

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.06.2018

CORAM

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

W.P.No.26094 of 2013

and

M.P.No.1 of 2013

The Commissioner
Tambaram Municipality,
Tambaram
Kancheepuram District.

..Petitioner

vs

1. D.Pandurangan
2. The Registrar
District Consumer Disputes
Redressal Forum, Chengalpattu
Kancheepuram District.

.. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order dated 16.04.2012 made in C.C.No.2 of 2011 on the file of the District Consumer Disputes Redressal Forum, Chengalpattu, the second respondent herein quash the same and consequently dismiss the complaint filed by the first respondent and forbear the first respondent herein from in any manner proceeding against the petitioner on the Time barred claim.

For Petitioner : M/s.K.Rajkumar

For Respondents : Mr.V.Raghavachari for R1
Mr.M.Elumalai, GA for R2

WEB COPY
O R D E R

The relief sought for in this writ petition is to call for the records in relation to the order dated 16.04.2012 passed in C.C.No.2 of 2011 on the file of the District Consumer Disputes Redressal Forum, Chengalpattu and quash the same and consequently dismiss the complaint filed by the first respondent.

2.The learned counsel appearing on behalf of the writ petitioner states that the complaint filed by the first respondent before the District Consumer Disputes Redressal Forum, Chengalpattu itself is without jurisdiction and therefore, the District Consumer Disputes Redressal Forum ought not to have entertained the complaint filed by the first respondent at all. Further, the claim made in the complaint would not have been entertained by the District Forum. Thus, the writ petitioner claims that the present writ petition filed under Article 226 of the Constitution of India is maintainable. The learned counsel for the petitioner is of an opinion that simultaneous proceedings are permissible and therefore, the writ petitioner is entitled to approach both the State Consumer Forum as well as the High Courts under Article 226 of the Constitution of India.

3.In this regard, the learned counsel for the petitioner cited the judgment in the case of Indian Bank, represented by its Assistant General Manager, Central Office, Chennai Vs. The President, District Consumer Disputes Redressal Forum, Mylapore, Chennai and another, reported in (2003) 2 M.L.J.17. The relief sought for in the case cited supra is that for issuance of a Writ of Prohibition, forbearing the District Consumer Disputes Redressal Forum, Chennai - 4, the first respondent from deciding or proceeding further in the complaint filed by the second respondent in O.P.No.309 of 2001.

4.The learned counsel for the petitioner relied on paragraph 10 of the above said judgment, which is extracted hereunder:

"10.The second respondent appearing in person would contend that since interest is to be given for the delayed credit of commutation amount, the Consumer Forum has jurisdiction. Though the second respondent has cited several decisions in support of his claim, on going through the factual details therein, I am of the view that the same are distinguishable and not applicable to the facts of the case on hand. Though the relationship comes to an end when the employees are relieved after the acceptance of VRS applications, since the question that is to be decided relates to VRS., formulated and implemented by the bank under certain terms and conditions, and also relates to "contract of personal service" in the exclusionary part of Sec.2(1)(o), it must be construed as excluding the services rendered by an employer to his employee under the contract of personal service from the ambit the expression "service". Though as per Sec.12 of the Act, the first respondent can entertain complaint, in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to

be provided, since neither goods were sold to the second respondent nor service availed from the petitioner, I am of the view that the entertainment of the complaint of the second respondent by the District Consumer Redressal Forum is without jurisdiction and the objection raised in this score by the bank is well-founded. It is to be noted that this Court is not under-estimating the entitlement of the second respondent. It is also made clear that this Court has not considered the eligibility or otherwise of the claim of the second respondent. In the light of the various provisions in the Consumer Protection Act, the service conditions of the 2nd respondent, more particularly the VRS and other terms and conditions and in view of the decision of the Supreme Court referred to above, I am satisfied that the first respondent committed an error in entertaining the complaint filed by the second respondent and I hold that the action of the first respondent in issuing Notice to the petitioner is without jurisdiction. It is also brought to my notice that the President of Indian Bank Voluntary Retirees Welfare Association has filed two writ petitions viz., W.P.Nos.12075 of 2001 and 6751 of 2001 before this Court seeking for certain directions to the bank regarding their retirement benefits like Provident Fund, Gratuity, Pension as per Indian Bank (Employees) Pension Regulations, 1995, etc. If that is so, it is for them to pursue the claim in this case on the same line. Further, as stated earlier, the second respondent is permitted to file a suit for writ petition before this Court to vindicate his grievance."

5.Relying on the above judgment, the learned counsel for the writ petitioner states that the petitioner is entitled to file a writ petition even challenging order passed by the District Consumer Disputes Redressal Forum under the provisions of the Consumer Protection Act. If at all, this Court is disagreeing with the judgment cited supra, this Court has to refer the matter for adjudication before the Larger Bench or Division Bench.

6.The learned counsel appearing on behalf of the respondents opposed the contentions by stating that the order under challenge was issued by the District Consumer Disputes Redressal Forum in C.C.No.2 of 2011. The writ petitioner had participated in the adjudication before the District Forum. This apart, the writ petitioner had admitted the claim of the first respondent before the District Forum. The findings of the District Forum in this regard are extracted hereunder:

"So, the opposite party perused the said

calculation attached to the memo dated 12.03.2012 and calculation list in Ex.A4 carefully. After that, the Commissioner, Tambaram Municipality opposite party filed a memo dated 12.03.2012 stating that, the complainant is not entitled to interest for 1996 to 2011 he has received the entire GPF amount after his retirement. But, the Commissioner admitted clearly in the memo dated 12.03.2012 that, the complainant is entitled to interest for the period from 1986 to 1994-1995 and the municipality is ready to pay the interest of Rs.16.434/- as arrived by the complainant in this case."

