

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1887 OF 2015

M/s. Medicare T.P.A. Services (I) Pvt. Ltd. .. Petitioner
Vs
The Tahsildar and Others. .. Respondents
—
Shri Ashutosh R. Gole for the Petitioner.
Shri Manish Pabale, AGP for the Respondent Nos.1 to 3.
Shri Rui A. Rodriques and Ms. Krupa Sawant for the Respondent No.4.
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CORAM : A.S. OKA & A.K. MENON, JJ

DATED : 4TH APRIL 2017

ORAL JUDGMENT (PER A.S. OKA, J)

1. The parties were put to notice on the earlier date that the Petition will be disposed of finally at the stage of admission. The challenge in this Petition under Article 226 of the Constitution of India by the Petitioner Company M/s. Medicare T.P.A. Services (I) Private Limited is to the notice of demand issued by the Tahsildar, Mumbai, on 3rd December 2014 in exercise of powers under Section 262 of the Maharashtra Land Revenue Code, 1966 (for short “the said Code”).

2. The fourth Respondent filed a complaint before the District Consumer Redressal Forum, Thane, against one Radhakishen Jadeja described as Manager of M/s. Medicare Services Club. The case made

out by the fourth Respondent is that his wife was required to undergo a surgery of intestine. According to the case of the fourth Respondent, a mediclaim of Rs.2,18,000/- remained unpaid by Medicare Services Club. By the judgment and order dated 13th November 2007, the said complaint was partly allowed by directing Shri Radhekishan Jadeja, the Manager of Medicare Services Club to pay to the fourth Respondent a sum of Rs.2,18,000/- with interest thereon at the rate of 9% per annum from 1st February 2005 onwards. He was also directed to pay the costs quantified at Rs.2,000/-. It appears that a notice of demand was issued by the Tahsildar on the basis of the recovery certificate issued by the District Forum by exercising the powers under Sub-section (3) of Section 25 of the Consumer Protection Act, 1986 (for short “the Consumer Protection Act”). According to the case of the Petitioner, to avoid any steps being taken by the Tahsildar against the assets of the Petitioner Company, on 5th February 2015, the Petitioner Company deposited a sum of Rs.50,000/- with the Tahsildar, Mumbai.

3. The submission of the learned counsel appearing for the Petitioner is that the judgment of the District Consumer Forum is not against the Petitioner but against the said Radhekishan. The learned counsel appearing for the fourth Respondent invited the attention of the Court to the contention raised in the reply. It is pointed out that the said Radhekishan carried on the correspondence on the letter head

showing the office address of the Medicare Service Club as the address of the head office of the Petitioner Company. The submission of the learned counsel appearing for the fourth Respondent is that the said Radhekishan appears to have acted on behalf of the Petitioner. Our attention was also invited to the order passed by the District Consumer Forum at Bangalore against the said Medicare Services Club, which carried the same office address as that of the Petitioner Company. He also invited our attention to the affidavit in support filed by the fourth Respondent in execution filed by him.

4. Faced with the difficulty that the Certificate under Sub-section (3) of Section 25 of the Consumer Protection Act is not issued against the Petitioner Company, the learned counsel appearing for the fourth Respondent on instructions of the fourth Respondent who is personally present in the Court states that he will make an application to the District Forum for grant of a certificate for the amount due and payable under the judgment and order dated 13th November 2007 against the Petitioner .

5. The learned counsel appearing for the Petitioner submitted that there is no power vesting in the District Forum to issue such a certificate against the Petitioner.

6. We have considered the submissions. On plain reading of the judgment and order dated 13th November 2007, it appears that the Petitioner was not specifically impleaded as an Opponent to the complaint filed by the fourth Respondent. Sub-section (3) of Section 25 of the Consumer Protection Act reads thus:-

“25. Enforcement of orders of the District Forum, the State Commission or the National Commission.—

(1)

(2)

(3) Where any amount is due from any person under an order made by a District Forum, State Commission or the National Commission, as the case may be, the person entitled to the amount may make an application to the District Forum, the State Commission or the National Commission, as the case may be, and such District Forum or the State Commission or the National Commission may issue a certificate for the said amount to the Collector of the district (by whatever name called) and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue.]”

