(2011) 11 NCDRC CK 0056

In the National Consumer Disputes Redressal Commission

Haryana State Co-Operative Housing Federation Ltd. APPELLANT

Vs

GURDEV SINGH RESPONDENT

Date of Decision : 04-11-2011

Acts Referred:

Citation : 2011 0 NCDRC 770 : 2011 4 CPJ 654 : 2012 1 CPR 87

Hon'ble Judges : V.B.Gupta , Suresh Chandra J.

Advocate : Pardeep Solath , Uttam Dass , Jinendra Kumar Jain , Rakesh Jain , Deep Dhamija , Sagar Dawar , Vivek Kumar , A.K.Virmani

Judgement

1. V.B. GUPTA, J.

2. BY this common order, above mentioned eight revision petitions are being disposed of, as facts are similar in these petitions and common question of law is involved. In these petitions, there is a challenge to orders dated 30.1.2009, 25.2.2009 and 29.4.2009, passed by Haryana State Consumer Disputes Redressal Commission, Panchkula (for short ?State Commission?) vide which State Commission dismissed the appeals of the petitioners.

Facts as emerges from the complaints filed by respondent no.1 (complainants) before the District Forum are that they took loan from respondent no.2 ? Tohana Modern Cooperative House Building Society Ltd. (for short as ?Society?) for construction of their houses. Complainants returned the loan amount to respondent no.2 and asked for return of their title-deed of the houses in question which were mortgaged at the time of advancing of loan but the same was not returned on the ground that there was huge amount due against the complainants towards the loan amount. Accordingly, title-deeds were not returned. Forced by these circumstances, complainants filed complaints before District Forum.

3. COMPLAINTS were contested by the petitioner. In the written statement filed by the petitioner, a plea was taken that under the provisions of Sections 102, 103, 124 and 128 of the Haryana Cooperative Societies Act, 1984, the District

Forum had no jurisdiction to entertain the complaints. If any dispute had arisen between the members and Society/Federation, they should have filed arbitration reference under Section 102 of the Haryana Cooperative Society Act to the Registrar Cooperative Society, Haryana for decision under Section 103 of the Act. It was further pleaded that complainants have mortgaged their properties with the Society, which had further sub mortgaged the same in favour of the petitioner. It was averred that substantial amounts are outstanding against the complainants and the complaints merit dismissal. District Forum, accepted the complaints and issued directions to the petitioner to return the original title deeds deposited by the complainants.

4. AGGRIEVED by the order of District Forum, petitioner filed appeals before the State Commission which dismissed the appeals of the petitioner. It is contended by learned counsel for the petitioners that petitioner is a Co-operative Housing Federation and there is no privity of contract between the petitioner and the complainants. The complainants obtained loan from the Society. Since, complainants had never taken loan from the petitioner, as such there was no privity of contract between the petitioner and the complainants. It is the duty and responsibility of the Society to clear the outstanding loan of the complainants. Petitioner is not responsible for the acts of the Society in any manner and as such the award should have been passed qua Society only. Counsel for petitioner in support of its contention has cited following judgments; (i)Central Bank of India Vs. Ravindra, AIR 2001 (SC) 3095 ; (ii) G.M. Telecom Vs. M. Krishnan & Anr. 2009 STPL (Web) 5 SC ; (iii) Rambhau Namdeo Gajre Vs. Narayan Bapuji Dhotra (Dead) through LRs, AIR (SC) 4342 ; (iv) Indian Oil Corporation Vs. Consumer Protection Council Kerala, 1994 (1) SCC 397 and (v) M/s Cheema Goods Transport Company Vs. Marudamalai Sri Murugan Textiles, AIR 1999 (SC) 796.

5. ON the other hand, it is contended by learned counsel for the complainants that entire amount has been paid and nothing is outstanding against them. Moreover, Society has issued "No Dues Certificates" to the complainants. In spite thereof, title deeds of the houses in question which were mortgaged at the time of advancing of loan, have not been returned by the petitioner. Further, there was privity of contract between the petitioner and the complainants.

6. IN support, learned counsel for complainants have relied upon M/s Dilwari Exporters Vs. M/s Alitalia Cargo & Ors. 2010 (2) (RCR) (Civil) and Skypak Couriers Ltd. Vs. Tata Chemicals Ltd. (2000) 5 SCC 294. As per petitioner?s case, there was no privity of contract between the petitioner and the complainants.

