

(2004) 12 NCDRC CK 0052

In the National Consumer Disputes Redressal Commission

MANUEL SONS INVESTMENT AND LEASING COMPANY LTD.	APPELLANT
Vs	
K.T. SEBASTIAN	RESPONDENT

Date of Decision : 17-12-2004

Acts Referred:

Citation : 2005 2 CPC 261 : 2005 3 CPJ 468 : 2005 3 CPR 233

Hon'ble Judges : T.M.Hassan Pillai , A.Radha J.

Final Decision : Appeal allowed

Judgement

1. WHEN this appeal came up before us for hearing the learned Counsel for the appellant assailing the order passed by the Consumer Disputes Redressal Forum, Thrissur in O.P. No. 752/1998 submitted that the Forum below should not have directed the complainant to approach the Civil Court for redressal of his grievance when no contention has been raised by the opposite parties before the Forum below in the version that complicated questions of law and facts are involved and the matter could not be decided by the lower Forum in a summary proceedings. Counsel submitted that the lower Forum on its own accord without adverting to the pleadings of the parties and without considering any materials on record directed the complainant to approach the Civil Court for redressal its grievance.

2. THE learned Counsel Mr. Chandramohan also fairly submitted before us that no such contention that complicated questions of law and facts are involved and the dispute cannot be resolved by the Forum below in a summary proceedings has been raised in the version filed by the respondent. From the pleadings of the parties it is clear that it is not the contention of the parties that complicated questions of law and facts are involved and as such the matter cannot be adjudicated by the Forum below in a summary proceedings, therefore, we are of the view that contention of the appellant is to be upheld.

Supreme Court in CCI Chambers Co-operative Housing Society Ltd. v. Development Credit Bank Ltd., III (2003) CPJ 9 (SC)=V (2003) SLT 185=AIR 2003 SC 5887, held that merely because recording of evidence is require or

some questions of fact and law arise which would need to be investigated and determined, cannot be a ground for shutting the doors of any Forum under the Act to the person aggrieved. The following observations made by the Apex Court are worthy of extraction: "It cannot be denied that Fora at the National level, the State level and at the District level have been constituted under the Act with the avowed object of providing summary and speedy remedy in conformity with the principles of natural justice, taking care of such grievances as are amenable to the jurisdiction of the for established under the Act. These for a have been established and conferred with jurisdiction in addition to the conventional Courts. The principal object sought to be achieved by establishing such fora is to relieve the conventional Courts of the burden which is ever increasing with the amounting arrears and whereas the disposal is delayed because of the complicated and detailed procedure which at times is accompanied by technicalities. Merely because recording of evidence is required, or some questions of fact and law arise which would need to be investigated and determined, cannot be a ground for shutting the doors of any Forum under the Act to the person aggrieved. In the Indian Medical Association case (supra) this Court noticed the powers conferred on the several fora under the Act, the procedure applicable (including the exercise of some powers of the Civil Court under the Code of Civil Procedure having been made available to the fora under the Act) and held that the nature of averments made in the complaint is not by itself enough to arrive at a conclusion that the complaint raises such complicated questions as cannot be determined by the NCDRC. It is only when the dispute arising for adjudication is such as would require recording of lengthy evidence not permissible within the scope of a summary inquiry that a Forum under the Act may ask the complainant to approach the Civil Court. The fora made available under the Act are in addition to, and not in derogation of the provisions of any other law for the time being in force and jurisdiction of the conventional Courts over such matters as are now cognizable under the Act has not been taken away. A three-Judge Bench of this Court recently in Dr. J.J. Merchant and Others case (supra) specifically dealt with the issue as to the guidelines which would determined the matter being appropriately dealt with by a Forum under the Act or being left to be heard and decided by a Civil Court. This Court noticed that the fora under the Act are specifically empowered to follow such procedure which may not require more than or delay the proceedings. A Forum under the Act is entitled, and would be justified, in evolving a procedure of its own and also by effectively controlling the proceedings so as to do away with the need of a detailed and complicated trial and arrive at a just decision of the case by resorting to the principles of natural justice and following the procedure consistent with the principles thereof, also making use of such of the powers of Civil Court as are conferred on it. The decisive test is not the complicated nature of the questions of fact and law arising for decision. The anvil on which entertainability of a complaint by a Forum under the Act is to be determined is whether the questions, though complicated they may be, are capable of being determined by summary inquiry, i.e., by doing away with the need of a detailed

and complicated method of recording evidence. It has to be remembered that the fora under the Act at every level are headed by experienced persons. The National Commission is headed by a person who is or has been a Judge of the Supreme Court. The State Commission is headed by a person who is or has been a Judge of the High Court. Each District Forum is headed by person who is, or has been, or is qualified to be a District Judge. We do not think that mere complication either of facts or of law can be a ground for the denial of hearing by a Forum under the Act. In *Synco Industries case* (supra) this Court upheld the order of NCDRC holding the complaint before it not a fit case to be tried under the Act and allowing liberty to the complainant to approach the Civil Court because this Court agreed with the opinion formed by the Commission that "very detailed evidence would have to be led, both to prove the claim and thereafter to prove the damages and expenses". The Court concluded that in any event it was "not an appropriate case to be heard and disposed of in a summary fashion". In *Amar Jawala Paper Mills (India) and Another case* (supra) this Court set aside the order of NCDRC relegating a complainant to a Civil Court in spite of the complexity of the matter because the hearing had almost concluded before the Commission. In *Dr. J.J. Merchant and Others case* (supra) this Court dealing with the contention that complicated questions of facts cannot be decided in summary proceedings held this submission also requires to be rejected because under the Act, for summary or speedy trial, exhaustive procedure in conformity with the principles of natural justice is provided. Therefore, merely because it is mentioned that the Commission or Forum is required to have summary trial would hardly be a ground for directing the consumer to approach the Civil Court. For the Trial to be just and reasonable, a long drawn delayed procedure, giving ample opportunity to the litigant to harass the aggrieved other side, is not necessary. It should be kept in mind that the Legislature has provided an alternative, efficacious, simple, inexpensive and speedy remedy to the consumers and that should not be curtailed on such ground. It would also be a totally wrong assumption that because summary trial is provided, justice cannot be done when some questions of fact are required to be dealt with or decided. The Act provides sufficient safeguards".

3. IN view of the settled legal position (laid down by the Supreme Court) we are of the view that the Forum below was not justified in directing the complainant to approach the Civil Court for redressal of its grievance. Hence, we allow this appeal and remit the matter to the Forum below. Forum below is directed to adjudicate upon the dispute on the basis of evidence, if any, available and any further evidence intended to be adduced by the parties in support of their rival cases if they so choose (Forum below should allow them to adduce further evidence if they so choose). Parties are directed to appear before the Forum below on 29/1. Appeal allowed.