

(2000) 06 NCDRC CK 0028

In the National Consumer Disputes Redressal Commission

MULKY CO-OPERATIVE SERVICE BANK LTD.

APPELLANT

Vs

KRISHNAPPA T. KOTIAN

RESPONDENT

Date of Decision : 27-06-2000

Acts Referred:

Citation : 2001 2 CPJ 14

Hon'ble Judges : Mohamed Anwar J.

Final Decision : Civil Revision Petition allowed

Judgement

1. LEARNED Counsel for respondent not present, Mr. Mahesh for petitioner is heard.

2. DESPITE grant of sufficient opportunity no material is brought on record by the learned Counsel for respondent showing that the execution of the Consumer Forum's award in question was taken on the file of the Court below pursuant to its transfer by the concerned Consumer Forum. Therefore, as things stand on the material on record, it transpires that the execution of the award of the Mangalore District Consumer Forum was independently initiated by respondent in Execution Case No. 130/96 on the file of the Court of the learned Prl. Civil Judge (Jr. Division), Karkala. The validity of the execution proceeding so initiated in the Civil Court by respondent, holder of the said award, is assailed by the petitioner-judgment debtor on the ground that any such award cannot be independently executed before any Civil Court and that it could be done so only on transfer of the award made by the concerned District Consumer Forum to the competent Civil Court in accordance with the provisions of Section 25 of the Consumer Protection Act, 1986 ("Act" for short). In other words the contention of Mr. Mahesh, learned Counsel for petitioner was that the Court below had no jurisdiction to entertain the execution petition filed independently before it by the respondent-decree holder against petitioner-judgment debtor in view of the provisions of Section 25 of the Act. Section 25 of the Act reads : "25. Enforcement of orders by the Forum, the State Commission or the National Commission.- Every order made by the District Forum, the State Commission or

the National Commission, may be enforced by the District Forum, the State Commission or this National Commission, as the case may be, in the same manner as if it were a decree or order made by a Court in a suit pending therein and it shall be lawful for the District Forum, the State Commission or the National Commission to send, in the event of its inability to execute it, such order to the Court within the local limits of whose jurisdiction,- (a) in the case of an order against a Company, the registered office of the Company is situated; or (b) in the case of an order against any other person, the place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated, and thereupon, the Court to which the order is so sent, shall execute the order as if it were a decree or order sent to it for execution."

(Underlining supplied)

A plain reading of this provision clearly brings out this legal position to the Fora in regard to execution of any award or order of a District Forum or the State Commission or the National Commission, that the power to execute its own order or award is vested with the concerned District Forum, the State Commission or the National Commission, as the case may be, in the same manner as if it were a decree or order made by a Court in a suit. In other words the Forum or Commission has itself the power to execute its order in the manner prescribed by the applicable rules of Order XXI, C.P.C. and any Civil Court mentioned in Sub-clauses (a) and (b) of Section 25 can get the jurisdiction to execute any such order or award only when the same is referred to it by the concerned District Forum, the State Commission or National Commission when its execution was found not possible by such District Forum, the State Commission or the National Commission.

3. THEREFORE, as rightly submitted by Mr. Mahesh, in the case in hand, the matter having not been referred to the Court below by the concerned District Forum for execution of its said order, the lower Court had no jurisdiction to entertain the execution petition of respondent and to proceed with its execution against petition. Hence, the impugned order of the Court below passed holding that it does have the jurisdiction to entertain and proceed with the execution of the order in question, is set aside. The execution petition of respondent filed before it in Execution Case No. 130/96 is dismissed. Parties to bear their own costs. Civil Revision Petition allowed.