

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

+ WRIT PETITION No.8377 of 2018

%02-08-2018

M/s. Global Hospitals and others.

... Petitioners

And

\$The Consumer Disputes Redressal Forum-III,
Rep. by its President, 5th Floor, Chandra Vihar,
Nampally, Hyderabad and another.

... Respondents

! Counsel for the Petitioners : Sri T. Rajendra Prasad

^Counsel for the respondents : GP for Civil Supplies for R1
None appeared for R2

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>HEAD NOTE

? CITATIONS : (1) AIR 2013 ANDHRA PRADESH 93
(2) I (2015) CPJ 109 (NC)
(3) I (2009) CPJ 104 (DB)

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... Respondents

COUNSEL FOR PETITIONERS : Sri T. Rajendra Prasad

COUNSEL FOR RESPONDENTS : GP for Civil Supplies for R1
None appeared for R2

THE COURT MADE THE FOLLOWING:

ORDER : (per Hon'ble Sri Justice C.V. Nagarjuna Reddy)

This Writ Petition is filed for a Mandamus to declare the Docket Order, dated 28-02-2018, in EA.No.6 of 2017 on the file of the District Consumer Disputes Redressal Forum-III, Hyderabad (for short 'the District Forum') as illegal, arbitrary and unconstitutional. The petitioners sought for a declaration that the entertainment of EA.No.6 of 2017 in C.C.No.374 of 2014 pending the Appeal before the State Consumer Disputes Redressal Commission, is illegal and arbitrary.

Inspite of service of notice, respondent No.2 has not entered appearance. We have heard learned Government Pleader for Civil Supplies.

The issue as to whether, under the Consumer Protection Act, 1986 (for short 'the Act'), the District Forum has the jurisdiction to entertain the petition filed under Section 27 of the said Act, when an appeal is pending, is no longer *res integra* as far as this Court is concerned.

In MAYTAS PROPERTIES LIMITED Vs. A.P.STATE CONSUMER DISPUTES REDRESSAL COMMISSION AND ORS¹, a Division Bench of this Court held as under:

¹ AIR 2013 Andhra Pradesh 93

“19. On a plain reading of [Section 27](#) of the Act, it is clear that it is penal in nature and is intended to empower the District Forum or the State/National Commission to punish not only the opposite party but also the complainant if it comes to the conclusion that the action on the part of the defaulter is dishonest and intentional. As explained in VISHWABARATHI HOUSE BUILDING CO-OP. SOCIETY'S case (5 supra) and also in C.V. RATNAM'S case (2 supra), [Section 27](#) is akin to Order XXXIX Rule 2-A of C.P.C. or the provisions of the [Contempt of Courts Act](#) or [Section 51](#) read with Order XXI Rule 27 of C.P.C. It is no doubt true that the object of the Act is to provide speedy and simple redressal to consumer disputes and the procedure to be followed for settlement of consumer disputes is summary in nature. However, having regard to the fact that [Section 27](#) is a penal provision under which non-compliance of the order of the District Forum or the State/National Commission would be punishable by way of imprisonment or fine, we are of the opinion that [Section 27](#) cannot be equated with the other provisions of the Act providing for settlement of consumer disputes by the District Forum and State/National Commission. Therefore, the penal proceedings under [Section 27](#) cannot be allowed to be taken recourse to even before the order of the District Forum or State/National Commission attains finality merely on the ground that the Act provides for speedy and simple redressal to consumer disputes. In fact, the language of [Section 24](#) of the Act is plain and unambiguous and makes it clear that the order of a District Forum or State/National Commission shall be final only if no appeal has been preferred against such order. The law is well settled that the language employed in a statute is the determinative factor of legislative intent. Therefore, as held by the Full Bench in C.V.RATNAM'S case (2 supra) [Section 27](#) can be taken recourse to only by way of last resort after the order attains finality as provided under [Section 24](#) of the Act.

20. The reliance placed by the State Commission upon ATMA RAM PROPERTIES P. LTD.'S case (3 supra) while passing the impugned order in our considered opinion is misplaced. The decision in ATMA RAM PROPERTIES P. LTD.'S case (3 supra) was rendered in the light of Order 41 Rule 5 of C.P.C. which provides that an appeal shall not operate as a stay of proceedings under a decree or order appealed from except where execution of decree is stayed. Admittedly no such provision is available in the Act. On the other hand, it is expressly provided under [Section 24](#) of the Act that the order of the District Forum or the State Commission shall be final if no appeal has been preferred against such order under the provisions of the Act. In the light of [Section 24](#), it can be safely concluded that the penal proceedings under [Section 27](#) of the Act cannot be entertained while an appeal is pending before the State/National Commission.”

On the direction issued by this Court, the President of Respondent No.1-Forum has filed his personal affidavit, dated 27.06.2018, wherein he has *inter alia* relied upon order dated 28.02.2018 in NILKALAM PATEL Vs. JAGDISH GOVARDHAN BHAI SHODHAN². It is stated in the said affidavit that the National Consumer Redressal Commission (for short “the Commission”) referred to the judgment of this Court in MAYTAS PROPERTIES LIMITED case (supra) and after considering the decision of the Hon’ble Supreme Court in AATMARAM PROPERTIES Vs. FEDERAL MOTORS, reported in VII (2004) SLT 494, it has held that inspite of pendency of the appeal, the District Forum can proceed with the Execution Petition. He stated that the Forum passed orders with bonafide intention and with prudence and there is no intention of defying the orders of this Court.

It is trite law that the High Court being a Constitutional Court and the Court of Record, its judgments are binding precedents on everyone, including the Courts and Fora functioning within its jurisdiction. In MAYTAS PROPERTIES (supra), a Division Bench of this Court in unequivocal terms held that mere pendency of appeal is sufficient to bar the District Forum from proceeding with the execution of the orders during the pendency of

² I(2015) CPJ 109 (NC)

appeal before the State Commission. Even if the National Commission refuses to follow the said judgment, the same still binds respondent No.1-Forum, as this Court is the jurisdictional Court, whose judgments bind the said respondent and the order of the National Commission cannot destroy the precedential value of this Court.

The learned Government Pleader has fairly conceded that no judgment of the Hon'ble Apex Court, including that in AATMARAM PROPERTIES (supra), which was referred in ALLAHABAD DEVELOPMENT AUTHORITY v. DISTRICT CONSUMER PROTECTION FORUM³ rendered by the Allahabad High Court and referred in the decision of the National Commission in NILKALAM PATEL (supra), has dealt with the issue arising in this case. In the absence of any such judgment of the Supreme Court taking a contrary view, the judgment in MAYTAS PROPERTIES (supra) continues to bind respondent No.1-Forum, despite the fact that the National Commission in NILKALAM PATEL (supra) has not chosen to follow the said judgment.

In the above view of the matter, respondent No.1-Forum has not properly comprehended the jurisprudential doctrine of binding precedent of the jurisdictional High Court and refused to follow the same labouring under an obvious misconception that order of the

³ I (2009) CPJ 104 (DB)

National Commission has a higher precedential value and that it could eclipse the judgment of this Court.

On an analysis as above, respondent No.1-Forum is prohibited from proceeding with E.A.No.6 of 2017 in C.C.No.374 of 2014 till disposal of the appeal by the State Forum.

Accordingly, this writ petition is allowed. No order as to costs.

As a sequel to the allowing of the writ petition, I.A.No.1 of 2018 shall stand disposed of accordingly.



C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

02.08.2018.

NOTE: L.R. Copy.
(B/O)
Msr

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Msr