

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

Writ Petition No.24316 of 2005
and
W.P.M.P.No.26555 of 2005

S.Subbiah

.. Petitioner

Vs.

1.The President,
District Consumer Disputes
Redressal Forum,
Chennai (North)
No.212, R.K.Mutt Road,
1st Floor,
Mylapore,
Chennai - 600 004.

2.S.Subramanian

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorari to call for the records relating to O.P.No.188 of 2005 on the file of the first respondent herein and to quash the same.

For Petitioner	:	Ms.D.Sathya Sri
For Respondent 2	:	NA.
For Respondent 1	:	District Consumer Disputes Redressal Forum

ORDER

The writ petition on hand is filed questioning the very complaint filed before the District Consumer Forum, Chennai North in O.P.No.188 of 2005.

2.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner was initially enrolled as an Advocate with the Registration No.136/1966 on the rolls of the Bar Council of Tamil Nadu, with effect from 28.01.1966 and after his practice successfully at Madurai Bar Association nearly for about 6 ½ years, the writ petitioner shifted his practice to Chennai, in the month of October 1972. The petitioner states that the second respondent had approached

him on 05.05.2003, during the summer vacation holidays, with a request to appear for him, as against the order of suspension dated 09.02.2002 and also his grievance is that the subsistence allowance during the period of suspension had not been paid by the authorities competent. On taking instructions from the litigant/second respondent and based on the documents submitted before the writ petitioner, he dictated an affidavit in the presence of the second respondent duly typed and shown to him in accordance with law. A detailed typed set of papers were also prepared and the writ petition was presented on 18.06.2003, after re-opening of the Hon'ble High Court after summer recess. The writ petition was numbered as W.P.No.16909 of 2003 and the Miscellaneous petitions were numbered as W.P.M.P.Nos.21125 to 21127 of 2003 respectively. The writ petition came up for hearing on 20.06.2003 and after hearing the writ petitioner, in an elaborate manner, the writ petition was disposed of by the Hon'ble High Court on 20.06.2003. Thereafter, an application for Review was also filed by the writ petitioner, on behalf of the second respondent, in Review Application No.72 of 2003 and this Court, passed an order expunging the observations made in paragraph No.6 of the order dated 20.06.2003 in W.P.No.16909 of 2003. On receipt of the certified copy of the order dated 10.09.2003, the second respondent preferred a writ appeal by engaging a different counsel, on his own choice, before a Hon'ble Division Bench of this Court in W.A.No.4096 of 2003 and the Writ Appeal was dismissed by a judgment dated 10.02.2004.

3.Under these circumstances, a complaint against the writ petitioner has been filed before the District Consumer Forum, Chennai North, alleging that there is a deficiency of service, on the part of the writ petitioner, in not presenting the case diligently and properly, thereby causing him a monetary loss to the tune of Rs.19,86,100/-.

4.The contention of the learned counsel for the petitioner is that, the very complaint itself is untenable. The complaint was filed by the second respondent on frivolous allegations and the averments set out in the complaint are incorrect and therefore, the first respondent ought not to have entertained the very complaint at all. It is further contended that the first respondent even at the time of admitting the complaint, ought to have gone into the nature of the allegations set out in the copy of the complaint filed by the second respondent.

5.The learned counsel for the writ petitioner pleads that the writ petitioner is a Senior Counsel as of now and has got a proven integrity and honesty. The copy of the complaint filed by the second respondent shows that the writ petitioner has indulged in some corrupt activities and such activities are

beyond truth and can never be entertained by the first respondent Consumer Forum. The nature of the allegations set out in the complaint causes a great mental agony to the writ petitioner and damaging the reputation of the writ petitioner as a senior counsel of the Hon'ble High Court of Madras.

6. Under these circumstances, the learned counsel for the writ petitioner urges this Court that entertaining of the complaint by the first respondent is without jurisdiction, illegal, abuse of process of Consumer Protection Act, 1986, as amended.

7. The learned counsel for the writ petitioner articulated the case of the petitioner by stating that the petitioner had acted diligently and had taken due care by representing the case of the second respondent before the Hon'ble High Court. He drafted the case in the presence of the second respondent and presented it before the High Court and the High Court passed an order, on merits. Thus, the petitioner cannot be blamed for any adverse order being passed against the second respondent.

8. This apart, the writ appeal filed by the second respondent was also dismissed by the Hon'ble Division Bench and therefore, the stand taken by the writ petitioner in the writ petition was confirmed by the Hon'ble Division Bench and thus, the complaint itself is frivolous and liable to be set aside.

