

(2007) 05 CAL CK 0024
In the Calcutta High Court
Case No : C.O. No. 2866 of 2004

Hoogly Co-operative Agriculture and Rural Development Bank Ltd. APPELLANT

Vs

Nemai Chandra Ghosh RESPONDENT

Date of Decision : 17-05-2007

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 227, 32
Consumer Protection Act, 1986 — Section 12, 15, 23
Criminal Procedure Code, 1973 (CrPC) — Section 195

Citation : AIR 2007 Cal 230

Hon'ble Judges : Prabuddha Sankar Banerjee, J

Bench : Single Bench

Advocate : Jishnu Chowdhury, P.K. Srivastava, Saumya Roychoudhury and Arnab Deb Roy, for the Appellant; Gazi Faruque, for the Respondent

Final Decision : Dismissed

Judgement

Prabuddha Sankar Banerjee, J.—This revisional application is one under Article 227 of the Constitution of India and is directed against order No. 9. dated 8-7-2004 passed by the District Consumer Dispute Redressal Forum, Hooghly in connection with CDF Case No. 38 of 2004.

2. The said case was brought by the present Opposite party against the present petitioner with prayer for directing the present petitioner to deposit Rs. 25,000/- in favour of the Opposite Party No. 1. The present Opposite Party also prayed for relief regarding rectification and adjustment of the amount in the pass book. The present Opposite Party also prayed for passing appropriate order directing the present petitioner to pay Rs. 20,000/- as compensation.

3. The fact leading to filing of the said case may be summed up thus:

(i) The present Opposite Party along with his wife approached the Hooghly Co-operative and Agricultural Development Bank for financial assistance in

purchasing a tractor.

(ii) The bank sanctioned a sum of Rs. 2,23,029/- by order dated 6-2-1999.

(iii) It is the case of the present Opposite Party that though the rate of interest was agreed to be @ 15% per annum, the Bank charged interest @ 17.5% per annum.

(iv) It is the specific case of the Opposite Party that the bank did not issue pass book for a long period in spite of repeated demands.

(v) It is the further case of the Opposite Party who filed the said application before the Forum u/s 12 of CP Act that a sum of Rs. 25,000/- was deducted from the loan amount towards asset recovery management cost on 25-6-2002. Finding no other alternative the Opposite Party i.e. the petitioner before the Forum filed one writ application which was numbered as 7799 (w) of 2002. The Hon'ble single Judge disposed of the said writ application with the direction upon the writ applicant to file representation before the Bank.

(vi) Thereafter the writ petitioner filed representation before the Bank which was rejected.

(vii) Thereafter the present Opposite Party filed the case before the District Consumer Dispute Redressal Forum, Hooghly with prayer as mentioned earlier.

(viii) The Bank contested the sale case by filing written objection. The Bank took the specific plea that the case is not maintainable as per Section 95 of the Act.

(ix) It is the further plea of the bank that the Registrar of Co-operative Society has the jurisdiction to entertain such complaint under the W.B.C.S. Act. The Bank also took the specific plea that if the present Opposite party had any grievance, he could have filed application before the Co-operative Tribunal.

(x) The Forum after due consideration of materials on record allowed the application and directed the present petitioner to credit a sum of Rs. 25,000/- in favour of the petitioner in his loan account. However, the forum refused to pass any order of compensation.

4. Being aggrieved and dissatisfied with the order of the Forum, the Bank preferred this revision under Article 227 of the Constitution.

5. Mr. Jishnu Chowdhury learned Counsel for the petitioner challenged the order impugned on the following grounds:

(i) That the order impugned is liable to be set aside being perverse.

(ii) That the Forum had no power to entertain the application filed by the present Opposite party.

6. Mr. Jishnu Chowdhury, in course of his argument contended that if there was any discrepancy in loan account, the present opposite party ought to have filed

suit before the civil Court. It was the further contention of Mr. Chowdhury, that under the Consumer Protection Act, the present opposite party is not entitled to get any protection as the present opposite party can never be treated as a "consumer".

