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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.A.No.1274 of 2019

S.Subbiah

.. Appellant

-vs-

1. The President
District Consumer Disputes
Redressal Forum Chennai (North)
No.212, R.K.Mutt Road, First Floor
First Floor, Mylapore
Chennai 600 004 now at behind TNPSC
TNPSC Road, V.O.C.Nagar
Park Town, Chennai 600 003

2. S.Subramanian

.. Respondents

Prayer:

Appeal filed under Clause 15 of the Letters Patent against the order dated 06.12.2018 made in W.P.No.24316 of 2005.

Prayer in WP.No.24316 of 2005:

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records relating to O.P.No.188 of 2005 on the file of the first respondent herein and to quash the same.

For Appellant : Mr.A.V.Arun for
M/s Elizabeth Ravi

For Respondents : Mr.C.K.Chandrasekar for R2
R1-District Consumer Disputes
Redressal Forum, Chennai (North)

JUDGMENT

(Judgment of the Court was made by T.RAJA, J.)

Mr.S.Subbiah, who is presently a designated Senior Advocate, practicing both in the Principal Seat and Madurai Bench of this



Court, has filed this appeal, aggrieved by the order of dismissal of the writ petition challenging the complaint in O.P.No.188 of 2005 made against him by the second respondent before the District Consumer Disputes Redressal Forum, Chennai (North), on the ground that the professional service rendered by him as an Advocate at the relevant point of time cannot be brought under the term 'deficiency in service', giving a cause of action for making out a case before the Consumer fora.

2. Mr.A.V.Arun, learned counsel appearing for the appellant submitted that when the second respondent approached the appellant on 5.5.2003 during the summer holidays with a request to appear for him as against the order of suspension dated 9.2.2002 passed against him, accepting the brief as an Advocate at the relevant point of time, filed the Writ Petition No.16909 of 2003 on his behalf and while arguing the case, two Full Bench judgments were cited before the learned Judge hearing the said writ petition opposing the maintainability of the writ petition, wherein the Full Bench of this Court has repeatedly held that the order of suspension or order of removal or order of termination or order of demotion passed by an officer of a co-operative society, is not amenable to writ jurisdiction under Article 226 of the Constitution of India. Similarly, a Constitution Bench of this Court in the case of Thanikachalam M. and others v. Maduranthakam Agricultural Producers Co-operative Marketing Society and others, 2001-I-LLJ 285, has also clearly and explicitly held that no writ petition is maintainable against co-operative societies. On this basis, Writ Petition No.16909 of 2003 filed by the appellant as an Advocate was disposed of. Secondly, there was yet another reason for dismissal of the writ petition, because the second respondent, questioning the order of suspension dated 9.2.2002, had also approached the civil Court by filing a suit in O.S.No.37 of 2002 on the file of the District Munsif Court, Ariyalur. Since Section 156 of the Tamil Nadu Cooperative Societies Act, 1983 also bars the jurisdiction of the civil Court, the appellant being a respectable Advocate, has rendered fair advice to his client that even the suit filed by the second respondent before the civil Court against the order of suspension, shall not be legally maintainable, by virtue of Section 156 of the Tamil Nadu Cooperative Societies Act, 1983. In spite of the fair advice rendered by the appellant, the second respondent, after the dismissal of the writ petition, misunderstanding the right advice made by the appellant, has wrongly sued the appellant before the District Consumer Disputes Redressal Forum, Chennai (North), on the premise that the advice made by the appellant amounts to deficiency in service. The District Consumer Disputes Redressal Forum also, without even appreciating whether any prima facie case is made out or not, has issued the summons



calling upon the appellant to appear before the Consumer forum. Questioning the same, the appellant has filed the Writ Petition No.24316 of 2005. But the learned single Judge, failing to appreciate the ordeals going to be faced by the appellant in participating in the long drawn proceeding before the Consumer forum, wherein large number of cases are pending and the same are also adjourned infinitely, has rejected his request causing huge prejudice to the appellant. In support of his submissions, placing on record a judgment of the Apex Court in the case of Nandlal Lohariya v. Jagdish Chand Purohit and others, 2021 (6) CTC 606 holding that if the submission advanced on behalf of the appellant is accepted, in each and every case where a litigant has lost on merits and his case is dismissed, he would approach the Consumer fora and pray for compensation alleging deficiency in service. Losing the case on merits after the Advocate argued the matter cannot be said to be deficiency in service on the part of the Advocate, because, in every litigation, either of the party is bound to lose and in such a situation either of the party, who would lose in the litigation may approach the Consumer fora for compensation alleging deficiency in service, which is not permissible at all, sought for allowing the writ appeal by setting aside the impugned order and also quashing the summons issued by the District Consumer Redressal Forum, Chennai (North).

