



WEB COPY



CRP(MD)No.16 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 21/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CRP (MD) No.16 of 2024
and
CMP (MD) No.128 of 2024

C.Karthikumar : Petitioner/Opposite Party

Vs.

P.Palanivelrajan : Respondent/Complainant

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to strike off the complaint vide CC No.19 of 2023 pending on the file of the District Commission, Srivilliputhur, Virudunagar District.

For Petitioner : Mr.C.Suraj

For Respondent : Mr.A.Mohan

O R D E R

This civil revision petition has been filed seeking an order to strike off the complaint in CC No.19 of 2023 pending on the file of the District Commission, Srivilliputhur, Virudunagar District.



WEB COPY



CRP(MD)No.16 of 2024

2. The facts in brief:-

The respondent herein filed a complaint before the Consumer Redressal Forum in CC No.19 of 2023 with the following allegations:-

There was a franchisee agreement between the petitioner and the respondent, on 11/12/2019. On that agreement, the entire expenses of the franchisee, establishment of location must be paid by him. From 11/12/2019 till date, the business is running by him in the name of 'SK CAR CARE-NETWORK'. He developed the business by spending more than Rs.73,00,000/-. The agreement amount was also paid by him periodically. Against the agreement, the respondent started another shop in front of the present shop and running the same. Because of that, his business is completely affected. So, by that violation of the agreement, the respondent has caused damage worth about Rs.10,00,000/-.

3.The petitioner also appeared and filed his counter.

4.Both sides filed affidavits. Written arguments were also filed. At this stage, this petition is preferred by the petitioner stating that the respondent



CRP(MD)No.16 of 2024

is not fit into the definition of '**Consumer**' under the provisions of the Consumer Protection Act, defined under section 2(7) of the Consumer Protection Act, 2019. Since it is a franchisee agreement between the parties, which is of commercial in nature, it will not come under the purview of Consumer Dispute under section 2(8) of the Consumer Protection Act, 2019. The commercial dispute is excluded from the jurisdiction of the Consumer Redressal Forum. So, the case is barred under section 36 of the Consumer Protection Act, 2019.

5.Per contra, the learned counsel appearing for the respondent would submit that only for the livelihood of the respondent, he entered into the franchisee agreement with the petitioner. So, he fit into the category of 'Consumer' as defined in section 2(7) of the Consumer Protection Act, 2019. According to him, it is maintainable before the Consumer Redressal Forum.

6.He would further submit that the petition filed is also highly belated one, since the complaint was filed as early as on 30/03/2023. After completing all the formalities, now posted for oral arguments. Since the oral arguments were already heard, at this stage, this petition came to be filed.



CRP(MD)No.16 of 2024

WEB COPY

7.A query was made to the learned counsel appearing for the petitioner as to the reason for the delay. For that, he would submit that he raised the maintainability issue before the Forum. But the Forum did not consider the maintainability at the first instance, insisting upon the parties to get along with the enquiry. Further submitted that the jurisdiction issue can be raised at any point of time. There is no bar.

8.Entire records have been called for from the Consumer Forum and perused.

9.In the counter as well as in the written argument, the petitioner raised a specific plea of maintainability of the complaint under the provisions of the Consumer Protection Act, as noted above. Before this court, he relied upon number of judgments, more particularly, in the case of **General Manager, Madras Telephone and others Vs. R.Kannan ((1994)1 CPJ 14(NC))**, which is followed in number of judgements. Subsequent to that, a recent one in **Softspec Software Pvt. Ltd Vs. Digital Equipment (India) Ltd and Other).**



WEB COPY



CRP(MD)No.16 of 2024

10.By citing this judgment, the learned counsel appearing for the petitioner would submit that the franchisee agreement will not come under the jurisdiction of the Consumer Redressal Forum.

11.Clarification was again sought from the both sides as to whether, it is permissible on the part of this Court to interfere into the proceedings, when the proceedings is in the advance stage. Again the learned counsel appearing for the petitioner would submit that jurisdiction issue is involved. So, it must be decided first.

12.So, I am of considered view that let the Consumer Redressal Forum itself decide its jurisdiction as to the maintainability of the petition before entering into the other aspects.

13.But the learned counsel appearing for the respondent would submit that a direction may be issued to the Redressal Forum to take up the maintainability issue along with other issues, so that the matter can be disposed of finally.



CRP(MD)No.16 of 2024

WEB COPY

14.The maintainability issue should be decided by the Redressal Forum first.

15.Here, the jurisdiction of the Redressal Forum itself is under challenge. So I am of the considered view that the Redressal Forum may decide that issue first.

16.With the above said direction, this civil revision petition stands **disposed of**. No costs. Consequently, connected Miscellaneous Petition is closed

21/03/2024

Index:Yes/No
Internet:Yes/No

er

To,

- 1.The District Commission,
Srivilliputhur,
Virudhunagar District.
- 2.The Chief Judicial Magistrate,
Virudhunagar @ Srivilliputur.
- 3.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CRP(MD)No.16 of 2024

G.ILANGO VAN, J

er

CRP (MD) No. 16 of 2024

21/03/2024