IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

OP(C).No. 1070 of 2015 (O)

AGAINST THE ORDER/JUDGMENT IN C.C 87/2014 of THE KERALA STATE CONSUMER DISPUTES REDRESSAL COMMISSION, THIRUVANANTHAPURAM.

PETITIONER(S):

THE CATHOLIC SYRIAN BANK,
NEMOM BRANCH, NEMOM,
REPRESENTED BY ITS BRANCH MANAGER.

BY ADV. SRI.R.S.KALKURA.

RESPONDENT(S):
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1. MANU KAMAL, S/O C.KAMALASANAN,
AGED 46 Y EARS, SRUTHI, TS.16/712,
JAGATHY, THIRUVANANTHAPURAM - 695 014.

2. SYLESH.K.S, S/O SAHADEVAN,
AGED 47 YEARS, DARSHAN,
T.C 13/209-1, P.V.LANE,
MUNNUMMUKKU, PETTA,
THIRUVANANTHAPURAM - 695 024.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 10-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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A.HARIPRASAD, J.

O.P (C) No.1070 of 2015

Dated this the 10th day of April, 2015.

J U D G M E N T

Petition under Article 227 of the Constitution of India. Petitioner bank is an entity registered under the Companies Act, 1956. Respondents filed a complaint before the Consumer Disputes Redressal Commission (in short 'the Commission') against the petitioner bank contending that there was mala fide conducts on the part of the petitioner bank. The respondents were unemployed youth. They pledged their gold ornaments with the bank weighing 2377 grams on 22-11-2013 and and availed a loan of Rs.47,54,000/-. It is further alleged that at the time of availing the loan, the bank had informed them that the pledged ornaments could be redeemed/renewed by paying interest within six months at the agreed rate of interest. The respondents were always ready to pay the interest. Ext.P1 is the copy of the complaint before the Commission. It is contended by the respondents that the bank made an unlawful demand to the respondents to pay more than Rs.10,00,000/- contending that there was reduction in security because of the fluctuation of gold value. According to the respondents the demand made by the bank was legally unjustifiable. Hence they approached the Commission complaining that there was deficiency in service.

2. The bank appeared before the Commission and questioned the jurisdiction of the Commission to entertain a complaint of this nature. Grievance of the petitioner bank is that the Commission without deciding the maintainability of the complaint is venturing to proceed with evidence in the matter.

3. Heard the learned counsel for the petitioner. Considering the nature of averments and the contentions raised, I am of the view that the original petition can be disposed of without serving notice on the respondents as no prejudice is likely to be caused to their legal rights. Learned counsel rely on a decision by Apex Court in ***Nivedita Sharma v. Cellular Operators Assn. of India of India and Others (2011 KHC***

5230) to contended that the High Courts can exercise powers under Article 226 and 227 to issue appropriate orders in matters pending before the Commission and there will not be any bar to do so as per the provisions in Consumer Protection Act, 1986. Apex court further held that the power of the High courts to issue directions, orders or writs under Article 226 is a basic feature of the Constitution and cannot be curtailed by Parliamentary legislation. However, the High court shall not entertain every such petition as a matter of course, ignoring the fact that aggrieved person has an effective alternative remedy. Learned counsel for the petitioner submitted that the petitioner is not challenging any order passed by the Commission. Inaction on the part of the Commission in exercising its vested jurisdiction is the issue brought out in this petition. To support the argument of the learned counsel, he relied on two decisions of the Calcutta High Court in ***L & T Finance Limited v. Anup Kumar Bera and Another (2014 KHC 2313)*** and ***Kanak Bala***

Mondal and Others v. Anjali Karmakar (2014 KHC 3850) wherein also the power of the High court under Article 226 and 227 are found to be invokable in a situation where there is no conflict with statutory provisions. Considering the facts and circumstances of the case, I am of the view that the Commission is expected to rule on its own jurisdiction at the earliest point of time.

In the result, the original petition is allowed. The Commission shall consider the application dated 02-03-2015 questioning the maintainability of the complaint in C.C No.87/2014 on the file of the Commission as expeditiously as possible.

All pending interlocutory applications will stand dismissed.

Sd/-
A.HARIPRASAD,
JUDGE.

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P.A to Judge