

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE U. DURGA PRASAD RAO

W.P. No. 39695 of 2017

ORDER:- (ORAL)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

This writ petition is filed for the following substantive relief:-

"...to issue a writ of Certiorari / Mandamus to declare the action of the 2nd respondent in proceeding with the trial in E.A.No. 23 of 2017 in C.C.No. 402 of 2015, as illegal, arbitrary and contrary to the provisions of the Consumer Protection Act, 1986 and against the Rule of law and consequently direct the 2nd respondent not to proceed further in E.A.No. 23 of 2017 in C.C.No. 402 of 2015 pending disposal of the appeal in F.A.No. 214 of 2017 before the Telangana State Consumer Redressal Commission, Hyderabad."

It is averred in the writ affidavit that the 1st respondent herein filed a complaint in C.C.No. 402 of 2015 against the petitioners herein before the District Consumer Disputes Redressal Forum-III, Hyderabad (for short "District Consumer Forum") and the same was allowed in part vide order dated 20.03.2017. Being aggrieved by this order, the petitioners filed an Appeal on 27.04.2017 in F.A.No. 214 of 2017 along with an I.A.No. 519 of 2017 seeking stay of the proceedings dated 20.03.2017 before the Telangana State Consumer Disputes Redressal Commission, Hyderabad (for short "State Consumer Commission").

The learned counsel for the petitioners submits that F.A.No. 214 of 2017 is pending adjudication, however no orders have been passed in the application for stay. The 1st respondent has filed E.A.No. 23 of 2017 in C.C.No. 402 of 2015 before the District Consumer Forum for execution of the orders dated 20.03.2017 and a copy of the application was received by the petitioners in the second week of May, 2017. Meanwhile, on 04.05.2017, the District Consumer Forum issued Notice under Section 27 of the Consumer Protection Act, 1986 (for brevity "the Act") directing the petitioners to appear before it on 05.06.2017. However, the District Consumer Forum, vide order dated 05.06.2017, issued Non-bailable Warrants against Petitioner Nos.1 and 3 to 7 for their non-appearance, but the same was subsequently recalled by the District Consumer Forum. The learned counsel also submits that if the Notice dated 04.05.2017 issued under Section 27 of the Act is entertained, the appeal filed by the petitioners shall be frustrated.

To buttress his contention, the learned counsel for the petitioners has relied on a decision rendered by this Court in the case of Maytas Properties Limited v. A.P. State Consumer Disputes Redressal Commission and Others¹ wherein it is held that in the light of Section 24 of the Act, it can be safely concluded that the penal proceedings under

¹ AIR 2013 ANDHRA PRADESH 93

Section 27 of the Act cannot be entertained while an appeal is pending before the State/ National Commission. Further, the learned counsel has relied on another decision rendered by this Court in W.P.No. 10351 of 2017 reported in BK Oakwood Estates & Another v. District Consumer Disputes Redressal Forum and Others² wherein it is held that the District Consumer Forum ought not to have entertained the application under Section 27 of the Act if the appeal is pending before the State Consumer Commission.

We note, in spite of the fact that the petitioners filed an appeal before the State Consumer Commission which is pending adjudication, the District Consumer Forum issued Notice dated 04.05.2017 under Section 27 of the Act in E.A.No. 23 of 2017 in C.C.No. 402 of 2015.

When this Court has specifically raised a query as to whether the petitioners have either challenged the notice issued under Section 27 of the Act or sought stay of the Notice, the learned counsel for the petitioners, however replied that after Notice under Section 27 of the Act and mentioning the said fact, he moved an Interlocutory Application seeking to expedite hearing of the appeal, but the same was not numbered, consequently not listed before the State Consumer Commission.

² 2017 Law Suit (Hyd) 306

The issue that has come up for consideration before this Court is that if any order adverse to a party is passed by the District Consumer Forum and the aggrieved party approaches the State Consumer Commission for redressal by way of filing an appeal or application, it is the bounden duty of the State Consumer Commission to entertain the appeal / application and pass appropriate orders.

In the present case as stated by the learned counsel for the petitioners that pending orders in I.A.No. 519 of 2017 filed for stay of the decree dt.20.03.2017, the District Consumer Forum issued Notice under Section 27 of the Act on 04.05.2017.

Section 12 of the Act envisages that if appeal is not filed before the State Consumer Commission against the order passed by the District Consumer Forum, that order will be considered as final order, but in the present case, the petitioners filed an appeal along with I.A.No. 519 of 2017 seeking stay of the order dated 20.03.2017 in C.C.No.402 of 2015. In such eventuality, I.A. No.519 of 2017 could be considered by directing the petitioners to deposit the whole amount or some part of it or that can be dismissed finding no merit. Not passing any order in the application for stay, will certainly cause prejudice to the rights of the petitioners and the same is contrary to the provisions of law.

In view of the facts and the legal proposition recorded as above, we hereby stay the Notice dated 04.05.2017 under Section 27 of the Act issued by the District Consumer Forum and grant liberty to the petitioners to approach the State Consumer Commission for adjudication of I.A.No. 519 of 2017.

We expect from the State Consumer Commission to hear the aforesaid I.A. and pass appropriate orders thereon as per law.

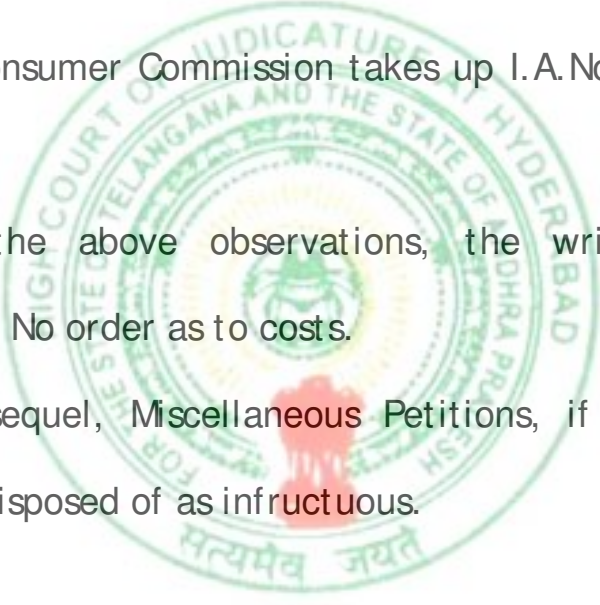
It is made clear that the Notice shall remain stayed till the State Consumer Commission takes up I.A.No. 519 of 2017 for hearing.

With the above observations, the writ petition is disposed of. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

23.11.2017

bcj

SURESH KUMAR KAIT, J

U. DURGA PRASAD RAO, J