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C.R.P.Nos.443, 548 and 561 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2024

CORAM :

The Hon'ble MR.JUSTICE V.LAKSHMINARAYANAN

**C.R.P.Nos.443, 548 and 561 of 2023
and C.M.P.Nos.3696, 4473 and 4547 of 2023**

N.Sivarajan

.. Petitioner in all CRPs.

-VS-

G.Chandrasekar
Sethumani
S.Azhagumathi

.. Respondent in CRP.443/23
.. Respondent in CRP.548/23
.. Respondent in CRP.561/23

Petitions filed under Article 226 of the Constitution of India against the orders dated 08.02.2023 in E.A.SR.Nos.1165 of 2022, 1222 of 2022 and 10 of 2022 in CC.No.48 of 2019, 47 of 2019 and 46 of 2019 on the file of Consumer Disputes Redressal Forum at Cuddalore.

For Petitioner in all CRPs. : Mr.S.Senthilnathan

For Respondents in all CRPs. : Ms.Dhilshath Raihana

* * * * *

COMMON ORDER

These civil revision petitions arise against the returned endorsement of the District Consumer Redressal Forum at Cuddalore. As the three revisions arise against the same return, they are clubbed



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and heard together.

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2. The respondents in all the revisions presented consumer complaints in the year 2019 alleging deficiency in service by the civil revision petitioner. The consumer complaints were ordered in favour of each of the respondents on 10.06.2022. As the civil revision petitioner did not satisfy the said award/decreed, execution petitions were filed before the Consumer Court and numbered as E.A.Nos.9, 10 and 11 of 2022. Even in these proceedings, after service of summons, the civil revision petitioner did not choose to participate. Therefore, initially the Court passed a bailable warrant. The civil revision petitioner did not honour the warrant and therefore, the Consumer Court, left with no other option, issued a non-bailable warrant in the proceedings.

3. With the threat of arrest which was hanging over his head becoming real, the civil revision petitioner woke up from his slumber and filed three applications in E.A. SR. Nos.1222 of 2022, 1165 of 2022 and 1221 of 2022. All these applications were returned by the Consumer Court with the following endorsement:

"This petition is not maintainable in view of the order passed by



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this Commission on 10.06.2022 and it has become final as per Section 68 of the Consumer Protection Act, 2019 for non preferring of appeal within 45 days from the date of this order.

*Sd/-
President"*

These three orders passed by the Consumer Redressal Forum is put in revision before me.

4. In ***Selvaraj & Ors., vs. Koodankumam Nuclear Power Plant India Limited, rep. through its Director***, reported in ***(2021) 5 MLJ 467***, Hon'ble Mr.Justice Seshasayee was pleased to hold that the Court should not decide the maintainability or merits of the matter at the stage of numbering. The learned Judge made a difference between the ministerial acts performed by the staff of the Court as against the judicial orders that have to be passed by the concerned Tribunal/Court. He further held that it is the duty of the Court to number the application where issues, which require a judicial order, are raised and after receiving a counter from the opposing party, the Court must decide the matter on merits.

5. If I were to apply the said principles to the facts of the present case, then it requires the Court to number the applications, receive a counter from the claimants / decree holders / respondents



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and thereafter, pass an order on maintainability of the petition.

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6. If no appeal had been filed as against the order passed by the Consumer Court in the revisional jurisdiction, then certainly it is executable. Matters relating to executability can be gone into in terms of Section 71 of the Consumer Protection Act, 2019. This provision makes Order 21 of the Code of Civil Procedure applicable to executions. By Section 71, the enforcement of the orders of the District Commission, State Commission or any Commission are to be in the same manner as if a decree had been passed by the Court in terms of Order 21 of Code of Civil Procedure. Section 47 is a provision which is available in the Code of Civil Procedure enabling a judgment debtor to question the executability, discharge and satisfaction of the decree.

7. Mr.Senthilnathan would argue that a clutch of persons who had made similar claims like the respondents herein had approached RERA and without resorting to the said forum, the respondents in these revision petitions have approached the Consumer Forum.

8. The issue whether the Consumer Protection Act is in addition



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to the existing remedies that are available to the respondents' claims would have to be decided by the learned Consumer Forum. I do not want to enter into a finding where it is in addition to or whether the RERA Act will exclude the operation of the Consumer Protection Act. If I were to enter a finding, it will result in prejudice to both the parties.

9. I have to take into consideration that the respondent in each of the revision petitions had paid substantial amounts to the civil revision petitioner and having obtained an award in their favour at least four years ago are yet to see the colour of the coin. The petitioner has been gaming with the Court by avoiding its process. He has not only remained exparte but he has also not complied with the requirements of the bailable warrant which had been issued by the District Consumer Forum. It was only after a non-bailable warrant had been issued, he chose to appear before the Court. This Court will have to balance the interests of both parties.

10. In the light of the above discussion, the following order is passed:

a) The civil revision petitioner shall deposit the entire award



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amount in each of the CCs. before the Executing Court, namely, the District Consumer Disputes Redressal Commission at Cuddalore.

- b) On such deposit, the Consumer Redressal Commission shall number the applications filed under Section 47 of the Code of Civil Procedure. The deposit shall be made within a period of eight weeks from today, that is, on or before 16.08.2024.
- c) In failure of the deposit, the Consumer Commission need not number the applications and can proceed with the execution.
- d) It is made clear that the deposit is a pre-condition for numbering the applications.

11. The civil revision petitions are disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No
Website : Yes/No
Speaking/Non-speaking Order

Note to Office:

The original petitions filed under Order 47 which are available in the bundle shall be returned to Mr.Senthilventhan, after obtaining the usual endorsement.



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To

The District Consumer Disputes Redressal Commission,
Cuddalore.



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V.Lakshminarayanan, J.

(sra)

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