7. It was the further contention of Mr. Chowdhury that though there is alternative remedy by filing appeal before the appropriate forum, the present petitioner has right to approach the Hon"ble Court in a revisional application under Article 227 of the Constitution as the order impugned can be treated as perverse and the Forum had no jurisdiction in passing such order.

8. Mr. Gazi Faruque, learned Counsel for the opposite party challenged the maintainability of the instant revisional application on the ground that this Court cannot invoke its power under Article 227 of the constitution in interfering with the order impugned.

9. He contended further that the Court cannot invoke its power also under Article 227 of Constitution as there is clear alternative remedy by preferring appeal before the State Commission.

10. Even assuming the fact that tis Court can invoke its power under Article 227 but the said power relates to supervising power of this Court with respect to subordinate Courts and the Tribunal.

11. It was the contention of Mr. Faruque, that a forum is not a tribunal and as such the power under Article 227 cannot be invoked by this Court in interfering with the order passed by the forum.

12. Mr. Chowdhury, learned Counsel for the petitioner however, contended that the forum can be treated as a Tribunal and for this he relied upon the case in between State of Karnataka Vs. Vishwabarathi House Building Coop. Society and Others, .

13. On the basis of the said judgment Mr. Chowdhury, contended that the forum is to be treated as a Tribunal and as such this Court has power under Article 227 to interfere with the order passed by a forum.

14. In the said case the constitution validity of Consumer Protection Act, 1986 was in question and the answer was in affirmative. However, in the said reported case the Hon"ble Court did not say specifically that the forum as per the said Act can also be treated as a Tribunal.

15. Paragraph 53 of the said judgment is relevant, which runs as follows:

53. The provisions relating to power to approach appellate Court by a party aggrieved by a decision of the forums/State Commissions as also the power of the High Court and this Court under Articles 226/227 of the Constitution of India and Article 32 of this Court apart from Section 23 of the Act provide for adequate safeguards. Furthermore, primarily the jurisdiction of the forums/Commissions is to grant damages. In the event, a complainant feels that he will have a better

and effective remedy in a civil Courts as he may have to seek for an order of injunction, he indisputably may file a suit in an appropriate civil Court or may take recourse to some other remedies as provided for in other statutes.

16. On the basis of the said finding, I am of opinion that this Court can invoke its power under Article 227 of the Constitution to interfere with any order passed by the forum it is found that the same is without jurisdiction and is perverse.

17. It goes without saying that against the order passed by the Consumer Disputes Redressal Forum, appeal can be preferred before Consumer Disputes Redressal Commission u/s 15 of the Act.

18. Now the question arises whether the Court can invoke Its power under Article 227 of the Constitution if it is found that there is alternative remedy in the act itself. In support of his contention. Mr. Chowdhury, learned Counsel for the petitioner relied upon the case in between Employees" Employees" State Insurance Corporation and Another Vs. Birla Corporation Ltd., .

19. On the basis of the same it was contended by Mr. Chowdhury, that High Court can invoke its power under Article 227 of the Constitution even there is alternative remedy by way of filing appeal.

20. That was a case with respect to Employees State Insurance Act, 1948. However, the Court can follow the principle as laid down in the said case.

21. On the basis of interpretation of statute, it has become the settled principle of law that High Court can invoke its power under Article 227 of the Constitution even there is alternative remedy by preferring appeal. However, there are some grounds when the Court can invoke its power. The said grounds are:

(a) If the order Is passed by Tribunal having no jurisdiction. In other words, if there is jurisdictional error in passing such order.

(b) If the order in question is perverse.

22. In the instant case the order was passed by the forum after the present petitioner moved before the Hon"ble High Court by filing one writ application and the forum thereafter passed the order impugned.

23. Now the question arises whether the present opposite party had the right to file complaint before the forum wherein he made some allegation against the present petitioner.

24. Mr. Chowdhury learned Counsel for the petitioner contended that the present opposite party did not acquire any right to file any complaint before the forum as the allegation made in the application does not come within the purview of the Consumer Protection Act.

