(2017) 01 NCDRC CK 0104

In the National Consumer Disputes Redressal Commission

Case No : 61 and 87 of 2009

Haryana Financial Corporation and another APPELLANT

Vs

Khushal Chand RESPONDENT

Date of Decision : 06-01-2017

Acts Referred:

Consumer Protection Act, 1986, Section 19 - Appeals
State Financial Corporations Act, 1951, Section 29 - Right of Financial Corporation incase of default
<a href=1

Citation : 2017 1 CPJ 636 : 2017 3 CPR 64

Hon'ble Judges : D.K. Jain, Shreesha

Advocate : Amit Dayal, Vipin Gogia

Judgement

1. These two cross First Appeals under Section 19 of the Consumer Protection Act, 1986 (for short "the Act"), arise out of the order dated 12.1.2009, passed by the State Consumer Disputes Redressal Commission, UT Chandigarh (for short "the State Commission"), in Complaint No. 12 of 2008. By the impugned order, the Sate Commission, while holding that the Complainant was liable to pay to Haryana Financial Corporation (for short "HFC") a total sum of Rs. 6,75,868 (Rs. 5,95,886 towards the principal and costs and Rs. 79,982 as interest), whereas he was made to deposit a sum of Rs. 26,33,340, under compelling circumstances, has allowed the Complaint with a direction to HFC and its Branch Officer, the Opposite Parties, to refund to the Complainant a sum of Rs. 19,57,472 (Rs. 26,33,340 minus Rs. 6,75,868) along with interest @ 12% p.a, from the date of deposit UK payment, besides Rs. 30,000 towards litigation costs.

2. Aggrieved by these directions, the parties to the Complaint have filed these Appeals. White First Appeal No. 87 of 2009 has been filed by the Complainant with a prayer to allow the Complaint in to, wherein he had demanded from HFC, a total sum of Rs. 81,58,340 on different counts, First Appeal No. 61 of 2009 has been filed by HFC & its Branch Manager for setting aside of the impugned order.

3. Succinctly put, the facts giving rise to the present Appeals, as culled out from the Complaint, are as under: 3.1 On 5.6.1995, one M/s. Anu Poultries, a partnership firm (for short "the Firm"), consisting of two partners, namely, Virinder Mittal & Brij Lal Goel, had been sanctioned by HFC a loan of Rs. 60,00,000. The Firm actually availed of a loan of Rs. 56,82,000. The Complainant along with one Anurag Mittal stood Guarantors for the said loan. On 26.7.1995, a Deed of Guarantee was got executed by HFC to which the Complainant was a party. After purchasing the land, the Firm started operating a poultry farm. During the period from 19.7.1996 to 24.03,1999, the Firm repaid an amount of Rs. 30,01,233 to HFC, According to HFC, since the Firm, the principal debtor, committed default in repayment of loan amount, vide its letter dated 31.5.1999, it was informed that a decision had been taken to take over possession and sell the mortgaged Unit. Accordingly, proceedings under Section 29 of the State Financial Corporation Act, 1951 were initiated against the Firm. In furtherance thereof, on 29.7,1999, HFC took over the assets of the Firm, including the birds. According to the Complainant, neither the partners of the Firm nor was he associated with the said proceedings nor was any notice regarding sale of the assets of the Firm was received by them; at the time of taking over of the assets of the Firm, it was a running concern, with assets worth more than Rs. 80,00,000, whereas the outstanding loan, as claimed by HFC, vide its letter dated 15.6.1998, though denied by the Firm, was only to the tune of Rs. 57,24,536. After the sale of the immovable and movable assets of the Firm, for a total sum of Rs. 47,70,000 (Rs. 42,00,000 for the unit and Rs. 5,70,000 against the sale of 15000 birds @ Rs. 38 per bird), as intimated to the Firm by HFC vide letter dated 22.11.1999, as also on sale of the mortgaged land, for a sum of Rs. 2,01,000, on 16.8.2002, HFC issued a notice to the Complainant under Section 3(1)(b) of the Haryana Public Moneys (Recovery of Dues) Act, 1979 (for short "The 1979 Act") for recovery of a sum of Rs. 43,37,642, allegedly still due from the Firm, as arrears of land revenue. Thereafter, upon certain adjustments HFC, vide its letter dated 17.2.2000, informed the Complainant that a total amount Rs. 19,12,706 (both principal and interest) was due from the Firm. Pursuant to recovery certificate dated 5.4.2006, the Collector attached the Petrol Pump of the Complainant. On 23.5.2006, the Complainant lodged a Complaint with the Human Rights Commission alleging that the officials of HFC had visited his premises and harassed and tortured his wife and son. On 10.5.2006, the Complainant filed a Civil Suit against the Managing Director of HFC for permanent injunction, restraining HFC from enforcing the recovery certificate. It seems that on 20.7.2006, HFC introduced a scheme for settlement of loss accounts and called upon the Complainant to take advantage of the same, as the outstanding dues against Firm, on that date were to the tune of Rs. 90,93,833. On 19.9.2006, although according to the Complainant nothing was due from him against the arrears of the Firm, yet, showing his willingness for settlement under the scheme, he asked for a personal hearing. However, HFC asked the Complainant to deposit the aforesaid sum of Rs. 26,33,340 (i.e. Rs. 25,53,358 as principal and Rs. 79,982 as interest), which was paid by him under protest. HFC

