



WP(C) NO. 25701 OF 2024

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2024:KER:98264

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 18TH DAY OF DECEMBER 2024 / 27TH AGRAHAYANA, 1946

WP(C) NO. 25701 OF 2024

PETITIONER/S:

DR. SHINY ANTONY RAUF
AGED 54 YEARS
BDS, W/O. RAUF, DENTAL SURGEON, RESIDING AT HOUSE
NO.19, MID ROAD, BAKER HILL, KOTTAYAM, PIN - 686001

BY ADVS.
R.SURENDRAN
S.MAYUKHA

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT, CONSUMER
AFFAIRS DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.,
PIN - 695001
- 2 ASSISTANT REGISTRAR
CONSUMER DISPUTE REDRESSAL COMMISSION, CIVIL STATION,
COLLECTORATE, KOTTAYAM, COLLECTORATE P.O., KOTTAYAM,
PIN - 686002
- 3 SMT. K.R. USHAKUMARI
KAVUKATTIL HOUSE, VATTUKULAM.P.O, KADAPPOOR, KOTTAYAM,
PIN - 686587

BY ADVS.
C.S.MANILAL
S.NIDHEESH(K/1061/2007)



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OTHER PRESENT:

SR GP SMT DEEPA NARAYANAN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
18.12.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**



C.S.DIAS, J.

WP(C) No. 25701 of 2024

Dated this the 6th day of January, 2025

JUDGMENT

By Ext.P1 order, the Consumer Disputes Redressal Commission, Kottayam (‘District Commission’, in short) had allowed the complaint filed by the 3rd respondent against the petitioner under the Consumer Protection Act, 1986 (for short, ‘Old Act’). Aggrieved by Ext.P1, the petitioner has filed an appeal before the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram (‘State Commission’, for brevity). The State Commission has admitted the appeal and issued notice to the 3rd respondent. As there is no provision in the Act to stay the operation and execution of the order, the petitioner is precluded from filing such an application. However, the 3rd respondent has filed an execution application before the District Commission to execute the Ext.P1 order. On receipt of the summons in the execution application, the petitioner appeared through counsel and sought time to file her objections. Yet, without affording the petitioner an opportunity to file an



objection, the District Commission has issued Ext.P7 non-bailable warrant of arrest. Ext.P7 is ex -facie illegal and erroneous. Hence, the writ petition.

2. When the writ petition came up for consideration on 03.12.2024, this Court had called for a report from the District Commission to ascertain why Ext.P7 arrest warrant was issued despite the petitioner preferring an appeal before the State Commission.

3. Pursuant to the said order, the District Commission has submitted a report stating that the complaint was allowed by Ext.P1 order. Subsequently, the 3rd respondent filed E.A.No.51/2024, alleging that the petitioner has not complied with the order. Consequently, the District Commission issued a summons to the petitioner under Section 72 of the Consumer Protection Act, 2019 ("New Act, for short). Although the petitioner appeared through Counsel, she did not state about the filing of the appeal and did not produce any order staying the operation of the Ext.P1 order. As the petitioner failed to comply with the directions in Ext.P1 order, the District Commission was constrained to issue Ext.P7 warrant of arrest. On 01.08.2024, the petitioner produced the interim order passed by this Court. The District Commission has transmitted the



records in the complaint to the State Commission.

4. Heard; the learned counsel for the petitioner and the learned counsel for the 3rd respondent.

5. The 3rd respondent had filed C.C.No.73/2018 before the District Commission on 21.04.2018 under Section 12 of the Old Act. By Ext.P1 order, the District Commission allowed the complaint on 25.1.2024, directing the petitioner to pay the 3rd respondent Rs.5,00,000/-. The New Act came into force on 09.08.2019. The petitioner has challenged Ext.P1 order by filing Ext.P2 appeal before the State Commission under Section 41 of the New Act. The petitioner has asserted in Ext.P2 memorandum of appeal that she has deposited Rs.25,000/- before the State Commission as per the mandate under the second proviso to Section 15 of the Old Act.

6. The petitioner contends that since there is no enabling provision, either under the Old Act or the New Act, to stay the operation and execution of the impugned order passed by the District Commission, the petitioner was precluded from filing a stay petition along with Ext.P2 appeal. The only requirement under the Old Act is to file an appeal within thirty days from the date of receipt of the order and to deposit 50% of the



ordered amount or Rs.25,000/-, whichever is less. The petitioner has complied with the twin conditions. Thus, the operation and execution of the impugned order stand statutorily stayed by operation of law. Hence, the District Commission should not have issued Ext.P7 warrant of arrest.

7. Section 15 of the Consumer Protection Act, 1986 reads thus:

“15. Appeal.—Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed:

Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period:

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be entertained by the State Commission unless the appellant has deposited in the prescribed manner fifty per cent. of that amount or twenty-five thousand rupees, whichever is less”.

8. There is no provision under the Old and New Acts, which is pari materia to Order 41 Rule 5 of the Code of Civil Procedure, to stay the operation and/or execution of an order passed by the District Commission. The only requirement contemplated under the Old Act is to file an appeal and deposit 50% of the amount ordered or Rs.25,000/- whichever is less, as a pre-condition to accept the appeal on file. As per Section 41 of the New Act, the appellant must deposit 50% of the ordered amount with the appeal.

