
(2016) 07 NCDRC CK 0035

In the National Consumer Disputes Redressal Commission

Case No : 17 of 2015

M/S. GREEN ROADWAYS (REGD PARTNERSHIP) & ANR.

APPELLANT

Vs

UNITED INDIA INSURANCE CO. LTD. & ANR.

RESPONDENT

Date of Decision : 20-07-2016

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 27](#) of the Act, [Section 25\(3\)](#) - Penalties - Enforcement of orders of the District Forum, the State Commission or the National Commission.

Citation : 2016 3 CPR 514

Hon'ble Judges : V.K. Jain

Advocate : Anil Nauriya, Sumita Hazarika, Anupam Tiwari

Final Decision : Appeals Disposed

Judgement

1. This appeal is directed against the order of the State Commission dated 20.10.2015 which to the extent it is relevant reads as under:- "As per above interpretation it is clear that the notice of the complaint case of Insurance Co. was served in the Court to M/s Green Roadways a partnership Firm and Sh. Gurnam Singh, Sh. Pritam Singh and Kishan Kumar Arora partners were appearing in the Court in the present matter and learned counsels are representing them. However, Commission had ordered vide order dated 17.10.2013 to issue the notice against the partners of the Green Roadways and as per the application and copy of registration certificate filed by the opposite parties there are total 19 partners in the partnership firm and the order dated 27.1.2011 is not implemented yet and opposite parties are filing various applications to delay the present matter. That every partner of the partnership firm is equally, severally and jointly liable for the act and omission of the partnership firm. Therefore in this situation there is no need to give separate notice to the partners of the Green Roadways. However bailable warrant, of Rs. Fifty Thousands, are issued against every partner of opposite party partnership firm as per Section 27 of the Act and also ordered to attach the property of the opposite party Green Roadways which is situated at Delhi. Further issue the

warrant of recovery and warrant of attachment when the applicable insurance company provides the address of registered office and the list of properties of Green Roadways and the addresses of its partners."

2. A perusal of the record would show that vide an order dated 27.1.2011, the State Commission had directed M/s Green Roadways a partnership firm to pay a sum of Rs.8,96,976/- to the respondent/complainant United India Insurance Co. along with interest @ 9% p.a. and the cost of litigation quantified at Rs.11,000/-.

3. Since the aforesaid order remained uncomplied, the complainant preferred a petition under section 25(3) and 27 of the Consumer Protection Act seeking execution of the said order. It was in the aforesaid execution petition that the above-referred order came to be passed by the State Commission.

4. Section 25(3) of the Consumer Protection Act read as under:- " 25. Enforcement of orders of the District Forum, the State Commission or the National Commission . - (1) Where an interim order made under this Act, is not complied with the District Forum or the State Commission or the National Commission, as the case may be, may order the property of the person, not complying with such order to be attached.

(3)Where any amount is due from any person under an order made by a District Forum, State Commission or the National Commission, as the case may be, the person entitled to the amount may make an application to the District Forum, the State Commission or the National Commission, as the case may be, and such District Forum or the State Commission or the National Commission may issue a certificate for the said amount to the Collector of the district (by whatever name called) and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue."

5. It would thus be seen that the aforesaid sub-section provides for issue of a recovery certificate by the concerned consumer forum to the concerned collector who has to recover the amount mentioned in the said recovery certificate as arrears of land revenue. The above-referred sub-section does not empower the consumer forum which passed the substantive order in the complaint to attach the property of the opposite party. Sub-section (1) of section 25 which enables the consumer forum to order attachment of the property of a person not complying with its order applies only to the interim orders and not to the final orders passed by a consumer forum. Once the complaint is decided and a final order is passed, it can be executed either in the manner prescribed in section 25(3) of the Consumer Protection Act, i.e., by sending a recovery certificate to the collector who has to recover the amount mentioned in the said certificate as arrears of land revenue or it can be enforced by imposing penalty in terms of section 27 of the Act. Therefore, the impugned order to the extent the State Commission directed issue of warrant of attachment of the property of the partners of Green Roadways or of Green Roadways cannot be sustained. However, the State Commission would be entitled to issue the requisite recovery

certificate in terms of section 25(3) of the Act to the concerned collector after hearing the parties appearing before it.

6. In *Kamlesh Aggarwal Vs. Narain Singh Dabbas & Anr.* [(2015) 11 SCC 661], the District Forum found the respondents guilty for non-compliance of its order and ordered for 3 months imprisonment along with penalty under Section 27 of the Consumer Protection Act. The aforesaid order was set aside by the State Commission holding noticing that the District Forum had not adopted the procedure of summary trial at the time of passing the order of conviction and sentence imposed upon the respondents, as provided under the Code of Criminal Procedure. The State Commission was of the view that the District Forum had to try the respondents following the summary procedure prescribed for a Judicial Magistrate of First Class under Code of Criminal Procedure. Being aggrieved from the order of the State Commission, the appellant approached this Commission, which dismissed the appeal on the ground that there was no provision for filing the second appeal. The matter was then carried by the appellant to the Hon'ble Supreme Court. Upholding the view taken by the State Commission, the Hon'ble Supreme Court inter alia observed and held as under:- "13. We have heard both the learned counsel on behalf of the parties. In the facts and circumstances of the case, we are of the view that the State Commission should have remanded the matter to District Forum after setting aside its order dated 26.11.2010 with a direction to proceed with the matter in accordance with the procedure contemplated under the Code of Criminal Procedure referred to supra for taking penal action against the respondents who are the officers concerned of Navchetna Sahkari Awas Samiti Ltd. for non-compliance with the order.

15....However we have to interfere with the order of the State Commission only to the extent in not remanding the case to the District Forum for passing an order in accordance with law, in not doing so, the right accrued in favour of the appellant will be lost and therefore, we have to pass appropriate order in this regard.

16 we deem it proper to exercise our power under Article 142 of the Constitution of India for the reason that the State Commission has erred in not remanding the case to the District Forum, after it has found fault with the order of the District Forum in convicting and sentencing the officers of Navchetna Sahkari Awas Samiti Ltd., who are the respondents herein for not following the procedure as provided under the Criminal Procedure Code and for that reason we deem it just and proper to remand the case to the District Forum with a direction to the District Forum to follow the procedure under Section 262 read with Chapter XX, Section 251 of the Code of Criminal Procedure to initiate penal action against the respondents under Section 27 of the Act for non-compliance of the statutory provisions."

7. For the reasons stated hereinabove, the execution appeal is disposed of with the following directions:- (i) The order of the State Commission to the extent it has issued warrant of attachment of the property of Green Roadways and/or its

partners is set aside.

(ii) The State Commission will be entitled to issue recovery certificate in terms of section 25(3) of the Consumer Protection Act against Green Roadways and all its partners at the time the order in the consumer complaint came to be passed by it. Of course, this can be done only after hearing the parties appearing before the State Commission.

(iii) The proceedings under section 27 of the Consumer Protection Act shall proceed strictly in accordance with the procedure prescribed by the Hon''ble Supreme Court in Kamlesh Aggarwal (supra).

8. The parties are directed to appear before the concerned State Commission on 14.9.2016, which is the date already fixed before the said Commission. The appellant shall remain present before the State Commission unless exempted from personal appearance.