

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.1931 of 2011
and
M.P.No.1 of 2011**

The Trans India Resort Chief Manager
(Legal and Administration)
Khaledi Center, 2nd Floor,
No.4, Montieth Road, Egmore,
Chennai-600 008.

.. Petitioner

Vs.

1.E.Balasubramaniam

2.The President,
District Consumer Disputes Redressal Forum,
Chennai (South),
Mylapore, Chennai-4.

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order of the learned District Consumer Disputes Redressal Forum, Chennai (South) made in E.A.No.26 of 2010 in C.C.No.254 of 2007 dated 04.05.2011, on its file.

For Petitioner : Mr.G.Jeremiah

For Respondents : Mr.P.Sundara Rajan

ORDER

The Judgment debtor/opposite party in C.C.No.254 of 2007 and the respondent in E.A.No.26 of 2010 is the civil revision petitioner before this Court, challenging the order in E.A.No.26 of 2010 in C.C.No.254 of 2007, dated 04.05.2011, on the file of the learned District Consumer Disputes Redressal Forum, Chennai (South), Mylapore, Chennai-4.

2.The respondent/deedee holder/plaintiff has filed a complaint in C.C.No.254 of 2007 before the learned District Consumer Dispute Redressal Forum, Chennai (South), Mylapore, Chennai-4 under Section 12(1) of the Consumer Protection Act, 1986 for a direction to the opposite party to pay a sum of Rs.25,200/- payable by the opposite party towards rental returns for the past six years along with the compound interest at the rate of 18% being the contractual rate or in the alternative to pay a refund of the investment amount of Rs.28,000/- along with compound interest at the rate of 18% as provided under Clause 17 of the agreement, and to pay the amount of Rs.20,000/- towards compensation for mental stress, mental agony and for the costs of the complaint alleging deficient on the part of the

opposite party.

3.It is the case of the respondent/decreed holder/complainant that the complainant is a decreed holder of a time share in home time mansion under the agreement of sale dated 20.05.1995 for the period of 99 years starting the date of full payment. The respondent/complainant further states that he has paid the full payment in the month of March 1997. Having paid full and final payment, he is entitled to allot the benefits under the agreement. As per Clause 27 of the agreement, the complainant had the option to request that the opposite party to rent out his time share for a maximum period of six years and that the opposite party is bound to pay the rental arrears to the complainant.

4.The respondent/complainant further states that when he made request to the opposite party to rent out his time share and pay the rental income, but the petitioner/opposite party had replied that they have decided not to consider rental returns from the year 1997 for the next 5 to 10 years. Therefore, if the conditions are breached by the opposite party, the complainant is entitled to refund the time share value and the maintenance charges paid by him with interest at the

rate of 18% per annum as per Clause 17 of the agreement. Since the opposite party has not come forward to settle the claim of the complainant, the respondent/complainant has filed the complaint before the said District Consumer Dispute Redressal Forum, Mylapore, Chennai (South) for the above relief cited supra.

5. On receipt of the summons, the petitioner/opposite party has filed his version and contended inter alia that it is true that the respondent/ complainant is a decree holder of the share in home time mansion. As per the terms and conditions of the time share, the respondent/complainant had the option to rent out his time share for a maximum period of six years. But, in the agreement, it was stated that the rental amount will be given to the share holders only when the company runs in a successful manner.

6. It is further case of the petitioner/opposite party is that the complainant became defunct and had to pay huge amount to the banks. Therefore, this petitioner/opposite party would not pay the rental arrears to the complainant. Hence, this petitioner/opposite party has filed the Company Petition in C.P.No.2879 of 2007 before this Court and it is open to the complainant to implead himself in the

matter and get the dividend according to the availability in the company. In the said circumstances, this petitioner/opposite party states that there is no deficiency in service on the part of the opposite party.

7.Considering the respondent/complainant's case, the learned District Consumer Dispute Redressal Forum, Chennai (South) was pleased to allow the complaint filed by the respondent/complainant and the learned District Consumer Dispute Redressal Forum, Chennai is directed this petitioner/opposite party to pay a sum of Rs.25,200/- as rental returns for the past six years with the interest at the rate of 18% per annum from the date of agreement till the payment.

8.After the decree in C.C.No.254 of 2007 dated 11.12.2009, this respondent/complainant/decreed holder filed Execution Petition in E.P.No.26 of 2010 before the very same District Consumer Dispute Redressal Forum, Chennai (South) for executing the decree dated 11.12.2009. Pending E.P., the respondent/petitioner has filed the petition to issue warrant of arrest against this petitioner/opposite party. On receipt of the notice, this petitioner/opposite party, who is the respondent in the E.P.No.26 of 2010 has filed his counter by

stating that the High Court by order dated 17.11.2008 in Company Petition No.13 of 2008, passed an order directing the petitioner/opposite party to file with the Registrar of Companies, Chennai, a certified copy of the order within 30 days from the date of order, which passed and the parties to the Scheme of Arrangement or any other person interested shall be at liberty to apply to the High Court for any directions that may be necessary in regard to carrying out this Scheme of Arrangement Annexed in the said order.

9.Pursuant to the Scheme of Arrangement between the Trans India Resort Company Limited and the Trans share holder, which was accepted by this Court in the order dated 07.11.2008 in C.P.No.13 of 2008 in C.C.No.254 of 2007 itself is not maintainable and therefore, the present E.P.No.26 of 2010 is not maintainable before the said District Consumer Dispute Redressal Forum, Chennai.