25. I cannot agree with the said plea of Mr. Chowdhury.

26. Admittedly the opposite party and his wife approached the Bank i.e. the

present petitioner for loan which was disbursed in their favour and the Bank asked them to repay the loan together with interest as per agreement. Accordingly, the present opposite party became a "customer" of the Bank and as such they were entitled to get the service from the Bank.

27. Mr. Gazi Faruque, learned Counsel for the opposite party in this regard relied upon the case in between Secretary. Thirumurugan The Secretary, Thirumurugan Co-operative Agricultural Credit Society Vs. M. Lalitha (Dead) through Lrs. and Others, .

28. On perusal of the said judgment it is crystal clear that the opposite party who filed the complaint before the District Forum had the legal right to file such application. As such the plea as taken by Mr. Chowdhury, cannot be accepted.

29. Mr. Chowdhury, also relied upon the case in between Achutananda Baidya Vs. Prafulla Kumar Gayen and others, regarding power of High Court to invoke the supervisory power under Article 227 of the Constitution. As the said point has been decided in favour of Mr. Chowdhury I do not feel it necessary to discuss the said case law in details.

30. Mr. Chowdhury, also relied upon the cases in between Navin Jain v. State Bank of India reported In 2002 (2) CHN and Surya Dev Rai Vs. Ram Chander Rai and Others, and Adarsh Mahila Shiksha Pratisthan and Another Vs. Municipal Assessment Tribunal and Others, . In those cases the Hon"ble Court also decided about the power of High Court under Article 227 of the Constitution and I do not think it necessary to discuss the said cases in detail as the answer was in affirmative in favour of Mr. Chowdhury.

31. Mr. Chowdhury also relied upon the case in between Bharathi Knitting Co. Vs. DHL Worldwide Express Courier Division of Airfreight Ltd., .

32. In that case the Hon"ble Supreme Court came to the conclusion that in case of acute dispute of facts, State/National Commission should not go behind the terms of the contract and should instead refer the parties to civil Court.

33. I failed to understand how that case will help Mr. Chowdhury's client.

34. Mr. Chowdhury, also relied upon the case in between Waryam Singh and Another Vs. Amarnath and Another, . In that case the Hon"ble Supreme Court dealt with the power of superintendence under Article 227 of the Constitution.

35. Mr. Chowdhury also relied upon the case in between Star Enterprises and Others Vs. City and Industrial Development Corporation of Maharashtra Ltd. and Others, . The said case relates to administrative law along with rule of natural justice and Article 12 of the Constitution.

36. I failed to understand how that case will help Mr. Chowdhury's client.

37. In this case the forum after due consideration of materials on record passed the order, At the same time, we must keep it in mind that the Hon"ble High

Court while disposing of the writ petition being W.P. No. 7799 (w) of 2002 gave liberty to the present opposite party to apply before the respondent authority of that case by way of a representation which should be considered by the respondent authority. The present opposite party, in compliance to the order passed by the Hon"ble High Court filed representation before the Bank and after the same was rejected, filed complaint before the forum and the forum thereafter on the basis of materials on record passed the impugned order.

38. It should be stated here that Mr. Chowdhury, learned Counsel for the petitioner also relied upon the case in between Manohar Lal Vs. Vinesh Anand and Others, .

39. In that case the Court dealt with Section 195 of Cr.P.C. and in paragraph 16 the Hon"ble Court came to the conclusion that provision of Consumer Protection Act also comes under the purview of Section 195 of Cr.P.C.

40. I failed to understand how the said case will help Mr. Chowdhury's client.

41. On the basis of the pleas as taken by the learned lawyer for the parties and also considering the cases as relied upon by the parties, I am of clear opinion that though the High Court has power under Article 227 to interfere with any order passed by the forum, in the instant case the Court should not invoke such power as there is alternative remedy under the Act itself. Moreover, the Court also should not invoke its power under Article 227 of the Constitution as there was no jurisdictional error and under no circumstances it can be said that the order impugned was perverse.

42. As such, the instant revisional application is dismissed on contest but without any cost.

43. Interim order of stay granted earlier is hereby vacated.

44. Urgent xerox certified copy of this order be given to the parties within 7 days from the date of this order on proper application.