asked the Complainant to withdraw the aforesaid suit as a pre-condition for issue of "No Dues Certificate", which was withdrawn by me Complainant on 15.1.2008 and the said certificate was issued by HFC. 3.2 Alleging misdeeds, misappropriation, embezzlement and negligence on the part of HFC in taking four months in selling the Unit and the birds, which were required to be sold immediately @ Rs. 100 per bird, the rate prevalent at the time of taking over of the unit and attachment of his Petrol pump, which action ruined his business, the Complainant filed the afore-noted Complaint, praying for a direction to HFC to pay to him a total amount of Rs. 81,58,340, towards the alleged settlement amount with interest paid; Interest @ 18% per annum on the amount paid from the dates of payment till actual repayment; Damages/compensation for closure of the business of petrol pump; Compensation for physical harassment and mental agony; Compensation for torture humiliation, harassment & mental agony suffered by complainant''s wife; Compensation for loss of reputation of the family and business of the complainant in society; and cost of litigation.

4. Upon notice, the Complaint was contested by HFC. In their joint Written Version, it was pleaded that neither the Complainant was a "Consumer" within the meaning of Section 2(1)(d) of the Act nor was there any deficiency of service, as defined in Section 2(i)(g) of the Act. On merits, it was stated that the Firm had availed of a loan of Rs. 56,82,000 from HFC in the year 1995, for which the Complainant and one Anurag Mittal, were the Guarantors in terms of a Deed of Guarantee dated 26.7.1995; as per the said deed, the Guarantors were liable to indemnify HFC in case of default on the part of the Principal borrower; since there was a default on the part of the firm in repayment of loan amount, on 31.5.1999 the Branch Manager of HFC had written a letter to it, with a copy to the Partners of the Firm as well as to both the Guarantors, informing them that in the said situation the possession of the Firm/Unit would be taken over on 10.6.1999, by resorting to Section 29 of the State Financial Corporation Act, 1951; deemed possession of the Unit was taken over in the presence of one of the Partners, namely, Virinder Mittal. While denying that the Complainant was not informed about the sale of primary security, it was stated that vide letters dated 7.9.1999, 7.10.1999, 4.11.1999 and 22.11.1999 the Complainant was duly informed about all the developments, and as a matter of fact while informing the Complainant about the highest bids he was asked to bring a better bid, but since he failed to do so, the Unit was sold for Rs. 42,00,000. On 17.2.2000, Partners of the Firm as well as the Guarantors were informed that since the total amount realized from the sale of primary security was not sufficient to offset Firm''s debt, the collateral security would also be taken over and sold. Subsequently, after informing the Complainant, by issue of several letters, between May, 2000 to May, 2002, the collateral security was sold on 27.6.2002 for Rs. 2,01,000. Since even after sale of collateral security, the amount due to HFC from the Firm was not sufficient notice dated 16.8.2002, under Section 3 of the 1979 Act, was issued to the Complainant requesting him to appear before the Managing Director for determination of his liability. Where

after on 1.3.2003 the recovery certificate was issued for recovery of amount due to HFC. However, pursuant to a Policy/Scheme, introduced by HFC the Complainant availed of the said scheme/policy voluntarily. On consideration of his request, HFC, vide their letter dated 18.1.2007, informed the Complainant that the loan account could be settled at Rs. 25,53,358, to which the Complainant agreed and paid the said amount along with further interest. Civil Suit filed by the Complainant for permanent injunction against HFC as well as the Firm, was withdrawn by him on 15.1.2008, making a statement before the Court that the matter had been compromised with HFC and ''No Dues Certificate'' had also been issued to him. It was thus, pleaded that having voluntarily applied for the settlement and paid the mutually settled amount of Rs. 26,33,340, against the total outstanding dues of Rs. 90,93,833, the Complaint alleging deficiency in service on the part of HFC was not maintainable, besides being barred by limitation.

