

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CIVIL REVISION PETITION No.2308 OF 2010

ORDER:

The Civil Revision Petition is filed against the order dated 26.03.2010 passed in F.A. No.1406 of 2007 on the file of A.P State Consumer Disputes Redressal Commission at Hyderabad, whereby the appeal filed by the appellant was dismissed confirming the order 09.04.2007 passed in C.C. No.22 of 2006 by the District Forum-II, Krishna District at Vijayawada.

The brief facts necessary for disposal of this CRP are as follows:

The respondent herein filed C.C. No.22 of 2006 before the District Consumer Forum-II, Krishna District at Vijayawada stating that her husband Ravi Shankar worked as an employee of Central Bank and as a member of Central Bank Staff Co-operative Credit Society, obtained long term Janata Personal Accident Insurance Policy bearing No.47610600 09958 for Rs.5 lakhs for the period from 29.01.1999 to 28.01.2017 which covers the benefit of death due to accident and has shown the name of respondent as his nominee in the policy.

While so, the husband of respondent was murdered by unknown persons by inflicting several injuries on his body. In that connection, the police initially registered the crime

under Section 174 Cr.P.C and subsequently altered the Section of Law. Later, the police filed charge sheet for the offence punishable under Section 306 I.P.C against the respondent and her brothers. The respondent's husband got insured with LIC vide policy No.681391397 for Rs.1,00,000/- and after due enquiry an amount of Rs.98,773/- was paid. After submitting her claim form with all relevant documents, the petitioner/ insurance company repudiated the same on 15.07.2005 holding that it is a suicidal death. Aggrieved by the same, the respondent preferred CC No.22 of 2006 before the District Consumer Forum-II, Krishna District holding that it is a case of murder and not the suicide. That said C.C was allowed in part directing the petitioner herein to pay Rs.5,00,000/- to the respondent herein along with interest at 7.5% per annum from the date of filing of the complaint till realization and also awarded costs of Rs.2,000/-. Impugning the same, the petitioner herein preferred F.A. No.1406 of 2007, which was dismissed confirming the orders passed by the District Consumer Forum-II, Krishna at Vijayawada. Aggrieved by the same, the present revision is filed.

Heard Sri Kota Subba Rao, learned standing counsel for petitioner, who submits that the father of the respondent and father-in-law of the deceased, gave complaint to the police and that it is a case of suicidal death, as such both the forums erroneously held that it is a case of murder and

granted the relief, which is unsustainable. He further submits that both the Courts below ignored the aspect that complaint was given by the father of the respondent and father in law of the deceased itself. As such, the matter has to be remitted back. He also submitted that the revision can be maintained under Article 227 of Constitution of India as the power conferred under Section 21 (b) of Consumer Protection Act, 1986 (for short 'the Act') does not in any way affect the power conferred on this Court under Article 227 of Constitution of India and in support of this contention, learned counsel relied on ***New India Assurance Company Limited vs Ramesh Bahi C.Patel and others***¹, ***Smt. Messa Varalakshmi vs The A.P. State Consumer Disputes Redressal Commission, Hyderabad and others***², ***Eureka Estates Private Limited vs A.P. State Consumer Disputes Redressal Commission, Hyderabad and others***³, ***United India Insurance Company Limited vs M/s.Harchand Rai Chandan Lal***⁴.

On the otherhand, learned Counsel for the respondent submits that the petitioner has alternative statutory remedy under Section 21 (b) of Consumer Protection Act, 1986 and instead of availing the said remedy, the petitioner has invoked Article 227 of Constitution of India. He further submits that even otherwise on merits, the Courts below concurrently held

¹ 1997 ACJ 938

² 1997 (2) ALT 95 DB

³ 2004 (6) ALT 46 DB

⁴ AIR 2004 SC 4794

that it is a case of murder and not suicide and this Court cannot interfere with the said finding of fact by exercising the power under Article 227 of Constitution of India by re-appreciating the evidence and also submits that a complaint was given by the father of respondent and father in law of deceased, but after investigation it was found that he was also involved in the crime but ultimately he was acquitted by giving the benefit of doubt. He further submits that the judgment of acquittal in the criminal case is not binding on the Civil Court, which was rightly taken into account by both the forums and as such the impugned order, even on merits does not require interference.

