

(2012) 04 NCDRC CK 0028

In the National Consumer Disputes Redressal Commission

Hp Coop. Society Shimla Hp

APPELLANT

Vs

Gian Chand Kaplish

RESPONDENT

Date of Decision : 03-04-2012

Acts Referred:

Citation : 2012 0 NCDRC 778 : 2012 2 CPJ 569

Hon'ble Judges : ASHOK BHAN , VINEETA RAI J.

Final Decision : Petition allowed

Judgement

1. THE Managing Director, H.P. Co-operative Society (hereinafter referred to as the "Petitioner ") has filed the present revision petition against the order passed by the State Consumer Disputes Redressal Commission, Himachal Pradesh (hereinafter referred to as the "State Commission ") in Execution Petition No. 8/2004.

2. BRIEFLY , the facts of the case are that the District Forum had allowed a complaint filed by Gian Chand Kaplish (hereinafter referred to as the Respondent) and directed the Hamirpur Co-Operative House Building Society Ltd., Hamirpur (hereinafter referred to as the "Opposite Party/Society ") to hand over the possession of the incomplete house within 30 days after receipt of the copy of the order, to the Respondent and after receiving the remaining amount due from him. Opposite Party/Society was also directed to pay Rs. 5,000 as costs within 30 days failing which this amount would carry interest @ 12% per annum till realization. Aggrieved by this order, Opposite Party/Society filed an appeal before the State Commission which dismissed the same on 25.6.2003. However, the cost of Rs. 5,000 awarded by the District Forum was reduced to Rs. 3,000. Respondent thereafter initiated execution proceedings under Section 27 of the Consumer Protection Act, 1986 before the District Forum. During these proceedings Opposite Party/Society took the plea that Respondent had taken possession of the flat without paying the balance amount due to the Society as directed by the District Forum. District Forum after hearing both parties disposed of the Execution Petition by directing Respondent to deposit a sum of Rs.

1,40,000 before the District forum and Opposite Party/Society along with Petitioner was directed to execute the sale deed in favour of the Respondent in respect of the Flat as per law, rules and procedure. Aggrieved by this order, Petitioner filed an appeal before the State Commission inter alia stating that since as per the orders passed by the District Forum in the Respondent "s original complaint which was upheld by the State Commission, no directions were issued to the Petitioner in respect of executing a sale deed or in terms of paying costs along with the Opposite Party/Society, therefore, in the Execution Petition, District Forum erred in directing the Petitioner also (along with the Opposite Party/Society) to execute a sale deed in favour of Respondent and also to pay jointly and severally along with Opposite Party/Society, cost of Rs. 5,000 to the Respondent. The State Commission dismissed the appeal and upheld the order of the District Forum in the Execution Petition and directed both the Petitioner and Opposite Party/Society to execute the sale deed in favour of Respondent and also pay jointly and severally Rs. 5,000 as costs. Hence, the present revision petition.

3. LEARNED Counsel for both parties made oral submissions. Learned Counsel for Petitioner stated that the Fora below erred in including the Petitioner i.e. Managing Director, H.P. Cooperative Society, Shimla to comply with the orders passed by the District Forum in the present Execution Petition because in the original complaint decided by the District forum on 2.8.2001 which was confirmed by the State Commission, the directions were issued only to Opposite Party/Society (Hamirpur Co-operative House Building Society Ltd., Hamirpur) and not to the Petitioner (Managing Director, H.P. Cooperative Society, Shimla) since Petitioner was never involved with the construction of the dwelling units. Therefore, including the name of the Petitioner during the course of the Execution Proceedings is not admissible because Execution Proceedings cannot go beyond the decree already passed and upheld.

4. LEARNED Counsel for Respondent (on behalf of the Legal Heirs of the Respondent who has since expired), however, reiterated that since during the Execution Proceedings both the District Forum and the State Commission had directed the Petitioner as well as the Opposite Party/Society to comply with their orders, Petitioner cannot disown his responsibility of implementing these directions. We have heard learned Counsel for both parties and have gone through the evidence on record. A perusal of the order of the District Forum dated 2.8.2001 (passed in the original Complaint) clearly states that it was only the Opposite Party/Society who was directed to hand over the possession of the house to Respondent after receiving the remaining amount from him and no directions were issued to Petitioner (Managing Director, H.P. Co-operative Society, Shimla) or any other party. The State Commission had also confirmed this order. It is well established that execution proceedings cannot go beyond the decree already passed and upheld at the execution stage. Only the compliance of the decree is to be ensured. Under these circumstances, we agree with the contention of Counsel for Petitioner that the Petitioner cannot be impleaded at the execution stage in the case and thus be directed to execute the sale deed

and pay litigation costs along with the Opposite Party/Society. In view of these facts, we are unable to uphold the order of the Fora below passed in respect of the execution proceedings and these are set aside. The revision petition is allowed. The Opposite Party/Society is, therefore, directed to comply with the orders dated 2.8.2001 passed by the District Forum and hand over the possession of the house within 30 days after receipt of the copy of the order, to the Respondent after receiving the remaining amount, if any, from him. Opposite Party/Society is also directed to pay Rs. 5,000 as costs within 30 days failing which this amount would carry interest @ 12% per annum till realization. Revision Petition allowed.