

(1992) 08 NCDRC CK 0034

In the National Consumer Disputes Redressal Commission

DIPTI ILESHBHAI RAWAL

APPELLANT

Vs

VINODBHAI VELJIBHAI MISTRY

RESPONDENT

Date of Decision : 28-08-1992

Acts Referred:

Citation : 1992 3 CPJ 97 : 1993 1 CPR 27

Hon'ble Judges : S.A.Shah , Leelaben Trivedi J.

Final Decision : Appeal allowed

Judgement

1. THE appellant is the original Opponent No. 3 against whom, alongwith two other opponents the District Forum, Surendranagar has passed an order to jointly and severally pay Rs. 43,200/- with interest @ 12% with cost to the original Complainant. THE short facts inter-alia are as under :

2. THE Opponent No. 1 is the Rajkot branch office of the Tapovan Housing Finance Limited who were dealing with housing finance. THE Opponent No. 2 is the marketing agent of Opponent No. 1 while the Opponent No. 3, the present appellant was the local agent of the said Company at Surendranagar. THE head office of the Company is at New Delhi. A scheme was published in newspapers to assist the needy persons for procuring loan for housing and to provide other facilities. As per the scheme the loan was to be procured payable by installments. THE complainant who was in need of a house was attracted by the advertisement and approached the Opponent No. 3 - present appellant for procuring loan of Rs. 1,60,000.00. He was advised by the appellant that he has to apply for loan and deposit 25% amount of the loan with the opponents with some administrative expenses. THE complainant managed Rs. 40,000.00 i.e. 25% of the total loan and paid the same by demand draft on 5/4/1991 and also Rs. 3,200/- as administrative expenses. In all he paid Rs. 43,200.00 to Opponent No. 1. THE Opponent No. 2 executed an alleged guarantee deed on stamp paper of Rs. 10/- assuring the complainant that he will get loan failing which he guaranteed return of deposit. After some length of the time the opponent did not give the loan amount to the complainant. He therefore demanded his money back. He was

given a cheque for Rs. 40,000.00 on 6/7/1991 but the same could not be encashed since dishonored. The Opponent Nos. 1 and 2 did not appear. The Opponent No. 3, the present appellant appeared and filed written statement which is at Exh. 6 denying the allegation leveled against her and stating that she was not connected with Opponent No. 1. She merely introduced the complainant to Opponent No. 2 and recommended to do the needful in the matter. She had not accepted the amount from the complainant either by cheque or by demand draft, there was no privacy of contract between her and the complainant etc. The District Forum passed the order directing to return the said amount jointly and severally with interest and cost. The Opponent No. 3 has challenged the said order making her liable for the amount deposited by the complainant.

Mr. Kothari, the learned Counsel appearing on behalf of the appellant - Opponent No. 3 has made the following submissions : (1) that the appellant has not floated the scheme, has not received any amount nor she has given the cheque which has been dishonoured and, therefore, she was not liable for the amount deposited with the Company by the complainant; (2) That she had merely introduced the parties and her role was just like a broker/agent. She has neither taken the amount nor she has any direct contract with the complainant either to give loan or to return the amount. In the circumstances if the money has not been returned by the persons who have received it, she cannot be held liable for the said deposit.

3. THE District Forum appears to have proceeded on the basis that the party alleging the case and seeking redressal has to prove what he asserts. THE complainant has filed an affidavit in support of his case while no such counter affidavit has been filed by Opponent Nos. 1, 2 or 3 though Opponent No. 3 (present appellant) has appeared and filed her written statement only. But since she has not filed an affidavit refuting the case alleged against her she would be liable for the suit amount and on that ground passed the decree. It is not possible to agree with the finding of the District Forum. The present appellant has denied her liability and, therefore, the burden is upon the complainant to prove that the present appellant is liable for the amount of Rs. 43,200/- paid to Opponent Nos. 1 and 2 to whom the money has been paid and Opponent No. 2 who has guaranteed the same. Even if we find that the present appellant has instigated the complainant to enter into the contract she would not be liable for the amount unless it is proved that she had floated the scheme or that she herself had received the money. But in total absence of the evidence that she was anyway connected with the scheme as a partner or as an owner, no liability can be imposed. The agents can bind the principals but the agents would not be personally responsible for the benefits received by the principals. In the instant case the appellant might have taken part so that other opponents could procure deposits but there is no averment anywhere in the affidavit to show that the appellant was anyway connected with the ownership of the scheme or that she has received this money or that she has given any guarantee.

4. THE appellant would not be held liable merely because she has not filed any affidavit or produced any evidence. THE burden to prove the liability of the appellant was upon the complainant. THERE is neither any averment nor any evidence to suggest that the present appellant was a beneficiary of the said amount or was directly connected with the scheme as an owner or partner or that she had received any money. In these circumstances, in the absence of any evidence to the liability of the present appellant, the District Forum could not have come to the conclusion that she was jointly and severally liable. THE decision therefore is erroneous and shall have to be reversed so far the present appellant is concerned. ORDER THE appeal is allowed. So far the present appellant (Opponent No. 2) is concerned, she is not liable for the dues of the complainant. THE decree against her making her liable is set aside. THE Opponent Nos. 1 and 2 have not filed any appeal. THEREfore the order of the District Forum against Opponent Nos. 1 & 2 is not disturbed and continued. In the circumstances there will be no order as to costs. Appeal allowed.