

(1997) 01 MAD CK 0105

In the Madras High Court

Case No : Writ Petition No. 3633 of 1994

T.S. Krishnamoorth

APPELLANT

Vs

Mercury Chemicals and Another

RESPONDENT

Date of Decision : 31-01-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Consumer Protection Act, 1986 — Section 11, 13(4), 2(0), 24A(2)

Citation : (1997) 1 CTC 507 : (1997) 1 LW 588

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : R.M. Krishna Raju, for the Appellant; K. Srinivasan, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—The prayer in the writ petition reads as follows:-

"To issue a writ of prohibition or any other appropriate writ, order or direction, prohibiting the District Consumer Disputes Redressal Forum at Madras, the second respondent herein from proceeding with O.P.No. 1223 of 1993 of the first respondent herein."

2. The case of the petitioner as seen from the affidavit filed in support of the above writ petition is briefly stated hereunder:- The petitioner is one of the senior members of the Tiruppattur Bar. According to him, the first respondent herein has preferred a complaint in O.P.No. 1223 of 1993 before the Consumer Disputes Redressal Forum at Madras, the second respondent herein, u/s 12 of the Consumer Protection act, 1986, read with Rule 5 of the Tamil Nadu Consumer Protection Rules, 1988 against the petitioner claiming Rs. 4,375-75 and Rs. 21,612-35 on the alleged ground that he failed and neglected to discharge his professional duties in filing a suit on behalf of the 1st respondent herein and he has not diligently conducted R.E.P.265 of 1991 in O.S.No. 4458 of 1985 on the file of District Munsif, Tiruppathur, North Arcot, Ambedkhar District. It is further

averred that the very complaint itself is false- and the first respondent has chosen to prefer the complaint only for the purpose of teasing and annoying the petitioner for incorrect and inappropriate reasons.

3. It is averred in the affidavit that the first respondent is not entitled to seek any relief under the provisions of the Consumer Protection Act, 1986, as the first respondent will neither be a consumer nor the above O.P.No. 1223 of 1993 will be a complaint, in respect of consumer dispute or the subject matter is regarding defect or deficiency regarding service u/s 2 of the said Act. The members of the legal profession are fully controlled and governed by the Advocates Act within the jurisdiction of the respective Bar Councils of the States and the All India Bar Council in each and every professional transactions between the members of the bar and their clients. That being so, the first respondent is neither entitled to claim any relief against the petitioner under the provisions of the Consumer Protection Act, 1986, nor the District Consumer Disputes Redressal Forum is competent to entertain or enquire into the above said O.P.No. 1223 of 1993. The District Consumer Disputes Redressal Forum at Madras has no jurisdiction, particularly with the consumer dispute, if at all, could be agitated only before the District Forum of North Arcot Ambethkar District, where the cause of action is alleged to have taken place within Tiruppattur, North Arcot Ambedhkhar District. Hence the Madras District Consumer Disputes Redressal Forum has no jurisdiction or authority or power to enquire into the said complaint. With these averments, the petitioner has approached this Court for issuance of writ of prohibition, prohibiting the District Consumer Forum at Madras from proceeding with O.P.No. 1223 of 1993.

4. The first respondent herein filed a counter affidavit wherein he has denied all the averments made in the affidavit filed in support of the writ petition. He has also averred in the counter that the issue of jurisdiction can be decided by the District Forum after considering the cause of action of the complaint. The District Forum only after considering the issues on merit can decide the jurisdiction issue. Therefore, on this score the writ cannot be maintained. It is also contended that the petitioner had filed his version and the case was posted for filing proof affidavit and documents and at that stage, the petitioner had filed the present writ petition. With these averments the first respondent prayed for dismissal of the writ petition.

5. I have heard Mr. R.M. Krishna Raju, learned counsel appearing for the petitioner and Mr. K. Srinivasan, learned counsel appearing for the first respondent.

6. Mr. R.M. Krishna Raju, learned counsel appearing for the petitioner raised the following two submissions:-

(i) The first respondent is not entitled to seek any relief under the provisions of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act") as the first respondent will neither be a consumer nor the above O.P. will be a complaint

in respect of consumer dispute in terms of Section 2 of the Act.

(ii) As per Section 11(2)(a) of the Act the second respondent, namely the District Consumer Disputes Redressal Forum at Madras, has no territorial jurisdiction to the dispose of the said complaint. In view of the fact that the second respondent has no jurisdiction in respect of the matter in dispute, this Court has ample power to issue a writ of prohibition.

7. On the other hand, Mr. K. Srinivasan, after pointing out Section 13(4) of the Act submitted that the second respondent has jurisdiction to dispose of the said complaint. He further submitted that even otherwise the issue can be decided by the second respondent itself and there is no need to consider the same in the present writ petition.

8. As far as the first submission regarding the maintainability of the complaint against the petitioner, in view of the decision of this Court reported in Srimathi and others Vs. The Union of India, and others, there is no need to probe further. In other words, in view of the law laid down by this court as affirmed by the Apex Court, the complaint before the Consumer Disputes Redressal Forum is maintainable. Hence, the learned counsel for the petitioner himself has not pressed with regard to his first objection.

9. Regarding the second objection, namely, the jurisdiction of the second respondent, the learned counsel for the petitioner submitted that no cause of action either wholly or in part arose within the jurisdiction of the second respondent since all the proceedings have taken place only at District Munsif's Court. Tiruppathur, North Arcot Ambedkhar District.

10. In order to appreciate the second objection of the learned counsel for the petitioner, let us see the relevant provisions in the Act. Section 11 deals with jurisdiction of the District Forum which runs as follows:-

"11. Jurisdiction of the District Forum:- (1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed rupees five lakhs.

