

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.27679 of 2004

and

WPMP.No.33696 of 2004

M/s.Sterling Decors Pvt.Ltd.,
Rep.by its Managing Director,
Mr.R.Sundaravelu
No.142, Indira Nagar,
Valasaravakam,
Chennai - 600 087.

...Petitioner

Vs.

1. The Presiding Officer
District Consumer Forum,
Shahjahanpur.
2. The Tahsildar
Mambalam Guindy Taluk,
Chennai - 600 078.
3. Naveen Chand Gupta
Proprietor,
Gupta Paint World (Bhopal)
Mohalla Chamkani,
Shahjahanpur, U.P.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for writ of Certiorari calling for the records relating to the demand notice dated 28.06.2004 bearing No.D3/19596/2004 issued by the Second respondent and quash the same.

For Petitioner : Ms.R.Maheswari
Respondent No.1 : Court
For Respondent : Mrs.K.Bhuvaneshwari
No.2
Respondent No.3 : Served - No appearance

ORDER

This writ petition has been filed challenging the demand notice dated 28.06.2004 issued by the second respondent under the Revenue Recovery Act pursuant to a Consumer Court award passed in favour of the third respondent.

2.It is the case of the petitioner that there was a Franchisee agreement between them and the third respondent. According to the petitioner, under the Franchisee agreement, any dispute or difference arising out of the agreement will have to be decided only by the Court at Chennai. However, according to the petitioner, only through the impugned notice dated 28.06.2004 issued by the second respondent, they came to know that the District Consumer Forum, Shahjahanpur, Uttar Pradesh has passed an order against the petitioner in favour of the third respondent for a sum of Rs.1,04,667/-. It is the case of the petitioner that immediately after the receipt of the impugned notice dated 28.06.2004, they verified with the Consumer Forum and found that an exparte award has been passed against the petitioner. It is the case of the petitioner that no notice was received by the petitioner in the Consumer Court proceedings otherwise they would have defended the claim made by the third respondent before the Consumer Forum against them. It is also their case that it is only the third respondent who owed money to them under the Franchisee agreement and no money is due and payable by them to the third respondent. Under such circumstances, this writ petition has been filed challenging the impugned notice dated 28.06.2004 issued by the second respondent under the Revenue Recovery Act.

3.Heard Ms.R.Maheswari, learned counsel appearing for the petitioner and Mrs.K.Bhuvaneshwari, learned counsel appearing for the second respondent and despite service of notice on the third respondent and his name having been printed in the cause list today, there is no representation on his side.

4.A categorical stand has been taken in the affidavit filed in support of the writ petition that the petitioner is not aware of the award passed in favour of the third respondent against the petitioner. The impugned notice dated 28.06.2004 issued by the second respondent under the Revenue Recovery Act discloses that recovery has been made pursuant to an award passed by the Uttar Pradesh Shahjahanpur District Consumer Forum. Except disclosing that a sum of Rs.1,04,667/- is due and payable as per the aforesaid award, the impugned notice issued by the second respondent does not disclose the case number or the name of the complainant, who lodged the complaint before the Consumer Forum against the petitioner. It is the case of the petitioner that

on receipt of the impugned notice dated 28.06.2004, they immediately verified and with great difficulty, they were able to find out that an exparte award has been passed in favour of the third respondent against the petitioner by the Shahjahanpur District Consumer Forum, Uttar Pradesh. A categorical stand has also been taken that the disputes arising out of the franchisee agreement would be subject to the jurisdiction of Chennai Courts only and therefore, only Chennai Court will have the jurisdiction to decide the dispute raised by the third respondent. However, in the instant case, the third respondent has lodged the claim before a Consumer District Forum, in Uttar Pradesh.

