

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

WP(C).No. 19867 of 2015 (G)

PETITIONER :

**M/S.MIZPATH EXPORTS & SERVICES
17/242, VADACODE P.O., KANGARAPADY
KAKKANAD - 682 021
REPRESENTED BY ITS PROPRIETRIX
SMT. ANNA K., W/O. K.V. ABRAHAM
REPRESENTED THROUGH ITS POWER OF ATTORNEY
PROF. ANI EAPEN ABRAHAM
KANIYAMPARAMBIL, MANGANAM P.O.,
KOTTAYAM.**

**BY ADVS.SRI.K.S.ARUNKUMAR
SRI.B.K.GOPALAKRISHNAN**

RESPONDENT(S) :

- 1. AMRITHA PRAKASH
W/O. PRA4AKASH MENON,
ASWINI, KADAVANTHRA P.O.,
KOCHI – 20.**
- 2. DAVIS POULOSE,
PROPRIETOR M/S. FARM GOLD SUPER MARKET AND BAKERY
G 262, PASSPORT OFFICE ROAD, PANAMPILLY NAGAR P.O.,
KOCHI - 682 036.**

**R1 BY ADVS. SRI.GEORGE CHERIAN
SRI.RAJESH CHERIAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONERS' EXHIBITS :

- EXHIBIT P1 TRUE COPY OF THE LICENSE FOR THE YEAR 2015-2016 ISSUED TO THE PETITIONER BY THE KALAMASSERY MUNICIPALITY TO MANUFACTURE AND SELL MILK AND MILK PRODUCTS.
- EXHIBIT P2 TRUE COPY OF THE SALES TAX REGISTRATION FROM THE COMMERCIAL TAX DEPARTMENT, GOVERNMENT OF KERALA.
- EXHIBIT P3 TRUE COPY OF THE IMPORTER EXPORTER CODE CERTIFICATE NO. 1002006813 DATE OF ISSUE 7-11-2002.
- EXHIBIT P4 TRUE COPY OF THE GSI COMPANY PREFIX NUMBER-LICENSE ON 3-6-2015.
- EXHIBIT P5 TRUE COPY OF TM-1 APPLICATION FORM AND REPRESENTATION APPROVED BY THE TRADE MARKS REGISTRY.
- EXHIBIT P6 TRUE COPY OF THE COMPLAINT DATED 4TH JUNE, 2015 FILED BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM, ERNAKULAM BY THE 1ST RESPONDENT.
- EXHIBIT P6(a) TRUE COPY OF THE IA NO. 289/2015 FILED BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM, ERNAKULAM BY THE 1ST RESPONDENT.
- EXHIBIT P7 TRUE COPY OF THE NOTICE DATED 6TH JUNE, 2015 FROM THE HONOURABLE CONSUMER DISPUTES REDRESSAL FORUM, ERNAKULAM ISSUED A NOTICE TO THE PETITIONER FOR APPEARING BEFORE THE FORUM AT 10.30 AM ON 20-06-2015.
- EXHIBIT P8 TRUE COPY OF THE EX-PARTE INTERIM ORDER DATED 6TH JUNE, 2015 FROM THE HONOURABLE CONSUMER DISPUTES REDRESSAL FORUM, ERNAKULAM.
- EXHIBIT P9 TRUE COPY OF THE COUNTER AFFIDAVIT (IA NO. 289 OF 2015) AND AN OBJECTION FILED BY THE PETITIONER ON 17TH JUNE, 2015.
- EXHIBIT P10 TRUE COPY OF THE ORDER PASSED BY CONSUMER DISPUTES REDRESSAL FORUM, ERNAKULAM IN I.A NO. 289/2015 ON 20TH JUNE, 2015.

RESPONDENT(S)' EXHIBITS :

- EXT. R1(1) PHOTOCOPY OF THE LICENSE ISSUED BY THE COMMISSIONERATE OF FOOD SAFETY, FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA LICENSE UNDER THE FSS ACT, 2006 DATED 12.5.2015.

(Contd...)