9. This Court has to consider the provisions of the Consumer Protection Act, 1986, as amended. The statement of objects and reasons for the enactment of the Consumer Protection Act, 1986 (hereinafter referred to as "the act") stipulates that an act is provided for better protection of interest of the consumers and further to promote and protect the rights of the consumers as such.

10. Section 2(d) defines the term "consumer":-

"(d) "consumer" means any person who-

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who 'hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purposes;"

11. Thus, the definition of the word "consumer" enumerates that a person hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services. There is no ambiguity in respect of the definition provided under the Consumer Protection Act.

12. Section 2 (o) of the act defines that "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

13. The jurisdiction of the District Forum is defined in Section 11 of the Act. Section 12 denotes the manner in which the complaint shall be made. Section 12(3) of the act enumerates that On receipt of a complaint made under sub-section (1), the District Forum may, by order, allow the complaint to be proceeded with or rejected: Provided that a complaint shall not be rejected under this section unless an opportunity of being heard has been given to the complainant: Provided further that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was received.

14. Section 12(4) of the act stipulates that 'Where a complaint is allowed to be proceeded with under sub-section (3), the District Forum may proceed with the complaint in the manner provided under this Act: Section 13 of the Act deals with the procedure of admission of complaint'.

15.A cogent reading of the provisions of the Consumer Protection Act which is mainly enacted for the benefit of consumers at large, it is categorically stated that a complaint shall not be rejected unless an opportunity of being heard had given to the complainant. Thus, even if the allegations set out in the complaint are frivolous or incorrect, an opportunity must be provided to the complainant to vindicate his grievances before the Consumer Forum. The very purpose and object of the provision is to ensure that summary rejection of the complaint by the District Consumer Forum or by the Appellate Forum will defeat the very purpose and object of the Act.

16.In this great nation, in a wider population, it is possible that there are many such frivolous or incorrect complaints filed by some scandalous persons or by any other persons based on some motive or on some personal vengeance. However, the judicial forums cannot reject in limine in respect of such complaint, in view of the fact that the person who files a complaint must be given an opportunity to express his case before the Forum. In the event of not providing any such opportunity, this Court is of the opinion that, the principles of audi alteram partem will be defeated. Any person who approaches the Court must be provided with an opportunity, at the first instance, to express his grievances and thereafter, the forum may consider the genuineness or otherwise of the complaint and decide on merits and in accordance with law. However, if any such complaints are dismissed in limine then the faith and trust on the judicial forum will be shaken in the public domain. The entire judiciary rests on the public trust and confidence. When the procedures adopted by such judicial forums are not in consonance with the established principles and not with the principles of natural justice, then, the very independence and the trust in which the judiciary rest will be uprooted.

17.Under these circumstances, this Court is of an undoubted opinion that the said provisions have got some spirit in it and proviso to Section 12(3) of the Act categorically enumerates that a complaint shall not be rejected unless an opportunity of being heard has been given to the complainant. The provision being sacrosanct, the same is to be complied by the consumer Forum, in its strict sense. Thus, the original complaint filed before the District Forum or before the state forum cannot be rejected in limine without providing an opportunity to the complainant to express his grievances.

18.In view of the fact that the present writ petition has been filed challenging the very filing of the complaint filed by the second respondent, this Court is of the opinion that an

opportunity must be provided to the second respondent to express his grievances in entirety before the District Consumer Forum. Accordingly, the District Consumer Forum, Chennai North can list the complaint of the second respondent for hearing and by providing an opportunity to the complainant/second respondent, decide the matter on merits and in accordance with law. It is needless to express that the writ petitioner being a Senior Counsel need not shy about the complaint and has to place his defence statement and place the truth regarding the incidence before the forum enabling it to decide the matter in accordance with law.

19.This being the factum of case now placed before this Court, the writ petition cannot be entertained as the same is devoid of merits and the liberty is given to the writ petitioner to place all the facts and circumstances and the documents, if any, before the District Consumer Forum, Chennai North and the District Consumer Forum, Chennai North, also shall consider the matter on merits after following the procedures contemplated under the Act and decide the same as expeditiously as possible.

20.With these observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

jbm/bga

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The President,
The District Consumer Disputes
Redressal Forum,
Chennai (North)
No.212, R.K.Mutt Road,
1st Floor, Mylapore,
Chennai - 600 004.

+1cc to Mr.Elizabeth Ravi, Advocate, S.R.No.84090
+1cc to Mr.A.V.Arun, Advocate, S.R.No.84383

W.P.No.24316 of 2005

JP(CO)
kak(06/02/2019)