3. In reply, Mr.C.K.Chandrasekar, learned counsel, who is assisting the Court on behalf of the second respondent through the High Court Legal Aid Society, submitted that when the appellant, accepting the brief from the second respondent as an Advocate at the relevant point of time challenging the charge memo dated 18.09.2002, has filed the Writ Petition No.16909 of 2003, it is trite law that no writ will lie against the order of suspension or order of removal or order of termination passed by the Registrar of the Co-operative Societies, in view of the Constitution Bench judgment of this Court in the case of Thanikachalam M. and others v. Maduranthakam Agricultural Producers Co-operative Marketing Society and others, 2001-I-LLJ 285, holding clearly that no writ petition is maintainable against a Co-operative Society, based on which, although the writ petition filed by the appellant as an Advocate on behalf of the second respondent, was dismissed, he ought not to have accepted the brief. Secondly, the civil suit filed by the second respondent challenging the order of suspension also is not maintainable, by virtue of Section 156 of the Tamil Nadu Co-operative Societies Act, 1983. Therefore, the second respondent ought to have been advised to withdraw the suit and not to file the writ petition, to avail the statutory remedy available under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983. Hence, the second respondent, alleging that there was deficiency



in service on the part of the appellant in rendering assistance as an Advocate, has approached the District Consumer Disputes Redressal Forum, Chennai (North) with the complaint, which cannot be found fault with. In any event, since the complaint has been pending for quite a long time, a direction may be issued to the District Consumer Disputes Redressal Forum, Chennai (North) to proceed with the matter in the manner known to law and dispose of the same within a stipulated time, so that both the parties will be able to see the light of their case, he pleaded.

4. Heard learned counsel appearing for the parties.

5. When the appellant was approached by the second respondent on 5.5.2003 seeking legal advice as to what should be done to get rid of the charge memo issued against him, as he had already filed a civil suit in O.S.No.37 of 2002 before the District Munsif Court, Ariyalur challenging the order of suspension dated 9.2.2002, the appellant has filed the Writ Petition No.16909 of 2003 challenging the charge memo. It is a well settled legal position that the Apex Court in the case of State of Uttar Pradesh v. Brahma Datt Sharma and another, (1987) 2 SCC 179 and in Union of India and another v. Kunisetty Sathyanarayana, (2006) 12 SCC 28 has vividly held that no writ petition under Article 226 of the Constitution of India will be maintainable against the charge memo. Even prior and after this judgment, there are umpteen judgments passed by this Court as well as by the Apex Court laying down the law that a writ petition will not lie against the charge memo. In the present case, on the date when the Writ Petition No.16909 of 2003 was filed questioning the charge memo dated 18.09.2002, there were two judgments rendered by the Full Bench of this Court in the case of R.Thamilarasan etc., P.Kannan, etc., v. Director of Handlooms and Textiles, Madras and others, 1989-I-LLJ-588 and in Ganesan K. v. The Special Officer, Salem Co-operative Sugar Mills and 2 others, 1994 W.L.R. 509 holding that the writ petition under Article 226 of the Constitution of India is not maintainable against co-operative societies. Approving and reiterating the above ratio, a Constitution Bench of this Court in the case of Thanikachalam M. and others v. Maduranthakam Agricultural Producers Co-operative Marketing Society and others, 2001-I-LLJ 285, while answering the reference, has categorically held that the writ petition against the co-operative societies is not maintainable in law, unless the petitioner shows some special circumstances. The relevant paragraph-61 of the said Constitution Bench judgment is extracted below:-



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"61. It is also to be noted that this Court while exercising power under Article 226 of the Constitution, which is discretionary in nature, is a Court not being a Court of Appeal, more so, when alternative remedy is available under a particular statute, and when the Act and the Rules provide for so many safety measures, and when the discretionary power of this Court under Article 226 remains in tact, we do not want to substitute our view that the writ petition against Co-operative Societies is maintainable in the garb of efficacious remedy as a matter of course, as discussed above. Unless the petitioner is able to show some special circumstances and the fact that the Authorities concerned while passing orders have failed to perform their duties imposed by the statute, as discussed above, no writ petition can be maintainable. In view of what we have discussed, and for the reasons mentioned above, we approve the decisions of the two Full Benches that no writ petition is maintainable against a Co-operative Society. The same needs no re-consideration. Writ petition against a Co-operative Society is not maintainable....."