In *Eurekha Estates Private Limited* (supra) maintainability of writ petition was not raised and decided vis-à-vis Section 21 (b) of C.P. Act.

In *Smt.Meesa Varalakshmi* (supra), this Court held at para No.3 is as under:

“The learned Counsel for the petitioner places reliance on a decision in *Dealwell Engineering Works, Secunderabad vs V.V. Choudary, Anantapur*⁵ a judgment of a learned Single Judge, to persuade us that the High Court has jurisdiction under Article 226 of the Constitution of India to entertain revision applications against the decision of the District Forum under the Consumer Protection Act. While there cannot be any dispute about the existence of the supervisory jurisdiction of this Court on the Forums under the Consumer Protection Act under the

⁵ 1994 (1) ALT 729

provisions of Article 226 of the Constitution of India and hence there would be power to entertain revisions against decisions of the Forums under the Act, yet it is well known that where provisions of appeal are provided against any order, the revisional jurisdiction can be exercised, it at all, only in extraordinary occasions. The theory of alternative remedy is as much applicable to Article 227 of the Constitution as to the entertainment of applications under Article 226. We hence cannot agree to a blanket proposition as advanced that wherever a decision is rendered by the State or the District Forum under the Consumer Protection Act, this Court would be obliged to entertain application under Article 227 of the Constitution and not desire the parties to approach the appellate forum. The cited case also does not lay down any proposition as is advanced before us and except where the Consumer Protection Act was not applicable and consequently the Forums have acted without jurisdiction in entertaining the applications, the Court could exercise its jurisdiction under Article 227 as a corrective measure.

In Ramesh Bhai (supra), the Supreme Court held at para No.2 as follows:

“In our opinion, these are mere procedural or technical objections which should not frustrate the course of justice. The object of omitting sub-section (3) of Section 166 of the Act to remove the bar of limitation for a claim petition is obvious. This being so, a matter which was pending in the High Court when this change was brought about, should be governed by the effect of omission of sub-section (3) of Section 166. In the present case, the petition under Article 227 of the Constitution is deemed to be an appeal to the High Court under Section 173 of the Act and condoning the delay in filing the appeal (Sic.

Claim application), the benefit of omission of sub-section (3) of Section 166 is granted to the claimants. The High Court's order directing the claim petition to be entertained and decided on merits is sustained on this basis."

In this case, it is not the case of the petitioner that the orders passed by both the Forums are void or patently illegal in view of lack of jurisdiction. As such the judgments cited by learned Standing Counsel for the petitioner are not applicable.

So far as the other contention of learned Standing Counsel for the petitioner that the orders are erroneous is concerned, from a reading of the orders of both the forums, it is clear that both the forums thoroughly appreciated the evidence on record. When such is the case, re-appreciating the evidence on factual aspects by this Court is not permissible by exercising the power under Article 227 of Constitution of India.

If it is the case of the petitioner that there is illegal exercise of jurisdiction by the Forums, it has an efficacious remedy under Section 21 (b) of the Act which reads as follows:

"to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or

has acted in the exercise of its jurisdiction illegally or with material irregularity.”

The same is not disputed by the learned standing counsel for the petitioner.

Strictly speaking in the judgments sought to be relied upon by the learned standing counsel for the petitioner, no principle is laid down that in each and every case, a party can approach this Court under Article 227 of Constitution of India without invoking power of Section 21 (b) of the Act.

This matter was admitted on 16.07.2010 and interim order was granted. In view of the same, this Court feels it not in the interest of justice to drive the petitioner again to seek remedy under Section 21 (b) of the Act, hearing the case on merits. This Court is of the opinion that it is not a case for interference, by exercising the power under Article 227 of Constitution of India, and the judgment of Harchand Rai (supra) relied by learned counsel for petitioner has no application to the facts of the case since both the Forums have rendered finding that the deceased was murdered and as such it is covered by the policy.

Viewed at any angle, there is no merit in this revision. Accordingly, the revision is dismissed by granting two months time to the petitioner for depositing the balance amount and on such deposit, the respondent is permitted to withdraw the same.

Miscellaneous petitions, pending if any, shall stand closed in the light of this final order.

A.RAJASHEKER REDDY,J

03-08-2017
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