

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.08.2015

CAV ON:08.08.2014

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.23904 of 2007

and

M.P.Nos.1 of 2007 and 1 of 2010

Order Reserved on 08.08.2014 Judgment Pronounced on

Dr.Agarwal's Eye Hospital Ltd.,
No.19, Cathedral Road,
Chennai - 600 086,
Represented by its Chairman

... Petitioner

Vs.

1.State of Tamil Nadu,
Rep. By its Secretary,
Department of Food and Civil Supplies and
Consumer Affairs,
Fort St. George,
Chennai - 600 009.

2.The District Consumer Disputes Redressal Forum,
Nagapattinam,
Nagapattinam District.

3.Marimuthu

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Prohibition, prohibiting the second respondent from proceeding with C.C.No.25 of 2007 filed by the third respondent and pending before the second respondent.

For Petitioner : Mr.S.Arunprasad
for Mr.A.S.Chandrasekharan

For Respondents : Mr.M.S.Ramesh (for R1)
Additional Government Pleader

R2 - No Appearance

Mr.R.Ramesh
for M/s.Srinath Sridevan (for R3)

O R D E R

The petitioner further submits that the petitioners are running an eye hospital and have been in existence now for the past 50 years. The petitioners are pioneers in the field of Ophthalmology. He states that the Petitioners are filing this Writ Petition for a Writ of Prohibition prohibiting the Second Respondent from proceeding with the Consumer Case in C.C.No.25 of 2007 filed by the third respondent pending on the file of the second respondent, since no part of the cause of action arose within the jurisdiction of the second respondent and there is an inherent lack of jurisdiction on the part of the second respondent in entertaining the complaint.

2. The petitioner further states that the third respondent has filed a complaint before the second respondent alleging medical negligence against the petitioners. He states that the third respondent came to Chennai for treatment of Cataract and the entire treatment was given at Chennai. He states that the third respondent is a diabetic and appears to have taken treatment elsewhere for diabetes and diabetic retinopathy. Even according to the complaint, the third respondent was taking treatment at Aravind Eye Hospital, Madurai and had five laser surgeries. Subsequently, it appears he was taking treatment at Sankara Nethralaya, Chennai. He states that the third respondent came to the petitioners with complaints of defective vision on 10.01.2006. He was advised operation of left eye and suitable medications were prescribed. The third respondent underwent surgery on 13.01.2006 at Chennai. The surgery was uneventful and the condition of the eye was good at the time of discharge on 21.03.2007. He was advised to use the medicines prescribed and was given detailed post-discharge instructions and was also advised to come for follow up. He has not come after 21.03.2007.

3. The petitioner further states that the petitioners are not traversing the various allegations made in the complaint except to state that they deny all the allegations contained in the complaint. The complaint has been filed only to extract money from the petitioners. Since the petitioners are questioning the jurisdiction

of the second respondent in admitting the complaint, they are not dealing with the merits of the complaint in this writ petition. He states that the complaint has been filed against the petitioners making allegations of negligence and deficiency in service in the matter of treatment rendered to the third respondent at Dr.Agarwal's Hospitals, Chennai. It is submitted that the complaint filed by the third respondent before the second respondent and the action of the third respondent in taking the complaint on file and issuance of notice to the petitioners is without jurisdiction. Hence, this writ petition is filed.

4. The highly competent counsel Mr.S.Arunprasad, appearing for the petitioner submits that the petitioner's are running an eye hospital and have been in existence for the past 50 years and they are pioneers in the field of Opthomology. The 3rd respondent herein has levelled a case in C.C.No.25 of 2007, on the file of the 2nd respondent against the petitioner herein. Since, no part of cause of action arose within the jurisdiction of the 2nd respondent and as there is an inherent lack of jurisdiction on the part of the 2nd respondent, in entertaining the complaint. The 3rd respondent's allegation was that the petitioner had committed medical negligence. The 3rd respondent came to Chennai for treatment of Cataract and the entire treatment was given at Chennai.

5. The very competent counsel further submits that the 3rd respondent is a diabetic and appears to have taken treatment elsewhere for diabetes and diabetic retinopathy. Further, the same respondent had undergone treatment at Aravind Eye Hospital, Madurai and had five laser surgeries and subsequently it appears that he had also undergone treatment at Sankara Nethralaya. The respondent came to the petitioner's hospital with complaints of defective vision on 10.01.2006 and he was advised operation of left eye and suitable medications were prescribed. The 3rd respondent underwent surgery on 13.01.2006 at Chennai. The surgery was uneventful and the condition of the eye was good at the time of discharge on 21.03.2007. He was advised to use medicines prescribed and was given detailed post-discharge instructions and was also given detailed post-discharge instructions and was also advised to come for follow up, but he did not attend the hospital after 21.03.2007. As such, the 3rd respondent himself neglected to take further advice and treatment from the petitioner's hospital.

6. The very competent counsel further submits that the hospital is situated at Chennai and the 3rd respondent underwent surgery operation on 13.01.2006 at Chennai. Therefore, the original cause of action arises at Chennai and not Nagapattinam. Hence, the very competent counsel entreats the Court to quash the case in C.C.No.25 of 2007, on the file of 2nd respondent, on the ground of lack of original jurisdiction which is the 1st principle of law and in the instant case, it has been violated.

