

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.07.2016

PRONOUNCED ON : 04.11.2016

CORAM

THE HON'BLE MR.JUSTICE **M.V.MURALIDARAN**

CRP.NO.3935 of 2008

B.Nagaraj

... Petitioner

--Vs--

Green Earth Biotechnologies Limited,
14-A, Jagani Industrial Area,
Anekal Taluk, Bangalore – 562 106.

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order of the District Consumer Disputes Redressal Forum, Dharmapuri at Krishnagiri dated Nil in Unnumbered Application S.R.No.369 of 2008 in C.O.P.No.33 of 2008.

Petitioner : Mr.V.Nicholas

Respondent: Mr.D.Padmaprakash

ORDER

The revision petitioner is the complainant in C.O.P.No.33 of 2008, on the file of the District Consumer Disputes Redressal Forum, Dharmapuri at Krishnagiri, since he did not appeared before the Forum on 06.06.2008 and the same was dismissed for default. Against which, the present petition has filed in I.A. unnumbered application S.R.No.369 of 2008 in C.O.P.No.33 of 2008, on the file of the District Consumer Disputes Redressal Forum, Dharmapuri at Krishnagiri to restore the C.O.P.No.33 of 2008 on file, which was dismissed for default on 06.06.2008.

2.But the District Consumer Disputes Redressal Forum, Dharmapuri at Krishnagiri has returned the unnumbered application stating that there is no power vested with the Forum to set aside the exparte order under the Consumer Protection Act and aggrieved by the said order, the revision petitioner has filed the present civil revision petition before this Court.

3.The case of the petitioner is that though he has filed the complaint in C.C.No.33 of 2008 before the District Consumer Redressal Forum at Krishnagiri stating that the complainant is an Agriculturist. The complainant had purchased the banana plantain seedlings from

opposite party in Numbers 3,500 at the rate of Rs.11/- per seedling and that the total cost paid is Rs.38,500/- and the complainant having the bill-cum-product delivery gate pass for the purchases.

4.The complainant further states that in order to raise good yield, the complainant ploughed his lands in a good manner, added the necessary manure in his land planted the said 3,500 plantain seedlings, watered the same periodically, applied the pesticides as per the advise of the Agricultural experts. The said banana seedlings which were planted in the land of the complainant and at present they are one year and 5 months old. To the surprise of the complainant, the said banana plants are affected by disease and there is abnormal growth. Though the complainant maintained his plantain garden in a good manner. For ploughing, tilling the land, manuring, watering for purchasing seedlings, transportation, etc., the complainant has spent more than a sum of Rs.2,10,000/-. The complainant utilised huge money as well as his good efforts. The plantain seedlings were nor grown up as represented by the opposite party. The complainant informed to the officer of opposite party then and there several times, in this regard, some officer of opposite party inspected the said plantain garden, but they could not cure the decease. The

complainant has sustained a loss of investment of Rs.2,10,000/- because of defective supply of banana seedlings by the opposite party, no income could be derived by the complainant. The officials of opposite party had represented that there would be not less than sum of Rs.200/- per plantain. Therefore, the complainant should have derived Rs.7,00,000/-. In this the complainant issued a notice on 17.11.2007 to the opposite party. That the opposite party received the said notice on 22.11.2007. But the opposite party has neither complied with the said notice nor have they issued reply notice till this date. There is deficiency on the part of opposite party which resulted in loss a sum of Rs.7,00,000/-. Due to the deficiency of service of opposite party the complainant has been caused great mental agony. For which, the complainant claims a sum of Rs.50,000/- as compensation, separately. Hence, the complainant claims compensation in total a sum of Rs.9,60,000/- by filing the complaint in C.O.P.No.33 of 2008 before the learned District Consumer Disputes Redressal Forum, Dharmapuri at Krishnagiri.

5.While pendency of the above complaint, the case was posted on 06.06.2008 and due to the non appearance of the complainant as well as his counsel, the Forum has passed the order that the

complainant called absent and there was no representation too no steps taken yet. Not known in the absence of the complainant still interested in prosecuting the case further. Hence the complaint is dismissed for default for non prosecution.

6. Noting the order of the learned District Consumer Redressal Forum dated 06.06.2008, the present petitioner / complainant has filed an application seeking prayer to restore the complaint in C.O.P.No.33 of 2008 and taken on file, which was dismissed for default on 06.06.2008 by the said Forum.

7. On receipt of the said order, the petition filed under Order 9 Rule 9 and Section 151 of C.P.C., the District Consumer Redressal Forum has returned the petition on the ground that the Forum has got no power to restore the complaint, which was dismissed for default on 06.06.2008. Challenging the order of returned, the petitioner has filed the present civil revision petition before this Court.

