
(2006) 08 NCDRC CK 0051

In the National Consumer Disputes Redressal Commission

BRIJESH KUMAR SHETTY

APPELLANT

Vs

M. BALAKRISHAN RAI

RESPONDENT

Date of Decision : 03-08-2006

Acts Referred:

Citation : 2007 2 CPJ 189

Hon'ble Judges : K.S.Gupta , P.D.Shenoy J.

Final Decision : Revision allowed

Judgement

1. THIS order will govern the disposal of R.P. Nos. 2484/2005 and 2485/05 which arise out of a common order dated 3.8.2005 of Karnataka State Consumer Disputes Redressal Commission, Bangalore.

2. FACTS in so far as they are relevant for deciding both these revisions as these: Respondent No. 1 in R.P. No. 2484/2005 was alleged to have deposited Rs. 75,000 on 2.6.1999 under fixed deposit receipt. No. 036 and Rs. one lakh on 7.2.2000 under fixed deposit receipt No. 191 with respondent No. 2/O.P. 1. Date of maturity of FDR No. 036 was 1.6.2000 while that of No. 191 was 6.2.2001. Rate of interest payable was 15% per annum. Respondent No. 1 in R.P. No. 2485/2005 was alleged to have deposited Rs. one lakh on 1.6.1999 under FDR No. 190, Rs. one lakh on 3.6.1999 under FDR No. 192 and Rs. one lakh on 4.6.1999, under FDR No. 193 with respondent No. 2. Fixed deposits carried interest @ 15% per annum and these were to mature on different dates in the year 2000. On maturity amounts not been paid the complaints were filed which were contested by respondent No. 2 firm represented by Sadashiva Shetty, one of the partners of firm. It is not in dispute that applications filed by the petitioner under Order 1 Rule 10, CPC seeking impleadment as O.P. No. 2 in both the complaints were dismissed and District Forum made the orders for refund of deposited amount with interest and compensation against the partners of respondent No. 2 firm. Appeals against District Forum's order filed by the petitioner were dismissed by the State Commission. Contention advanced by Ms. Kiran Suri for petitioner is that to the knowledge of respondent No. 1 in both the

complaints, the firm was dissolved w.e.f. 1.4.2000 and the petitioner, therefore, ought to have been allowed to be arrayed as O.P. No. 2 by the District Forum. In support of the submission, she has invited our attention to the proviso appended to Rule 3 of Order XXX, CPC, copy of Deed of Dissolution dated 1.4.2000 and affidavit filed along with application seeking impleadment filed before the District Forum. She points out that in cause title of the orders passed by District Forum, the petitioner is shown as O.P. No. 2 though his applications for impleadment were dismissed. While refuting the said submission. It has been urged by Ms. Haripriya Padmanabhen, Adv. for respondent No. 1 that copy of above Deed of Dissolution was not filed before the District Forum and petitioner being a partner of respondent No. 2 firm at the time of acceptance of deposits was jointly and severally liable to pay the awarded amounts. Under Rule 1 of Order XXX, CPC any two or more partners claiming or being liable as partners may sue or be sued in the name of firm. Proviso to Rule 3 of the said order which is material, reads thus: "Provided, that in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within India whom it is sought to make liable."

Though the provisions of CPC do not apply to Consumer Fora but the principle underlying the said proviso would still be applicable. In Para No. 2 of the affidavit filed along with impleadment application it is averred that respondent No. 2 stopped business since 31.3.2000. Above Deed of Dissolution would show that respondent No. 2 firm was dissolved w.e.f. 1.4.2000. Obviously, respondent No. 2 firm had stopped business since 31.3.2000 as alleged in Para No. 2 of the affidavit. Considering the aforesaid proviso and respondent No. 2 having being dissolved w.e.f. 1.4.2000, the petitioner was entitled to be impleaded as O.P. No. 2 in the complaints. The order of District Forum declining impleadment as affirmed by State Commission, thus, cannot be legally sustained. We hasten to add that we are not expressing any opinion on the merits of complaints. Petitioner is allowed to be impleaded as a party in both the complaints. Consequently, case deserves to be remanded for complaints being decided afresh on merits to the District Forum.

Revision petitions are, therefore, allowed and orders passed by Fora below are set-aside. Matter is remanded to the District Forum for complaints being decided afresh on merits. Of course, petitioner will be entitled to file written version(s) and lead evidence, if any, on affidavits. Both the parties will appear for directions on 16.3.2006 before the District Forum concerned, which will ensure that complaints are decided within 3 months thereafter. Revision allowed.