
(2017) 02 NCDRC CK 0039

In the National Consumer Disputes Redressal Commission

Case No : 4246 of 2010

M/S. GEOJIT BNP PRIBAS FINANCIAL SERVICE LTD. & ORS. APPELLANT
Vs
SUNIL DATTARAM RAIKAR RESPONDENT

Date of Decision : 10-02-2017

Acts Referred:

Citation : 2017 1 CPR 306

Hon'ble Judges : K.S. Chaudhari

Advocate : P.V. Dinesh, Rajendra Beniwal

Judgement

1. This revision petition has been filed by the petitioners against the order dated 18.08.2010 passed by the Karnataka State Consumer Disputes Redressal Commission, Bangalore (in short, "the State Commission") in Appeal No. 3286 of 2010 - M/s. Geojit BNP Pribas Financial Services Ltd. & Ors. Vs. Sunil Dattaram Raikar by which, appeal was dismissed at admission stage.

2. Brief facts of the case are that complainant/respondent resident of Belgaum was carrying on business of jewellery at Belgaum and also dealing in shares and securities; so, opened account with OPs and placed orders for purchase of shares and made payment of shares purchased by him. It was further submitted that on 4.10.2007 and 5.10.2017, complainant sold shares. It was further submitted that after 4 months, complainant went to the office of OPs and enquired about trend of market and his balance amount and was shocked to know that only Rs.13,500/- was available in his account and remaining amount was utilized by OPs for purchase of different shares without his consent. Alleging deficiency on the part of OPs, complainant filed complaint before District Forum. OPs resisted complaint and submitted that complainant does not fall within purview of consumer and further submitted that numerous transactions were carried out as per instructions of complainant and intimation of intraday transactions was given to the complainant. Denying any deficiency on their part, prayed for dismissal of complaint. Learned District Forum after hearing parties allowed complaint and directed OP to pay Rs.5,17,838.43 with 12% p.a. interest along with

compensation of Rs. 60,000/- and cost of Rs.10,000/-. Appeal filed by OPs was dismissed by learned State Commission at admission stage vide impugned order against which, this revision petition has been filed.

3. None appeared for respondent even after service of notice and he was proceeded ex-parte.

4. Heard learned Counsel for the petitioners and perused record.

5. Learned Counsel for petitioners submitted that order passed by learned State Commission is neither speaking order nor considered huge intraday transactions of the complainant and question of jurisdiction of Consumer Fora and has committed error in dismissing appeal at admission stage; hence, revision petition be allowed and impugned order be set aside and matter may be remanded back to learned State Commission to decide appeal by speaking order.

6. In memo of appeal filed before State Commission it was specifically pleaded that complainant is not consumer and Consumer Fora has no jurisdiction to entertain the complaint and in the light of Arbitration Clause, complaint was not maintainable and District Forum has not considered various documents produced by OPs depicting huge transactions carried out by complainant. Learned State Commission while dismissing appeal at admission stage observed as under: "We have carefully gone through the impugned order under challenge. No doubt that the respondent/appellant instigated OP 3 to invest his amount by selling the shares of Reliance Communication and Suzlon Energy to the tune of Rs.5,17,838.43 in his account. But directors of the company as well as OP 3 has fraudulently utilized the said amount available in the account of the respondent/complainant and carrying on the trade actions without the instructions of the respondent which has been admitted by OP 3 in writing as per the letter dated 16.6.2008 and 26.6.2008 which amounts to deficiency in service. Though the respondent/complainant has produced the documents and valuable evidence in support of his case, OPs/appellants have not produced documents".

Learned State Commission has wrongly observed that OP has not produced documents whereas numerous documents were produced and it was specifically pleaded that letters dated 16.6.2008 and 27.6.2008 were obtained by coercion, force and undue influence by Police. Learned State Commission has also not considered objection of maintainability of the complaint as OPs specifically raised contention that looking to intraday transactions, complainant does not fall within purview of consumer and has also not considered Arbitration Clause. Impugned order is not a speaking order as learned State Commission has not considered all grounds of appeal taken in memo of appeal.

7. Hon"ble Apex Court in (2001) 10 SCC 659 - HVPNL Vs. Mahavir observed as under: "1.In a number of cases coming up in appeal in this Court, we find that the State Consumer Disputes Redressal Commission, Haryana at Chandigarh is passing a standard order in the following terms:

"We have heard the Law Officer of HVPN - appellant and have also perused the impugned order. We do not find any legal infirmity in the detailed and well-reasoned order passed by District Forum, Kaithal. Accordingly, we uphold the impugned order and dismiss the appeal".

2. We may point out that while dealing with a first appeal, this is not the way to dispose of the matter. The appellate forum is bound to refer to the pleadings of the case, the submissions of the counsel, necessary points for consideration, discuss the evidence and dispose of the matter by giving valid reasons. It is very easy to dispose of any appeal in this fashion and the higher courts would not know whether learned State Commission had applied its mind to the case. We hope that such orders will not be passed by the State Consumer Disputes Redressal Commission, Haryana at Chandigarh in future. A copy of this order may be communicated to the Commission".

8. In the light of above judgment, it becomes clear that Appellate Court while deciding an appeal is required to deal with all the aspects and arguments raised by the appellant and as learned State Commission has not dealt with facts of the case and legal contentions of the appellant, it would be appropriate to remand the matter back to the learned State Commission for disposal by speaking order after dealing with all the contentions and arguments raised by the parties.

9. Consequently, revision petition filed by the petitioner is allowed and impugned order dated 18.08.2010 passed by the learned State Commission in Appeal No. 3286 of 2010 - M/s. Geojit BNP Pribas Financial Services Ltd. & Ors. Vs. Sunil Dattaram Raikar is set aside and matter is remanded back to learned State Commission to decide appeal afresh by speaking order after giving opportunity of being heard to the petitioner and respondent if required.

10. Petitioner is directed to appear before State Commission on 20.3.2017.

11. Amount deposited by petitioner with District Forum in pursuance to order dated 28.9.2011 of this Commission be released to him with interest accrued, if any.