8. Heard Mr.V.Nicholas, learned counsel appearing for the petitioner and Mr.D.Padmaprakash, learned counsel appearing for the respondent.

9.The learned counsel Mr.V.Nicholas, appearing for the petitioner would submit that even though there is no specific provision in the Consumer Protection Act for restoring the complaint, which was dismissed for default, but, there was no impediment for the District Consumer Disputes Redressal Forum to restore the complaint on file by setting aside the exparte order dated 06.06.2008. In fact, in the previous proceedings, this Court has taken a view that such a power could be exercised even by the Consumer Redressal Forum and appropriate relief has necessarily to be granted to the aggrieved party.

10.For the supporting of his case, the learned counsel has produced the judgment passed by this Court, ***The Manager, Indian Bank, High Court Extension Counter, Madras 104 and four others Vs. District Consumer Disputes Redressal Forum, Madras and another reported in 1996 (II) CTC 84.*** This Court clearly held that the Consumer Protection Forum has got power to entertain application to set aside exparte order. This Court clearly held that while dealing with the provisions of the Consumer Protection Act, 1986, Section 13(2) and (4) of the Act and Rules 88 and 89 of the Tamil Nadu, it has been observed that the power given to decide the

complaint exparte implies to power the set aside such exparte order or decision. In para-9 of the said judgment extracted as follows:

“9. When the Consumer Protection Forum has got the power to decide a complaint ex parte under Rule 8(8) and 8(9) of the Rules, it automatically implies that it has got power to set aside an ex parte order. The District Consumer Forum and the State Consumer Forum have got powers to entertain the applications to set aside ex parte orders and decide the same on merits. It is also settled law that when there is error in exercise of jurisdiction, this Court can always come in by exercising the powers under Article 227 of the Constitution. As rightly pointed out by the learned counsel for the petitioners, and fairly conceded by Mr.D.I.J.Rajkumar though there is no express provision in the Act or the Rules framed thereunder giving the Forum jurisdiction to do so, it is well known rule of statutory construction that the Forum should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions for the purpose of rendering

justice between the parties.”

11. We may point out that Section 13(2) and (4) of Consumer Protection Act, 1986 and Rule 8(8) and 8(9) of Tamil Nadu reads as follows:

“8. Rule 8(8) and 8(9) runs as follows:

8(8) If during the proceedings conducted under Section 13, State Commission fixes a date for hearing of the parties, it shall be obligatory on the complainant and opposite party or his authorised agent to appear before the State Commission on such date of hearing or any other date to which hearing could be adjourned. Where the complainant or his authorised agent fails to appear before the State Commission on such day, the State Commission may in its discretion either dismiss the complaint for default or decide it on merits. Where the opposite party or its authorised agent fails to appear on the day of hearing, the State Commission may decide the complaint ex parte.

8(9) While proceedings under sub-rule (8) the

State Commission may, on such terms as it may think fit and at any stage, of the proceedings adjourn the hearing of the complaint but not more than one adjournment shall ordinarily be given and the complaint shall be decided within 90 days from the date of notice received by the opposite party where the complaint does not require analysis or testing of the goods and within 150 days if it requires analysis or testing of the goods.”

12.Considering the above order rendered by this Court in **1996 (II) CTC 84**, this Court passed an another order in CRP(NPD)No.264 of 2008 dated 15.07.2008 is as follows:

“3.In view of the above said decision, this Court can exercise the powers under Section 227 of the Constitution of India and direct the District Consumer Disputes Redressal Forum to take up the petition filed praying to condone the delay in filing the application to set aside the exparte order along with application to set aside the exparte order, as it has got power to decide the same and there is no obstacle for the

District Consumer Disputes Redressal Forum to entertain those applications and dispose of them in accordance with the procedure.

4. In the light of the above discussions, the civil revision petition is allowed and the petitioner is directed to represent the papers, which had already been returned by the Forum within four weeks from the date of receipt of copy of this order. The Forum is directed to take the petitions on file and decide them on merits after affording opportunity to both parties. The registry is directed to return the original papers filed by the petitioner to enable him to represent the same before the District Consumer Forum."

