

(2010) 08 BOM CK 0171

In the Bombay High Court

Case No : Writ Petition No. 6143 of 2009

Abhay Raje and Others

APPELLANT

Vs

Shrikant Bhalerao and Others

RESPONDENT

Date of Decision : 05-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Consumer Protection Act, 1986 — Section 11, 15, 2, 2(1), 3
Telegraph Act, 1885 — Section 7(B)

Citation : (2010) 5 BomCR 854

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : B.S. Shinde, for the Appellant; Shaikh Naseer, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Deshpande, J.—This writ petition challenges the order dated 25th of February 2009 passed by the District Consumer Disputes Redressal Forum, Jalgaon, (hereinafter referred to as the "District Consumer Forum") holding that the respondent No. 1 is the consumer in view of provisions of Section 2(1) of the Consumer Protection Act, 1986 and there is deficiency in rendering service by the petitioner No. 10 Kala Hanuman Urban Credit Society, of which the petitioner Nos. 1 to 9 are the directors. The District Consumer Forum has directed return of the amount kept by the respondent No. 1 - Consumer in fixed deposit with respondent No. 10, along with interest and compensation.

2. Notice in this matter was issued on 15th of September 2009 and the order passed by the Consumer Forum was stayed. In response to the notice, Shri. Shaikh Nasir, the learned Counsel appears for respondent No. 1 - Consumer. Though the respondent Nos. 2 to 6 were served, no one appears for them. They are the former directors of the petitioner No. 10 Society. In view of this, it is not necessary for this Court to issue fresh notices to respondent Nos. 2 to 6 and the petitioners have made it clear in this petition that no grievance is made against

those respondents. Hence, the issuance of notices to respondent Nos. 2 to 6 are dispensed with. The learned Counsel appearing for the parties agree that the matter can be heard finally at the stage of admission. Hence, Rule, made returnable forthwith. The matter is heard by consent of parties.

3. The question involved in this case is, whether the jurisdiction of District Consumer Forum, constituted under the Consumer Protection Act, 1986, is expressly barred under the provisions of Section 91(3) of the Maharashtra Co-operative Societies Act, 1960, in respect of dispute as contemplated by Sub-section (1) of Section 91 of the said Act.

4. The learned Counsel for the petitioners has urged that the jurisdiction of the District Consumer Forum is expressly barred by the provisions of Sub-section (3) of Section 91 of the Maharashtra Cooperative Societies Act, 1960. Sub-section (3) of Section 91, which is relevant for deciding the controversy involved in this case, is reproduced below along with the explanation:

(3) Save as otherwise provided under Sub-section (2) of Section 93, no Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in Sub-section (1).

Explanation 1.- A dispute between the Liquidator of a society (or an official Assignee of a de-registered society and the members including past members, or nominees, heirs or legal representative or deceased members of the same society shall not referred to the co-operative Court under the provisions of Sub-section (1).

Explanation 2.- For the purpose of this sub-section, a dispute shall include-(i) a claim by or against a society for any debt or demand due to it from a member or due from it to a member, past member or the nominee, heir or legal representative of a deceased member, or servant for employee whether such a debt or demand be admitted or not;

(ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan by a society and recovered from the surety owing to the default of the principal borrower, whether such a sum or demand be admitted or not;

(iii) a claim by a society for any loss caused to it by a member, past member or deceased member, by any officer, past officer or deceased officer, by any agent, past agent or deceased agent, or by any servant, past servant or deceased servant, or by its committee, past or present, whether such loss be admitted or not;

(iv) a refusal or failure by a member, past member or a nominee, heir or legal representative of a deceased member, to deliver possession to a society of land or any other asset resumed by it for breach of condition as the assignment.

5. The learned Counsel for the petitioners has urged that the complaint filed by

the respondent No. 1 - Consumer before the District Consumer Forum is covered by item (i) of Explanation 2 reproduced above. According to him, Sub-section (3) of Section 91, clearly bars the jurisdiction of District Consumer Forum to entertain any suit or other proceedings in respect of any dispute referred to in Sub-section (1) of Section 91, which is required to be tried and decided by a Special Court i.e. Co-operative Court, constituted for that purpose under the said Act. According to him, the District Consumer Forum is a "Court" as contemplated by Sub-section (3) of Section 93 reproduced above and complaint before District Consumer Forum, is covered by Sub-section (1) of Section 91 and therefore, the jurisdiction of the District Consumer Forum is ousted. He relies upon the decision of the Apex Court reported in General Manger, Telecom Vs. M. Krishnan and Another, ., in support of his contention that when a separate forum is created to agitate the complaint in respect of which the dispute arises, then the jurisdiction of consumer forum is impliedly barred. He further relies upon the decision of the Apex Court reported in (2009) 2 SCC 630 in the case of Committee of Management and Anr. v. Vice-Chancellor and Ors., for the proposition that there is absolutely no bar of alternate remedy of appeal before State Commission and if the orders passed by the authorities/forum/courts are without jurisdiction or in violation of the principles of natural justice, the writ petition under Article 226 and 227 of the Constitution of India is maintainable.

