

**In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh**

Writ Petition No.36827 of 2017

Between:

Smt.G.Srikantha and another

... Petitioners

and

P.V.Prasad Rao (died) and 2 others

...Respondents

Date of Judgment Pronounced: 06-09-2018

Submitted for Approval:

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice Gudiseva Shyam Prasad

1. Whether Reporters of Local newspapers
may be allowed to see the judgments ? No
2. Whether the copies of judgment may be
marked to Law Reporters/Journals Yes
3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment ? Yes

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

* The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and
The Hon'ble Sri Justice Gudiseva Shyam Prasad
+ Writ Petition No.36827 of 2017
% Dated 06.09.2018

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! Counsel for the petitioners: Mr.B.Naresh Kumar Reddy

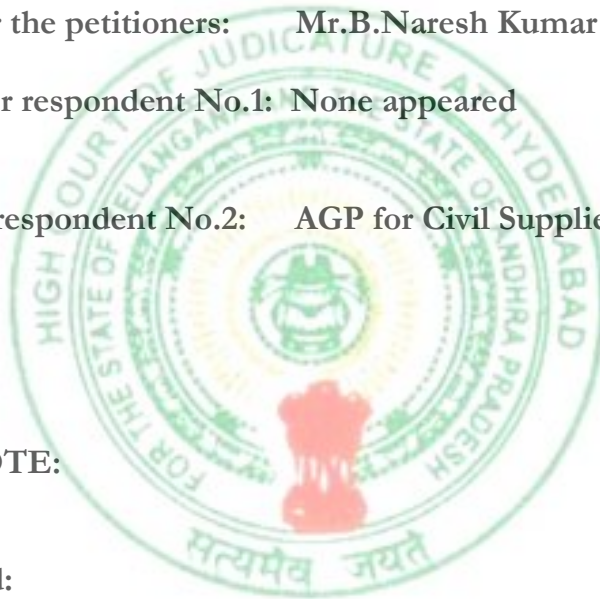
^ Counsel for respondent No.1: None appeared

Counsel for respondent No.2: AGP for Civil Supplies

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>HEAD NOTE:

? Cases cited:



The Hon'ble Sri Justice C.V.Nagarjuna Reddy
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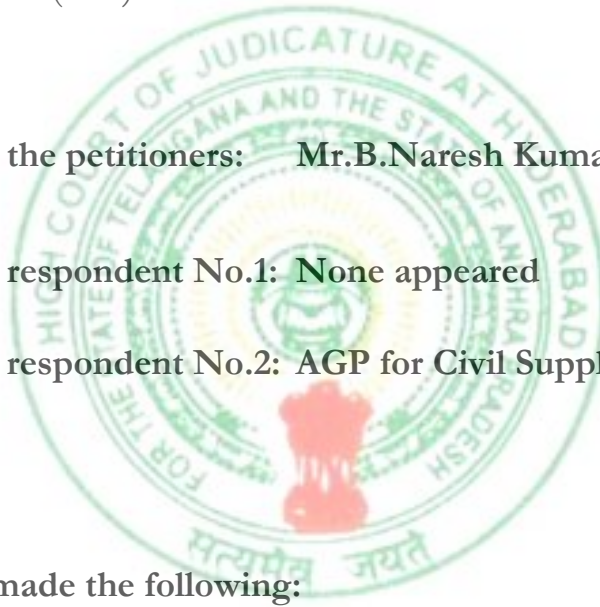
..Respondents

Counsel for the petitioners: Mr.B.Naresh Kumar Reddy

Counsel for respondent No.1: None appeared

Counsel for respondent No.2: AGP for Civil Supplies

The Court made the following:



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

This Writ Petition is filed for issue of Certiorari to quash Order, dated 23-01-2017, in FAIA(SR).No.3087 of 2016 in FA.No.117 of 2016 on the file of respondent No.3- Telangana State Consumer Disputes Redressal Commission, Hyderabad (for short 'the State Commission').

Though notice has been served on respondent No.2, no one entered appearance.