13. Mr. D. Padmaprakash, learned counsel appearing for the respondent would submit that there is no power vested with the Forum to set aside the ex parte order under the Consumer Protection Act, 1986. Supporting his arguments, the learned counsel appearing for the respondent relying upon 2 judgments reported in (1) **Rajeev Hitendra Pathak & Others v. Achyut Kashinath Karekar &**

Another ordered in **Civil Appeal No.4307 of 2007**, (2) **New India Assurance Co. Ltd. v. R.Srinivasan** ordered in **Appeal (Civil) 11439 of 1996 dated 28.02.2000** both the judgments passed by the Hon'ble Supreme Court.

14.The Hon'ble Supreme Court clearly held in the Civil Appeal No.4307 of 2007 that the Consumer Courts have inherent powers to restore the complaints dismissed for default. In fact, the Hon'ble Supreme Court has set aside the order and direct the National Commission to dispose of the Original Petition No.110 of 2003 *de novo* as expeditiously as possible and in any event within three months from the date of receipt of the order.

15.As per the above judgment produced by the revision petitioner is squarely applicable to this case, though there is no specific provision in the Act or in the Tamil Nadu Consumer Protection Rules (hereinafter referred to as the Rules) framed thereunder to set a party ex parte, if such power is implied, then the Forum has incidental and ancillary power to set aside such ex parte order.

16.It is pertinent to note that to look into Section 13 of the Act and Rules 8(8) and 8(9) of the Rules. Section 13 of the Act deals with the procedure to be followed by the Forum on receipt of a complaint. The Forum, on receipt of a complaint sends a copy of the same to the opposite party, who should file his objections within 30 days or maximum period of 45 days. The time bound procedure is to ensure speedy disposal. After the receipt of objections, evidence is taken following the procedure of Courts under the Civil Procedure Code. Every proceedings before the Forum shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code and the Forum shall be deemed to be a civil court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

17.When the Consumer Protection Forum has got the power to decide a complaint exparte under Rule 8(8) and 8(9) of the Rules, it automatically implies that it has got power to set aside an ex parte order. The District Consumer Forum and the State Consumer Forum have got powers to entertain the applications to set aside exparte orders and decide the same on merits. It is also settled law that when there is error in exercise of jurisdiction, this Court can always

come in by exercising the powers under Article 227 of the Constitution of India. It is also my view that there is no express provision in the Act or the Rules framed thereunder giving the Forum jurisdiction to do so, it is well known rule of statutory construction that the Forum should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions for the purpose of rendering justice between the parties.

18. Therefore, it is made clear that when the Consumer Protection Forum has got the power to decide the exparte under Rule 8(8) and 8(9) of the Rules, it is automatically implies that it has got power to set aside an exparte order. Therefore, the District Consumer Disputes Redressal Forum, Dharmapuri at Krishnagiri have got power to set aside the exparte order dated 06.06.2008 and the said Forum is having power to decide and to pass orders in the set aside exparte application. Therefore, in my opinion that the District Consumer Disputes Redressal Forum, Dharmapuri at Krishnagiri has got every power to entertain the application filed by the parties concerned either to set aside the exparte order or to restore the complaint, which was dismissed for default. As per the above cited supra, the District Consumer Disputes Redressal Forum, Dharmapuri at Krishnagiri should

entertain the application filed by the petitioner / complainant in unnumbered application S.R.No.369 of 2008 on its file and to pass orders on merits by numbering the said application by giving notice to other side. Accordingly, this Civil Revision Retition ought to be allowed.

19.In the above circumstances, I am inclined to pass the following orders:

(a)the civil revision petition is allowed by directing the petitioner to re-present the papers, which had already been returned by the Forum within a period of four weeks from today.

(b)the District Consumer Disputes Redressal Forum, Dharmapruai at Krishnagiri is directed to take the unnumbered application in S.R.369 of 2008 on file and number the same and decide the petition on merits by affording fair opportunities to both the parties and the said Forum is directed to dispose of the said application to be re-presented by the petitioner within a period of four weeks. The Registry is directed to return the original papers filed by the petitioner to enable to re-present the same before the District Consumer Disputes Redressal Forum, Dharmapuri at Krishnagiri.

(c)after passing the order in the restoring application filed

unnumbered application in S.R.No.369 of 2008, the District Consumer Disputes Redressal Forum, Dharmapuri at Krishnagiri is hereby directed to dispose of the main C.O.P.No.33 of 2008 within a period of four months thereafter.

20.Accordingly, the civil revision petition is allowed with the above observation. No costs.

04.11.2016

Note:Issue order copy on 09.11.2016.

vs

Index:Yes.

Internet:Yes.

To

The District Consumer Disputes Redressal Forum,
Dharmapuri at Krishnagiri.

M.V.MURALIDARAN, J.

**Pre-Delivery Order made in
CRP.No.3935 of 2008**

04.11.2016

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