent No. 2 has filed a complaint CC No. 170 of 2010 before respondent No. 1 u/s 12 of the Consumer Protection Act, 1986 (for short, 1986 Act), which is pending before respondent No. 1. The petitioner has been summoned in the case and has been ordered to file reply to the complaint. The petitioner has filed reply and has taken objections of maintainability. The respondent No. 1 has no jurisdiction to hear and decide the matter. The 1968 Act provides complete mechanism to decide the dispute raised by respondent No. 2. The respondent No. 2 is not a consumer under 1986 Act. The respondent No. 2 himself has stated in the complaint that he is a shareholder in the society.

2. The respondent No. 1 has wrongly entertained the complaint for adjudication. The objections raised by the petitioners regarding the maintainability and jurisdiction of respondent No. 1 have not been decided. The respondent No. 1 has exceeded the jurisdiction and has exercised the jurisdiction not vested in it.

3. The petitioner will be dragged in unnecessary litigation and has to challenge the order in appeal in case the objection of the petitioner is decided against the petitioner. The present petition has been filed to avoid multiplicity of litigation. The respondent No. 2 cannot be consumer and owner being the member of the petitioner.

4. The learned counsel for the petitioner in all petitions has been heard on the question of maintainability of the petitions. He has reiterated the stand taken in the petitions. In brief, it has been contended on behalf of the petitioners that complaints filed by respondent No. 2 before respondent No. 1 under 1986 Act are misconceived in the teeth of 1968 Act, where complete mechanism has been provided for adjudicating the dispute between the parties. The respondent No. 2 has claimed himself to be the member of petitioner society and, therefore, respondent No. 2 cannot be owner as well as consumer as defined under the 1986 Act. The filing of the complaint before a forum, which lacks inherent jurisdiction in the facts and circumstances of the case, is abuse of the process of law. The petitioners cannot be compelled to wait the outcome of the complaint, appeal and revision provided under the 1986 Act when ex-facie the respondent No. 1 has no jurisdiction to entertain and proceed with the complaint filed by respondent No. 2.

5. The learned counsel for the petitioners has relied *Surya Dev Rai Vs. Ram Chander Rai and Others*, and *Om Prakash Saini Vs. DCM Ltd. and Others*, in support of his submissions. The learned counsel for the petitioners has fairly submitted that in CMPMO No. 337 of 2012-F and other connected petitions, a learned Single Judge on 30.11.2012 has dismissed similar petitions filed by petitioners therein under Article 227 of the Constitution of India. In those petitions, objection with respect to jurisdiction of District Consumer Redressal Forum was raised. In CMPMO No. 368 of 2012, the court had already issued notice to respondents.

6. In *Surya Dev Rai (supra)*, the question before the Supreme Court was as to what is the impact of amendment in Section 115 CPC provided by Act 46 of 1999 w.e.f. 1.7.2002 on the power and jurisdiction of the High Court to entertain the petitions seeking a writ of certiorari under Article 227 of the Constitution or invoking the power of superintendence under Article 227 of the Constitution as against similar orders, acts or proceedings of the courts subordinate to the High Courts, against which earlier the remedy of filing civil revision u/s 115 CPC was available to the person aggrieved. Is an aggrieved person completely deprived of the remedy of judicial review, if he has lost at the hands of the original court and the appellate court, though a case of gross failure of justice having been occasioned can be made out? The Supreme Court has held as follows:-

We are of the opinion that the curtailment of revisional jurisdiction of the High Court does not take away - and could not have taken away - the constitutional jurisdiction of the High Court to issue a writ of certiorari to a civil court nor is the power of superintendence conferred on the High Court under Article 227 of the Constitution taken away or whittled down. The power exists, untrammelled by the amendment in Section 115 CPC, and is available to be exercised subject to rules of self-discipline and practice which are well settled.

7. In CMPMO No. 337 of 2012-F and other connected matters, decided on 30.11.2012, it has been held as follows:-

4. In the facts and circumstances of the case, when the petitioner-society has an alternative effective remedy of revision u/s 17 of the Act, the present petitions cannot be entertained in exercise of the power under Article 227 of the Constitution, as has been laid down by the Hon"ble Supreme Court, vide order dated 9.7.2010, in Petition(s) for Special Leave to Appeal (Civil) No(s). 17068-17069/2010, titled M/s Advance Scientific Equip. LD. & Anr. vs. West Bengal Pharma & Photochemical Dev. & Anr., operative part whereof is as under:-

We are further of the view that the petitioners" venture of filing petition under Article 227 of the Constitution was clearly an abuse of the process of the Court and the High Court ought not to have entertained the petition even on a single day because an effective alternative remedy was available to the petitioner u/s 23 of the Act and the orders passed by the State Commission did not suffer from lack of jurisdiction. With the above observations, the special leave petitions are dismissed.

8. The question involved in the present petitions is the maintainability of the petitions. The stand of the petitioners is that respondent No. 1 has no jurisdiction to proceed under 1986 Act. The respondent No. 2 has claimed himself to be a member of the petitioner society, therefore, the grievance of respondent No. 2 can be considered under 1968 Act and not under 1986 Act. It is pleaded case of the petitioner that respondent No. 1 in the complaint filed by respondent No. 2 has already issued notice and petitioner has filed the reply. In other words, the respondent No. 1 has entertained the complaint of respondent No. 2.

