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W.P.No.31594 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2024

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.P.No.31594 of 2023

A.Rajasekeran .. Petitioner

v.

1. National Consumer Disputes
Redressal Commission
by its Registrar
Upbhokta Nyay Bhawan
'F' Block, GPO Complex
INA, New Delhi 110 023

2. State Consumer Dispute
Redressal Commission
V.O.C.Nagar, George Town
Chennai 600 003

3. "Malliga Thirumana Mandapam"
rep.by its Proprietor-cum-Manager
Mr.Kural Amuthan
No.43, Maamaram Street
Annagramam, Neyveli Puthu Nagar
Gandhi Nagar, Neyveli 607 308 ..

Respondents



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Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned order of the 1st respondent made in F.A.No.269 of 2023 dated 14.08.2023 and the order made in C.C.No.142 of 2017 dated 16.11.2021 of the 2nd respondent and quash the same and consequently direct the 2nd respondent to dispose of the matter within a time frame fixed by this Hon'ble Court.

For Petitioner :: Mr.S.Sathia Chandran

For Respondents :: No appearance for R1 & R2
 Mr.A.R.Nixon for R3

ORDER

(Order of the Court was made by S.S.SUNDAR,J.)

This writ petition is directed against the order passed by the first respondent dated 14.08.2023 in F.A.No.269 of 2023 and the order passed by the second respondent dated 16.11.2021 in C.C.No.142 of 2017.

2. Brief facts that are necessary for the disposal of this writ petition are as follows:

(a) The petitioner moved the third respondent for letting out the marriage hall in connection with the marriage of his daughter on 07.09.2016, by paying an advance of Rs.10,000/-. However, the third



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respondent appears to have let out the marriage hall to another person, even after knowing that the petitioner also had booked the marriage hall.

Therefore, after issuing a legal notice to the third respondent to refund a sum of 10,000/- and also to pay a sum of Rs.50,000/- for booking an alternative mahal as well as to pay a sum of Rs.20,00,000/- as compensation for the mental agony, the petitioner had preferred a petition before the second respondent Commission in C.C.No.142 of 2017. But the case in C.C.No.142 of 2017 was dismissed for default by the second respondent vide order dated 16.11.2021. Thereafter, the petitioner filed a petition to restore C.C.No.142 of 2017. The State Commission, without even numbering the restoration application, rejected the same by order dated 22.06.2022, on the ground that State Commission does not have jurisdiction to restore the case which was dismissed for default.

(b) As against the order of dismissal of his complaint, the petitioner preferred an appeal before the National Consumer Disputes Redressal Commission, the first respondent herein with a petition to condone the delay of 260 days in filing the appeal. By order dated 14.08.2023, the first respondent dismissed the petition for condonation of delay and rejected the



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appeal itself. Challenging the said orders, the petitioner has filed the above writ petition.

3. The learned counsel appearing for the contesting respondent submitted that the writ petition is not maintainable as against the orders of the Consumer Disputes Redressal Commission, as the remedy of the petitioner is only to approach the Hon'ble Supreme Court.

4. This argument is quite contrary to the judgment of the Hon'ble Supreme Court in Special Leave Petition (Civil) No.5263 of 2023 dated 26.07.2023 (M/s Universal Sompo General Insurance Co.Ltd. v. Suresh Chand Jain and another), wherein the Hon'ble Supreme Court has held as follows:-

“38. In the aforesaid view of the matter, we have reached to the conclusion that we should not adjudicate this petition on merits. We must ask the petitioner herein to first go before the jurisdictional High Court either by way of a writ application under Article 226 of the Constitution or by invoking the supervisory



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jurisdiction of the jurisdictional High Court under Article 227 of the Constitution. Of course, after the High Court adjudicates and passes a final order, it is always open for either of the parties to thereafter come before this Court by filing special leave petition, seeking leave to appeal under Article 136 of the Constitution.”

5. The Hon'ble Supreme Court disposed of the special leave petition with liberty to the petitioner therein to approach the jurisdictional High Court and challenge the order passed by the National Consumer Disputes Redressal Commission.

6. A similar issue was also considered by this Court with reference to Section 22 of the National Green Tribunal Act, 2010. Section 22 of the National Green Tribunal Act provides for further appeal to the Hon'ble Supreme Court by a person aggrieved as against any award, decision or order of the National Green Tribunal. However, this Court, following the judgment of the Hon'ble Supreme Court on the interpretation of Section 22 of the National Green Tribunal Act, has held that despite the said provision,



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the power under Article 226 can be exercised by this Court. Therefore, we hold that this writ petition is maintainable.

7. The next question that arises for consideration is whether the order passed by the National Consumer Disputes Redressal Commisison is in accordance with law, while rejecting the petition/appeal on the ground that the petitioner has not produced any document to justify the delay?

8. Even though the first respondent took note of the fact that the Covid-19 pandemic was also stated as one of the reasons for condonation of delay, the first respondent held that the delay of 260 days is still unexplained to the satisfaction of the Court and that therefore, the inordinate delay cannot be condoned. The fact that the petitioner, after the dismissal of complaint for default, filed a restoration application and the same was also dismissed on 22.06.2022. Thereafter the petitioner stated that all the documents were required to be translated and got the copy of order in the restoration application only on 23.12.2022. It was therefore stated that the delay of 260 days had occurred.



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9. As regards condonation of delay, the Hon'ble Supreme Court has repeatedly held that the Courts need not apply any rigid formula.

Considering the overall circumstances, irrespective of the length of delay, the Court will condone the delay if sufficient cause is shown.

10. In the case on hand, when substantial delay was on account of delay in restoration application, this Court finds that the discretion ought to have been exercised in favour of the petitioner, especially when the petitioner had given valid explanation. Secondly, the entire nation was in deep trouble due to the lock-down and that normalcy was brought back after the second wave only. Movements were restricted. The reasons stated by petitioner cannot be discarded and the period taken for prosecuting the restoration application can be excluded. Therefore, this Court finds that the order of the National Consumer Disputes Redressal Commission, which refused to condone the delay is not appropriate and is liable to be set aside. Hence, the order dated 14.08.2023 is set aside and the matter is remitted to the first respondent for deciding the appeal on merits.



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11. So far as the order dated 16.11.2021 passed by the second respondent is concerned, this Court finds that the State Consumer Disputes Redressal Commission has dismissed the case for non-prosecution on the ground that neither the complainant nor his counsel was present on the date when the matter was taken up. In fact, when the petitioner filed an application to restore the complaint in M.P.SR.No.56 of 2022 in C.C.No.142 of 2017, the State forum did not even number it and dismissed the same on the ground of maintainability, stating that the Consumer Protection Act does not provide for restoration of the case, which stood dismissed for non-prosecution or to set aside the ex parte reasoned order. But this Court does not express any view on the merits of the order passed by the second respondent, in the given case.

12. With the aforesaid observations, the writ petition stands partly allowed. Consequently, W.M.P.No.31223 of 2023 stands closed. However, there is no order as to costs.

Index : yes/no
Neutral citation : yes/no
ss

(S.S.S.R.,J.) (N.S.,J.)
11.03.2024



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