6. The learned Counsel appearing for the respondent has relied upon the decision of the Division Bench of this Court reported in Sanjay R. Kothari and Another Vs. South Mumbai Consumer Disputes Redressal Forum and Another, ., wherein it has been held that the Consumer Forum is not a civil Court within the meaning of the provisions of Code of Civil Procedure. He submits that in view of this decision of the Division Bench of this Court, the Consumer Court cannot be said to be a "Court" within the meaning of Sub-section (3) of Section 91 of the Maharashtra Co-operative Societies Act, 1960 and hence, the bar created under Sub-section (3) of Section 91, shall not operate in respect of the complaint filed before the District Consumer Forum. He further relies upon the provisions of Section 3 of the Consumer Protection Act, 1986, which states that the provision of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. He, therefore, submits that even assuming that it is a dispute covered under Sub-section (1) of Section 91 of the Maharashtra Co-operative Societies Act, the complainant has choice either to approach the Co-operative Court or to approach the Consumer Forum, which is an additional remedy as stipulated u/s 3 of the said Act. He, therefore, submits that the jurisdiction of the District Consumer Forum is not barred, as urged by the learned Counsel for the petitioners. On the question of an alternate remedy, he submits that there exists an alternate statutory remedy by way of filing an appeal before the State Commission as provided u/s 15 of the Consumer Protection Act, 1986, to challenge the order impugned in this petition.

7. Bare perusal of Sub-section (3) of Section 91 of the Maharashtra Co-operative Societies Act, 1960, makes it clear that it creates a bar of the jurisdiction of the

"Court" to entertain any suit or other proceedings in respect of any dispute referred to in Sub-section (1). The word "Court" in the context of the provisions of the said Act, signifies a "Civil Court". The Division Bench of this Court in its judgment delivered in Sanjay's case cited supra has held that the Consumer Forum, though it has trappings of Civil Court, is not a "Civil Court" within the meaning of the provisions of Code of Civil Procedure. In view of this, the bar created by Sub-section (3) of Section 91, does not operate against the District Consumer Forum, which is created/constituted under the provisions of Consumer Protection Act, 1986. As pointed out by the learned Counsel for the respondent, Section 3 of the Consumer Protection Act, 1986 clearly states that the provisions of the said Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force, hence, it is the choice of the consumer, either to go before the Cooperative Court, constituted under the Maharashtra Co-operative Societies Act or to approach the District Consumer Forum, constituted under the Consumer Protection Act. The respondent No. 1 - Consumer has chosen to approach the District Consumer Forum for making the complaint. The District Consumer Forum has recorded a finding that the respondent No. 1 is a consumer and there is a deficiency in service rendered by the petitioner No. 10 - Society and this finding is not assailed. Hence, no fault can be found with the order of the District Consumer Forum in entertaining and deciding the complaint filed by the respondent No. 1. The jurisdiction of the District Consumer Forum is not ousted.

8. In the judgment of the Apex Court relied upon by the learned Counsel for the petitioners in M. Krishnan's case cited supra, it was held that in view of the fact that special remedy is provided under the Telegraph Act by way of Section 7(B) for arbitration of disputes, the jurisdiction of the Consumer Forum under the Consumer Protection Act, 1986 was impliedly barred. In para 8 of the said judgment, reliance is placed upon the decision of the Apex Court reported in Chairman, Thiruvalluvar Transport Corporation Vs. Consumer Protection Council, .

9. The judgment of the Apex Court in Thiruvalluvar's case cited above was also considered in the decision of the Apex Court reported in The Secretary, Thirumurugan Co-operative Agricultural Credit Society Vs. M. Lalitha (Dead) through Lrs. and Others, . Para 12 of the said judgment is reproduced below:

12. As per Section 3 of the Act, as already stated above, the provisions of the Act shall be in addition to and not in derogation to any other provisions of any other law for the time being in force. Having due regard to the scheme of the Act and purpose sought to be achieved to protect the interest of the consumers, better the provisions are to be interpreted broadly, positively and purposefully in the context of the present case to give meaning to additional/extended jurisdiction, particularly when Section 3 seeks to provide remedy under the Act in addition to other remedies provided under other Acts unless there is clear bar.