9. In interpreting Section 19 of the Old Act, which provides for an



appeal from the orders passed by the State Commission to the National Commission, in **Shreenath Corp. (M/s.) and others vs. Consumer Education and Research Society and Others** [(2014) 8 SCC 657], the Honourable Supreme Court observed thus:

“9. The second proviso to Section 19 of the Act mandates pre-deposit for consideration of an appeal before the National Commission. It requires 50% of the amount in terms of an order of the State Commission or 35,000/- whichever is less for entertainment of an appeal by the National Commission. Unless the appellant has deposited the pre-deposit amount, the appeal cannot be entertained by the National Commission. A pre-deposit condition to deposit 50% of the amount in terms of the order of the State Commission or Rs.35,000/- being condition precedent for entertaining appeal, it has no nexus with the order of stay, as such an order may or may not be passed by the National Commission. Condition of pre-deposit is there to avoid frivolous appeals.

10. It is not the case of any of the appellants that the Consumer Forum including State and National Commissions has no power to pass interim order of stay. If the National Commission after hearing the appeal of the parties in its discretion wants to stay the amount awarded, it is open to the National Commission to pass an appropriate interim order including conditional order of stay. Entertainment of an appeal and stay of proceeding pursuant to order impugned in the appeal stands at different footings, at two different stages. One (pre-deposit) has no nexus with merit of the appeal and the other (grant of stay) depends on prima facie case; balance of convenience and irreparable loss of party seeking such stay”.

(emphasis given)

10. It is also contextual to refer to the observations made by the Honourable Supreme Court in **Manohar Infrastructure and Constructions Private Limited and Others v. Sanjeev Kumar Sharma and others** [(2022) 8 SCC 474], which reads thus:



“13. We are in complete agreement with the view taken by this Court in the case of Shreenath Corporation and Ors. (supra). Therefore, it is held that National Commission can pass an order to deposit the entire amount and/or any amount higher than 50 per cent of the amount in terms of the order of the State Commission while staying the order passed by the State commission. **However, at the same time, while considering the stay application against the order passed by the State Commission and while passing the order to deposit the entire amount and/or any amount higher than 50 per cent of the amount, the National Commission has to assign some reasons and pass a speaking order why the conditional stay is being granted on condition of deposit of the entire amount and/or any amount higher than 50 per cent of the amount. Such an order on the stay application is not to be passed mechanically.....** ..”

11. The above precedents unquestionably settle the legal position that, notwithstanding the absence of a specific provision to stay the operation of an order passed by the District or State Commission, the Commissions have the inherent power to stay the operation of the impugned order, subject to the condition that the appeal is duly filed after depositing the statutory amount. Then, it will always be open to an appellant to move an application for the stay of the operation of the impugned order. Therefore, the State Commission has the power to stay the execution of Ext.P1 order subject to the condition that the petitioner files an application before the State Commission for the said purpose. As the petitioner has no other alternative remedy for the relief prayed for in this writ petition, this Court is persuaded to exercise its discretionary



powers in favour of the petitioner. Hence, I am inclined to grant the petitioner a breathing time to file such an application in the pending appeal. The question of whether the provisions of the Old Act or the New Act apply regarding the amount to be deposited is left open, which shall be decided by the State Commission.

In the result, the writ petition is disposed of, in the following manner:

- (i) The petitioner would be at liberty to file an application for stay in Ext.P2 appeal within 30 days from the date of receipt of a certified copy of this judgment;
- (ii) If such an application is filed, the State Commission shall consider and dispose of the application within one month from the date of filing of such application, in accordance with the law, after affording the petitioner and the 3rd respondent an opportunity of being heard.
- (iii) The enforceability of the Ext.P7 order would be subject to the orders to be passed on the stay application.
- (iv) Ext.P7 order shall stand deferred for 60 days from the date of receipt of a certified copy of this judgment.
- (v) The Registry is directed to forward a copy of this judgment to the State and District Commission.

sd/-

C.S.DIAS, JUDGE



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APPENDIX OF WP(C) 25701/2024

PETITIONER EXHIBITS

- Exhibit P1** TRUE COPY OF THE ORDER DATED 25-1-2024 IN C.C NO. 73/2018 ON THE FILE OF CONSUMER DISPUTES REDRESSAL COMMISSION, KOTTAYAM
- Exhibit P2** TRUE COPY OF THE MEMORANDUM OF APPEAL DATED 9-3-2024 FILED BEFORE THE KERALA STATE CONSUMER DISPUTES REDRESSAL COMMISSION, THIRUVANANTHAPURAM, AS FIRST APPEAL NO. A/182/2024
- Exhibit P3** TRUE COPY OF THE ORDER DATED 10-6-2024 OF KERALA STATE CONSUMER DISPUTES REDRESSAL COMMISSION, THIRUVANANTHAPURAM, IN FIRST APPEAL NO. A/182/2024
- Exhibit P4** TRUE COY OF THE APPLICATION DATED 30-4-2024, FILED BY THE THIRD RESPONDENT BEFORE THE CONSUMER DISPUTES REDRESSAL COMMISSION, KOTTAYAM AS E.A NO.51/2024
- Exhibit P5** TRUE COPY OF THE ORDER DATED 29-5-2024 OF CONSUMER DISPUTES REDRESSAL COMMISSION, KOTTAYAM IN E.A NO.51/2024
- Exhibit P6** TRUE COPY OF THE NOTICE DATED 6-6-2024 ISSUED BY THE ASSISTANT REGISTRAR OF CONSUMER DISPUTES REDRESSAL COMMISSION, KOTTAYAM TO THE PETITIONER
- Exhibit P7** TRUE COPY OF THE ORDER DATED 6-7-2024 OF CONSUMER DISPUTES REDRESSAL COMMISSION, KOTTAYAM IN E.A NO.51/2024