7. It is apparent from Sub-section (3) of Section 25 of the Consumer Protection Act that only after a certificate of the amount due and payable is issued by the District Forum, the State Commission or the National Commission, the Collector can proceed to recover the amount mentioned therein in the same manner as arrears of land revenue. In the present case, a notice of demand under Section 267 of the said Code was issued by the Tahsildar on the basis of the certificate issued under Sub-section (3) of Section 25 of the Consumer Protection

Act against the said Radhekishan in his capacity as the Manager of the Medicare Services Club. On the basis of the certificate issued in the name of the said Radhekishan, the notice of demand under Section 267 could not have been issued against the Petitioner-Company.

8. As noted earlier, the fourth Respondent wants to apply for a certificate under Sub-section (3) of Section 25 of the Act against the Petitioner. Till the Application which is proposed to be made by the fourth Respondent is decided, the sum of Rs.50,000/- deposited by the Petitioner cannot be refunded as in the event of certificate being issued against the Petitioner, the said amount can be adjusted towards the recovery of compensation. In the event, the District Forum refuses to issue a recovery certificate against the Petitioner, refund of the said amount can be issued to the Petitioner along with interest, if any, accrued thereon.

9. Hence, we dispose of the Petition by passing the following order:

ORDER :

- (a) The impugned notice of demand (Exhibit-A to the Petition) issued under Section 267 of the

Maharashtra Land Revenue Code, 1966 is set aside only on the ground that the certificate under Sub-section (3) of Section 25 of the Consumer Protection Act, 1986 was not issued against the Petitioner;

- (b) It will be open for the fourth Respondent to make an Application to the District Forum for issuing a recovery certificate against the Petitioner under Sub-section (3) of Section 25 of the Consumer Protection Act;
- (c) We leave it to the District Forum to decide whether recovery certificate on the basis of such Application can be issued to the Petitioner;
- (d) If such an Application is made within a period of one month from the date on which this judgment is uploaded, the District Forum shall endeavour to decide the same within a period of three months from the date of filing of the Application;
- (e) The amount of Rs.50,000/- deposited by the Petitioner with the Tahsildar shall be invested in a

fixed deposit with any Nationalized Bank, if it is not already invested;

- (f) In the event, the certificate under Sub-section (3) of Section 25 of the Consumer Protection Act is issued against the Petitioner, it will be open to the fourth Respondent to apply to the Tahsildar in the office of the Collector of Mumbai City for payment of the sum of Rs.50,000/- with interest accrued thereon. Before releasing the amount to the fourth Respondent on the basis of the certificate, the Tahsildar shall issue notice in writing to the Petitioner. The amount shall not be permitted to be withdrawn by the fourth Respondent for a period of four weeks from the date on which the notice is served to the Petitioner;
- (g) Needless to add that it will be open for the Petitioner to adopt appropriate remedy against the certificate which may be issued under Sub-section (3) of Section 25 of the Consumer Protection Act;
- (h) In the event the Application made by the fourth Respondent for issue of the certificate against the

Petitioner is rejected, the District Forum shall issue intimation of the said order to the Tahsildar in the office of the Collector of Mumbai City. On receipt of the said notice, the Tahsildar shall refund the amount of Rs.50,000/- with interest accrued thereon to the Petitioner;

- (i) We make it clear that if the fourth Respondent fails to take out an Application under Sub-section (3) of Section 25 of the Consumer Protection Act for issuing recovery certificate against the Petitioner within a period of one month from the date on which this Judgment and Order is uploaded, the Petitioner will be entitled to refund of the amount of Rs.50,000/- with interest accrued thereon;
- (j) We make it clear that we have not made any adjudication on the question whether the fourth Respondent is entitled to a certificate of recovery against the Petitioner;
- (k) All contentions of the parties in that behalf are kept open;

- (l) The Rule is partly made absolute on above terms;
- (m) All concerned to act upon an authenticated copy of this order.

(A.K. MENON, J)

(A.S. OKA, J)