

(1998) 12 NCDRC CK 0073

In the National Consumer Disputes Redressal Commission

GOEL S. PAL

APPELLANT

Vs

RISHI COOP. GROUP HOUSING SOCIETY LTD.

RESPONDENT

Date of Decision : 01-12-1998

Acts Referred:

Citation : 1999 1 CPJ 672

Hon'ble Judges : A.P.Chowdhri , Desh Bandhu J.

Final Decision : Appeals dismissed

Judgement

1. THIS appeal arises out of a common order of District Forum-I disposing of Case No. 1913/ 1994, Goel S. Pal v. Rishi Co-operative Group Housing Society Ltd. & Others and Case No. 1912/1994, Smt. Rita Goel v. Rishi Co-operative Group Housing Society Ltd. & Others. The main order was recorded in the case of the Goel S. Pal and as both cases arise out of identical facts, we propose to dispose of both the appeals by a common order.

2. BRIEF facts leading to these appeals are that Mr. Goel S. Pal and his wife Smt. Rita Goel hereinafter referred to as the complainants were members of Rishi Co-operative Group Housing Society Ltd. They were expelled from membership of the Society by order of the then Administrator dated 6.1.1988 on account of persistent default in payment of the dues of the Society. The order of expulsion was duly approved by Registrar, Co- operative Societies. In the appeal before the Lt. Governor of Delhi, the complainants were granted time to square up the dues of the Societies within two months from the date of the order with interest @ 18% per annum but the complainants failed to comply with the same and the order of expulsion became final. The complainants filed Writ Petitions in Delhi High Court which was disposed of by a Division Bench by order dated 8.2.1994. The case of the appellant is that whereas the Society was required to refund Rs. 67,541.15 besides interest @ 24% per annum, the amount actually refunded was Rs. 61,744.42 leaving the balance amount unpaid, according to the direction of the High Court. The case of the Society, on the other hand, is that in compliance with the orders of the High Court, the amount due was refunded by

cheque dated 5.3.1994 drawn on the Punjab National Bank and the order of the High Court duly complied with.

It further appears that in 1993, two complaints were filed before the District Forum- I and the same were dismissed. The appellant was called upon to place on record a copy of the order passed by District Forum-I dismissing the said earlier complaints. He has failed to do so. It further appears that the complainant filed two fresh Complaints No. 1913 and 1912 both of 1994, which have been disposed of by the order which is the subject matter of the present appeals.

3. IN the reply, a number of objections have been raised by the respondent Society. It has been submitted that the jurisdiction of the FORA under the Consumer Protection Act is barred by the Provisions of the Delhi Co-operative Societies Act, 1972 as the alleged dispute is between Society and its past members. It has further been stated that the complainants were expelled from the membership of the Society due to non-payment of dues of the Society and the said order was duly approved by the R.C.S. and appeal dismissed by Lt. Governor of Delhi. The complainants WPs were also dismissed by Delhi High Court. As the complainants had exhausted their remedy as aforesaid, the present complaints were not maintainable. Another objection raised is that the complainants had earlier filed similar complaints which were dismissed by the District Forum and in view of the said dismissal, the second complaint on the same cause of action were not maintainable. The complainants have filed a rejoinder giving a large number of citations from decided cases. We have heard the appellant Mr. Goel S. Pal and learned Counsel for the respondents Society and have carefully gone through the record. On a consideration of the matter, District Forum-I held that the similar complaints had been filed earlier and the same were dismissed by orders dated 17.7,1994 and 19.7.1995 respectively. In view of the said dismissal of earlier complaints, the present complaints were held barred. It was further held that the complainants had exhausted their remedy under the Delhi Co-operative Societies Act and the order of expulsion passed by the Administrator of the Society was approved by R.C.S. and appeal their against dismissed. The WPs filed by the complainants were dismissed by Delhi High Court and as the complainants had exhausted their remedy, the present complaints were not maintainable.

4. WHILE disposing of the WPs, Delhi High Court observed: "If any amount is due to the petitioner the respondents Society, shall refund the same within one month. If any interest is payable, under the rules, the same shall also be paid." The District Forum held that if some amount still remained to be paid by the Society to the complainant in terms of the order of the High Court, their remedy was to move High Court for taking necessary action against the Society and not by filing a fresh complaint. For these reasons, the complaints were dismissed. Hence these appeals. The admitted position in the present case is that the complainants were past members of the Co-operative Society. We had occasion to examine the question of jurisdiction of the FORA in cases covered by Section

60 of Delhi Co- operative Societies Act, 1972, r/w Section 93 of the said Act. In view of the recent pronouncements of the Supreme Court in *The Chairman, Thiruvellur Transport Corporation v. The Consumer Protection Council*, I (1995) CPJ 3 (SC) and decision of the National Commission in *Union of India & Another v. M. Adai Kalam*, II (1993) CPJ 145 (NC). The conclusion reached was that the jurisdiction of the FORA in such cases is barred. The decision of this Commission is reported in *R.V. Vaswani v. N.K. Arora*, President, New Subhash Co-operative Group Housing Society, II (1996) CPJ 203 (Delhi) and an unreported decision in *Members of Ordinance Co-operative Group Housing Society v. Hony. President/ Secy. Ordinance Co-operative Group Housing Society*, C-91/93 decided on 24.6.1996. Our view finds support from certain other decisions noted as follows : (1) *A. Manoharan v. The Thirunagar House Construction Society Ltd.*, II (1997) CPJ 55 (Chennai). (2) *Dilip Singh & Others v. Prabhandhak & Another*, I (1996) CPJ 141 (M.P.). In *M.P. Oxide Batteries Pvt. Ltd. v. M.P. Electricity Board*, III (1994) CPJ 44 (NC)=1986-94 CONSUMER 1246 (NS), the National Commission laid down that when a party had already chosen a Forum and was unsuccessful, he could not be permitted to institute fresh proceedings under the Consumer Protection Act in view of the provisions of Section 3 of the Consumer Protection Act. This decision also seems to support our above conclusion. We, therefore, hold that jurisdiction of the FORA in the facts and circumstances of the present case and in view of the provisions of the Delhi Co-operative Societies Act already referred to is barred and the appeal must fail on this short ground.

5. IT is not disputed that the complainants had earlier filed similar complaints which were dismissed. Copies of the orders passed in the earlier complaints have been placed on record and no case has been made out to show that a fresh complaint on the same cause of action could be filed. We have, therefore, no difficulty in affirming the decision of the District Forum on this point as well. Lastly, we may point out that in case the complainants feel that the Society has not paid the whole amount due as directed by the High Court while disposing of the WPs, the proper course for the complainants is to approach the High Court by an appropriate petition for the non-compliance of its directions and a fresh complaint is not maintainable.

6. IN the rejoinder, the complainants have given a large number of citations indicating the broad proposition of law in the margin of those authorities. The proposition as stated are broadly unexceptionable but they do not apply to the cases in hand. We do not wish to burden this order by a detailed discussion of each one of those authorities. For the foregoing reasons, we find no merit in these appeals. These are accordingly dismissed leaving the parties to bear their own costs. A copy of the order be conveyed to the parties. Appeals dismissed.