
(2014) 03 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

Mr. Pradeep Kumar Goel

APPELLANT

Vs

M/S. J.K. Synthetics Ltd. And M/S. Bajaj Capital Investment
Centre Pvt. Ltd.

RESPONDENT

Date of Decision : 06-03-2014

Acts Referred:

Citation : (2014) 03 NCDRC CK 0006

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

Judgement

1. THIS is the oldest case pending in this Commission. The original complaint was filed before this Commission, on 27.01.1997. Sh. Pradeep Kumar Goel, the complainant, deposited a sum of Rs. 13,85,000/- in Fixed Deposit Receipts, with M/s. J.K. Synthetics Ltd., OP 1. The Deposit Receipts were issued in the joint names of Sh. Ram Swaroop Goyal, first named, Sh. Pradeep Kumar Geol, second named and Mrs. Pushpa Goel, third named, during the year 1991 -92. Sh. Ram Swaroop Goyal, father of the complainant, expired in August, 1991. The complainant requested OP 1 to delete his father's name and requested for pre - mature withdrawal, vide letter dated 27.09.1991. The complainant, being the second joint owner, was entitled to get the disputed amount. The amount was deposited @ 14% p.a. compounded monthly and OP 1 paid interest to depositors @ 15% p.a. compounded quarterly, from 10.01.1992 to 09.12.1993 and @ 14% p.a. interest compounded monthly from 10.12.1993 to 30.11.1995 and 15% p.a. interest compounded monthly since 01.12.1995. The said amount was deposited through M/s. Bajaj Capital Investment Centre Pvt. Ltd., OP 2 who paid incentive @ 1% p.a. to their Clients. Both the companies are paying since September, 1996 with permission of RBI, interest rate more than 21% p.a. and Company's Broker/Agent, paying incentive @ 7% p.a.

2. IN the meantime, Sh. Deepak Kumar Goyal, the brother of the complainant, contacted OP 1 and requested them not to pay the amount claimed, in his joint name. However, OPs advised him to claim one -third share in the property of his father. Sh. Deepak Kumar Goyal asked them not to make the payment without the Court order. OP advised him to obtain an Injunction Order against the

Complainant. Sh. Deepak Kumar Goyal, filed a Suit for Permanent Injunction in the Civil Court of Kanpur. The 4th ACMM Court declined to grant ad -interim Injunction order to Sh. Deepak Kumar Goyal as he failed to furnish the list of FDRs or specifically list of properties or other particulars. In October, 1991, OPs furnished him a List of FDRs. He could furnish 24 numbers of the List, out of 26. It is alleged that OP was not fair in extending help to Sh. Deepak Kumar Goyal, to get Injunction Order. The OP refused to make the payment vide letter dated 09.11.1991 (Annexure A -5) and asked the complainant that they would wait for court's directions. An ad -interim injunction was granted on 14.04.1991. The OP again failed to make the payment vide letter dated 23.11.1991. On 09.11.1992, vide Annexure A -8, the ACMM, Kanpur, dismissed the ad -interim injunction and stay stood vacated.

3. THE complainant again requested OP 1 to make the payment vide letter dated 25.12.1992, Annexure A -9. OP 1 could not pay the amount to the complainant. Sh. Deepak Kumar Goyal filed an application before the High Court of Allahabad which was rejected vide order dated 17.11.1992. Sh. Deepak Goyal filed an appeal against that order. The complainant had to give an undertaking that he would not withdraw the amount upto 22.12.1992 and onwards.

4. THE Hon"ble High Court, Allahabad, passed an order dated 01.08.1994, Annexure A -12, granting an injunction specifically on shares and debentures and allowing Sh. Deepak Kumar Goyal one -third of bank deposits and two -thirds to the respondents. The complainant filed a Special Leave Petition, titled Pradeep Kumar Geol Vs. Deepak Kumar Goyal and Vijay Kumar Goyal, against the order of High Court, Allahabad and Hon"ble Supreme Court granted ex -parte order dated 25.11.1004. A legal notice dated 21.12.1994 was served on the OPs. OPs did not make the payment. The Complainant filed an Original Petition No. 97 of 1995, before this Commission, for recovery of amount. He also filed petitions before the Company Law Board, MRTPC, New Delhi and Supreme Court. His complaint was dismissed by this Commission, vide order dated 06.12.1995, which runs, as follows: - ORDER

The right of the complainant to receive the amounts under the deposit receipts in question is pending before the High Court of Allahabad as well as in some other litigations between the parties. In these circumstances, we are not disposed to adjudicate upon the subject matter of the present dispute when civil proceedings in respect of the identical issues are pending in courts. The complainant is at liberty to urge all his contentions in the pending litigation or to institute an appropriate action in a competent civil court to have his title to those amounts declared by the civil court. Without prejudice to the complainant's rights in that regard, this original petition is dismissed on the limited ground indicated above, without going into the merits of the case.

Sd/ -(V. Balakrishna Eradi)PresidentSd/ -(B.S. Yadav)MemberSd/ -(S.S. Chadha)MemberSd/ -(R. Thamarajakshi)MemberSd/ -(S.P. Bagla)Member.

5. PRIOR to that, the Hon''ble Apex Court stayed the operation of the order of the High Court, vide order dated 25.11.1994. The Hon''ble Apex Court, vide order dated 15.01.1996, passed the following order, in SLP No. 19299 of 1994, titled Pradeep Kumar Goel Vs. Deepak Kumar Goyal & Anr.: - The service is deemed sufficient in view of the office report dated January 12, 1996.