Therefore, the argument advanced by Mr.Chandrasekar that the appellant also should have been well aware of the well settled legal position, is far from acceptance, for the reason that the appellant also had advised his client, but he only wanted to take a chance, as submitted by Mr.Arun, learned counsel appearing for the appellant. Therefore, in view of the well settled legal position, as highlighted above, and the ratio laid down by the Constitution Bench of this Court in M.Thanikachalam and others case (supra), the writ petition was dismissed. Therefore, no blame can be put on the counsel, who suffered the dismissal of the writ petition, in the light of the well settled legal position, as indicated above.

6. Secondly, espousing the cause of the second respondent to get back his job by availing the speedy remedy under Section 153 of the Tamil Nadu Co-operative Societies Act, the appellant has rightly advised the second respondent in person to withdraw the pending suit, as the trial of the civil suit generally can take a longer time and even after the disposal of the civil suit,



either of the parties losing the case before the civil Court, could prefer first appeal and second appeal and in that process, a litigant would suffer a long delay and resultant mental agony. Besides, Section 153 of the Tamil Nadu Co-operative Societies Act also legally bars the jurisdiction of civil Court to seek any remedy against any order or action taken by the officer or Tribunal, therefore, the appellant's client legally cannot maintain any suit either against the suspension order or against the charge memo issued against him, therefore, keeping in mind the paramount interest of his client, the appellant has rightly advised him to withdraw the suit, hence, the second respondent cannot charge the appellant that he has committed deficiency in service in giving a wrong advice. Moreover, a perusal of Section 156 of the Tamil Nadu Co-operative Societies Act, 1983, which is given below,

"156. Bar of jurisdiction of Civil Courts.-- Notwithstanding anything contained in any other law for the time being in force no order or award passed, decision or action taken or direction issued under this Act by an arbitrator, a liquidator, the Registrar or an officer authorised or empowered by him, the Tribunal or the Government or any officer subordinate to them, shall be liable to be called in question in any court and no injunction shall be granted by any court in respect of anything which is done or intended to be done by or under this Act.",

also makes it clear that no order or award passed, decision or action taken or direction issued under this Act by an arbitrator, a liquidator, the Registrar or an officer authorised or empowered by him, the Tribunal or the Government or any officer subordinate to them, shall be liable to be called in question in any Court and no injunction shall be granted by any Court in respect of anything which is done or intended to be done by or under this Act. Therefore, the advice given by the appellant to the second respondent to withdraw the suit in O.S.No.37 of 2002 pending on the file of the District Munsif Court, Ariyalur, in our considered opinion, cannot amount to deficiency in service.

7. In this context, the Apex Court in the case of Nandlal Lohariya v. Jagdish Chand Purohit and others, 2021 (6) CTC 606 has held thus:-

"4.1.....If the submission advanced on behalf of



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the Petitioner is accepted, in that case, in each and every case where a litigant has lost on merits and his case is dismissed, he will approach the Consumer fora and pray for Compensation alleging deficiency in service. Losing the case on merits after the Advocate argued the matter cannot be said to be deficiency in service on the part of the Advocate. In every litigation, either of the party is bound to lose and in such a situation either of the party, who will lose in the litigation may approach the Consumer fora for Compensation alleging deficiency in service, which is not permissible at all."

The above observation also clearly shows that in each and every case where a litigant has lost on merits and there is no negligence on the part of the Advocate, it cannot be alleged that there was deficiency in service. Losing the case on merits after the Advocate argued the matter cannot be said to be deficiency in service on the part of the Advocate, because, in every litigation, either of the party is bound to lose and in such a situation either of the party, who will lose in the litigation may approach the Consumer fora for compensation alleging deficiency in service, which is not permissible at all.

8. In the light of the above observations, since the complaint made by the second respondent is pending before the Consumer fora, we direct the District Consumer Disputes Redressal Forum, Chennai (North) to take up the O.P.No.188 of 2005 for hearing on the preliminary issue as to whether the complaint filed by the second respondent is maintainable and dispose of the matter in accordance with law, within an outer time limit of three months from the date of receipt of a copy of this order. We also place on record our appreciation for the fair assistance rendered to the Court by the learned counsel Mr.C.K.Chandrasekar in the disposal of the matter. The writ appeal stands disposed of accordingly. However, there is no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ss



To

1. The President
District Consumer Disputes
Redressal Forum, Chennai (North)
No.212, R.K.Mutt Road,
1st Floor, Mylapore, Chennai - 600 004.

Now at
Behind TNPSC, TNPSC Road,
VOC Nagar, Park Town
Chennai 600 003

+1cc to Mr.Elizabeth Ravi, Advocate, S.R.No.40121

+1cc to Mr.C.K.Chandrasekar, Advocate, S.R.No.40010

W.A.No.1274 of 2019

SSV(CO)
UMA(05/07/2022)