

Ct. 21.02
No. 652 2024
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akb

C.O. 49 of 2021
Maa Parvati Travels
Prop. Dilip Kumar & Anr.
Vs.
M/s. Nilachal Iron and Power Ltd. & Ors.

Mr. Rabindra Nath Mahato
Mr. Aritra Sankar Ray ...For the Petitioners

Mr. Shashwat Nayak
Mr. Anirudhya Dutta ...For the Opposite Parties

Affidavit-of-service filed on behalf of the petitioner is taken on record.

Challenging the order dated 13th March, 2020 passed by the learned 2nd Bench of the State Consumer Redressal Forum, West Bengal in complaint case No. 388 of 2015, present application has been preferred under Article 227 of the Constitution of India.

Petitioner No. 1 claiming itself as a sole proprietorship firm represented by the petitioner No. 2, had instituted the aforesaid complaint case before the State Consumer Redressal Forum with the cause of action that on the basis of the work order dated 10th August, 2011 issued by the opposite parties herein and as per terms and conditions of the said work order, the petitioners herein had placed the vehicles as per the terms, under the disposal of the opposite parties and the opposite parties were liable to pay the charges and the said agreement had been renewed time to

time and the petitioners herein performed as per the renewed agreement with modified work order upto 31st July, 2015 but the opposite parties became very reluctant to pay the billings amount after September, 2012. The opposite parties issued two cheques of an amount of Rs. 55,331/- and 26,637/- sometimes on or about January, 2015 and February, 2015 although at that point of time there were a due of an amount of Rs. 22 lakhs. Thereafter, opposite party No. 2 made consultation with their respective officers of the opposite parties at Kolkata Office, who assured to pay the amount to the petitioners but afterwards the opposite parties have paid only an amount of Rs. 1,90,048/- by three cheques.

The petitioners again on 30th July, 2015 raised a final bill and thereafter no payment has been made but after filing of the matter, the opposite parties have paid an amount of Rs. 5,00,000/- but failed and neglected to perform their duties as per the terms of their said work order, though the same is bindings upon both the parties. In fact the opposite parties have adopted the unfair trade practice. The petitioners further state that till now there is a due more than an amount of Rs. 20 lakhs, with interest as to be accrued thereon.

It is further alleged by the petitioners that learned

State Consumer Redressal Forum by its impugned order dated 13th March, 2020 has been pleased to decide casually that the complaints can neither be treated as '*consumer*' nor the dispute can be categorised as a '*consumer dispute*' and as such held that the complaint before the State Consumer Redressal Forum is not maintainable.

Being aggrieved by that order Mr. Rabindra Nath Mahato, learned Counsel appearing on behalf of the petitioners submits that the order is a cryptic one and the State Consumer Redressal Forum has not explained in the said order as to why the petitioners are not coming under definition of '*Consumer*'. In fact the State Consumer Redressal Forum has not considered the written notes of argument filed by the petitioner nor have at all appreciated that the definition of '*consumer*' is very much applicable in the present context. Forum ought to have appreciated that the determination of the question whether a particular service is for commercial purpose or not is purely a question of fact and it cannot be decided without taking evidence. Practically, he has passed the order without applying judicial mind and without considering the object that the provisions of Consumer Protection Act are compensatory in nature and accordingly prayed for setting aside the order impugned.

Mr. Shashwat Nayak, learned Counsel appearing on behalf of the opposite parties raised objection and contended that the Application under Article 227 of the Constitution of India is not maintainable in the present context, since equal efficacious remedy is available to the petitioners and if the petitioners herein feels aggrieved by the order impugned they ought to have preferred appeal before the National Forum. He further submits that the State Consumer Redressal Forum has not committed any mistake in observing that the present dispute is a commercial dispute and does not attract the provisions of the Consumer Protection Act, 1986. Accordingly he submits that the order impugned does not call for any interference invoking jurisdiction under Article 227 of the Constitution of India.

I have considered the submissions made on behalf of both the parties.

Before going to further details let me reproduce Section 2(1)(d) of the Consumer Protection Act, 1986 :-

“2. Definitions.—

(1) In this Act, unless the context otherwise requires,—

(a) xxxx

(b) xxxx

(c) xxxx

(d) “consumer” means any person who,—

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred

payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose;

Explanation.— For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;"

Accordingly, in view of aforesaid definition of “Consumer”, the term implies is one who consumes. The term can be broadly stated, so as to include anyone who consumes goods or services at the end of the chain of production. In other words every person who pays money as the price or of cost of goods and service. Moreover, the important change brought about by way of amendment is

that the Act shall not apply where service availed of for any “*commercial purpose*”, subject to exception that availing of service by a person, which is exclusively used by him for the purpose of earnings his livelihood by means of self-employment. From the definition of “*consumer*” given in the Act, it is clear that legislature wanted that a direct nexus with profit and loss would be the determinants of character of a transaction to call it a “commercial transaction” or not and thereby also excludes such transactions or service which are for earnings “livelihood” by “self-employment”.

Here from the contents of complaint made before the State Forum as stated above, it is clear that dispute relates to recovery of hire charges on the breach of work order and for realisation of arrear amount from the opposite parties. By no stretch of imagination, a complaint for recovery of hire charges on the ground of breach of work order can satisfy the ingredients of “*complaint*” defined under the Act and the petitioners who have described themselves in paragraph 1 of the complaint as a “non-registered firm, represented by its proprietors, who engaged themselves to run respective vehicles to run transport business” cannot come under the definition of “*consumer*” and thereby cannot be a “*complainant*” under the said Act to

redress their grievances before the said Forum.

In such view of the matter I do not find any perversity in the ultimate finding of the order impugned dated 13th March, 2020. In such view of the matter the order impugned does not call for any interference, invoking jurisdiction under Article 227 of the Constitution of India.

The revisional application, being C.O. 49 of 2021 is thus stands dismissed.

However, this order will not preclude the petitioners herein to redress their grievances before an appropriate Forum, subject to other provisions of law.

Since, no affidavit-in-opposition has been called for, the allegations made in the application, are deemed to have not been admitted by the opposite parties.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)