(2014) 02 NCDRC CK 0044

In the National Consumer Disputes Redressal Commission

India Info Line Commodities Ltd. APPELLANT

Vs

Jagu Srinivasa Rao RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Citation : 2014 0 NCDRC 333 : 2014 1 CPJ 483

Hon'ble Judges : J.M.MALIK J.

Final Decision : Petition allowed

Judgement

1. INDIA Info Line Commodities Ltd., which was arrayed as O.P. 2 in the complaint, transacts the business of ''on -line'' buying and selling of commodities. India Info Line Commodities, is having one of its branches at Guntur, which is arrayed as O.P. 1. Sh. Jagu Srinivasa Rao, the complainant, opened an account with O.P. 1, on 12.8.2008, for buying and selling of gold on ''on -line'', like share business. O.P. 1 allotted the client ID as ''SRI JAGU'', after verification was made by O.P. 2. The complainant credited the amounts by way of Demand Drafts drawn on HDFC Bank, in his account with OPL the total amount being, Rs. 8,50,000. O.P. 1 issued receipts having received the said amount. The complainant opened the account exclusively for the purpose of gold related commodity, online, and O.P. 1 obtained consent from the complainant for trade of gold commodities.

2. IT is alleged that subsequently, without written consent and advise from the complainant, O.P. 1 treated the other commodities like spices due to which the complainant incurred huge loss in his business. O.P. 1 encashed two demand drafts and misappropriated the same. Ultimately, a complaint was filed with the District Forum wherein it was requested to pay misappropriated amount in the sum of Rs. 2,00,000, for misuse of trade Rs. 2,00,000, for mental agony Rs. 50,000, for compensation Rs. 20,000 and Rs. 5,000 towards costs, totalling to Rs. 4,75,000. The District Forum allowed the complaint and passed the following order: 1. The opposite parties 1 and 2 are directed to refund the misappropriated amount of Rs. 2,00,000 with interest @ 9% p.a. from the date of deposit till the

realisation. 2. The opposite parties 1 and 2 are further directed to pay sum of Rs. 5,000 towards compensation for mental agony and pain and Rs. 1,000 towards legal expenses. 3. The amounts ordered above shall be paid within a period of six weeks from the date of receipt of the copy of the order, failing which, they shall carry interest @ 9% p.a. till the date of realisation.

3. AGGRIEVED by the said order, Ops. 1 and 2 filed appeal before the State Commission. The State Commission upheld the order of the District Forum.

4. I have heard Counsel for the parties. At the very outset, it must be mentioned that the petitioner is not a ''consumer''. He has been dealing in trade of gold commodities. The transaction is for commercial purposes. In para. No. 3 of the complaint, it is mentioned that the complainant is a permanent resident of Guntur. The complainant is a respectable businessman in the business locality. In para. 3(g) of the complaint, it is stated as under: (g) The complainant is a young businessman and who invested the amount with the help of relatives out of his livelihood. Due to the mala fide and misrepresentation done by the opposite parties, the complainant suffered severe financial hardship in his life. Thus, it is clear that the complainant is a young businessman who has invested the amount with the help of his relatives. This is a case of investment. He entered into a commercial transaction. There is not even an iota of evidence to reveal that the complainant entered into the said transaction for his livelihood. The use of the word ''livelihood'' is not enough. The word ''consumer'', in the CP Act, clearly lays down that the ''consumer'' does not include a person who obtains such goods for sale or for any commercial purpose. What is commercial purpose, was decided by the Hon''ble Apex Court in the case of Laxmi Engineering Works v. P.S.G. Industrial Institute, II (1995) CPJ 1 (SC). The definition of word ''consumer'' was comprehensively explained in para. 10 of the said judgment. It was further held that in the absence of a definition, we have to go by the ordinary meaning. ''Commercial'' denotes ''pertaining to commerce'' (Chamber''s Twentieth Century Dictionary), it means ''connected with, or engaged in commerce; mercantile; having profit as the main aim'' (Collins English Dictionary) whereas the word "commerce" means "financial transactions, especially buying and selling of merchandise on a large scale" (Concise Oxford Dictionary).

5. AGAIN , in Morgan Stanley Mutual Fund v. Kartick Das, II (1995) CPJ 1 (SC) : 1994 (4) SCC 225, the question was, whether a prospective investor in the shares of a company, is a ''consumer'', as defined in Section 2(f). It was held that he was ''not'' a ''consumer''. Consequently, I am of the considered view that the petitioner is not a ''consumer''. The Consumer Fora is not armed with the power to decide ''commercial transactions''. The revision petition is, therefore, accepted. The orders passed by the Fora below are set aside. The complaint is, therefore, dismissed, with liberty to the complainant to seek redressal of his grievance before the appropriate Forum and also seek exclusion of limitation, as per law laid down in Laxmi Engineering Works v. P.S.G. Industrial Institute (supra).