(2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction;-

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or @BT-1-IND = (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or have a branch office or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or carry on business, or have a branch office or personally work for gain, as the case may be, acquiesce in such institution;

(c) the cause of action, wholly or in part arises."

A reading of Section 11(2)(a) of the Act clearly shows that complaint if any shall be instituted in a District Forum where the opposite party or parties at the time of institution of the complaint actually and voluntarily resides or carries on business or personally works for gain. In our case the complaint is against the petitioner who is an advocate practicing at Tiruppathur. Hence, as per the said provisions, it is not open to the 1st respondent to file a complaint against the petitioner at the District Consumer Forum, Madras. The other relevant clause is Section 12(2)(c) of the Act which deals with cause of action wholly or in part. According to the petitioner, the case of the complainant is that the petitioner failed and neglected to discharge the professional duties in filing suit and has not prosecuted the Execution Petition No. 265 of 1991 in O.S.No. 4458 of 1985 on the file of District Munsif, Tiruppathur, North Arcot Ambedkhkar District. So no cause of action much less part arise within the jurisdiction of the second respondent in so far as the complaint as laid by the first respondent.

11. No doubt, Mr. Srinivasan, learned counsel appearing for the first respondent refers to Section 13(4) of the Act which is extracted hereunder:-

"Section 13(4): For purposes of this section, the District Forum shall have the same powers as are vested in Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:-

- (i) the summoning and enforcing attendance of any defendant or witness and examining the witness on oath;
- (ii) the discovery and production of any document or other material object producible as evidence;
- (iii) the reception of evidence on affidavits;
- (iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;
- (v) issuing of any commission for the examination of any witness; and
- (vi) any other matter which may be prescribed."It is true that for the purpose of Section 13 namely, procedure on receipt of complaint, the District Forum shall have the same powers as are vested in Civil Court under the Code of Civil Procedure, while trying a suit in respect of some of the matters enumerated therein.

In our case if the District Forum at Madras, second respondent holds that it has no jurisdiction, there is no provision for returning the complaint with a direction to represent the same before the appropriate forum, since the same has not been incorporated in Sub-section (4) of Section 13 of the Act referred to above. Except the abovesaid Sub-section (4) of Section 13, the learned counsel for the first respondent is unable to point out another provisions in this regard.

12. It is also relevant to note that as per Section 24A of the Act, a complaint has to be made within the District Forum, the State Commission or the National Commission within one year from the date on which the cause of action has arisen. However, Sub-section (2) of Section 24A enables the above mentioned authorities to condone delay if there is sufficient cause for not filing the complaint within such period. Hence, even if I hold that the second respondent has no jurisdiction in view of the provisions pointed above if the first respondent still feels he has a cause, it is always open to him to approach the appropriate Forum of course by invoking Section 24A(2) of the Act.

13. If the petitioner establishes that the second respondent is incompetent to issue notice or it has no jurisdiction, this Court can issue a writ of prohibition for which the following decisions have been cited by Mr. R.M. Krishna Raju:-

(i) East India Commercial Co. Ltd., Calcutta and Another Vs. The Collector of Customs, Calcutta, .; (ii) Govinda Menon Vs. Union of India (UOI), .; (iii) Isha Beevi on behalf of the Minor Umaiben Beevi and Others Vs. The Tax Recovery Officer and Addl. P.A. to Collector, Quilon and Others, .

In the first case, namely, East India Commercial Co. Ltd., Calcutta and Another Vs. The Collector of Customs, Calcutta, the Apex Court has held thus:-

"The first question is whether the petitioner filed by the appellants under Article 226 of the Constitution for the issue of a writ in the nature of prohibition is maintainable in the circumstances of the case.

A writ of prohibition is an order directed to an inferior Tribunal for bidding it from continuing with a proceeding therein on the ground that the proceeding is without or in excess of jurisdiction or contrary to the laws of the land, statutory or otherwise. Mackonochie v. Lord Penzance, 1881 A.C. 424 and Halsbury's Laws of England. Vol.2, 3rd Edition."

14. In the other decision, namely, Govinda Menon Vs. Union of India (UOI), the Appex Court with regard to jurisdiction for grant of prohibition has observed in the following manner:-

"The jurisdiction for grant of a writ of prohibition is primarily supervisory and the object of that writ is to restrain Courts or inferior tribunals from exercising a jurisdiction which they do not possess at all or else to prevent them from exceeding the limits of their jurisdiction. In other words, the object is to confine Courts or tribunals of inferior or limited jurisdiction within their bounds. It is well settled that the writ of prohibition lies not only for excess of jurisdiction or for absence of jurisdiction but the writ also lies in a case of departure from the rules of natural justice." "If there is want of jurisdiction then the matter is coram non iudice and a writ of prohibition will lie to the Court or inferior tribunal for bidding it to continue proceedings therein in excess of its jurisdiction."

14. Finally in the last decision, namely, Isha Beevi on behalf of the Minor Umaiben Beevi and Others Vs. The Tax Recovery Officer and Addl. P.A. to

Collector, Quilon and Others, the same view has been reiterated once again by the Apex Court.

15. I have already demonstrated with reference to the provisions in the Act and in the absence of enabling provision as found in the Code of Civil Procedure, the complaint as filed by the first respondent before the second respondent cannot be sustained. In those circumstance, as observed by the Supreme Court in the above referred decisions, this Court can very well issue writ of prohibition. Accordingly, writ of prohibition is issued prohibition the second respondent, namely District Consumer Disputes Redressal Forum at Madras from proceeding with O.P.No. 1223 of 1993 filed by the first respondent herein. Net result, the writ petition is allowed as prayed for. No costs.