5. Upon evaluation of the evidence adduced by the parties before it, as noted above, the State Commission has allowed the Complaint and directed HFC to refund the aforesaid amounts observing thus: "There is no dispute about it that the amount received by sate of security was to. be adjusted towards misc. Expenses with interest and then towards the principal amount. It is stated that out of the amount of Rs. 42 lacs, Rs. 28,70,362 were adjusted towards the principal Rs. 15,407 were adjusted towards misc. expenses and Rs. 13,14,231 were adjusted towards interest. It is further stated that amount of Rs. 2.1 lac, which was received by sale of land measuring 25 bighas 9 biswa at Village Bas Tuban Bhoj, Nangal, District, Panchkula was credited in the account of the poultry farm i.e. Rs. 1,57,568 towards interest and Rs. 43,432 towards misc. expenses and no amount was adjusted towards principal amount. Even if these adjustments are taken to be gospel truth, then also only an amount of Rs. 5,95,886 was due as principal, and misc. expenses and not Rs. 25,53,358 on 7.1.2000. The copy of the statement (exhibit OP-17) is stated to be a recast statement. The account cannot be recast again and again as it is contrary to the earlier statement of account annexure OP-11 and annexures C-12 and C-12/A. The recasting of the account statement regarding amount of Rs. 42 lacs on 1.7.2000 is simply an attempt to mislead this commission and is clearly inadmissible (sic) in evidence. It shows that all is not well within HFC or its account department."

6. Being dissatisfied, both the contesting parties are before us in these Appeals.

7. Having examined the case in the light of the afore-noted factual scenario, we are of the opinion that the order impugned in the Appeals is unsustainable, for the following reasons.

8. Admittedly, the Firm had obtained from HFC a term loan of Rs. 60,00,000 for commercial purpose viz. for purchase of land, building, machinery and birds for the poultry farm. Hence, the Principal Debtor, i.e. the Firm, having availed of the loan for a commercial purpose, was excluded from the category of a "Consumer",

as. defined in Section 2(1)(d) of the Act. That being so, the necessary corollary is that the Complainant, a Guarantor for the loan, shall continue to maintain the same status as that of the Firm and therefore, would also stand excluded from the category of a "Consumer" under the Act. Thus, the Complaint filed by him under the Act was not maintainable. Learned Counsel appearing for the Complainant could not point out from the complaint that it was pleaded by the Complainant that loan was availed of by the Firm exclusively for the purpose of earning its livelihood by means of self-employment, as contemplated under the Explanation to Section 2(1)(d)(ii), substituted w.e.f. 15.3.2003.

9. Further, the firm being a defaulter in repayment of the loan amount to HFC, being one of the Guarantors, HFC was within its jurisdiction to effect recovery of the mutually settled amount from the Complainant, by taking recourse to proceedings under the 1979 Act. In our view it was not within the domain of the State Commission to go into the merits of the amount determined to be payable by the Complainant, in order to liquidate the liability of the Principal debtor, by a Statutory Authority, in exercise of the power vested in it under the 1979 Act. More so, when the validity of the attachment notice dated 5.4.2006, issued by the Collector under the said Act was questioned by the Complainant by way of a Civil suit, which was later on withdrawn unconditionally on 15.1.2008, by making a statement before the Civil Court that the dispute between the Complainant and HFC having been compromised, and "no dues certificate" having been issued by HFC to him the suit was rendered infrutuous. We have no hesitation in holding that in the said background, complaint alleging deficiency in service on the part of HFC, was utterly misconceived, if not mala fide and an abuse of the provisions of the Act.

10. We are also in complete agreement with Mr. Amit Dayal, learned Counsel appearing for HFC, that the recovery notice under the 1979 Act having been issued to the Complainant, as far back as on 16.8.2002, which was admittedly challenged by the Complainant by filing a Civil Suit, but was withdrawn, the Complaint filed on 5.5.2008, alleging highhandedness, deficiency, etc. on the part of HFC during the process of recovery of the dues of the Principal Debtors, was miserably barred by limitation.

11. For the aforegoing reasons, we have no hesitation in holding that the Complaint, giving rise to the present appeals, was not maintainable and deserved to be dismissed, as such. It is ordered accordingly.

12. Resultantly, the Appeal preferred by HFC is allowed and the one filed the Complainant is dismissed, leaving the parties to bear their own costs. The statutory deposit made by HFC at the time of filing of the Appeal shall be transferred to the Consumer Welfare Fund. Appeal disposed of.

