

(2004) 03 NCDRC CK 0038

In the National Consumer Disputes Redressal Commission

AMALENDU SARKAR

APPELLANT

Vs

NABADWIP CO-OPERATIVE BRICKS And POTTARY SOCIETY
LTD

RESPONDENT

Date of Decision : 12-03-2004

Acts Referred:

Citation : 2004 2 CPJ 592

Hon'ble Judges : S.Majumder , D.Karformas J.

Final Decision : Appeal allowed

Judgement

1. THIS is an appeal against the order dated 6.3.1999 passed by the District Forum, Nadia. The present appellant was the complainant before the Forum while the present respondent was the O.P.

2. FROM the impugned order it is observed that the Forum rejected the petition of the complainant at the preliminary stage on the ground that the case was not maintainable before the Forum. As the complaint was dismissed on the ground of maintainability alone, the merits of the case were not gone into by the Forum. Being aggrieved by that order, the complainant has come in appeal before the Commission. We find from the impugned order that the Forum relied upon Section 95 of the West Bengal Co-operative Societies Act, 1983 wherein it has been enjoined that any dispute concerning the business of a co-operative society capable of being the subject of civil litigation shall be referred in the prescribed manner to the Registrar of Co-operative Societies, if the parties thereto are, inter alia, any person having transaction with a co-operative society [vide Section 95(d) of the aforesaid Act]. Though in the impugned order it has not been specifically mentioned, we find that in Section 134 of the same Act it has been stipulated that no Civil Court or Revenue Court shall have jurisdiction in regard to any dispute required to be referred to the Registrar under Section 95 [vide Section 134(2)(d)]. This provision apparently tends to support the decision of the Forum as stated above.

In the memo. of appeal the appellant has assailed the order of the Forum mainly

on the following grounds: (1) Section 3 of the Consumer Protection Act states that the provisions of the C.P. Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. The appellant contends that because of this enabling provision the jurisdiction of the Consumer Forum cannot be ousted by the relevant provisions of the Co-operative Societies Act. (2) As per Consumer Protection Act a complaint can be made against a "person" where the word "person" includes a co-operative society [vide Section 2(e) and Section 2(m) of the C.P. Act]. (3) The appellant further contends that the Hon'ble Supreme Court has held that even if there is a clause for arbitration, the jurisdiction of the Forum cannot be taken away to decide such disputes.

3. IN support of his contention the learned Lawyer for the appellant has filed several case laws which are as under: (1) Order of Hon'ble National Commission dated 15.3.2002 in Revision Petition No. 1468 of 2001 [2002 N.C.J. 548 (N.C.)] (2) Order of Hon'ble Supreme Court dated 20.8.1996 [1996 (4) CTJ 749 (Supreme Court) (C.P.)]. (3) Order of the Maharashtra State Commission dated 31.1.1991 [I (1991) CPJ 462].

Out of the above case laws cited by the appellant the one which is most directly relevant for the present matter is the order passed by the National Commission in Revision Petition No. 1468 of 2001. In this order the National Commission has held that Section 3 of the C.P. Act has been worded in the widest terms and leaves no one in any doubt about the remedies under the C.P. Act, being in addition to and not in derogation of any other law for the time being in force. Therefore, even if any other Act provides for any remedy to a litigant, but does not bar the jurisdiction of the Forum under the C.P. Act, it will be open to the litigant to go to District Forum or State Commission as the case may be and seek his remedy under the C.P. Act. The National Commission further held that the Fora under the C.P. Act are not Civil Courts even though they have the trappings of a Civil Court and the Legislature did not in its wisdom extend the bar to "other authority" and confined such oust of jurisdiction to Civil or Revenue Courts only. From the above provisions it is quite clear that the Legislature in the State of West Bengal wanted to bar the jurisdiction of any Civil or Revenue Court only and not of any other Tribunal or Authority as has been done in other statutes such as Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and Railway Claims Tribunal Act, 1987. While passing the above order the National Commission also referred to the case of Smt. Kalawati and Others v. United Vaish Co-operative Thrift and Credit Society Ltd. (Revision Petition No. 826 of 2001) wherein it was held that the Fora created under the C.P. Act are not Civil Courts and hence, their jurisdiction was not barred. The other case law which is also relevant for the present matter is the order passed by the Hon'ble Supreme Court [(1996) 4 CTJ 749 (Supreme Court) (CP)] wherein the Hon'ble Supreme Court held that though the District Forum, State Commission and National Commission are judicial authorities, for the purpose of Section 34 of the Arbitration Act, in view of the object of the C.P. Act and by operation of Section 3 thereof it would be appropriate that these Forums created under the C.P. Act are

at liberty to proceed with the matters in accordance with the provisions of the C.P. Act rather than relegating the parties to an arbitration proceeding pursuant to a contract entered into between the parties.

4. THE case laws as discussed above clearly establish that despite the provisions contained in Section 95 and Section 134 of the West Bengal Co-operative Societies Act, the jurisdiction of the District Forum or State Commission created under the C.P. Act is not ousted for the purpose of adjudication of the present matter wherein a complaint has been lodged by a person (who is not even a member of the Co-operative Society) against the Co-operative society. It is the complainant's choice as to whether he would approach the Registrar of Co-operative Societies under the Co-operative Societies Act or the District Consumer Forum under the C.P. Act. In the present matter he has chosen the latter. Accordingly we hold that the complaint filed by the present appellant before the District Forum is very much maintainable. THEREfore, the appeal is allowed ex parte and the impugned order of the Forum is set aside. As the Forum dismissed the complaint at the initial stage without going into the merits of the matter we deem it appropriate to remand the matter to the Forum below for adjudication on merits. Be it clarified that at the Forum the question of maintainability cannot be raised again. As the matter is a very old matter, the Forum would do well to dispose of the matter very expeditiously. THE parties are directed to appear before the Forum on 12.4.2004 for further instruction. A copy of this order should be sent immediately to the respondent at their recorded address. THE appeal is thus disposed of. This order will also govern the appeal matter Nos. 119/A/2000 and No. 120/A/2000. Appeal allowed.