

(1998) 11 KL CK 0021
In the High Court Of Kerala
Case No : O.P. No. 4680 of 1996-F

Mrs. Jancy Joseph

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-11-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 56, 58
Consumer Protection Act, 1986 — Section 27

Citation : AIR 1999 Ker 234

Hon'ble Judges : S. Sankarasubban, J

Bench : Single Bench

Advocate : Sunil C.C., V.M. Baby and A.D. Baby, for the Appellant; George Poonthottam, ACGSC, K.K.M. Sheriff, Govt. Pleader, Viju Thomas, Meena John, P.K. Raghavan and Mathai Eapen Vettah, for the Respondent

Final Decision : Allowed

Judgement

S. Sankarasubban, J.—The petitioner challenges in this Original Petition Section 27 of the Consumer Protection Act, 1986, hereinafter referred to as "the Act". The further prayer is to declare that the petitioner being a woman cannot be arrested or detained by the Consumer Disputes Redressal Forum, hereinafter referred to as "the Forum", exercising the powers u/s 27 of the Act and for quashing Exhibit P5 order of the Forum. The case of the petitioner is that she is a partner of the firm M/s. Geo Financiers, Thiruvalla. Complaining that the amounts deposited by respondents 4 and 5 had not been returned to them, they filed petitions before the Forum as O.P. Nos. 740/1993 and 102/1994. Both these complaints were accepted by the Forum and in O.P. No. 740/1993, the respondents therein were directed to pay the principal sum of Rs. 45,000/- with interest at 12% per annum from 15-6-1989 to 12-4-1992 and thereafter on the total amount of Rs. 65,768.87 and Rs. 300/- as cost within one month. In O.P. 102/1994, similarly the opposite parties were directed to pay the principal sum of Rs. 20,000/- with interest at 12% per annum from 25-6-1989 to 12-4-1992 and thereafter on the total amount of Rs. 29,330.95 and Rs. 250/- as costs,

within one month. Since the amounts have not been paid within one month, respondents 4 and 5 filed execution petitions as E. P. Nos. 155/1995 and 154/1995. When notice was received in the execution petitions, the present petitioner raised an objection that she being a woman and the claim was for realisation of money, she cannot be arrested in exercise of the powers u/s 27 of the Act. That contention was negated by the Forum and by the impugned order Exhibit P5 the Forum has taken the view that Section 27 is in the nature of penal provision and that the provisions regarding execution of money decree cannot be attracted to this provision. Hence, this Original Petition is filed for a declaration that Section 27 of the Act is unconstitutional and arbitrary and for quashing Exhibit P5 order.

2. Learned counsel for the petitioner submitted that Sections 25 and 27 of the Act prescribe the mode of execution of the order of the Forum. Section 25 prescribes that the order can be executed by the Civil Court and also by the Forum as if it is a decree passed by the Civil Court, Hence, the provisions of the CPC are applicable. Section 27 of the Act gives an absolute power to the Forum to imprison any person or impose fine if the order is not complied with. According to the counsel, this is discriminatory and violative of Article 14 of the Constitution. The contention is that if procedure u/s 25 of the Act is invoked, then the petitioner can get protection under the Code of Civil Procedure; while that is not available u/s 27 of the Act. It is further submitted that so far as payment of money is concerned, it depends upon the means of the person to pay the amount. No person can be punished on the ground that such person has no means to pay the amount.

3. Learned counsel for the respondents submitted that Section 27 has been enacted with a view that the orders of the Forum are complied with. A summary remedy is provided u/s 27 with a penal provision. In the nature of the object and scope of the Act, it cannot be said that this section is arbitrary or discriminatory.

4. The validity of Section 27 has come up for consideration before this Court in the decision reported in *Joseph v. Union of India*, 1997 (2) KLT 600. Koshy, J. upheld the validity of the Section. In this connection, the learned Judge has referred to a Division Bench decision of the Madras High Court in *Registrar, University of Madras v. Union of India*, 1996 CCJ 668. In that decision the Madras High Court held as follows :--

"There is also no merit in the contention that the p revisions of Section 27 enabling the District Forum or the Commission to award imprisonment besides fine are unreasonable. Obviously, the provision is made with a view to enable the Forum or the Commission to enforce its orders as quickly as possible. The very purpose of the Act to protect the interests of the consumers will be defeated if the consumers find it difficult or impossible to execute the orders of the Forum or the Commission for a long time just as in Civil Courts. The provision is only similar to Section 51(c) of the CPC and the dicta of the Supreme Court in *Jolly George Varghese and Another Vs. The Bank of Cochin*, , relating to arrest and

execution proceedings in cases arising under the CPC will certainly be borne in mind by the District Forum or the Commission when its powers u/s 27 are exercised".

The learned Judge in 1997 (2) KLT 600 has followed the decision of the Madras High Court and held that the provisions of CPC are made applicable even when Section 27 of the Act is invoked.

5. A perusal of the order of the Forum shows that it has held that Section 27 has an independent power and the provisions of CPC are not applicable. The Forum relied on certain decisions of the State Commission and the National Commission.

6. I respectfully follow the Division Bench decision of the Madras High Court. I hold that the provisions of arrest in the CPC have to be taken into consideration by the Forum while it deals with recovery of money. If that be so, Sections 56 and 58 of the CPC become relevant. u/s 56 CPC "notwithstanding anything in this Part, the Court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for the payment of money". Thus, when the Forum is executing an order for recovery of money, it cannot order the arrest of a woman for recovery of the amount. Regarding recovery of money from others, arrest can be ordered only if it is found that the persons concerned have means to pay and they are neglecting to pay the amount.

In the above view of the matter, I quash Exhibit P5 in so far as it holds that woman can be arrested for recovery of money u/s 27 of the Act and that means of judgment debtor need not be considered when the power u/s 27 is exercised for recovery of money.

The Original Petition is allowed.