

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

WP(C).No. 27264 of 2015 ()

PETITIONER(S):

- 1. CHAIRMAN AND MANAGING DIRECTOR,
M/S. ANSAL BUILDWELL LTD.,
REGISTERED OFFICE 118, UFF, PRAKASH DEEP,
7, TOLSTOY MARG, NEW DELHI - 110001.**
- 2. ADDITIONAL VICE PRESIDENT,
ANSAL BUILDWELL LTD., ANSAL CITY,
PUTHIYADAVU, KUREEKADU P.O,
KOCHI - 682 305.**

BY ADV. SRI.K.PAUL KURIAKOSE

RESPONDENT(S):

- 1. THE ANSALS RIVERDALE OWNERS ASSOCIATION,
REP. BY ITS SECRETARY, JAMES POTHEN,
KULATHUNKAL HOUSE, 62 - ANSALS RIVERDALE,
ERROOR P.O, KOCHI - 682 306.**
- 2. THE KERALA STATE CONSUMER DISPUTES
REDRESSAL COMMISSION, THIRUVANANTHAPURAM,
REP. BY ITS REGISTRAR, SISUVIHAR LANE,
VAZHUTHACAUD, SASTHAMANGALAM P.O, PIN - 695 010.**

**R1 BY ADVS. SRI.BALAKRISHNA KUNHIKRISHNA NAMBIAR
SRI.P.V.MOHANAN**

R2 BY GOVERNMENT PLEADER SRI.MANOJ KUNJACHAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17-11-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

WP(C).No. 27264 of 2015

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1- PHOTOSTAT TRUE COPY OF COMPLAINT C.C.NO.420 FO 2014 FILED BEFORE
 THE CONSUMER DISPUTES REDRESSAL FORUM, ERNAKULAM.**
- P2- PHOTOTSTAT TRUE COPY OF WRITTEN VERSION FILED BY THE PETITONERS
 IN C.C.NO.420 OF 2014.**
- P3- PHOTOSTAT TRUE COPY OF IA NO.981 OF 2014 FILED BY THE PETITIONERS
 IN C.C.NO.420 OF 2014.**
- P4- PHOTOSTAT TRUE COPY OF ORDER DATED 23.6.2015 IN REVISION PETITION
 NO.24 OF 2015 OF THE STATE COUNSUMER DISPUTES REDRESSAL
 COMMISSION, THIRUVANANTHAPURAM.**
- P5- PHOTOSTAT TRUE COPY OF IA NO.869 OF 2015 IN REVISION PETITON NO.24
 OF 2015.**
- P6- PHOTOSTAT TRUE COPY OF APPLICATION DATED 1.8.2015 MADE UNDER
 RIGHT TO INFORMATION ACT.**
- P7- PHOTOSTAT TRUE COPY OF REPLY DATED 7.8.2015 TO EXHIBIT P6.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.MUHAMED MUSTAQUE, J.

W.P(C)No. 27264 of 2015

Dated this the 17th day of November, 2015

J U D G M E N T

Petitioners challenge Ext.P4 order dated 23.6.2015 passed by the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram in a revision petition (Revision Petition No.24/2015) against the order dated 27.2.2015 passed by the Consumer Disputes Redressal Forum, Ernakulam in I.A.No.981/2014 in C.C.No.420 of 2014.

2. Petitioners herein are the opposite parties before the District Forum. They raised a question of maintainability of the complaint before the District Forum. Petitioners also raised the question of limitation. It appears that the District Forum did not pass any specific order in this regard and postponed the hearing of the issues along with the complaint(final matter) itself. Petitioners, aggrieved by that decision, approached the State Commission. The State Commission

passed the following order:-

“2. It is settled law that a question need be heard as preliminary issue if only it finally disposes of the case, further it is not a mixed question of law and fact. If the preliminary question requires evidence to be recorded, then it is desirable that, that question is considered at the time of final hearing after evidence is recorded. In the nature of the allegations raised as seen from the memorandum of appeal, it appears that even the question of limitation cannot be decided without recording evidence. The question is not solely dependent on the agreement between the parties because certain things will have to be performed as per the agreement and the question remained when the agreement between the parties was fully performed. This being a disputed issue it appears that the consumer forum was justified in postponing the hearing of the application at the time of final hearing of the complaint though no specific reason is stated in the order. So if the revision is entertained that will only prolong the disposal of the complaint unnecessarily. Hence the revision petition is dismissed.”

Petitioners challenge the above decision of the State Commission.

3. Heard the learned counsel for the petitioners and the learned counsel for the first respondent/complainant.

4. It is to be noted that the District Forum did not find that the

question raised by the petitioners requires the evidence to be adduced. The Commission obviously assumed that the preliminary question raised by the petitioners requires evidence and therefore, the Forum is justified in postponing the issue. The question whether it requires probe by the evidence or not is a matter to be adverted with reference to the pleadings in the preliminary question. Therefore, this Court is of the view that in such situation, the State Commission ought to have directed the District Forum to take appropriate decision, after adverting to the nature of the issue raised in the preliminary objection.

5. Therefore, this Court is of the view that the State Commission committed jurisdictional error in relegating all the issues to be tagged along with the complaint (final matter). Therefore, this Court is of the view that Ext.P4 is liable to be set aside. Accordingly, it is set aside and the following directions are issued.

The Consumer Disputes Redressal Forum, Ernakulam shall decide, after adverting to the preliminary objection whether it can be

decided as a preliminary issue, without going into further probe through evidence. If it can be decided without adducing evidence, Forum shall take appropriate decision in this regard. Necessarily before proceeding further, appropriate orders in this regard shall be passed by the Forum after hearing both the parties. It is submitted that next hearing is scheduled to be held on **20th November, 2015**. If possible, Forum shall pass appropriate orders on 20th itself or on subsequent date, in the light of the above direction.

This writ petition is disposed of as above.

A.MUHAMED MUSTAQUE,
Judge

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WP(C).NO. 27264 of 2015

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