

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CM No. 1814 of 2018 in/and
CWP No. 12752 of 2017
Date of Decision: 8.5.2018**

Dayawanti (deceased) through LRs.Petitioners
v.

Permanent Lok Adalat for Public Utility Services and others
.....Respondents

CORAM HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. B.S. Mittal, Advocate, for the petitioners
Mr. B.R. Mahajan, Senior Advocate with
Mr. Sandeep Moudgil, Advocate and
Mr. Saurabh Mago, Advocate, for respondents No. 2 to 4

RAKESH KUMAR JAIN, J. (Oral)

CM No. 1814 of 2018 :

This application is filed for placing on record the replication to the reply filed by the respondents.

Application is allowed. Replication is taken on record.

Main Case :

The petitioners have prayed for the issuance of a writ in the nature of certiorari for quashing the order dated 19.11.2008 passed by respondent No.3 and order dated 27.3.2015 passed by respondent No.1.

In brief, the petitioners had the electricity connection bearing No. SD 56/5100 of DS Category which was installed in the name of their predecessor Dayawanti at her residential house. The said meter was checked

on 14.11.2008 by the officers of the DHBVNL (For short 'the Nigam'). The meter was removed and thereafter, the petitioners received a memo dated 19.11.2008 by which they were asked to pay Rs.37,021.40 as penalty. The petitioners challenged the demand raised by the Nigam before the District Consumer Disputes Redressal Forum, Sirsa (for short 'the Forum') by filing a complaint under Section 12 of the Consumer Protection Act, 1986. However, the said complaint was withdrawn, allegedly on the ground that the Forum has no jurisdiction to decide such type of disputes. The Forum also observed that the time spent by the complainant before this Forum in these proceedings may be set off by the authority where further proceedings may be filed as per the provisions of Section 14 (2) of the Limitation Act and as per the Ruling of Hon'ble Supreme Court in the case of **Laxmi Engineering Works v. PSG Industrial Institute, (1995) 3 SCC 583**.

The petitioners thereafter, filed a civil suit for declaration to the effect that the checking report No. 80, Book No. 85 dated 14.11.2008 prepared by the officials of the Nigam and Memo No. 4125 dated 19.11.2008 were illegal and penalty of Rs.37,021.40 was not recoverable.

The said suit was withdrawn by the petitioners on 16.7.2014 with the following order :-

“Today learned counsel for the plaintiffs suffered a separate statement that he does not want to proceed further with the present case and the same may be dismissed as withdrawn. In view of his statement, present case in hand is hereby dismissed as withdrawn. File be consigned to the record room after due compliance.”

Thereafter, the petitioners filed an application under section 22C of the Legal Services Authorities Act, 1987 (for short 'The Act') before the Permanent Lok Adalat (Public Utility Services), Sirsa seeking the same relief

for which the petitioners had earlier filed the complaint under Section 12 of the Consumer Protection Act and the civil suit before the civil Court.

The said application was dismissed by the Permanent Lok Adalat vide its impugned order dated 6.5.2014 and therefore, the present petition has been filed.

The basic argument of the petitioners is that as per the Circular issued by the Nigam on 20.7.2007, in the case of tampering of seals of the meter, it would not be a case of theft and it could be at the most a case of a suspected theft.

On the other hand, Mr. B.R. Mahajan, Senior Advocate has submitted that the application filed by the petitioners under Section 22 C of the Act before the Permanent Lok Adalat was itself not maintainable. In this regard he has referred to Section 22C (1) of the Act to contend that the application could have been filed by the petitioners before they had brought the dispute to any other Court. He has also submitted that Chapter VI A of the Act, which has been inserted by the Act of 37 of 2002, of which Section 22C is a part, is provided for the purpose of pre litigation, conciliation and settlement. He has submitted that since the petitioners had approached the two Courts before filing the application under Section 22 C of the Act, therefore, the application should not have been entertained by the Permanent Lok Adalat.

In this regard, learned counsel for the petitioners has vehemently argued that the complaint filed under Section 12 of the Consumer Protection Act or the civil suit filed by the petitioners were not decided on merits, therefore, application under Section 22 C of the Act has been filed.

I have heard learned counsel for the petitioners and perused the

record with their able assistance.

The question, thus, in this case arises as to whether the petitioners could have maintained an application filed under Section 22 C of the Act after having filed the complaint under Section 12 of the Consumer Protection Act, or a civil suit for declaration before the civil Court, even if the complaint was withdrawn for want of jurisdiction of the Forum or civil suit was withdrawn without any reason, much less seeking permission to file any other litigation?

In order to answer this question, it would be relevant to refer to Section 22C (1) of the Act which read as under :-

“Any party to a dispute may, before the dispute is brought before any court, make an application to the Permanent Lok Adalat for the settlement of the dispute”

A bare reading of this provision shows that sine qua none for maintaining the application under Section 22C of the Act before the Permanent Lok Adalat is, that the litigant party has not approached any Court with the dispute before.

In the present case, however, the petitioners had, admittedly, approached the Consumer Protection Forum for redressal of their grievances by filing a complaint under Section 12 of the Consumer Protection Act. There is no denial to the fact that the said complaint was withdrawn by the petitioners because the Forum had no jurisdiction.

For a moment, it can be presumed that the said complaint filed under Section 12 of the Consumer Protection Act was as good as it was not filed because if a case is filed before a Court or Forum who has no jurisdiction, it has no meaning, however, the petitioners thereafter, filed a civil suit on the same cause of action but the said civil suit was simply withdrawn without

assigning any reason. The petitioners could have said that the civil Court has no jurisdiction but no such statement was made, rather the suit was withdrawn simpliciter, may be it was in the mind of the petitioners to take the remedy of filing the application under section 22 C of the Act. In this regard, it would be pertinent to mention that if the petitioners had withdrawn the civil suit then for the purpose of launching another litigation on the same cause of action, they should have made a statement.

Thus, in my considered opinion, the decision of the petitioners of going to civil Court for redressal of their grievance and withdrawing the suit without any order, tantamount to approaching the Court. Therefore, the application filed under Section 22C of the Act was apparently not maintainable in view of the bar created under Section 22C (1) of the Act.

The aforesaid question is answered accordingly. Once I am holding that the application filed by the petitioners is without any competence, there is no need to go into the merits of the order passed by the Permanent Lok Adalat as the Permanent Lok Adalat was factually correct that the application was not competent on the part of the petitioners.

The writ petition is, thus, dismissed.

(RAKESH KUMAR JAIN)
JUDGE

8.5.2018.

Ashwani

Speaking/Reasoned
Reportable

Yes/No
Yes/No