(2010) 04 NCDRC CK 0005

In the National Consumer Disputes Redressal Commission

Arun Kashinath Pingale APPELLANT

Vs

Madhukar Sonanis RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:

Citation : 2010 4 CPJ 30

Hon'ble Judges : B.N.P.Singh , S.K.Naik J.

Advocate : S.K.Sharma , Uday Prakash Warunjikar

Judgement

1. LEARNED Counsel for petitioners and respondents were heard at length on admission issue. To appreciate the rival contentions raised with all ingenuity, the salient features of the case need to be noticed with brevity.

2. FACTUAL matrix are that petitioners who run Suyog Departmental Stores floated a Scheme "Suyog Thev Yojana" attracting their customers to make deposit of sums with them on monthly interest payable @ 2% by them on deposits, in term of either discount on the goods purchased, or cash, which followed execution of agreement between the parties sometimes in May, 2001 and July, 2001. Though this arrangement of giving discount on purchases made either in cash or in term of interest functioned for some period smoothly when interest accrued on deposits used to be paid to the creditors, after petitioners failed to make payment of interest accrued on deposits, respondents having taken recourse to consumer Grievance Redressal Agency, filed a complaint with District Forum. Complaint was resisted by petitioners both on maintainability of complaint and also on merit. The issue of belated filing of complaint, District Forum having no pecuniary jurisdiction, in view of total relief claimed including the principal and interest having exceeded more than Rs. 21,00,000, the contract between the parties having got frustrated on account of Maharashtra Protection of Interest of Depositors proceedings pending before Special Court, petitioners being not service providers for any consideration, and transaction in question between the parties being entirely a loan transaction and relationship of the petitioners qua the respondents being that of debtors and creditors, were raised

before Fora below. District Forum, however, having over-ruled contentions, raised on behalf of petitioners, while accepting complaint, directed petitioners to refund a sum of Rs. 17,00,000 with interest @ 24% from December, 2001 to respondents in terms of agreements executed between parties. Compensation of Rs. 6,000 was also awarded for mental agony and cost of proceeding. State Commission too, having negated those contentions raised, while upholding finding of District Forum, dismissed appeal with cost of Rs. 2,000. Now the deck is ready to appreciate the contentions raised before us with factual backgrounds noticed above.

3. CONTENTIONS were raised on behalf of petitioners that causes of a number of customers who executed agreements on different dates were clubbed together for filing a complaint without obtaining permission of District Forum as enjoined in Section 13(6) of CP Act, 1986, and reliance was placed on a decision of Hon''ble Apex Court in case of Godfrey Philips India Ltd. v. Ajay Kumar, II (2008) CPJ 5 (SC)=IV (2008) SLT 62=2008 CTJ 568 (SC) (CP). In that case even though complainant did not represent interest of other consumers, complaint was filed without permission of District Forum as enjoined under Section 13(6) of the said Act. It was in this back drop that complaint on this count also was considered to be not maintainable. Contentions raised merits rejection for the simple reason that Complainant No. 1 had filed complaint espousing causes of complainant Nos. 2 to 5, he being Power of Attorney Holder for them. Filing of complaint by complainant No 1 was as such obviously not in volition of Section 13(6) of the Act. Yet other contention raised was that since respondents had already initiated criminal proceeding under Sections 3 and 4 of Maharashtra Protection of Interests of Depositors (in Financial Establishment) Act, 1999, which was pending before Special Court, Thane and the matter being sub judice, filing of complaint before Consumer Grievance Redressal Agency was hopping the other Fora and also abuse of process of Forum.

4. TIME and again, National Commission and also the Courts having noticed such logic fallacious have ruled that notwithstanding the aggrieved, taking recourse to other remedy, approaching Consumer Fora seeking its indulgence for recording a finding for deficiency in service and to award adequate compensation in case of loss or injury caused, was an additional remedy available to the consumers. Catena of decisions on this issue need not be reiterated.

5. THAT apart, if statement and object for enacting Maharashtra Protection of Interests of Depositors Act, 1999 are taken notice of, that makes distinction quite explicit: "There is mushroom growth of Financial Establishments in the State of Maharashtra in the recent past. The sole object of these Establishments is of grabbing money received as deposits from public, mostly middle class and poor on the promises of unprecedented highly attractive rates of interest or rewards and without any obligation to refund the deposit to the investors on maturity or without any provision for ensuring rendering of the services in kind in return, as assured. Many of these Financial Establishments have defaulted to return the

deposits on maturity or to pay interest or render the services in kind, in return, as assured to the public......... It is, therefore, expedient to make a suitable special legislation in the public interest to curb the unscrupulous activities of such Financial Establishments in the State of Maharashtra."

6. THE object of Legislation of the Act in question was to curb activities of such unscrupulous Financial Institutions which siphon deposits of customers. If respondents initiated criminal proceedings against petitioners, also under Maharashtra Protection of Interest of Depositors Act, 1999, before taking recourse to consumer grievance redressal agency, the object and intent for approaching both Fora below were quite distinct and in different backgrounds. The rightful claim of respondents who made fixed deposits with petitioners was not to be defeated simply on the anvil that they had initiated criminal proceeding against borrowers who are petitioners. That apart, the object of initiating criminal proceeding is simply to make offender answerable for their criminal liability.