In para 17 of the said judgment, the decision of the Apex Court in Thiruvalluvar's case has been considered and it has been held that it was not a

case of the additional remedy available before the Consumer Forum created u/s 1986 Act and hence, the said decision does not advance the case of the appellant. In para 18 of the said judgment, it has been held as under:

18. The decision in Dhulabhai case (supra) also does not help the appellant. The present case is not one where the question to be considered is as to the exclusion of jurisdiction of civil court in view of the provisions of Section 90 read with Section 156 of the Act. Provisions of 1986 Act, as already made clear above, apply in addition to the other provisions available under other enactments. It follows that the remedies available under the 1986 Act for redressal of disputes are in addition to the available remedies under the Act. Under the 1986 Act we have to consider as regards the additional jurisdiction conferred on the forums and not their exclusion. In Dhulabhai case consideration was whether the jurisdiction of the civil court was excluded. Propositions (1) and (2) indicate that where the statute gives a finality to the orders of the special tribunals the jurisdiction of civil courts must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Further, where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. The remedies that are available to an aggrieved party under the 1986 Act are wider. For instance in addition to granting a specific relief the forums under the 1986 Act have jurisdiction to award compensation for the mental agony, suffering, etc., which possibly could not be given under the Act in relation to dispute u/s 90 of the Act. Merely because the rights and liabilities are created between the members and the management of the society under the Act and forums are provided, it cannot take away or exclude the jurisdiction conferred on the forums under the 1986 Act expressly and intentionally to serve a definite cause in terms of the objects and reasons of the Act, reference to which is already made above. When the decision of Dhulabhai's case was rendered the provisions similar to 1986 Act providing additional remedies to parties were neither available nor considered. If the argument of the learned Counsel for the appellant is accepted it leads to taking away the additional remedies and forums expressly provided under the 1986 Act, which is not acceptable.

The judgment of Apex Court in Secretary, Thirumurugan's case above, was considering the provisions of Co-operative Societies Act vis-a-vis the provisions of the Consumer Protection Act and is directly on the proposition involved in this case. In view of this, it is apparent that the judgment of the Apex Court in M. Krishnan's case is of no help to the petitioners.

10. In view of above, it is held that that the jurisdiction of the District Consumer Forum u/s 11 of the Consumer Protection Act, 1986 is not barred by the provisions of Sub-section (3) of Section 91 of the Maharashtra Co-operative Societies Act, 1960 in respect of a dispute covered by Sub-section (1) of Section

91 of the said Act and if the case is otherwise covered by "complaint" u/s 2(c), "Consumer" u/s 2(d), "deficiency" u/s 2(g) and "service" u/s 2(o) of Consumer Protection Act, 1986, it cannot be said that the District Consumer Forum has acted without jurisdiction.

11. So far as the another decision relied upon by the learned Counsel for the petitioners reported in (2009) 2 SCC 630 Committee of Management and Anr. v. Vice-Chancellor and Ors., is concerned, there cannot be dispute about the proposition that the alternate efficacious remedy cannot be an absolute bar, when the order passed by the authority is without jurisdiction or in violation of the principles of natural justice. In this case, I have already held that the jurisdiction of the District Consumer Forum is not barred and the order passed by the District Consumer Forum cannot be said to be without jurisdiction. There is no complaint that the order was passed in violation of the principle of natural justice. Hence, the said judgment is of no avail to the petitioners.

12. An amount of Rs. 5500/- has been deposited in this Court by the petitioners in terms of the order dated 15.9.2009, which is 50% of amount awarded by District Consumer Forum. The respondent No. 1 is permitted to withdraw the said amount. The petitioners are at liberty to approach the State Commission by filing an appeal as provided under the provisions of Consumer Protection Act, 1986 and the amount of Rs. 5500/- deposited by the petitioners in this petition shall be taken into consideration, while requiring the petitioners to deposit 50% amount, as contemplated by the provision of Section 15 of the Consumer Protection Act. It is made clear that this Court has not gone into the merits of the matter and it shall be open for the petitioners, even to urge before the appellate forum that the respondent No. 1 is not consumer or that no service is provided by the petitioner No. 10 Society. All questions are left open after holding that District Consumer Forum has jurisdiction to entertain and try the complaint, by proceeding on the assumption that the respondent No. 1 is Consumer and the petitioner No. 10 Society has not rendered the service.

13. In the result, there is no substance in the petition, the same is dismissed. No costs.

14. The interim relief passed by this Court on 15.9.2009 shall continue to operate for a period of 15 days from the date of filing of appeal before the State Commission, at the end of which it shall stand vacated.