This defence taken up by the petitioner that there was no privity of contract between the petitioner and the complainant is devoid of any merits.

7. AS per petitioner?s written statement, the loan was advanced by the petitioner to the Society. Society further advanced it to the complainants. For security of loan, the complainants mortgaged their original title deeds in favour of the

Society, which in turn further sub-mortgaged the same with the petitioner for security of the loan with the consent of the complainants. The loan was to be repaid in equated quarterly installments and in case of default, the complainants were liable to pay the penal interest plus normal rate of interest as mentioned in the mortgaged deed. The complainants did not deposit the installments of the loan amount regularly and deposited only partial amount in their loan accounts in the installments, with the petitioner. It is further pleaded in the written statement that since complainants have not deposited the installments of the loan amount regularly and certain amount are still due from the complainants, thus, there is no deficiency on the part of the petitioner and complainants have not suffered any mental and physical agony due to the act and conduct of the petitioner.

8. IT is further pleaded in the written statement that since petitioner has not received the repayment of the loan at federation level and petitioner is not liable to release the sale deed to the complainants. As per terms of the loan, the title deeds of the complainants would be released on receipt of full and final payment in the account of complainants at federation level. Petitioner has also taken a plea in the written statement that in case the Society has received the entire amount from the complainants, then the Society is liable to get release of the legal documents of the complainants from the petitioner, after remittance of full and final payment in the account of the complainants. Thus, is manifestly clear from the written statement of the petitioner that there is a privity of contract between the petitioner and complainants. Now petitioner cannot take a somersault by stating that there was no privity of contract between the petitioner and the complainants.

9. DISTRICT Forum while allowing the complaints held ; "10. On a close scrutiny of the documents on the record and even as per documents of the opposite parties, the complainant had deposited a sum of Rs.79,306.80p with the Ops nos.2 and 3 upto7.6.1995 and this fact is very clear even from the recovery statement Ex.R-8. It is also not disputed that a sum of Rs.2,800/- is lying deposited with the society as share money of the complainant being a member of the society and if the said amount is adjusted against the loan amount the total amount paid by the complainant comes to Rs.82,102.80p. Thus, it can be said that the complainant had deposited a sum of Rs.82,106.80 p. with the Ops ? Society upto 7.6.1995. 11. Learned counsel for the complainant argued that if the benefit of One Time Settlement Scheme dated 12.9.2007 is given to the complainant then nothing remains to be paid by the complainant because he has already deposited more than double the amount with the Ops. Let us examine the One Time Settlement Scheme dated 12.9.2007 Ex. R-10. The perusal of Ex.R-10 reveals that the beneficiary (loanee) must clear the original amount with interest equal to the loan amount i.e. double of the original amount and that in case the remaining amount shall be waived off. As already stated that the complainant had raised a loan of Rs.40,000/- and upto 7.6.1995 he had deposited a sum of Rs.82,106.80 in total including his share money to the tune

of Rs.2,800/-. Thus, it can be said that the complainant had deposited more than double of the original loan amount and in view of One Time Settlement Scheme Ex-R-10 dated 12.9.2007 the remaining loan amount of the complainant should have been waived off. 12. The Ops had got the matter enquired into through the Secretary of the Society who submitted his report dated 8.7.2008 Ex.C-2. If we go through the inquiry report Ex.C-2 of an inspector it is transpired that the inquiry officer clearly mentioned in his report that the complainant had deposited a sum of Rs.79,316.80p against his loan account with the society upto 7.6.1995 and that his share money to the tune of Rs.2,800/- has lying deposited with the society and thus, the complainant had deposited the total amount of Rs.82,116.80p with the society. He has also been mentioned in the inquiry report dated 8.7.2008 that Haryana Government had issued One time Settlement Scheme in September, 2007 applicable upto 31.12.2007 and on the basis of which the complainant was entitled to the benefit of the same but no benefit of the said scheme was given to the complainant. It has also been mentioned that if the benefit is given to the complainant, then nothing remains to be paid by the complainant against the loan account. He also recommended for taking disciplinary action against Ex-Secretary of the Society Shri Rajbir Singh as the certain amount was not deposited by him with the federation. Thus, from the inquiry report also it becomes very clear that the complainant was entitled to the benefit of One time Settlement Scheme Ex.R-10 dated 12.9.2007 and if the said benefit is extended to the complainant then his entire loan account stands cleared off and thus nothing had been paid by the complainant. By not giving benefit of One time Settlement Scheme to the complainant the Ops have committed irregularity and illegality which amounts to deficiency in service on their part. Having paid the loan amount as per One time Settlement Scheme Ex.R-10 the complainant is entitled to return of his original title deed deposited by him with the Ops nos.2 and 3 ? Society. If the Ops nos.2 and 3 did not deposit the loan amount with the federation, it is an internal matter between the society and federation and the federation can take action against the society. Thus, the complaint of the complainant deserves acceptance".

