

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.10162 OF 2016

ORDER: *(Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

The petitioners herein are calling in question the order passed by the Telangana State Consumer Disputes Redressal Commission at Hyderabad in C.C.No.90 of 2014 on 17.03.2014. The order passed by the State Consumer Disputes Redressal Commission reads as under:

“Counsel on both sides present. Counsel for the Ops 1 & 2 categorically stated that they are not going to file their affidavit evidence.

Hence, post this C.C. and CCIA 1477/2014 together for hearing on 31.3.2016.”

Sri G. Ramachander Rao, learned counsel for the petitioners herein would submit that the State Consumer Disputes Redressal Commission, infact, has recorded the submissions made on behalf of the writ petitioners herein inaccurately. Neither the petitioners nor their counsel did ever make a statement that they are not going to file their affidavit evidence at all. On the other hand, they made a statement that as soon as CCIA No.1477 of 2014 is decided by the said State Commission, then, they will file the affidavit evidence.

We are not interested in entering upon this charter. The State Commission speaking through its President has recorded the statement made at the Bar. We cannot discredit any such recording of such a statement made at the Bar lightly. In case the petitioners are aggrieved that the State Commission has wrongly recorded its submissions, it is perfectly open to the petitioners to file an appropriate

recall/rectification petition before the same State Commission. That would be a straightforward approach or otherwise the remedy available to them under Section 21(b) by filing a revision before the National Commission ought to have been availed, instead of preferring the present writ petition. When there is an effective alternative remedy in the form of a revision before National Commission for Consumer Disputes Redressal, it will not be appropriate for us to entertain this writ petition.

Sri G. Ramachander Rao would also contend that a preliminary issue has to be decided at the first instance and it cannot be heard or decided along with the main matter. He also relies upon the order passed by the Supreme Court in Civil Appeal No.8078 of 2001 dated 21.11.2001 in **Arun Agarwal vs. Nagreeka Exports (P) Ltd and another**^[1]. In that case, the plaintiff respondents have filed a suit with leave under Clause XII of the Letters Patent before the High Court of Calcutta on its original side for recovery of Rs.87,20,000/- from the defendant-appellant. In that suit, an application was moved under Chapter XIII-A of the Rules for summary disposal of the suit. The defendant/appellant filed a petition for revocation of the leave by taking an objection that the Court has no jurisdiction to entertain and decide the matter. The High Court of Calcutta on its original side held that the question relating to jurisdiction will be decided at the time of hearing of the suit and then proceeded to direct the appellant to furnish security for a sum of Rs.55 lakhs by way of bank guarantee, failing which a decree for the principal amount of Rs.55 lakhs would be passed. It is against the said order, the matter was carried to the Supreme Court. In that backdrop, the Supreme Court directed the preliminary issue regarding the jurisdiction of High Court of Calcutta to be decided, at the first instance. The other judgment, which was placed reliance upon

by the learned counsel for the petitioner, is ***K. Sagar, Managing Director, Kiran Chit Fund, Musheerabad v. A. Bal Reddy and another***^[2]. A preliminary objection was raised before the State Commission for Consumer Disputes Redressal setting out that a prized subscriber of a chit fund is not a consumer and consequently, a dispute raised by him is not entertainable. Reliance was placed upon a judgment rendered by the National Commission in ***Dwarkadish Chits (P) Ltd v. Sanju Ram Aggarwal***^[3]. In spite of the same, the State Commission went ahead and decided the matter on merits. In that background, the Supreme Court felt that the issue relating to jurisdiction has to be decided by the forums first.

Much can be said on both sides in a matter of this nature. Instead of allowing the parties to litigate on a preliminary issue for long time, a forum like that of a State Commission may be justified in dealing with the preliminary issue also along with the merits of the matter, so that, it would save the litigation time unnecessarily spent on the preliminary issue.

It is also appropriate to point out that the Supreme Court in ***Om Prakash Saini v. DCM Ltd and Ors***^[4], in paragraph 12, has held that the Consumer Protection Act, 1986 is a special statute enacted by the Parliament for better protection of the interests of the consumers and a whole mechanism has been put in place for adjudication of the consumer disputes and hence, the remedy of appeal available to a person aggrieved by an order of the State Commission cannot, but, be treated as an effective alternative remedy. In that view of the matter, it was held that entertaining a writ petition is not the most appropriate of the courses.

Hence, the parties may seek leave of the State Commission to

file evidence affidavit immediately after the preliminary objection is decided as well and the Writ petition is dismissed.

Consequently, miscellaneous applications pending if any shall also stand dismissed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

DR. JUSTICE B. SIVA SANKARA RAO

30.03.2016

sp

note: cc in 3 days

b/o

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[\[1\]](#) (2002) 10 Supreme Court Cases 101

[\[2\]](#) (2008) 7 Supreme Court Cases 166

[\[3\]](#) (1995) 1 CPJ 227 (NC)

[\[4\]](#) AIR 2010 SUPREME COURT 2608 (1)