(1994) 04 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

GYAN SINGH APPELLANT

Vs

CARRYON SAVINGS AND INVESTMENT CO. LTD RESPONDENT

Date of Decision : 22-04-1994

Acts Referred:

Citation : 1994 2 CPR 269 : 1994 3 CPJ 9

Hon'ble Judges : Jyotirmoyee Nag , Sunil Kanti Kar , S.Dutta J.

Final Decision : Petition allowed

Judgement

1. THIS execution case has been filed against the order dated 14.5.1993 in S.C. Case No. 1022/0/92.

2. THE said SC Case No. 1002/0/92 was filed by recovery of Rs. 1,17,170/- from the opposite parties who received deposit on various schemes from the complainant/petitioners for acceleration of their money by growth of interest. As per said scheme the complainants/ petitioners deposited their money by instalments and it was agreed by the opposite parties to pay back the money under this scheme upon maturity of the same after payment of the last instalment.

The total amount of the claims of the petitioners/complainants aggregated to Rs. 1,17,170/- on maturity out of which Rs. 8,000/- was paid by cash only and Rs. 14,400/- paid by different cheques by the opposite parties were dishonoured. Consequently the actual amount of Rs. 1,11,170/- was due and payable by the opposite parties on maturity but inspite of repeated demands made by the respective claimants to get back their money invested under different schemes on maturity, the opposite parties did not pay the respective sums of the complainants/petitioners, consequently the complaint was lodged before the State Commission by the petitioners/complainants who were claimants from the opposite parties.

3. DUE notices were served upon the opposite parties as it appears from the records but the opposite parties did not prefer to appear before this Commission

to contest the matter. As a result, this Commission passed an exparte award in said S.C. Case No. 1022/0/92 upon hearing the complainants/petitioners and upon perusal of the materials on record as per provisions of law and directed the opposite parties to pay the respective claim of the complainants/petitioners alongwith 10% compensation of the claimed amount of the respective claimant. The complainant/petitioners communicated the order dated 14.5.1993 to the opposite parties for compliance but the opposite parties did not comply with the order passed by this Commission as aforesaid as a result the complainants/ petitioners put the order into execution under Section 25 of the Consumer Protection Act.

4. THE opposite parties firstly did not appear in the execution Case in consequence whereof the writs of warrant of arrest were issued against the Directors of the opposite parties and thereafter the Directors of the opposite parties entered appearance in the execution case and contended inter-alia that the order was passed exparte and it should be restored as per provisions of law and that the opposite party/company is a juristic person as such the Directors cannot be held responsible and that the memorandum of articles and association of the company is to be looked into and that the case should be heard denovo and that the matter should be heard before company law board and denied that notice was served upon the opposi te parties. THE opposite parties also specifically challenged the maintainability of the proceeding before the Consumer Disputes Redressal Forum. The complainants/petitioners contended that there was no provisions in the Consumer Protection Act, 1986 for re-opening of the case, particularly when the opposite party has not preferred any application for re-opening of the same and there was no latches on the part of the complainant/ petitioners to serve the notice upon the opposite parties and the notices were duly served and that the question of maintainability of the case could not be raised at the stage of execution. It was further contended by the complainant/ petitioner that as the transaction took place during the tenure of the Directors namely Sri A. Talukdar, Sri M. Das and Sri M.K. Roy as per brochure published in this regard and according to Section 62 of the Companies Act, the Directors named in the brochure are responsible for payment of the dues under the various schemes invested by the complainants/petitioners upon its maturity.

5. IT is specifically pointed out by the complainants/ petitioners that the opposite parties has not taken any objection about the non-service of the notice upon it. DECISION

6. IT appears to us although the original SC Case No.1022/92 has not been re-opened but all the points of contentions have been agitated by the opposite parties in the instant execution case and we are of opinion that the said contentions are very much immaterial and insubstantial in the context of the case because as per provisions of the Consumer Protection Act it even after service of the notice upon the opposite parties it does not prefer to appear before this Commission, the commission is empowered to decide the case exparte upon

hearing the petitioners/complainants and on perusal of the materials on record. Accordingly this Commission exclusively decided the case of the complainants/ petitioners by its order dated 14.5.1993 in S.C. Case No. 1022/0/1992.

We further observe that although there is no prayer for re-opening the case but by reopening the case for re-hearing would not improve the situation. Moreover, all the contentions as raised by the opposite parties in this execution case are being dealt by us, inasmuch as that the service of notice of the S.C. Case No. 1022/0/1922 was duly made upon the opposite parties and as there is no case that the notice was not served by the opposite parties or it was served in wrong name or wrong address, so the question of service upon the opposite parties is absolutely admitted position and inspite of service of notice upon the opposite parties if it does not appear, there is no reason to interfere with the exparte order.

7. AS regards the contention of the opposite parties that the company is a juristic person and it can sue and can be sued accordingly it is argued by the opposite parties that the Director of the Company cannot be held responsible for the liability of the complainants/petitioners. We are unable to agree with the said contention in view the brochure published in this regard contained the names of three Directors who accepted the money invested by the complainant/ petitioners under different schemes for growth and the complainant/petitioners being allured by such publication in the brochure by the Directors invested different sums under different schemes for the growth of capital and improvement in financial conditions.

