

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.06.20214

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THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.R.P.(NPD).No.3307 of 2015

and

MP.No.1 of 2015

V.Paramasivam

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Petitioner/Petitioner/
Complainant

Vs.

1.The Branch Manager
Indian Overseas Bank
ALC Complex,
Viruthachalam Road,
Ulunthurpet, Villupuram District.

2.The Divisional Manager,
Indian Overseas Bank,
Mudaliarpeta,
Puducherry-605 004

...

Respondents/Respondents/
Opposite parties

PRAYER : The Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 20.12.2012 in M.P.No.2 of 2012 in C.C.No.19 of 2009 on the file of the District Consumer Redressal Forum, Villupuram.

For Petitioner : Mr/S Mifraneshaa for
M/S V.Raghavachari

For Respondents :M/S.Ananda Gomathy for R1
No Appearance [R2]

ORDER

(Heard through video conferencing)

This Civil Revision Petition has been filed against the order of the District Consumer Redressal Forum, Villupuram, dated 20.12.2012 in M.P.No.2 of 2012 in C.C.No.19 of 2009, by which the ex parte order dated 07.10.2011 was set aside.

2. The learned counsel for the civil revision petitioner submitted that the District Consumer Redressal Forum does not have any power to set aside the ex parte order passed by it and the power to set aside the ex parte order lies with the National Commission only. In support of her above contention, she relied on judgement reported in **(2019) 9 SCJ 497 (Samaresh Prasad Chowdhury Vs. UCO Bank & others)**. The said judgement has followed the law laid down by the earlier judgement of the Supreme court in **Rajeev Hitendra Pathak And others Vs Achyut Kashinath Karekar and others.**, in **(2011) 9 SCC 541**. The Hon'ble Supreme Court has held that the Consumer Forum does not have the power to set aside the ex parte order and the relevant paragraph is extracted below:

(2011)9 Supreme Court Cases 541

[Rajeev Hitendra Pathak and Others Vs. Achyut Kashinath Karekar and Another]

“33. We have carefully scrutinized the provisions of the [Consumer Protection Act](#), 1986. We have also carefully analysed the submissions and the cases cited by the learned counsel for the parties.

34. On careful analysis of the provisions of the Act, it is abundantly clear that the Tribunals are creatures of the Statute

and derive their power from the express provisions of the Statute. The District Forums and the State Commissions have not been given any power to set aside ex parte orders and power of review and the powers which have not been expressly given by the Statute cannot be exercised.

35. The legislature chose to give the National Commission power to review its ex parte orders. Before amendment, against dismissal of any case by the Commission, the consumer had to rush to this Court. The amendment in Section 22 and introduction of Section 22-A were done for the convenience of the consumers. We have carefully ascertained the legislative intention and interpreted the law accordingly.

36. In our considered opinion, the decision in Jyotsana's case laid down the correct law and the view taken in the later decision of this Court in New India Assurance Co. Ltd. is untenable and cannot be sustained.

37. In view of the legal position, in Civil Appeal No.4307 of 2007, the findings of the National Commission are set aside as far as it has held that the State Commission can review its own orders. After the amendment in Section 22 and introduction of Section 22A in the Act in the year 2002 by which the power of review or recall has vested with the National Commission only. However, we agree with the findings of the National Commission holding that the Complaint No.473 of 1999 be restored to its original number for hearing in accordance with law.

38. There has been considerable delay in disposal of the complaint. Therefore, we direct the State Commission to dispose of the Complaint No.473 of 1999 [in Civil Appeal No.4307 of 2007] as expeditiously as possible and in any event within three months from the date of the communication of this order.

39. Similarly, in Civil Appeal No.8155 of 2001, we set aside the impugned order and direct the National Commission to dispose of the Original Petition No.110 of 2003 de novo as expeditiously as possible and in any event within three months from the date of the communication of this order."

3. Per contra, the learned counsel for the petitioner submitted that in an earlier decision rendered by this High Court in **CRP No.3935 of 2008, dated 04.11.2016 [B.Nagaraj Vs. Green Earth Biotechnologies Limited, Bangalore]**, it has been held that the Consumer Forum, which passed the ex parte order has got within itself the

power to set aside the ex parte order also. However, the decision of the Hon'ble Supreme Court now cited by the petitioner would only prevail over the decision of this Court.

4. So, it is made clear that the only course open to the party who got aggrieved by ex parte order is to challenge the same before the Appellate Forum. Since the District Consumer Forum has allowed the petition without jurisdiction, the order is liable to be set aside .

In the result the present Civil Revision Petition is **allowed** and the order of the District Consumer Redressal Forum, Villupuram, dated 20.12.2012 in M.P.No.2 of 2012 in C.C.No.19 of 2009, is hereby set-aside. No costs. Consequently, connected miscellaneous petition is also closed.

24.06.2021

Speaking/Non-speaking
Index : Yes/No
Internet : Yes/No

jrs

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To

1.The District Consumer Redressal Forum, Villupuram

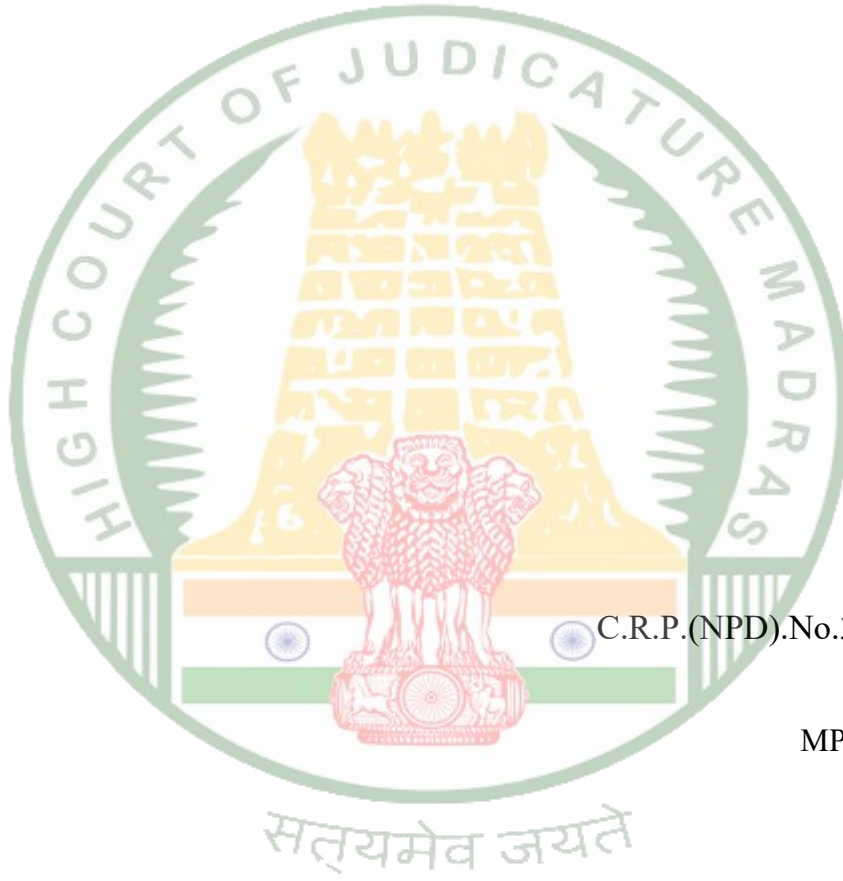
2.The Section Officer,
V.R.Section,
High Court, Madras.



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R.N.MANJULA,J.

Jrs



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