5.The learned counsel fairly submitted that the petitioner is willing to contest the exparte Consumer Court award on merits by filing an application to set aside the exparte award. However, she vehemently argued that the impugned notice dated 28.06.2004 will have to be quashed as it has been issued without any authority under law pursuant to an exparte award passed by the District Consumer Forum, Shahjahanpur without serving on the petitioner any notice of the said proceedings. Further, as observed above, the impugned notice dated 28.06.2004 does not disclose the number of the consumer complaint or the name of the petitioner and also the date of the award and therefore, it is bereft of any particulars.

6.For the foregoing reasons, this Court is of the considered view that the impugned notice dated 28.06.2004 is arbitrary, and has been issued by total non application of mind and violates the principles of natural justice.

7.In the result, the impugned demand notice dated 28.06.2004 is hereby quashed. However, it is made clear that the petitioner will have to take steps to set aside the ex parte award passed by the District Consumer Forum, Shahjahanpur, Uttar Pradesh in favour of the third respondent against the petitioner within a period of four weeks from the date of receipt of a copy of the order, failing which, the third respondent is permitted to execute the award against the petitioner by following the due procedure established under law. Accordingly, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

sms

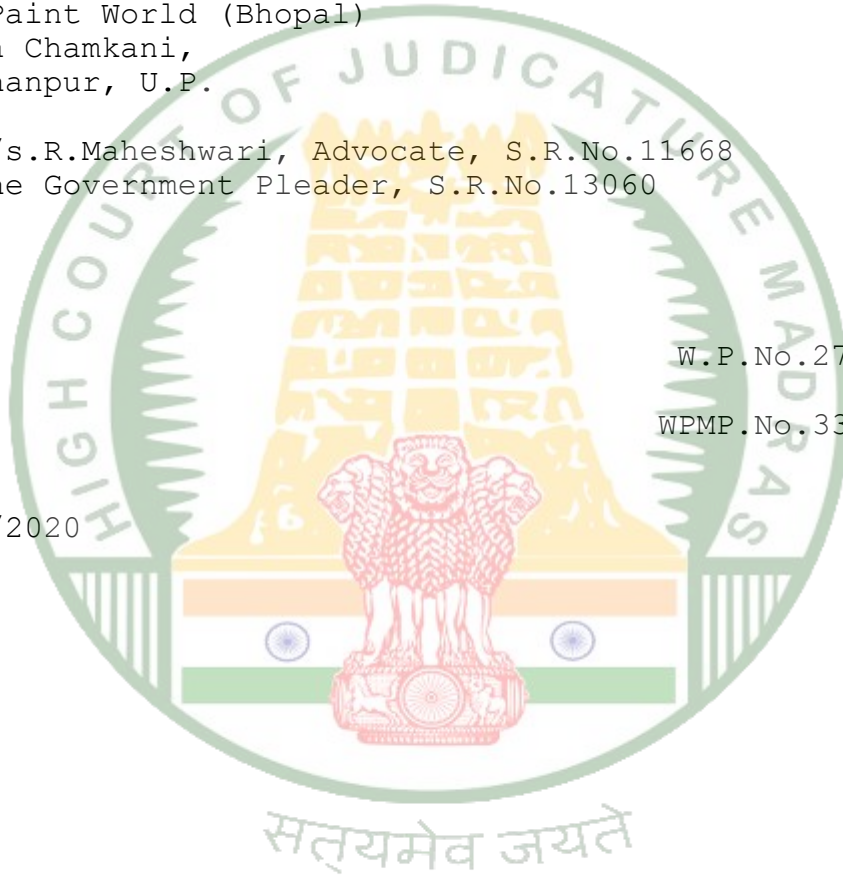
To

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2. The Tahsildar
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Chennai - 600 078.
3. Naveen Chand Gupta
Proprietor,
Gupta Paint World (Bhopal)
Mohalla Chamkani,
Shahjahanpur, U.P.

+1cc to M/s.R.Maheshwari, Advocate, S.R.No.11668
+1cc to the Government Pleader, S.R.No.13060

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PVS (CO)
KKV/12/06/2020



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