10.This petitioner/opposite party also stated in his counter that as per the order of the National Forum once the matter goes before the Company Court and when any orders are passed in the said proceedings the relief can be obtained in the respective company law Court or board. Further, once the order is passed under Section 391

of the Companies Act, the party concerned to the agreement can approach the company petition and no other Courts can approached for the said relief. When this Court on 07.11.2008 has passed an order in C.P.No.13 of 2008, this respondent/decreed holder, who accept the said order for the arrangement wherein his right to receive the rental returns and accepted the changes in C.P.No.13 of 2008 and to ventilate his right. But, even after passing the order of the High Court in C.P.No.13 of 2008, dated 07.11.2008, the learned District Consumer Dispute Redressal Forum have no right to proceed the E.P.No.26 of 2010, hence, he prayed the said Court for dismissal of the said application.

11. When the matter was taken up for hearing on 04.05.2011, the learned District Consumer Dispute Redressal Forum, Chennai has passed an order stating that there was no representation for Judgment debtor/Respondent and called absent and he was set Ex-parte and arrest warrant was issued against this petitioner/opposite party. Challenging the said order, the petitioner/judgment debtor has approached this Court and file this civil revision petition.

12. I heard Mr.G.Jermiah, learned counsel appearing for the

petitioner and Mr.P.Sundara Rajan, learned counsel appearing for the 1st respondent. There was no representation on behalf of the 2nd respondent.

13.Admittedly, there was a complaint by the respondent/decreed holder before the learned District Consumer Dispute Redressal Forum, which was taken on file in C.C.No.254 of 2007. The learned District Consumer Forum, Chennai by order dated 11.12.2009, allowed the complaint in C.C.No.254 of 2007 as prayed by the respondent/decreed holder. Pursuant to the order passed by the District Consumer Forum, this respondent/decreed holder has filed the E.P.No.26 of 2010 for executing the said decree in C.C.No.254 of 2007. In the meantime, there was a scheme of arrangement was entered between the Trans India Company Limited and Trans Share holder including this respondent/decreed holder.

14.Pursuant to the above scheme of arrangement, the petitioner/judgment debtor has filed a Company Petition in C.P.No.2879 of 2007 before this Court. Considering the petitioner's case, this Court by order dated 07.11.2008, passed an order as follows:

“(1) That, the Petitioner Company herein do file with the Registrar of Companies, Chennai, a certified copy of the order within 30 days from this date.

(2) That, the parties to the Scheme of Arrangement or any other person interested shall be at liberty to apply to this Court for any directions that may be necessary in regard to carrying out this Scheme of Arrangement Annexed hereunder.

(3) That Mr.M.Gopikrishnan, Central Government Standing Counsel shall be entitled to a fee of Rs.2500/- (Rupees two thousand five hundred only) from the Petitioner company.”

15.It is admitted fact that the National Consumer Forum also issued orders by stating that whenever the case or complaint filed before the Company Court and when any order has been passed in the said proceedings, the relief can be only obtained in the respective Company Law Court or Board. Therefore, the parties concerned should approach the Company Court as per Section 391 of the Companies Act and he can seek the very same relief, which sought for in the District Consumer Forum.

16. Apart from this, when this Court passed an order in C.P.No.13 of 2008, dated 07.11.2008, it is bounded duty of this respondent/decree holder should approach the Company Court in the said C.P.No.13 of 2008 and seeks remedy. When the Company Court by order dated 07.11.2008 in C.P.No.13 of 2008, has passed an order in the Company Petition filed by the petitioner/Company, the respondent/decree holder must have approach the Company Court and seek his remedy, since, the Company Court in the said order has very clearly held that the parties to the Scheme of Arrangement or any other person interested shall be at liberty to apply to this Court for any directions that may be necessary in regard to carrying out this Scheme of Arrangement.

17. Therefore, the order passed by the learned District Consumer Forum by issuing warrant of arrest against this petitioner by order dated 04.05.2011 in E.P.No.26 of 2010, is not at all maintainable. Since the National Consumer Forum also issued orders that whenever the matter goes to the Company Court either the Company or its Shareholder should approach the Company Court only and no complaint before the District Consumer Forum is maintainable.

18.It is my absolute view that once the Company Court has passed the order in C.P.No.13 of 2008 dated 07.11.2008, directing the parties to the Scheme of Arrangement or any other person interested shall be at liberty to apply to the Company Court for any directions that may be necessary in regard to carrying out the Scheme of Arrangement. Therefore, thus being the case, the order passed by the learned District Consumer Disputes Redressal Forum, Chennai (South) dated 04.05.2011 in E.P.No.26 of 2010 is totally wrong and it is against the order passed in C.P.No.13 of 2008 dated 07.11.2008. Therefore, it is just and necessary, this Court warranting interference in the order passed in E.P.No.26 of 2010 dated 04.05.2011 and the same is liable to be set aside.

19.In the result:

(a) this Civil Revision Petition is allowed by setting aside the order passed in E.P.No.26 of 2010 in C.C.No.254 of 2007, dated 04.05.2011, on the file of the District Consumer Disputes Redressal Forum Chennai (South);

(b) the respondent/decreed holder, who is the time

shareholders, is at liberty to approach the Company Court in C.P.No.13 of 2008, on the file of this Court for the relief sought for in E.P.No.26 of 2010 in C.C.No.254 of 2007. No costs. Consequently, connected miscellaneous petition is closed.

15.06.2017

Index:Yes
Speaking Order

vs

To

The District Consumer Disputes Redressal Forum,
Chennai (South), Mylapore, Chennai-4.

M.V.MURALIDARAN, J.

VS

Pre-Delivery order made in
CRP(NPD)No.1931 of 2011
and
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