

**In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh**

Writ Petition No.10351 of 2017

Between:

BK Oakwood Estates
A partnership firm
Hyderabad and another

... Petitioners

and

District Consumer Disputes Redressal Forum
Hyderabad and 3 others

...Respondents

Date of Judgment Pronounced: 14-06-2017

Submitted for Approval:

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Ms. Justice J.Uma Devi

1. Whether Reporters of Local newspapers may be allowed to see the judgments ? **Yes/No**
2. Whether the copies of judgment may be marked to Law Reporters/Journals **Yes/No**
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment ? **Yes/No**

(C.V.Nagarjuna Reddy, J)

(J.Uma Devi, J)

* The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and

The Hon'ble Ms. Justice J.Uma Devi

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! Counsel for the petitioners: Mr.Zeeshan Adnan Mahmood

^ Counsel for respondent No.1: AGP for Civil Supplies (TS)

^ Counsel for respondent Nos.2 & 3: Mr.Kamini Venkateswarlu

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>HEAD NOTE:

? Cases cited:

AIR 2013 AP 93

WP.No.22686 of 2015, dated 28-09-2015

The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and
The Hon'ble Ms. Justice J.Uma Devi

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Counsel for the Petitioners: Mr.Zeeshan Adnan Mahmood
Counsel for respondent No.1: AGP for Civil Supplies (TS)
Counsel for respondent Nos.2 and 3: Mr.Kamini Venkateswarlu

The Court made the following:

Order: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Writ Petition is filed seeking issue of a Writ of Prohibition against respondent No.1- District Consumer Disputes Redressal Forum-II, Hyderabad, from proceeding with EA.No.11 of 2017 in CC.No.270 of 2013 during the pendency of FA.No.A/237/2016 before the State Consumer Disputes Redressal Forum.

We have heard the learned Counsel for both parties and perused the record.

A consumer dispute was instituted by respondent Nos.2 and 3 against the petitioners and respondent Nos.3 to 6 in connection with an agreement of sale, dated 07-05-2008. The said dispute was registered as CC.No.270 of 2013 by respondent No.1. After hearing both sides, respondent No.1 has passed an order on 16-09-2016, granting certain reliefs to respondent Nos.2 and 3 including payment of a sum of Rs.4,08,500/- along with interest @ 9% p.a. Feeling aggrieved by this order, the petitioners filed an Appeal before the State Consumer Disputes Redressal Forum for Telangana State, which was registered as FA.No.237 of 2016. Pending the Appeal, respondent Nos.2 and 3 filed EA.No.11 of 2017 before respondent No.1 for penalising the petitioners for

non-compliance with the Order, dated 16-09-2016, in CC.No.270 of 2013, passed in their favour. Feeling aggrieved by entertainment of the said Application by respondent No.1, the petitioners filed this Writ Petition.

At the hearing, Mr.Zeeshan Adnan Mahmood, learned Counsel for the petitioners, submitted that as the order passed by respondent No.1 in CC.No.270 of 2013 has not attained 'Finality' within the meaning of Section 24 of the Consumer Protection Act, 1986, (for short 'the Act'), respondent No.1- Forum had no jurisdiction to entertain the Application filed by respondent Nos.2 and 3 under Section 27 of the Act. In support of this submission, he has placed reliance on a Division Bench judgment of this Court in **Maytas Properties Limited, rep. by its Authorized Signatory V.Nagaiah & Another vs. A.P.State Consumer Redressal Commission and others**¹.

Opposing the above submissions, Mr.Kamini Venkateswarlu, learned Counsel for respondent Nos.2 and 3, submitted that there is no prohibition under the Act from entertaining an Application under Section 27 of the Act though the Forum might not proceed with its hearing and pass an order

¹ AIR 2013 AP 93

before the order appealed against attained Finality. He has, therefore, submitted that the Writ Petition filed against the very entertainment of the Application under Section 27 of the Act is not maintainable and the same is, accordingly, liable to be dismissed.

We have considered the submissions of the learned Counsel for both parties with reference to the record.

