



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

CrI.O.P.[MD] No.1868 of 2019

and

CrI.M.P[MD]No.1010 of 2019

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The Branch Manager,
New India Assurance Company Ltd.,
251, T.H.Road, Thandayarpettai,
Chennai,
rep. by P.Selvamani

: Petitioner

vs.

1.Selvakumar

2.The Assistant Director of Fisheries,
Thoothukudi.

3.The Special Officer,
Fisherman Co-operative Society,
Beach Road, Thoothukudi.

: Respondents

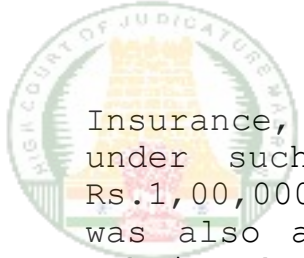
PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order dated 03.08.2018 in E.A.No.9 of 2016 in C.C.No.9 of 2007 to issue warrant on the file of the District Consumer Disputes Redressal Forum, Thoothukudi against this petitioner.

For Petitioner : Mr.L.Robert Chandrakumar

ORDER

The petition has been filed to set aside the order dated 03.08.2018 in E.A.No.9 of 2016 in C.C.No.9 of 2007, wherein the District Consumer Disputes Redressal Forum, Thoothukudi had issued warrant against the petitioner.

2.The learned counsel for the petitioner would submit that the petitioner is the Branch Manager of New India Assurance Company Limited. He would submit that the petitioner company is a General Insurance Company having been established under the Act of the Parliament and that in the course of its business in carrying out several social obligations, it caters to the needs of several lakhs of people and contributing to the National economy. He would submit that the first respondent filed a consumer complaint before the District Consumer Disputes Redressal Forum, Thoothukudi in C.C.No.9 of 2007, claiming compensation against the respondents 2 and 3 for the injuries suffered by him while fishing in the sea. The compensation was claimed on the premise that under the Scheme of



Insurance, the third respondent paid premium to the petitioner and under such accident claim, the petitioner could get a sum of Rs.1,00,000/- as compensation. Hence, accordingly, the petitioner was also added as a respondent in the said complaint. He would submit that the petitioner filed a counter denying the averments stating that several premiums were not paid to the petitioner company by the first respondent. Whereas, the District Consumer Disputes Redressal Forum, Thoothukudi passed an award on 26.11.2009 allowing the complaint and the first opposite party, namely, the Assistant Director of Fisheries was directed to send the proposal to the second respondent party claiming the amount to the assured under the accident insurance scheme if the policy was valid at the relevant point of time and also to pay Rs.5000/- as compensation for the hardship to the complainant and to pay Rs.1000/- towards costs. He would submit that it is clear from the said order that the petitioner has to pay any amount if only the policy was valid at the time of accident. He would submit that subsequent to the award passed by the District Consumer Disputes Redressal Forum, the second respondent sent a communication on various dates, merely asking for disbursement of the insurance amount paid to the first respondent without giving any particulars about any insurance policy and that the petitioner was not in a position to consider the same. Thereafter, the first respondent filed an execution application in E.A.No.9 of 2016 and in the execution petition, the petitioner was shown as a sole respondent, though there was a specific direction as against the petitioner. Subsequently, the second respondent was also added as the first respondent in the execution petition. The second respondent filed a counter that they sent communication to the petitioner and the petitioner also filed a counter stating that no specific order was passed against the petitioner and no proposal was submitted by the Fisheries Department for consideration. The said counter was filed on 16.12.2017 and the matter was adjourned several occasions and when the matter had been taken up on 18.06.2018, the Consumer Forum without any enquiry and without considering the counter, passed an order as "Payment by R2/OP2". Since the first respondent in the complaint was the second respondent herein, the order was not clear and that on 03.08.2018, the District Consumer Disputes Redressal Forum had passed an order "issue warrant by 31.08.2018". He would submit that still, it is not clear as to against whom the said warrant is issued, however, since the petitioner is apprehensive of his arrest and detention under the Act, had approached this Court to set aside the order dated 03.08.2018 issuing warrant against the petitioner.

3. On the earlier occasion at the SR stage, when the matter was posted regarding maintainability, the learned counsel for the petitioner would submit that without prejudice to his right for claiming the amount against the second and third respondent, the petitioner was prepared to pay the awarded amount to the first respondent, namely, the complainant in the consumer complaint and based on that, this Court had granted interim stay of the execution of the warrant. Thereafter, when the matter had come up before this



Court, the petitioner appeared before this court along with DD and submitted that he is unable to serve notice on the first respondent. Today, the first respondent is present before this Court and he was verified and identified based on the Adhar Card. He has accepted the DD from the counsel for the petitioner.

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4.The learned counsel for the petitioner would submit that the cost has been paid. He would submit that he understand that the Fisheries Department has filed an appeal against that order and that in that appeal, the cost has been paid by them. However, he would also submit that if the costs are not paid, the petitioner undertakes to pay the amount to the first respondent complainant and would recover it from the Fisheries Department in accordance with law.

5.Without going into the merits of the case, since now the amount of Rs.1,00,000/- has been paid to the first respondent, this Court sets aside the warrant dated 03.08.2018 issued by District Consumer Disputes Redressal Forum, Thoothukudi. The counsel for the petitioner shall file a memo before the concerned court.

6.At this juncture the counsel for the petitioner would submit that he may be granted liberty to proceed against the respondents 2 and 3 herein for recovery of the amount paid to the 1st respondent from them, since as per records of the petitioner the policy amount along with the proposal from under the scheme has not been paid by the Fisheries Department on behalf of the 1st respondent. The petitioner is at liberty to proceed in accordance with law.

7.With these observations, this Criminal Original Petition is closed. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Assistant Director of Fisheries, Thoothukudi.

2.The Special Officer,
Fisherman Co-operative Society, Beach Road, Thoothukudi.

+1 CC to MR.G.PRABHU RAJADURAI, Advocate SR-44618.

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