7. The highly competent counsel Mr.R.Ramesh, appearing for the 3rd respondent submits that the petitioner is aged about 63 years and he was attached to the Tamil Nadu Police Department as Head Constable and he is now retired. During his service, he had received 90 awards. Further, the 3rd respondent is physically a sound person and he is involved in agricultural operation as he owned large extent of land. The 3rd respondent is a sugar patient but it is under control. In the year 2005, he had undergone laser treatment at Aravind Hospital, Madurai. After the said laser operation, he got normal vision. The very competent counsel further submits that the friends and relations of the 3rd respondent advised him to go to Chennai for better treatment. Accordingly, the 3rd respondent went to the petitioner's hospital, wherein surgical operation was conducted on his left eye. Before operation, the Doctors attached to the petitioner's hospital assured him that he would get his normal vision after operation. However, after operation, the 3rd respondent totally lost his vision, due to the insufficiency of medical service rendered by the petitioners hospital. Hence, the 3rd respondent filed a case against the petitioner for compensation before the 2nd respondent. Under whom, the 3rd respondent is residing. As such, part and parcel of the jurisdiction is covered. Now, the said case i.e., pending for more than nine years and it is ready for trial.

8. On Considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that the 3rd respondent underwent surgery on 13.01.2006 at Chennai Hospital and after surgery on the very evening of the same day, he was discharged. As such, it is evident that the original cause of action arose at Chennai. Therefore, the 3rd respondent is at liberty to withdraw the said case in C.C.No.25 of 2007, on the file of the 2nd respondent herein and he is permitted to present the same before the District Consumer Forum, Chennai. After presenting the said case, the District Consumer Forum, Chennai, is directed to dispose the said case on the top most priority basis, probably within a period of three months from the date of presentation of the said case, after notice to the writ petitioner. Hence, the above writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

WEB COPY
-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

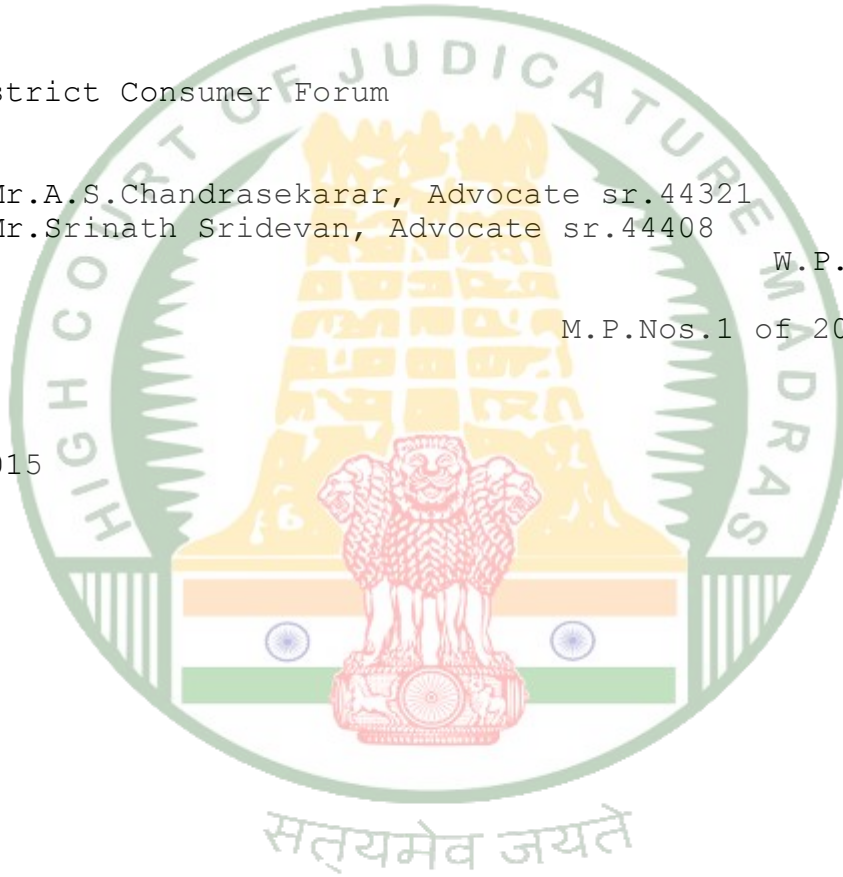
- 1.The Secretary,
Government of Tamil Nadu,
Department of Food and Civil Supplies and
Consumer Affairs,
Fort St. George,
Chennai - 600 009.
- 2.The District Consumer Disputes Redressal Forum,
Nagapattinam,
Nagapattinam District.

3. The District Consumer Forum
Chennai

+1 cc to Mr.A.S.Chandrasekarar, Advocate sr.44321
+1 cc to Mr.Srinath Sridevan, Advocate sr.44408

W.P.No.23904 of 2007
and
M.P.Nos.1 of 2007 and 1 of 2010

aa22/09/2015



WEB COPY