



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD)No.2841 of 2018

and

C.M.P. (MD)No.12331 of 2018

1. Sri Aadhithyya Finance,
Rep. through its Managing Partner,
P.Kumaresan
2. P.Kumaresan
3. K.Naveenkumar ... Petitioners/ Respondents / Respondents

Vs.

K.S.Alagarsamy ... Respondent/ Petitioner/Complainant

PRAYER: Petition filed under Article 227 of the Constitution of India to strike off the proceedings in E.A.No.40 of 2007 in C.C.No.89 of 2006 on the file of the District Consumer Disputes Redressal Forum, Theni.

For Petitioners : Mr.K.P.S.Palanivel Rajan

ORDER

The first petitioner is a finance company and the second and third petitioners are the managing partners of the finance company. Alleging deficiency in service rendered by them, the respondent, being a consumer / depositor, has filed C.C.No.89 of 2006 before the District Consumer Disputes Redressal Forum, Theni and the forum directed the finance company to pay a sum of Rs.1,30,279/- to the complainant / respondent herein. As the finance company failed to comply with the said direction, the respondent filed a petition under Section 27 of the Consumer Protection Act, before the District Consumer Forum on 30.05.2007 and the same was numbered as E.A.No.40 of 2007 in C.C.No.89 of 2006. Though several notices were sent to the petitioners herein, they could not be served. Therefore, on 18.03.2008 paper publication was ordered. Even thereafter, the petitioners herein did not appear before the Forum and hence, on 04.04.2008, Non-Bailable Warrant was issued against the petitioners herein. Even after several reminders to the Police, the warrant could not be executed till date. While so, now the petitioners have filed this petition seeking to strike off the proceedings in E.A.No.40 of 2007 in C.C.No.89 of 2006.

2. According to the petitioners, as per Section 27 of the Consumer Protection Act, the Forum is vested with the power of a Judicial Magistrate and therefore, the Forum has to try the proceeding as a summary trial. But, the Forum assigned the petition



filed by the respondent as execution application and has been proceeding the same as execution application. The Forum has issued the Non-Bailable Warrant in a casual manner, without following the procedure. Therefore, the execution application may be struck off.

3. Reiterating the contents raised in the grounds of revision petition, the learned Counsel for the petitioners submitted that the very foundation of the proceeding before the forum is illegal and lacks jurisdiction and therefore, prays for striking off the proceedings in E.A.No.40 of 2007 in C.C.No.89 of 2006.

4. Heard the learned Counsel appearing for the petitioners and perused the documents placed on record.

5. The Consumer Protection Act, 1986 is a complete Code unto itself. Any person aggrieved by an order passed by the District Forum can file an appeal before the State Commission. If he is not satisfied with the order of the State Commission, a further remedy is available by way of revision before the National Commission. If the complaint is decided by the State Commission, the aggrieved person can file an appeal before the National Commission. Similarly, a further remedy is available before the Hon'ble Supreme Court.

6. In this case, the petitioners have questioned the jurisdiction of the Forum in entertaining an execution petition by assigning a number as E.A. and also issuing NBW. It is needless say that the wrong assignment of the application would not be a dissuading factor. However, in such a case, as per Section 17(1)(b) of the Consumer Protection Act, 1986, the petitioners have to approach the State Commission and not this Court under Article 227 of the Constitution of India. Since there is a special forum to exercise revisional as well as appellate powers under the Consumer Protection Act, the general powers under Articles 226 and 227 of the Constitution of India, cannot be invoked. When there is an effective and efficacious alternative remedy is available to the petitioners, this petition cannot be entertained.

7. However, this Court is inclined to impose heavy cost on this petition for the following reasons:

(a) Though the petition has been filed under Section 27 of the Consumer Protection Act and the Forum has issued Non-Bailable Warrant, after following the procedure of issuing notice and ordering paper publication, as if the Forum has straight away issued NBW without following the procedures, the petitioners have purposefully filed the impugned order in a jumbled manner and misled the Court.

(b) It is seen that the addresses of the petitioners mentioned in this petition and in the execution application are one and the same. No change of address is mentioned, in this petition, in respect of the petitioners. As stated earlier, in this case, notice



and fresh notices could not be served for about 8 months and finally, it was returned as "not claimed". Even after paper publication, the petitioners did not appear before the Forum and hence, the Forum issued Non-Bailable Warrant on 04.04.2008. Though almost 10 years have gone, the said warrant has not been executed till date. It shows that the Police authorities had been in lethargic attitude. It is needless to say that it is the duty of the Police to see that NBW issued by any Court or Forum is executed without any delay. On the other hand, it also shows that for these long years, the petitioners could be able to see that the notice and fresh notice could not be served to them and NBWs could not be executed against them till date, having been living in the same addresses. Only after pressurization of the Forum to the Police, now the petitioners have approached this Court. More over, it is seen that it is not the only case pending against the petitioners and there are other cases also pending against the petitioners before the same Forum.

8. No judicial system can tolerate such ignoble act and conduct of the parties. If the judiciary has to perform its function in a fair and free manner, the dignity and authority of the court has to be respected by all concerned, failing which, the very constitutional scheme and public faith in the judiciary runs the risk of being lost. This Court would be failing in its duties, if the matter in question is not dealt with in a manner proper and effective for maintenance of the majesty of the judiciary as otherwise law Courts would lose their efficacy to the litigant public. It is, in this perspective, this Court feels it expedient to impose a sum of Rs.1 lakh as cost on the petitioners. Accordingly, Rs.1,00,000/- (Rupees one lakh only) is imposed as cost on the petitioners. The petitioners are jointly or severally directed to pay the said cost to the respondent, who was put into harassment for the past twelve years, within a period of four weeks from the date of receipt of a copy of this order. If the petitioners fail to pay, the Forum shall recover the said amount, along with the compensation amount and pay to the respondent.

9. With the above observations and directions, this Civil Revision Petition stands dismissed with costs quantified as above. The petitioners may work out their remedy before the State Commission, as per Section 17(1)(b) of the Consumer Protection Act, 1986. Consequently, connected miscellaneous petition is also dismissed.

sd/
Assistant Registrar(crl.side)

/True Copy/

Sub Assistant Registrar



To

1. The District Consumer Forum,
Theni.

2. K.S.Alagarsamy,
S/o.Surulichettiayar,
45/C, Suruli Main Road,
Kamayagoundanpatti,
Uthamapalayam Taluk,
Theni District.

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