7. Since the writ petitioner had agreed the claim of the 1st respondent before the District Forum, there was no disputed question of Law aroused before the District Forum. Thus, the case cited by the learned counsel for the petitioner is certainly in-applicable in respect of the facts and circumstances of the present case on hand. This apart, against the order of the District Consumer Dispute Redressal Forum, an appeal lies before the State Consumer Commission and thereafter, before the National Consumer Forum. This apart, in the case cited supra, the very filing of the complaint before the District Forum was questioned before this Court. However, in the present case on hand, the District Forum adjudicated the matter and passed an order. This apart, there was a consent by the writ petitioner in respect of the claim of the first respondent before the District Consumer Forum. Such being the facts and circumstances of the present case on hand, the case cited by the learned counsel for the petitioner has no relevance and the same cannot be relied upon for the purpose of deciding the present writ petition.

8. This being the provisions contemplated under Consumer Protection Act 1986, the present writ petition filed, challenging the order passed by the District Consumer Forum is not maintainable.

9. The learned Government Advocate appearing on behalf of the second respondent also supported the contentions raised on behalf of the first respondent by stating that the writ petition is not maintainable and the writ petitioner if at all aggrieved from and out of the order passed by the District Forum is at liberty to approach the State Consumer Commission by way of an appeal.

10. Considering the arguments as advanced by the respective

learned counsel for the respondents, this Court is of an opinion that Section 15 of the Consumer Protection Act 1986, [hereinafter referred to as "the Act"] provides an Appeal - "Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed". Thus, "the Act" provides an appeal before the State Consumer Commission. The Jurisdiction of the State Commission also enumerated in Section 17 of "the Act". Section 19 of "the Act" deals with further appeals - "Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of Section 17 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed". Section 23 of "the Act" denotes "Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of Section 21, may prefer an appeal against such order of the Supreme Court within a period of thirty days from the date of the order."

11. Thus, "the Act" in unambiguous terms stipulates that an appeal lies before the State Consumer Commission and thereafter, before the National Consumer Commission and finally before the Hon'ble Supreme Court of India.

12. This being the provisions of "the Act", there is no reason to entertain a writ petition under Article 226 of the Constitution of India to test the validity of the order passed by the District Consumer Redressal Forum. Even in respect of jurisdiction or the legal grounds raised by the writ petitioner in the present writ petition shall be adjudicated by the State Consumer Commission. The State Consumer Commission is also exercising the judicial powers and therefore, there is no impediment for the State Commission to test the validity or otherwise of the order passed by the District Forum even if the point of jurisdiction, maintainability or other related grounds are raised.

13. This apart, the learned counsel for the first respondent also cited that the order passed by the District Forum is a consent order and the claim of the first respondent had been admitted by the writ petitioner before the District Forum. However, all these points need not be adjudicated in the present writ petition as the present writ petition is liable to be dismissed on the ground of maintainability.

15.In this view of the matter, the writ petition stands dismissed as not maintainable. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kak

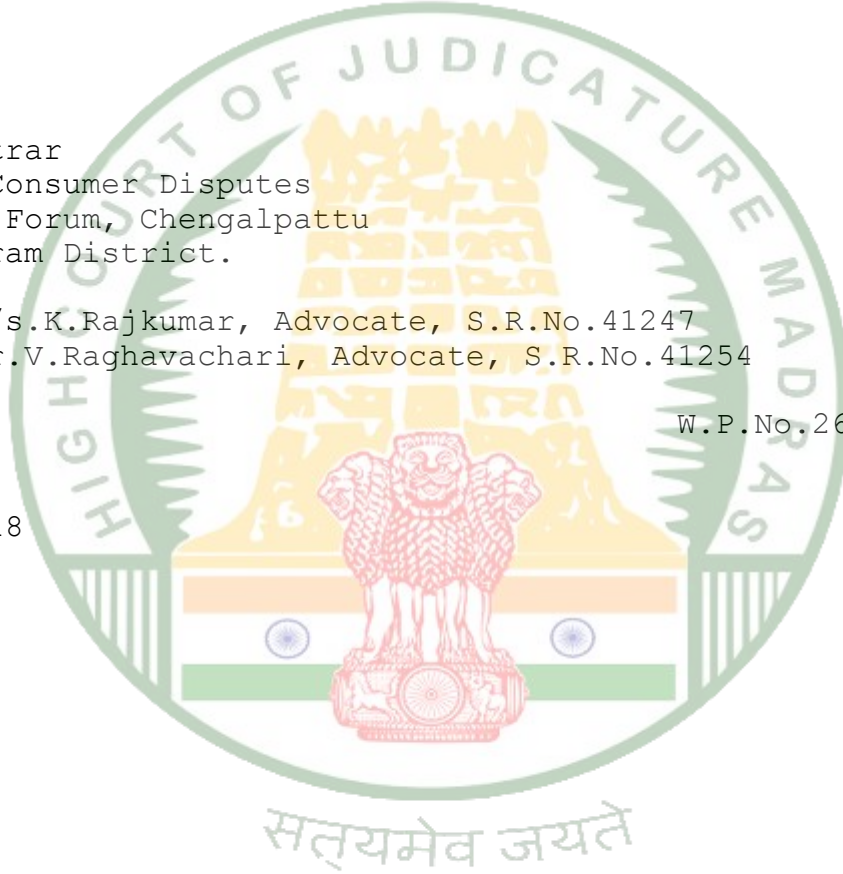
To

The Registrar
District Consumer Disputes
Redressal Forum, Chengalpattu
Kancheepuram District.

+1cc to M/s.K.Rajkumar, Advocate, S.R.No.41247
+1cc to Mr.V.Raghavachari, Advocate, S.R.No.41254

W.P.No.26094 of 2013

SVN(CO)
CS/12/07/18



WEB COPY