We have heard Mr.B.Naresh Kumar Reddy, learned Counsel for the petitioners, and perused the record.

The petitioners have filed CC.No.212 of 2008 in the District Consumer Disputes Redressal Forum, Ranga Reddy (for short 'the District Forum'), to direct the deceased respondent No.1 to refund a sum of Rs.6 lakhs with interest @ 18% p.a., from the date of payment till the date of realisation; to award a sum of Rs.1 lakh towards mental agony and sufferance; and also to pay a sum of Rs.10,000/- towards damages and costs. The said CC was partly allowed by directing refund of the sum of Rs.6 lakhs with interest @ 6% p.a., from the date of complaint *i.e.*, 01-12-2008 till the date of realisation. Feeling

aggrieved by the quantum of interest and the period for which the same was ordered, the petitioners have filed FA.No.117 of 2016 before the State Commission. As the respondent in the CC died after filing of the Appeal, the petitioners filed FAIA(SR) No.3087 of 2016 for bringing on record, the wife of the deceased respondent No.1 as respondent No.2 therein. Evidently, the office of the State Commission has raised an objection to number the said application on the ground that the petitioner did not produce the Family Membership Certificate of the proposed respondent No.2 obtained from the Mandal Revenue Officer as per Govt.Memo.No.31346/ Ser.II.2/2010, Revenue (SER.II) Department, Government of Andhra Pradesh, dated 25.10.2010. The said application, which was called on the Bench, was dismissed by the State Commission on the ground that the petitioners have failed to comply with the office objections.

Section 13 (7) of the Consumer Protection Act, 1986 (for short 'the Act') envisages that in the event of death of the complainant, who is a consumer, or of the opposite party against whom the complaint has been filed, the provisions of Order XXII of Code of Civil Procedure, 1908 (CPC), shall apply subject to the modification that every reference therein to

the plaintiff and the defendant shall be construed as a reference to a complainant or the opposite party as the case may be.

Section 18 of the Act envisages that the provisions of Sections 12, 13 and 14 and the Rules made thereunder for the disposal of complaints by the District Forum shall be applicable to the disposal of disputes by the State Commission. Thus, the provisions of Section 13 of the Act, which are applicable to the complaints before the District Forum, are made applicable to the appeals before the State Commission as well.

Under Order XXII Rule 1 of the CPC, the death of a plaintiff or defendant shall not cause the suit to abate, if the right to sue survives. Under Rule 4 of the said Order, where the sole defendant or the sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit. Under Rule 5 thereof, where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court.

The abovementioned provisions not only place obligation on the appellants to bring on record the legal representatives of the deceased respondent, but also empower the Court to determine the question as to whether the person is or is not the legal representative of the deceased party.

We fail to understand as to how Memo.No.31346/Ser.II.2/2010, Revenue (SER.II) Department, dated 25.10.2010, issued by the Government of Andhra Pradesh is relevant in determining the question as to who are the legal representatives of the deceased respondent. From a perusal of the said Memo, it is evident that the same was intended to afford an opportunity to the family members of the deceased to obtain a Family Member Certificate for the purpose of applying for Government Welfare Programmes. This Memo has nothing to do with the applications filed before the Courts and the *Fora* such as the State Commissions for bringing on record the legal representatives of the deceased parties. The office of the State Commission has, therefore, raised a frivolous objection, which, unfortunately, was confirmed by the State Commission without application of mind.

For the aforementioned reasons, the impugned Order, dated 23-01-2017, in FAIA(SR).No.3087 of 2016 in FA.No.117 of 2016 on the file of the State Commission, is quashed. The State Commission is directed to reassign a number to FAIA(SR). No.3087 of 2016. If, after notice, respondent No.2 herein, who is proposed to be impleaded as the legal representative of the deceased respondent No.1, disputes her status as such, the State Commission shall determine the said question under Rule 5 of Order 22 CPC.

The Writ Petition is, accordingly, allowed.

As a sequel, WPMP.No.45729 of 2017, filed by the petitioner for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Dt: 6th September, 2018

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