



W.P (MD).No.22166 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.01.2025

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THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

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and

W.M.P(MD)No.18736 of 2021

M/s.Sterling Holidays Resorts (India) Ltd.,  
Rep. by its Authorised signatory,  
Having office at No.7, 3rd Cross Street,  
Kasturibai Nagar, Adiyar,  
Chennai-600 020.

... Petitioner

Vs.

1.Dr.K.Aruljothi  
2.The Registrar,  
Tamil Nadu State Consumer Disputes Redressal Commission,  
District Court Building,  
Madurai-20.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order dated 05.10.2021 in C.M.P.No.70/2019 in C.M.P.No.38/2016 in F.A.S.R.No.80/2016 on the file of the Tamil Nadu State Consumer Disputes Redressal Commission, Madurai and quash the same and direct the Circuit Bench of the Tamil Nadu State Consumer Disputes Redressal Commission, Madurai to decide the application on merits.



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For Petitioner : Mrs.AL.Ganthimathi  
For R1 : Mr.R.Murali  
For R2 : Mr.D.Gandhi Raj  
Special Government Pleader

### **ORDER**

This writ petition has been filed challenging the order passed in C.M.P.No.70/2019 in C.M.P.No.38/2016 in F.A.S.R.No.80/2016, dated 05.10.2021, on the file of the Tamil Nadu State Consumer Disputes Redressal Commission, Madurai, thereby, rejected the application on the ground that the order under challenge was appealable one.

2. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3. The first respondent was a member of the petitioner and enjoying the amenities of the petitioner in the holiday resorts in the time shares of week in places as per his wishes. While being so, the first respondent filed a complaint in D.D.No.4 of 2013 before the District Consumer Redressal Forum, Karur for refund of a sum of Rs.28,362/-, which was paid by the first respondent along with interest and also claiming unused holidays along with



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compensation for the alleged deficiency of the service with regard to the non-availability of the accommodation as promised by the petitioner. Though the petitioner received notice in the said complaint, he failed to appear before the District Consumer Redressal Forum, Karur and the petitioner was set exparte. The complaint was allowed by an award dated 13.03.2015 thereby directed the petitioner to pay a sum of Rs.2,25,000/- for the unused holidays and a sum of Rs.15,00,000/- as compensation. The first respondent filed an Execution Petition in E.P.No.9 of 2015 to execute the order, dated 13.03.2015. After receipt of the notice in the execution petition, the petitioner came to know about the order dated 13.03.2015. Thereafter, aggrieved against the order dated 13.03.2015, the petitioner preferred an appeal in F.A.S.R.No.80/2016 before the Registrar, Tamil Nadu State Consumer Disputes Redressal Commission, Madurai with condone delay petition in C.M.P.No.38 of 2016. The second respondent allowed the condone delay petition with a costs of Rs.500/- payable by the petitioner on or before 30.08.2018. However, the counsel who appeared have failed to note down the date for payment of the cost and the date for reporting the compliance on 31.08.2018 and the same was not informed to the petitioner. Hence, the condone delay petition was dismissed on 31.08.2018 for non-compliance of the condition imposed while allowing the condone delay petition. Therefore, the petitioner filed another application in C.M.P.No.70 of



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2019 to set aside the order dated 31.08.2018. However, by an order dated 05.10.2021 it was dismissed as not maintainable and also observed that the conditional order is not complied and the same is appealable one.

4. The learned Senior Counsel appearing for the petitioner would submit that though provision under Section 51 of the Consumer Protection Act, 2019 provided the appeal before the National Consumer Disputes Redressal Commission as against the order passed by the Tamil Nadu State Consumer Disputes Redressal Commission. The Hon'ble Supreme Court of India in the case of *M/s.Universal Sompo General Insurance Co. Ltd., vs. Suresh Chand Jain and another in Special Leave Petition (Civil) No.5263 of 2023* held that the aggrieved person can approach their respective High Courts. In view of the above, the present writ petition is very much maintainable.

5. The learned counsel appearing for the first respondent would submit that Section 51 of the Consumer Protection Act, 2019 is very clear that any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) or (ii) of clause (a) of sub-section (1) of section 47 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and



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manner as may be prescribed. There is a statutory appeal remedy is very much available, the petitioner cannot maintain the writ petition.

6. This issue has already been settled by the Hon'ble Supreme Court in the case of ***M/s.Universal Sompo General Insurance Co. Ltd., vs. Suresh Chand Jain and another in Special Leave Petition (Civil) No.5263 of 2023.***

7. In view of the above, this writ petition can very well maintainable before this Court. Further, the petitioner failed to pay the cost of Rs.500/- in favour of the first respondent as per the condition imposed while allowing the condone delay petition.

8. In view of the above, this Court is inclined to allow condone delay petition by imposing more costs to compensate the first respondent. Accordingly, the petitioner is directed to pay a sum of Rs.25,000/- as cost to the first respondent within a period of two weeks from the date of receipt of a copy of this order directly to the first respondent.

9. Accordingly, the order passed in C.M.P.No.70/2019 in C.M.P.No. 38/2016 in F.A.S.R.No.80/2016, dated 05.10.2021 by the Tamil Nadu State



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Consumer Disputes Redressal Commission, Madurai is quashed and the writ petition is allowed on condition that the petitioner shall pay a sum of Rs.25,000/- as cost in C.M.P.No.70/2019 in C.M.P.No.38/2016 in F.A.S.R.No. 80/2016 on the file of the Tamil Nadu State Consumer Disputes Redressal Commission, Madurai. It is made clear that the first respondent refused to receive the same, the petitioner is at liberty to deposit the same on the file of the Tamil Nadu State Consumer Disputes Redressal Commission, Madurai. On such deposit, the second respondent is directed to proceed with the appeal and dispose of the same on merits and in accordance with law within a period of three months thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Internet : Yes  
Index : Yes/No  
Speaking/Non Speaking order  
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**06.01.2025**



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To

The Registrar,  
Tamil Nadu State Consumer Disputes Redressal Commission,  
District Court Building,  
Madurai-20.



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**G.K.ILANTHIRAIYAN, J.**

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