

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND
THE STATE OF ANDHRA PRADESH**

W.P.No.22807 of 2016

Between:

The Branch Manager,
HDFC Standard Life Insurance
Company Limited,
Opposite ING Vysya Bank,
D.No.7-4-12, New Colony,
Srikakulam town and district
and another

... Petitioners

And

Sampathirao Sarvani Devi
W/o.Narayana Rao,
Aged about 62 years,
R/o.D.No.16-3-214,
by the side of SET College,
Gujarahipeta Post,
Srikakulam-532 005
and two others.

... Respondents

JUDGMENT PRONOUNCED ON **07.06.2018**

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked to Law Reporters/Journals
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

(C.V.NAGARJUNA REDDY,J)

(M.GANGA RAO, J)

***THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO
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W.P.No.22807 of 2016

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Respondents

!Counsel for the Petitioners : Mr.P.Ramachandran

Counsel for the Respondents: None appeared for R1
G.P. for Civil Supplies (AP) for R2&3

<Gist :

>Head Note:

?Cases referred:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

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Counsel for the Respondents : None appeared for R1
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The Court made the following:

Order: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This writ petition is filed for a mandamus to set aside the order dated 08.06.2016 in I.A.No.116 of 2016 in E.A.No.3 of 2016 in C.C.No.2 of 2014 on the file of the District Consumer Forum, Srikakulam (for short 'the Forum').

2. Despite service of notice, respondent No.1 has not entered appearance. We have heard Mr.P.Ramachandran, learned counsel for the petitioners and perused the record.

3. Respondent No.1 has approached the Forum under Section 12 of the Consumer Protection Act, 1986 (for short 'the Act'), for a direction to the petitioners to settle her claim for return of the deposited amount of Rs.4 lakhs as per the initial assurance and promise of returns, with interest and to pay an amount of Rs.2 lakhs towards compensation for loss of interest and mental agony, together with costs. The said petition was number as C.C.No.2 of 2014 and by order dated 17.12.2015, the Forum has partly allowed the petition, by directing the petitioners to pay Rs.1,35,000/- to the respondent No.1 with interest @ 6% p.a. from the date of the complaint i.e. 22.10.2013, till the date of realization. The Forum further directed that if the petitioners fail to pay the said amount within two months, they are liable to pay interest @ 9% p.a. from the date of complaint

till the date of realization of the awarded amount of Rs.1,35,000/- and the petitioners were also directed to pay Rs.25,000/- towards compensation and mental agony to the respondent No.1, together with costs of Rs.3000/-, including Advocate's fees.

4. Complaining of violation of the said order, which has evidently attained finality, respondent No.1 has filed E.A.No.3 of 2016 under Section 27 of the Act, for enforcement of the said order. On 10.05.2016, the Forum has issued non-bailable warrants to the petitioners, evidently for their absence. Respondent No.1 has filed a Memo., reporting no dues.

5. It is the pleaded case of the petitioners that on receipt of notices in E.A.No.3 of 2016, they have deposited the entire amount awarded by the Forum and that respondent No.1 has withdrawn the said amount. Thereafter, the Forum has issued non-bailable warrants to the petitioners in E.A.No.3 of 2016, evidently for the reason that they were not physically present. The petitioners have filed I.A.No.116 of 2016, for recalling of non-bailable warrants. The learned counsel for the petitioners submitted that by mistake, the copy of the said I.A. is not filed but, however, it is a fact that the amount was paid under receipt, to respondent No.1 and the receipt along with a photocopy of the cheque, have been filed before the Forum. Despite payment of the dues by the petitioners as claimed in E.A.No.3 of 2016, the Forum dismissed I.A.No.116 of 2016, filed for

recalling non-bailable warrants. Feeling aggrieved by the said dismissal and continuance of E.A.No.3 of 2016, the present writ petition is filed by the petitioners.

6. The docket order dated 10.05.2016 passed by the Forum in E.A.No.3 of 2016 in C.C.No.2 of 2014 reads as under:

“Memo. filed by the D.Hr. stating No dues from J.Dr. with a prayer to continue the prosecution U/s.27 of C.P.Act. No representation for J.Dr. J.Drs. 1 and 2 called absent. Issue N B W to J.Drs. 1 and 2 and issue notice to other side on memo by 13.05.2016.”

7. The contents of the docket order reproduced above, are self explanatory. It is clear therefrom, that respondent No.1 herself has filed Memo., reporting no dues from the petitioner. But however, she requested for continuing the prosecution under Section 27 of the Act. The Forum in our opinion has displayed an injudicious attitude by directing issue of non-bailable warrants to the petitioners, without applying its mind to the fact that the petitioners have already cleared all the dues. Once the dues are cleared, there could be no reason for the Forum to insist on the presence of the petitioners, though it appears from the docket order itself that Smt.T.Sudha Rani, counsel for the petitioners appeared before it. The unreasonable attitude of the Forum is further compounded by dismissing I.A.No.116 of 2016, for recalling the non-bailable warrants, merely because the petitioners were absent. The Forum failed to give any weight to the fact that neither the counsel of nor respondent No.1 herself, who obviously

lost interest after receiving the due amounts, was present before it. In paragraph 4 of the affidavit filed in support of this writ petition, the petitioners have categorically pleaded that after receipt of notice in E.A.No.3 of 2016, they have paid the entire amount awarded in favour of respondent No.1 and that the latter has also withdrawn the said amount. Respondent No.1 has failed to respond to the notices issued by this Court and contest the writ petition. Thus, the averments in the affidavit of the petitioners remain uncontraverted. In our opinion, continuance of the petition filed under Section 27 of the Act, despite payment of entire dues by the petitioners, constitutes gross abuse of process of law. The Forum instead of dismissing E.A.No.3 of 2016, acted in a manner, which encouraged frivolous and vexatious litigation indulged in by respondent No.1. No doubt, the Forum is constituted under the Act for protecting the interests of the consumers, but at the same time, they must conduct themselves in a responsible manner, so as not to harass the opposite parties.

8. For the aforementioned reasons, we are of the opinion that the Forum has acted in an illegal and unjust manner in dismissing the application for recalling of non-bailable warrants and continuing the proceedings in E.A.No.3 of 2016. The Forum is accordingly, restrained from proceeding further in E.A.No.3 of 2016, by declaring that the same does not any longer survive for adjudication.

9. The writ petition is, accordingly, allowed with costs of Rs.10,000/- against respondent No.1

(C.V.Nagarjuna Reddy, J)

(M.Ganga Rao, J)

Date: 07th June, 2018

Note:

L.R. copies

(B/o.)

msb