10. STATECOMMISSION while upholding the order of District Forum has dismissed the appeals of the petitioner in limini. In the impugned order, State Commission observed ; "Having considered the submission of the learned counsel for the appellant as well as documents placed on record, we do not find any force in the contention raised on behalf of the appellant. It is not disputed between the parties that the complainant has returned the entire loan amount taken by him and had deposited the same with respondent no.2. The dispute, if any, is in between the appellant (OP no.1) and the respondent no.2. If the officials of the respondent no.2 have committed any error in not maintaining their accounts or they have embezzled the amount repaid by the complainant, then the complainant is not liable to be penalized for this act and had the appellant ? OP no.1 been vigilant and responsible about its duties and had checked the accounts of the respondent no.2 (opposite party no.3) regularly and

would have taken timely action to stop irregularities and misappropriation of funds, the present situation would not have come. Therefore, we find that the dispute, if any, is interse between the appellant (opposite party no.1) as well as the respondent no.2 (opposite party no.3) and not with the complainant and once the complainant has already returned the entire loan amount, there was no justification to retain the documents in question illegally by the appellant. The other contention raised on behalf of the appellant that the District Forum had no jurisdiction to entertain the complaint, is also without any force. In this regard, reliance may be placed on the observations made by the Hon?ble National Commission in case Bihar State Cooperative Federation Ltd. Vs. Sushila 2006 (2) CPC 209.In this case, the Hon?ble National Commission had taken notice of the decision by the Hon?ble Supreme Court in case Secretary Thirumurugan Cooperative & Agricultural Credit Society Vs. M.Lalitha (dead) through legal heirs and others, (2004) I SCC 305, wherein it was held that the remedy under the Consumer Protection Act, 1986 (hereinafter referred to as the Act, 1986) is in addition and not in derogation of other remedy provided under the other Acts. It was also observed that the District Forum had jurisdiction to decide the dispute between the members of the Cooperative Society and in view of the arbitration agreement its jurisdiction was not ousted. The case law cited supra is fully applicable in the instant case. We have already held that there was a privity of contract between the petitioner and complainants. Moreover there are finding of facts by the foras below, that complainants have already returned the entire loan amount, so there is no justification on the part of the petitioner to retain the title deeds in question, illegally.

Under these circumstances, we find no reason to disagree with the findings and reason given in the foras below. The findings of both the foras below are based on sound reasoning.

11. VARIOUS judgments cited above by learned counsel for the petitioners are not applicable to the facts of the present case, since in the present cases admittedly, there was privity of contract between the petitioner and the complainants. It is well settled that under Section 21 (b) of the Consumer Protection Act, 1986, scope of revisional jurisdiction is very limited. 23. Recently, Hon?ble Supreme Court in Mrs. Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd. 2011 (3) Scale 654 has observed ; "Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter,

we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two fora."

12. THUS, no jurisdictional or legal error has been shown to us to call for interference in the exercise of powers under Section 21 (b) of the Act. Since, two fora below have given detailed and reasoned orders which does not call for any interference nor they suffer from any infirmity or erroneous exercise of jurisdiction. THUS, present petitions are hereby, dismissed with costs of Rs.10,000/- (Rupees Ten Thousand only) each. Petitioner is directed to deposit the costs of Rs.10,000/- each, in these eight petitions by way of cross cheques, in the name of "Consumer Legal Aid Account" of this Commission, within four weeks from today. In case, petitioner fails to deposit the said costs within the prescribed period, then it shall also be liable to pay interest @ 9% p.a., till realization. List on 16.12.2011 for compliance.