7. EQUALLY those contentions raised about respondents being not consumers as defined under Section 2(1)(d) of CP Act, 1986, there being no hiring of service by them from petitioners and no consideration having been ever paid, was devoid of merit.

8. THE other allied issue raised was that since transaction was a loan transaction only, relationship between petitioners and respondents were that of borrowers and creditors.

9. ON admitted facts discount on purchases by respondents was made available to them by petitioners either in cash or in the form of interest. In these factual backgrounds, can such contentions be raised that petitioners were not service providers qua respondents

10. LEARNED Counsel for petitioners with his lucid submission makes all endeavour to impress us that since the agreements were executed by parties some times in May, 2001 and July, 2001, filing of complaint on 23.2.2006 was manifestly time barred and taking notice of pre-emptory provision of Section 24-A of CP Act, 1986, complaint ought to have been dismissed by District Forum, there being no move by respondents for condonation of delay on sufficient cause having been shown by them. Though this issue appears to be attractive but this too is devoid of merit for the reason that it is even acknowledged by petitioners that system of giving discount on purchases made by respondents either in the form of cash or interest, continued till 2003 and it was only after 2003 that when they ceased to pay interest, respondents having made communication to them on 10.4.2003, pulled petitioners for refund of deposits made with them. If this be so, we see no good ground for defeating legitimate claim of respondents on anvil of belated filing of complaint, by petitioners. If one goes by recitals made in complaint, among other reliefs, respondents have sought refund of their deposits of Rs. 17,00,000 made with petitioners and in this view of matter also, filing of

complaint with District Forum was within its pecuniary jurisdiction.

11. THOUGH respondents had initiated criminal proceedings against petitioners under Sections 3 and 4 of the Maharashtra Protection of Interests of Depositors Act, 1999, notice issued under said Act against petitioners was, however, declared ultra vires by Full Bench of Hon''ble Bombay High Court, that being not within legislative competence of State Legislature. We are told that a Special Leave Petition is before Hon''ble Apex Court against aforesaid verdict of Hon''ble High Court. Subsequently, a Xerox copy of order of Hon''ble Apex Court was filed by Counsel for petitioner by which granting a stay in the matter, following directions were issued by Hon''ble Apex Court: Firstly, the prosecuting agency to continue with investigation with a rider that there should be no further prosecution of the accused persons in cases where accused persons had been convicted, the Court would be at liberty to pass order granting bail, when moved. The interim attachment granted by competent authority too subsists. Application for releasing of attached property is to be disposed of in accordance with law by separate orders. However, there shall be no sale of attached properties. No coercive steps are to be taken to recover the amount under the Act by authority.

12. THIS direction, however, was issued by Hon''ble Apex Court in SLP Nos. 406-409 of 2004 against criminal proceedings pending before Court under Maharasthra Protection of Interests of Depositors Act, 1999 and not in context of proceeding pending before Consumer Fora under CP Act, 1986.

13. THE redeeming feature of the case under consideration is that the petitioners while acknowledging fixed deposits made by respondents have not disowned their liability to make payment to respondents However, they expressed their inability to meet their obligation in view of financial crisis with their Establishment. Failure of petitioners to meet their contractual obligation is also sought to be justified by learned Counsel for petitioners holding that since movable and immovable properties of petitioners were attached during pendency of proceeding under MPID Act, by police, they are handicapped on this count also. Some additional documents which were not before Fora below have been put on record to show a communication having been made to petitioners by police during pendency of investigation to Sub-Registrar not to permit transfer/ alienation of property without order of Court. There is no evidence about any order issued by Court effecting attachment of movable or immoveable properties of petitioners. Even if there be such an order, remedy yet lies with petitioners to meet their obligation through other assets held by them. Proceeding under CP Act, 1986, notwithstanding parallel criminal proceedings having been initiated against petitioner under Maharashtra Protection of Interests of Depositors Act were challenged, citing a decision of Hon''ble Apex Court in matter of General Manager, Telecom v. M. Krishnan and Anr., III (2009) CPJ 71 (SC)=VII (2009) SLT 160, Civil Appeal No. 7687/2004. Learned Counsel urged that since alternative remedy is available to consumer for approaching Arbitrator, maintainability of complaint before Consumer Fora was considered to be without

jurisdiction under Indian Telegraph Act. We are afraid that in view of catena of decisions of Hon''ble Courts about platform of Consumer Fora being an additional remedy not in derogation of other Acts, grievance of respondents can be thrown to the wind for seeking remedy before other Fora. Said Act supplements and not supplants the jurisdiction of Civil Courts or other statutory authorities. Ratio of decision of Hon''ble Apex Court was quite in different background, and is not applicable in this case. Concurrent finding of Fora below in our considered view, does not persuade us for re-appraisal of facts, while exercising revisional jurisdiction. Revision petition in the circumstances, divorced of merit is dismissed, with no order as to cost. R.P. dismissed.

