

(2006) 04 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE COMPANY LIMITED

APPELLANT

Vs

PANNA LAL

RESPONDENT

Date of Decision : 19-04-2006

Acts Referred:

Citation : 2006 1 CPC 710 : 2006 2 CLT 568 : 2006 3 CPJ 30

Hon'ble Judges : R.C.Kathuria , Banarsi Das , Shakuntla Yadav J.

Final Decision : Revision Petition allowed

Judgement

1. THIS revision is directed against the order dated 7.1.2005 passed by District Forum, Panipat in the execution application filed by the respondent-complainant against the petitioner-opposite party.

2. PUT shortly, the facts of the case are that the Complaint Case No. 151 of 2004 filed on 9.4.2004 was accepted on 3.11.2004 by the District Forum, Panipat, whereby direction was given to the opposite party to make the payment of Rs. 6,39,500 along with interest @ 9% per annum from 24.11.2003 till the date of realisation on net salvage basis, within a period of 60 days from the date of the order. On 7.1.2005 the respondent-complainant filed the execution application seeking execution of the order dated 3.11.2004. On the same day the following order was passed by the District Forum: "Present: Sh. P.K. Saini, Counsel for the complainant. Execution application/petition put up today. Notice to the respondent be issued under Sections 25 and 27 of the C.P. Act for 18.2.2005 after filing copies, etc."

Aggrieved by the said order, the present revision petition has been filed by the petitioner-opposite party on the ground that proceedings under Section 27 of the Consumer Protection Act, 1986 (hereinafter referred to as the Act) are not sustainable without initiating proceedings under Section 25 of the Act and before passing such order under these provisions an opportunity of hearing is to be provided to the petitioner, straightaway initiated proceedings under Section 27 of the Act. It was further averred that proceedings of execution filed by the complainant is an abuse of process of law and for that reason the impugned

order deserves to be set aside. The respondent has contested the revision petition. The Counsel representing the parties have been heard at length. During the course of arguments, it was contended by the learned Counsel for the petitioner that the complainant had filed the execution application without waiting for the outcome of the preliminary hearing of the appeal which was listed for 24.1.2005 though the same has been dismissed on 24.1.2005. It needs to be noticed in this regard that preposition of law is well settled that mere preferring of an appeal would not operate as stay of an order appealed against because a party having succeeded cannot be deprived of the fruits of the order obtained merely because defeated party had chosen to invoke jurisdiction of the Appellate Authority. Even if an application for stay along with the appeal is filed, discretion is left with the Appellate Authority to grant order of stay or refused the same. In this case, it is not the case of the appellant that at the time when the execution was filed, any stay order has been passed by the Appellate Court. Therefore, there is hardly any merit in the submission made in this regard.

Coming to the main grievance made from the side of the petitioner is that the District Forum has straightaway issued notice under Sections 25 and 27 of the Act. It appears that the District Forum has totally ignored that at the first instance it is the duty of the District Forum to have recourse of provisions of Section 25 of the Act so as to give an opportunity to the opposite party to comply with the direction given in the order of the District Forum at the first instance. Where the order cannot be enforced in terms of the requirement of provisions of Section 25 of the Act and the District Forum comes to the conclusion that the opposite party had failed to comply with the order passed by the District Forum then resort can be made to the provisions of Section 27 of the Act. In this case, notice has to be taken of the observations made by the Hon"ble National Commission in Revision Petition No. 546 of 2005 in its order dated 28.2.2005 wherein the above noted direction of the District Forum in the order dated 3.11.2004 in Complaint Case No. 151 of 2004 between the same parties as in the present revision petition and the same reads as under: "The District Forum has passed the final order on 3.11.2004. Thereafter, execution application was filed on 7.1.2005. Immediately, an order was passed on the same day. We reiterate that powers under Sections 25 and 27 are to be used with caution and care. There was no justifiable reason for holding that Insurance Company would not pay the amount as per final order. There was no urgency in passing such an order. We have to bear in mind that wide powers conferred under Section 27 are to be utilized for doing justice and that at no point of time there should be any misuse."

3. AFTER making the above observations the proceedings of the execution were stayed and direction was given to the petitioner to approach this Commission. The above direction in the order clearly shows that the District Forum has committed patent illegality in the order dated 7.1.2005 when it straightaway issued notice under Section 27 of the Consumer Protection Act without complying with the requirement of Section 25 of the Act. For the aforesaid reasons, the

revision petition is accepted, impugned order is set aside and it is further directed that the Executing Court shall proceed with the execution in the light of the observations made in this case. Revision Petition allowed.