9. The Section 3 of 1986 Act provides 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. Section 15 of 1986 Act provides any person aggrieved by an order made by District Forum may prefer an appeal against such order to the State Commission within a period of 30 days from the date of order, in such form and manner as may be prescribed. The State Commission may entertain the appeal after expiry of 30 days, if sufficient cause is shown for not filing the appeal within thirty days. Section 17 provides State Commission shall have jurisdiction 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 within material irregularity. Section 24 provides every order of District Forum, the State Commission or the National Commission shall, if not appeal has been preferred against such order under the provisions of this Act, be final. The section 26 further provides where a complaint is instituted before the District Forum, the State Commission or, as the case may be, the National Commission is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the complaint and make an order that the complainant shall pay to the opposite party such cost, not exceeding ten thousand rupees, as may be specified in the order.

10. In *Om Prakash Saini (supra)*, the appellant therein had filed a complaint under the Consumer Protection Act, 1986 before the State Consumer Disputes Redressal Commission with the prayer that respondent No. 1 may be directed to pay the amount due to him with interest and compensation of rupees one lakh. The State Commission allowed the complaint and directed the respondent to pay the maturity amount to the complainant as per the terms of the contract alongwith interest at the agreed rate up to the maturity date and 12% after the maturity date. The State Commission also awarded Rs. 10,000/- as costs of the litigation. The respondent No. 1 challenged the order of State Commission by filing an appeal u/s 21 of the 1986 Act, but withdrew the same on 25.4.2007. Thereafter, it filed a petition, under Article 227 of the Constitution, which was allowed by the learned Single Judge, vide his order dated 11.7.2007 on the premises that in view of the scheme sanctioned by the Company Judge under the Companies Act, the State Commission did not have the jurisdiction to entertain the complaint. The appellant filed an application for recall of the aforementioned order, but the same was dismissed by the learned Single Judge. The Supreme Court has held as follows:-

Any person aggrieved by an order passed by the District Forum can file an appeal before the State Commission. If he is not satisfied with the order of the State Commission, a further remedy is available by way of revision before the National Commission. If the complaint is decided by the State Commission, the aggrieved person can file an appeal before the National Commission. Elaborate procedure has been laid down for filing of the complaints and disposal thereof. Since the 1986 Act is a special statute enacted by Parliament for better protection of the interest of consumers and a wholesome mechanism has been put in place for adjudication of consumer disputes, the remedy of appeal available to a person aggrieved by an order of the State Commission cannot but be treated as an effective alternative remedy.

The Supreme Court has further held:-

In the result, the appeals are allowed. The impugned order is set-aside and the matter is remitted to the High Court for fresh adjudication of CM(M) No. 398 of 2007. While deciding the matter, the High Court is expected to take note of the

fact that Respondent 1 had an effective alternative remedy against the order passed by the State Commission and, as a matter of fact, it had availed the remedy of appeal. If the High Court comes to the conclusion that Respondent 1 should be relegated to the remedy of appeal, then it may pass appropriate order to facilitate recall of order dated 25.4.2007 passed by the National Commission so that Respondent 1 may be able to pursue the remedy of appeal.

11. In *State of Gujarat and Another Vs. Gujarat Revenue Tribunal Bar Association and Another*, , the Supreme Court has held as follows:-

The High Court's power of judicial superintendence, even under the amended provisions of Article 227 is applicable, provided that two conditions are fulfilled: firstly, such tribunal, body or authority must perform judicial functions of rendering definitive judgments having finality, which bind the parties in respect of their rights, in the exercise of the sovereign judicial power transferred to it by the State, and secondly, such tribunal, body or authority should be the subject to the High Court's appellate or revisional jurisdiction.

In the aforesaid judgment, the Supreme Court has laid down two conditions for invoking Article 227 of the Constitution, (i) tribunal, body or authority must perform judicial functions of rendering definitive judgments having finality, which bind the parties in exercise of sovereign judicial power transferred to it by the State and (ii) such tribunal, body or authority should be subject to the High Court's appellate or revisional jurisdiction.

12. The remedy of appeal, revision has been provided to the aggrieved person under the 1986 Act against the order of District Forum. The jurisdiction of the High Court under Article 226 of the Constitution is distinct and separate, but the present petition has been filed under Article 227 of the Constitution of India. It has not been denied by Mr. Pathak that similar petitions have been dismissed by a learned Single Judge vide judgment dated 30.11.2012 in CMPMO No. 337 and connected matters. The notice to respondents in CMPMO No. 368 of 2012 is of no help to the petitioner, inasmuch as, while issuing notice in that petition it was not held that CMPMO No. 368 of 2012 filed under Article 227 of the Constitution is maintainable. Thus seen from any angle, the petitions are not maintainable. In view of above, CMPMO Nos. 341, 367, 368, 369, 370 and 371 of 2012-F are dismissed as not maintainable. The dismissal of the petitions would not be a bar to the petitioners to avail other remedy available in law. All pending applications are also disposed of.