8. SO, according to Section 62 of the Companies Act, the Directors are severally liable for mis-statement made in the prospectus published in this regard and as such the Directors are held responsible and liable to pay the dues of the complainants/ petitioners as per statement made in the prospectus published by them and as the prospectus of brochures contained the names of the three Directors namely Sri A. Talukdar, Sri M.Das and Sri M.K. Roy they are jointly or severally liable to pay the dues of the complainants/petitioners together with compensation as awarded by this Commission in its order dated 14.5.1993. The reference made by the opposite parties about provisions under Sections 58 A and 283, we are of opinion that those sections have got no nexus or relevancy to the context of the present case and more so that the complainants/ petitioners are not obliged to know when the office of a Director was vacated by internal arrangement and until unless it is announced or published in the similar manner. It was further argued by the opposite party that the memorandum of articles and association of the Company has to be looked into but no memorandum has been submitted before us for our examination and scrutiny. With regard to the contention of the opposite parties that the matter should be adjudicated in the company law board instead of filing this complaint before this Commission and it is not maintainable before the Consumer Dispute Redressal Forum, we do not agree with the such views of the opposite parties because we are of opinion that this Commission can entertain such complaint received from the complainants/

petitioners and there is no bar to entertain such complaint by us in view of provisions of Section 3 of the Consumer Protection Act by way of additional remedy claimed by the complainants/petitioners if such actions are not in derogation of the provisions of any other law for the time being in force. Moreover, in the recent judgment pronounced by the National Commission in the case of Nilla Basanta Raje published in Sunday Times of India dated 27th March, 1994 it has been observed by the National Commission that when a company or a firm invites deposit on promise of attractive rate of interest and prompt re-payment of principals and interest on the expiry of the stipulated period with full security of the investment in the shape of the assets of the company, it is in essence an offer by the company of providing to persons interested, safe avenue for investment of their funds with an assurance of prompt repayment and full security of investment. The consideration for the arrangement consists of the fact that the company or firm is enabled to use the funds deposited with it for the purpose of its business.

9. NATIONAL Commission further held that such transaction is clear by one of providing service for a consideration and the depositor is clearly a consumer under the provisions of Consumer Protection Act. Now it has become a common practice with middle-class families and pensioners to invest their funds in such deposit scheme launched by companies, so, it would not be right to take a hi-technical view regarding such arrangement and deny relief under the act to this depositors in the event of the company or firm failing to discharge their obligation in the matter of re-payment of the principal and interest or the basis of the arrangement of service entered into between the parties. The default on the part of the company or firm to carry out its obligation to repay the principals or interest constitute deficiency in service, so as to warrant the filing of a complaint before a Consumer Forum seeking relief under the Act.

10. THE Consumer Protection Act defines service as service of any description which is made available to potential users, barring service rendered free of charge or under a contract of personal service. Similarly it describes deficiency as any fault or inadequacy in the quality nature and manner of performance which required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract of otherwise in relation to any service. Referring to Mrs. Raje''s complaint we also hold that the complainants are middle calls persons who have deposited from savings with the opposite party/company which had promised good relation interest and prompt re-payment of principal and interest with full security for the investment. After the deposits being matured for payment the opposite party did not repay the principal and interest and hence the complaint has been filed before this State Commission for relief. National Commission further observed that in interpretating a social welfare legislation one should not make a narrow approach. It should be guided by principles of benevolent interpretation which will help to achieve the object of act namely to protect Consumer interest and suppressed evil, sought to be remedied by the statue namely the unscrupulous

exploitation of the consumer.

Under the Consumer Protection Act, as prior to amendment the only relief that could be granted by Consumer Forum was the award of compensation in such a case but under the Consumer Dispute Redressal Forum as it stands after amendment can also give direction calling upon the opposite parties to rectify the deficiency in service or defect in goods supplied.

11. IN view of the aforesaid observation we overrule all the contentions and/or objection raised by the opposite parties and uphold our award dated 14.5.1993 passed exparte in the matter arid direct the opposite parties to re-pay the dues of the respective complainant/petitioners together with interest at the rate of 18% p.a. on matured sums from the date of maturity upto date and with compensation of 10% of the matured sums to the respective claimant within 7 days from the date of communication of this order and such payment be made by issuing demand draft in name of the respective claimant and be deposited with this Commission for collection of the same by the respective complainant/ petitioner from this office. In default to re-pay the respective sums together with interest at the 18% p.a. and compensation at the rate 10% on matured sums within stipulated time by the Directors of the opposite party, the penal action will be taken as per provisions of Section 27 of the Consumer Protection Act without further notice and addition to it the matter would be referred to the D.I.G., C.I.D. for necessary actions.

12. THE complainants/petitioners are to supply a statement showing the respective matured sums together with interest and compensation of the respective claimants to the opposite parties/ Directors of the opposite party along with this order to enable them to draw the pay orders in their favour. Petition allowed.