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- EXT. R1(2) COPY OF POUCH PACK OF MILK 'ASHREYA' HAVING DATE 4.6.2015.
- EXT. R1(3) COPY OF POUCH PACK OF MILK 'ASHREY' HAVING DATE 14.3.2015.
- EXT. R1(4) THE TRADE MARK SEARCH REPORT OF
www.trademarking.in/instant-search/ DATED 5.6.2015.
- EXT. R1(5) LIST OF APPROVED PRODUCT BY GSI ASSIGNING BARCODE.
- EXT. R1(6) APPLICATION FOR TRADEMARK WITH ACKNOWLEDGEMENT DATED
11.6.2015.

//TRUE COPY//

P.S. TO JUDGE

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A.MUHAMED MUSTAQUE, J.

W.P(C)No. 19867 of 2015

Dated this the 30th day of September, 2015

J U D G M E N T

Petitioner aggrieved by the interim order passed by the Consumer Disputes Redressal Forum, Ernakulam, has approached this Court. Ext.P8 is the order.

2. The first respondent is the complainant. She alleges that she went to purchase 'Ashreye' milk from the petitioner. However, she was provided with a bill containing name of the brand of the milk as 'Ashrey', in the pouch, the brand name is shown as 'Ashreye'. According to the first respondent, she was given inferior quality milk by name 'Ashreye'. Therefore, she sought immediate intervention by passing an order directing to stop the sale of milk marketed under the brand name 'Ashrey' by the petitioner. The Consumer court granted interim order after hearing the petitioner as well as the first respondent, thereafter the order is made absolute.

3. The learned counsel for the petitioner submitted that Consumer Forum exceeds its jurisdiction in passing such an order. Learned counsel for the first respondent defended the order saying that this order was passed in terms of Section 13(3)(B) of the Consumer Protection Act.

4. Essentially, the issue is not the power, but is a issue related to the jurisdictional fact to be exercised by the Consumer Forum in deciding the matter. Jurisdictional fact has to be understood with respect to the definition of the 'complaint' under Section 2(c) of the Consumer Protection Act. Under Section 2(c), the complaint is defined as follows:-

“2(c) “complaint” means any allegation in writing made by a complainant that--

- (i) an unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;*
- (ii) the goods brought by him or agreed to be brought by him suffer from one or more defects;*
- (iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;*

(iv) a trader or the service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price---

(a) fixed by or under any law for the time being in force;

(b) displayed on the goods or any package containing such goods;

(c) displayed on the price list exhibited by him by or under any law for the time being in force;

(d) agreed between the parties;

(v) goods which will be hazardous to life and safety when used are being offered for sale to the public---

(A) in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;

(B) if the trader could have known with due diligence that the goods so offered are unsafe to the public;

(vi) services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety;

with a view to obtaining any relief provided by or under this Act;”

Therefore, existence of jurisdictional fact with respect to the complaint must be there to issue an order in the nature issued by the

Consumer Forum. The question of similarity or dissimilarity of a trade mark cannot be a ground unless it is pointed out that it results in unfair trade practices or any other matter referable to in section 2(c). There must be a prima facie finding of passing such an order to the effect that the forum is satisfied with the complaint with respect to any of the enumerated matter under section 2(c). No doubt, some time it may be required a probe for further evidence.

5. This Court is of the view that the forum, exercising its power under Section 13(6) of the Consumer Protection Act, necessarily must be satisfied the existence of any of such facts for passing an interim order in the nature of order passed as per Ext.P8.

6. Therefore, this Court is of the view that the order passed by the Consumer Redressal Forum requires reconsideration. It is open for the Consumer Forum to decide the entire matter, after giving opportunity. Therefore, leaving open all the issues, the matter is remitted back to the Consumer Disputes Redressal Forum to decide.

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Till a decision is taken by the Consumer Disputes Redressal Forum either for interim order or for disposal, interim order passed by this Court will continue.

This writ petition is disposed of as above.

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A.MUHAMED MUSTAQUE,
Judge

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