

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.10.2018

Coram

The Honourable Ms.Justice P.T.ASHA

C.R.P(PD)Nos.2207 of 2011

and

M.P.No.1 of 2011

1.P.Natarajan
2.N.Sivakumar
3.N.Ravikumar
4.N.Senthilkumar

...Petitioners

Versus

G.Radhakrishnan

...Respondent

This Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and decree in I.A.No.451 of 2008 in O.S.S.R.No.1475 of 2008 on the file of the Principal District Judge at Chengalpet passed on 11.01.2011.

For Petitioners : Mr.N.L.Rajah,
Senior Counsel
for Mr.R.Kumar

For Respondent : Mr.B.Rajkumar Ashok Singh

ORDER

This Civil Revision Petition is filed challenging the order passed by the learned Principal District Judge, Chengalpet in in I.A.No.451 of 2008 in O.S.S.R.No.1475 of 2008 dated 11.01.2011, in and by

which the learned Principal District Judge, Chengalpet had allowed an Application filed under Section 14 of the Limitation Act to exclude the period spent before Consumer Forum from 24.07.2002 to 01.02.2007 by the respondent herein while considering the question of limitation for filing the suit.

2. The facts in brief are as follows:

The respondent had filed a consumer complaint against the revision petitioners before the State Consumer Dispute Redressal Commission, Chennai in O.P.No.79 of 2002 alleging deficiency of service in construction and allotment of certain shops and he had claimed damages. The State Consumer Dispute Redressal Commission by its order dated 03.03.2005 had dismissed the complaint observing as follows:

"5. In the result, this complaint is dismissed, but in the circumstances, without costs. However, the complainant is at liberty to approach the Civil Court for necessary relief, however, subject to the question of limitation. The order passed in M.P.No.62 of 2004 directing the Opposite parties to furnish security is hereby vacated. In the circumstances, the parties are directed to bear their own costs."

3. Thereafter, respondent challenging this order before the

National Consumer Disputes Redressal Commission in First Appeal

No.133 of 2005. The National Consumer Disputes Redressal Commission by its order dated 01.07.2007 had disposed of the said Appeal with the following observation:

*"We clarify that in the event of suit being filed, the appellant will be entitled to file Application for exclusion of the period spent in pursuing the complaint/appeal under Section 14 of the Limitation Act, 1963 as held by the Supreme Court in **Laxmi Engineering Works Vs. P.S.G.Industrial Institute, 1995 (3) SCC 583.**"*

4. Thereafter, on 19.02.2007, the respondent herein had instituted the suit in O.S.SRNo.1475 of 2008. Along with the suit, the respondent had filed an Application under Section 14 of the Limitation Act in I.A.No.451 of 2008 to exclude the period spent before Consumer Forum from 24.07.2002 to 01.02.2007 by the respondent herein.

5. In the affidavit filed in support of the said Application, the respondent herein had contended that he had initiated the proceedings within a period of two years from the date of the Execution of the transactions and considering the fact that the initiation of the proceedings was well within a period of limitation and the suit has now been filed within days of the National Consumer Disputes Redressal Commission clarifying that the respondent would file an Application for excluding the period

between 24.07.2002 to 01.02.2007 while considering the issue of limitation.

6. The first petitioner herein had filed a counter affidavit in which he would contend that the respondent was not *bonafide* prosecuting the case before the Consumer Forum since he was very much aware that O.P.No.79 of 2002 filed before State Consumer Dispute Redressal Commission, Chennai is without jurisdiction. The *malafide* on the part of the respondent is further evident from the fact that the respondent had not filed the suit even after the State Consumer Disputes Redressal Commission had disposed of the Appeal and on the contrary, the respondent had approached the National Consumer Disputes Redressal Commission. He would contend that the suit is hopelessly barred by limitation and the period between 24.07.2002 to 01.02.2007 cannot be excluded as the respondent was not *bonafide* prosecuting the case before another Forum. The learned Principal District Judge, Chengalpet after hearing both parties, by his order dated 11.01.2011 proceeded to allow the Application filed in I.A.451 of 2006 by the respondent. The learned Judge had placed reliance on the judgment ***Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and Ors.*** reported in **(2008) 5 MCJ 431 (SC)** where the Honourable Apex Court culled out five principles

while considering the Application under Section 14 of the Limitation Act. The learned Judge has also placed reliance on the order of the National Consumer Disputes Redressal Commission and held that the order of the State Consumer Disputes Redressal Commission would merge with the order of the National Consumer Disputes Redressal Commission and therefore, by reason of the doctrine of merger, the period of limitation would begin to run only from the date of the Appellate Court's order. On examination of those lines, the learned Judge had allowed the Application. Challenging this order, the revision petitioners are before this Court.

7. Mr.N.L.Rajah, learned Senior Counsel for the petitioners and Mr.B.Rajkumar, learned counsel for the sole respondent.

8. The learned Senior Counsel appearing for the petitioners though had argued that the Consumer Forum cannot be considered as a Court and therefore, the benefits of Section 14 of the Limitation Act would not be available did not press this argument. He argued that the learned Judge has not considered the question of bonafides especially when the judgment of the Honourable Supreme Court relied upon by the National Consumer Disputes Redressal Commission had clearly stated that one of the qualifications for maintaining the Application under Section 14 of the Limitation Act is

that the prior proceeding had been prosecuted with due diligence and in good faith. In the instant case, they would contend that the intention is *malafide* and the respondent has deliberately approached the Consumer Forum. He would submit that this factum has not been considered by the learned District Judge though argued by him. The learned Senior Counsel for the petitioners had produced the judgment ***Soumitra Kumar Sen Vs. Shyamal Kumar Sen and Others*** reported in **(2018) 5 SCC 644** where the Honourable Supreme Court has held as follows:

"In a case like this, though recourse to Order 7 Rule 11 C.P.C by the appellant was not appropriate, at the same time, the trial Court may, after framing the issues, take up the issues when pertain to the maintainability of the suit and decide the same in the first instance. In this manner the appellant, or for that matter the parties, can be absolved of unnecessary agony of prolonged proceedings, in case the appellant is ultimately found to be correct in his submissions."

9. *Per Contra*, the learned counsel appearing for the respondent would contend that the National Consumer Disputes Redressal Commission had passed the order only upon an Appeal by respondent and therefore, it clearly indicates that the National Forum had ordered the exclusion.

10. Heard the submissions and perused the records.

11. Considering the fact that the prayer of the revision petitioner is restricted to the trial Court considering the question of maintainability as per the observation of the Honourable Supreme Court in the judgment cited *supra*, this Court deems it fit to dispose of the Civil Revision Petition with an observation that the revision petitioners shall move necessary Application for rejecting the plaint on the ground of the same being time barred and on such Application being moved, the respondents shall be permitted to make their submissions and thereafter, the same shall be taken up at the very beginning before trial and orders passed thereon.

12. In the result, this Civil Revision Petition is disposed with the above observation and the order passed by the learned Principal District Judge, Chengalpet in I.A.No.451 of 2008 in O.S.S.R.No.1475 of 2008 dated 11.01.2011 is upheld.

12.10.2018

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Index: Yes/No

P.T.ASHA, J.,

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To

The Principal District Judge,
Chengalpet.



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12.10.2018