

(2005) 03 NCDRC CK 0042

In the National Consumer Disputes Redressal Commission

JAGJIT KUMARI

APPELLANT

Vs

KAILASH CO-OPERATIVE HOUSING BUILDING SOCIETY LTD.

RESPONDENT

Date of Decision : 02-03-2005

Acts Referred:

Citation : 2005 2 CPC 339 : 2005 3 CPJ 92

Hon'ble Judges : M.B.Shah , P.D.Shenoy J.

Final Decision : Revision Petition disposed of

Judgement

1. BEING aggrieved and dissatisfied with the judgment and order dated 20.12.1998 passed by the Himachal Pradesh State Consumer Disputes Redressal Commission, Shimla in Appeal No. 74/97, the complainant has preferred this revision application. By the impugned order, the State Commisison allowed the appeal, set aside the order passed by the District Forum and dismissed the complaint on the ground that it was not maintainable.

2. AGAINST that judgment, it is contended by the learned Counsel for the petitioner that the impugned judgment and order passed by the State Commission is contrary to the law laid down by the Apex Court in Secretary, Thirumurugan Co-operative Agricultural Credit Society v. M. Lalitha, I (2004) CPJ 1 (SC)=I (2004) SLT 200=AIR 2004 SC 448. In our view, the aforesaid submission requires to be accepted.

It was the case of the complainant before the District Forum that she was enrolled as a Member of Kailash Co-operative Housing Building Society Ltd. and was assured allotment of independent house measuring 100 sq. yards on deposit of instalments as per the schedule. Complainant deposited in all Rs. 43,000/- upto 8.10.1992. As the house was not allotted to her a complaint was filed for refund of the said amount along with interest.

3. THE Society raised various contentions including the contention that the proceedings under the Consumer Protection Act, 1986 were not maintainable in view of Section 72 of Himachal Pradesh Co-operative Societies Act, 1968. That

contention was accepted by the State Commission. For appreciating the said contention we would reproduce the relevant part of Section 72 which is as under: "Such disputes shall be referred to the Registrar for decision and no Court shall have jurisdiction to entertain any suit or other proceeding in respect of such disputes".

(Emphasis supplied)

4. BY bare reading of the aforesaid section it is apparent that what is barred is a suit or other proceedings in a Court in respect of a dispute which is required to be decided and dealt with by the Registrar of the Co-operative Societies. Admittedly, the Forums established under the Consumer Protection Act are not Courts. No doubt, they are having trappings of Civil Court and are required to decide the matters judicially. Further, the question does not require much discussion in view of the decision in case of Secretary, Thirumurugan Co-operative Agricultural Credit Society v. M. Lalitha (supra). The Apex Court dealing with the similar contention observed that the Forums established under the Consumer Protection Act are quasi-judicial Forums observing principles of natural justice and are empowered to give relief of a specific nature and to award appropriate compensation to the consumers and to impose penalty for non-compliance of their orders. Court also referred to earlier decisions and observed that Section 3 of the Consumer Protection Act seeks to provide the additional remedy under the Act and unless there is a clear bar under the Act, proceedings before the Consumer Forums are maintainable. The Court dealing with the similar provision Section 90 of T.N. Co-operative Societies Act 1983, observed that "the remedies that are available to an aggrieved party under the 1986 Act, are wider. For instance, in addition to granting a specific relief the Forums under the 1986 Act have jurisdiction to award compensation for the mental agony, suffering, etc. which possibly could not be given under the Act in relation to dispute under Section 90 of the Act. Merely because the rights and liabilities are created between the members and the management of the Society under the Act and Forums provided, it cannot take away or exclude the jurisdiction conferred on the Forums under the 1986 Act expressly and intentionally to serve a definite cause in terms of the objects and reasons of the Act, reference to which is already made above". Court further observed that if such argument is accepted it would lead to taking away the additional remedies expressly provided under the Consumer Protection Act, 1986.

5. SIMILAR view was taken by this Commission in the case of Kalawati and Ors. v. United Vaish Co-operative Thrift and Credit Society Ltd. I (2002) CPJ 71 (NC)=decided on 26.9.2001 in R.P. Nos. 823 to 826/2001. In the said case the Commission referred to similar Section 93 of the Delhi Co-operative Societies Act, 1972 and held that the said section does not bar the jurisdiction of the Consumer Forums. SIMILARly, in the case of M.D., Orissa Co-operative Housing Corporation Ltd. v. K.S. Sudarsan in III (2002) CPJ 181 (NC)=Revision Petition No. 1468/2001 decided on 15th March, 2002, this Commission dealing with

Section 68 of the Orissa Co-operative Society Act, held that there is no bar to entertain the complaint under the Consumer Protection Act. The bar of jurisdiction was qua Civil Court only and not of any other Tribunal or Authority constituted under other provisions.

6. IN this view of the matter, the impugned order passed by the State Commission is set aside. As the matter is not decided by the State Commission on merits, the same is remitted to the State Commission for deciding it on merits. The State Commission shall issue notices to both the parties and proceed in accordance with law. The revision petition is disposed of accordingly. We appreciate the assistance rendered by the amicus curiae, Mr. Vinod Kumar. Revision Petition disposed of.