A Division Bench of this Court in **Maytas Properties Limited** (cited supra), considered an identical situation and on analysis of the provisions of the Act in general and Sections 24 and 27 of the Act in particular, observed as under:

“We find force in the submission of the learned Senior Counsel appearing for the writ petitioner. What is challenged in the present batch of writ petitions is only an order passed by the State Commission dismissing the interlocutory applications filed by the writ petitioner to reject the petitions filed under [Section 27](#) of the Act on the ground that no such petitions can be maintained while the appeals preferred by the petitioner under [Section 19](#) of the Act are pending before the National Commission. Since no final order as such is admittedly passed on the petitions filed by the respondents under [Section 27](#) of the Act, the question of appeal under [Section 27-A](#) does not arise at all. Hence, the preliminary objection raised on behalf of the respondents as to the maintainability of the writ petitions on the ground of availability of alternative statutory remedy of appeal cannot be accepted.”

The submission of the learned Counsel for respondent Nos.2 and 3 that there is no bar on respondent No.1- Forum entertaining the application is in the teeth of the ratio laid down in **Maytas Properties Limited** (1 supra). The bar, as per the Division Bench Judgment, extends to even entertainment of the application under Section 27 of the Act.

The learned Counsel for respondent Nos.2 and 3 placed reliance on a Division Bench Judgment of this Court in **Sri Siva Mutually Aided OP Thrift Society Limited and others vs. District Consumer Disputes Redressal Forum- II, Vijayawada**². In that case, an appeal along with a delay condonation petition was filed against the order of the District Forum by the writ petitioners and pending the application for condonation of delay, the opposite party in whose favour, the District Forum passed an order, filed an application under Section 27 of the Act. The Division Bench, while disposing of the Writ Petition, directed disposal of the delay condonation petition expeditiously and further directed that till such disposal, no further steps shall be taken on the application under Section 27 of the Act filed before the District Forum. This Judgment has not addressed

² WP.No.22686 of 2015 dated 28-09-2015

the issue of maintainability of an application under Section 27 of the Act pending the appeal.

On the above analysis, we are of the opinion that respondent No.1- Forum ought not to have entertained the application under Section 27 of the Act and registered the same as EA.No.11 of 2017.

The learned Counsel for respondent Nos.2 and 3 submitted that as the appeals are kept pending for several years, the complete bar on entertaining and disposing of an application under Section 27 of the Act would cause serious prejudice and hardship to the interests of the successful party.

We understand the concern expressed by the learned Counsel for respondent Nos.2 and 3 that the very legislative intent of speedy relief to a consumer will be defeated if the successful party before the District Forum is prevented from executing the orders on the ground of pendency of appeals before the appellate Fora.

Indeed, there is a legislative mandate under Section 13(3A) of the Act for making an endeavour by the District Forum to dispose of the complaints within three months from the date of

receipt of notice by the opposite party and a similar provision is also incorporated in Section 18 of the Act, which deals with disposal of disputes by the State Commission. Section 19A was inserted by Act 62 of 2002 as per which the State Commission or the National Commission shall make an endeavour to dispose of the appeals within 90 days from the date of their admission. But, in reality, these provisions are followed more in breach and cases are pending before the Fora for substantially long periods.

The absence of a specific provision for stay of the orders of the original forum, pending the appeals, is, obviously, for the reason that the legislature has assumed expeditious disposal of the appeals in conformity with the aforementioned legislative intent. Long pendency of cases before the District Fora and the State Commissions disabling successful party from seeking execution of orders merely on the ground of pendency of appeal causes undue hardship to the parties, who succeeded before the District Forum. We, therefore, feel it expedient to suggest an appropriate amendment to the provisions of the Act to alleviate such hardship probably by incorporating a provision for stay of the orders of the original forum and also a provision, which enables the successful party before the original forum, to seek execution of its orders, in

the event, the appellant fails to secure an interim order or comply with the conditional order, if any, passed by the appellate forum.

For the present, while prohibiting respondent No.1 from proceeding further with EA.No.11 of 2017, we permit respondent Nos.2 and 3 to file an application for expeditious hearing of the appeal by the State Consumer Forum. On such application being filed, the State Consumer Forum shall consider disposal of the appeal as expeditiously as possible.

The Writ Petition is, accordingly, allowed in the manner as indicated above.

As a sequel, WPMP.No.12820 of 2017, filed by the petitioners for interim relief, is disposed of.

(C.V.Nagarjuna Reddy, J)

(J.Uma Devi, J)

Dt: 14th June, 2017

Note:

* Registry shall communicate a copy of this order to the Ministry of Civil Supplies and the Ministry of Law and Legislative Affairs, Government of India.

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(B/o)
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