Leave granted. Heard counsel for the appellant. When the first defendant is putting forward a Will under which he claims that all the properties have been bequeathed to him by the father and when the said plea of his has not so far been pronounced upon and held to be untenable, the interim order impugned is unsustainable. Under the impugned order, the learned Single Judge has directed that the plaintiff shall withdraw one -third of the compensation amount relating to the properties covered by the Will. While we do not express any opinion on the merits of the case of either party, we only say that at this stage of proceedings, the impugned order could not have been made.

Accordingly, the order is set aside and the matter is remitted to the High Court for disposing of the application in accordance with law.

The appeal is disposed of accordingly. No costs.

6. CONSEQUENT LY , a second complaint was filed with the following prayers: -
1) Opp. party be directed to repay principal amount of Rs. 13,85,000/ - with interest @ 20% per annum, interest compounded yearly, from the date of deposit till the date of filing complaint on 27.01.1997 for Rs. 26,88,009.19, Grant Total Rs. 40,73,009.19 (Annexure No. 20) and further interest in same manner till the date of payment and double of the amount to be returned.

2) Broker incentive @ 1% per annum with interest in same manner as above every year on total sums i.e., principal amount + interest.

3) Expenses in typing, postage, telephones, faxes, travelling to Kanpur be allowed Rs. 30,000/ - (Thirty thousand only).

4) damages, financial loss, harassment, mental agony be allowed Rs. 50 lacs (Fifty lacs).

5) Cost of the complaint be allowed Rs. 20,000/ - (Twenty thousand only).

6) Any other relief under amended Companies Act.

7) Any other such order(s) or directions may kindly be passed.

Op 1 has initially contested this case on the following three grounds. Firstly, the case is barred by limitation, secondly, the second complaint, on the same cause of action is not maintainable. Lastly, there is no deficiency on the part of Op 1.

7. WE have heard the complainant, in person, and the counsel for the OPs. Previously, the case was adjourned because it was stated that the case of OP 1 was still pending with BIFR. The case was adjourned sine die, vide order dated 01.11.2002.

8. THEREAFTER , the case was put up before us, on 10.05.2013. Counsel for OP 1 stated at Bar that they have kept aside the money in question, and they are ready to pay the same to the person, who is entitled to that. After having closest scrutiny of the record and after having heard the complainant and the counsel for the OPs, as also after going through the written synopses, we find that the instant case is not maintainable. The complainant has invited our attention towards the order passed by the Civil Court, on 14.11.1991, which runs as follows: - In the Court of 4th Additional Chief Metropolitan Magistrate, Kanpur

Suit No. 1129 of 1991

Deepak Kumar Goyal

Vs.

1. Pradeep Kumar & (2) Vijay Kumar Goyal

English translation of Ex -parte Ad -interim injunction order dt. 14.11.91 against application order 39 Rule 1 & 2 (Index No. 9 Ga 2).

14.11.91: Case called. Counsel for plaintiff present. Plaintiff has filed 3 documents along with index 17 Ga 2. Registry has been served on opp. party No. 2. Summons through registry has been sent to opp. party No. 1 but not returned back. Application index 9 Ga 2 was represented.

Plaintiff has stated that if all properties would be taken by opp. parties, then he would be unable to get any part and suit will become infructuous.

Therefore, it is directed that till the final disposal of application index 9 Ga 2 opp. parties would not withdraw properties of their father Shri Ram Swaroop Goyal either in his individual name or jointly with opp. parties from concerned Bank/ Company/Officer.

Dated 2.12.91 fixed for W.S./index 9 Ga 2.

Sd/ -Illegible.

9. THE complainant stated that, at this stage, no civil suit is pending. Sh. Deepak Kumar Goyal has since passed away. His Legal Representatives are not pursuing this case. He stated that no Civil Suit of any kind is pending.

10. THIS Commission is bound by the order, dated 06.12.1995, passed by 4 - Members" Bench of this Commission, headed by Hon"ble Mr. Justice V. Balakrishna Eradi, the then President. We cannot pass a different order from that. Although the issues involved in this case were not adjudicated in the Original Petition No. 97 of 1995, on 06.12.1995, yet, this Commission cannot ignore the directions given by the 4 -Members" Bench of this Commission, headed by Hon"ble Mr. Justice V. Balakrishna Eradi, the then President. No reason was given as to why second complaint was being filed.

11. IT is not known, whether, the Civil Suit is still pending or not, and no solid,

concrete and flappable evidence was adduced, before us. It is difficult to say, whether, the complainant himself is stating the truth or not. Above all, as per the directions given by the previous Bench of this Commission, he should have filed a Civil Suit.

12. THERE lies no rub in pursuing in the matter in Civil Court, as well. He can seek help from Section 14 of the Limitation Act and the observations made by this Hon''ble Supreme Court in the Case of Laxmi Engineering Works Vs. PSG Industrial Institute, : (1995) 3 SCC 583, wherein in Para 23 of its judgment, it was held: - 23. The appeal accordingly fails and is dismissed but without costs. If the appellant chooses to file a suit for the relief claimed in these proceedings, he can do so according to law and in such a case he can claim the benefit of Section 14 of the Limitation Act to exclude the period spent in prosecuting the proceedings under the Consumer Protection Act, while computing the period of limitation prescribed for such a suit.

There is one more aspect which arises for consideration of this Commission. This is a unique case. The OP is ready to pay the amount, but this Commission cannot order that the said amount be paid to the Complainant. Counsel for OP 1 submits that, in case, this money is given to the complainant, and subsequently, the Civil Court orders that this money be given to his brothers, and for that reason, the OP should not be vexed twice. The OP should not be made to pay the amount, twice. Although, in these proceedings, notice was sent to Mr. Deepak Kumar Goyal, yet, he has not turned up. Moreover, he is not a necessary party in this case. Under these circumstances, no orders in favour of the complainant can be passed. If so advised, he can approach the Civil Court, as per law. The complaint is, therefore, dismissed. No costs.