

(1996) 12 J&K CK 0009
In the Jammu And Kashmir High Court
Case No : CIA No. 78/1995

Nirmal Singh

APPELLANT

Vs

Manager, Central Co-operative bank, Seer Anantnag

RESPONDENT

Date of Decision : 26-12-1996

Acts Referred:

Jammu and Kashmir Consumer Protection Act, 1987 — Section 17

Citation : (1997) KashLJ 80 : (1996) KashLJ 80

Hon'ble Judges : A.Q.Parray, J

Bench : Single Bench

Advocate : B.R.Tantray, Advocates appearing for the Parties

Judgement

Mr. Tantray appearing for the appellant submitted that the appeal is maintainable. While developing his arguments further, Mr. Tantray has taken me through Section 17 of the Consumer's Protection Act 1987(herein to be referred to as the Act), which reads :

17. Appeals : Any person aggrieved by any order by the State Commission in exercise of its powers conferred by subclause(I) of against such

order to the High Court within a period of thirty days from the date of the order in such form and manner as may be prescribed.

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause

for not filing it with in that period.

Thus Ld counsel for the appellant has laid emphasis that he has a statutory right under the provision of the Act to file the appeal against any order.

By any order, he means even an interlocutory order or the final orders, and submits that the order though passed in the proceedings on 26091995,

whereunder his evidence was closed, is also falling within the definition of an order and, as such, he has preferred the appeal.

The contention raised by Mr. Tantray is not well found. It may be noted that Consumer's Protection Act is a special Act and has been passed by

the Legislature only to provide better . protection of the interests of the consumer and for the purpose, provisions for the establishment of

Consumer's Council and other Agencies for the settlement of such consumer disputes and all such matters connected there which have been

provided under the Jammu and Kashmir Consumer's Protection Act Not only in the State but through out the country, there is consumer

movement wherein interests of the consumers are protected.

The Forums which have been created and authorised under the provision of the Act are Divisional Forum has the State Commission, Divisional

Forum has the jurisdiction prescribed under the provision of Section 9 and whereas the State Commission has the jurisdiction provided under

section 15 of the said Act and the procedure to be adopted by such Forums is governed under the Rules which have been framed under the Act.

So in order to overcome the difficulties which were being faced by the consumers on behalf of unscrupulous traders by deficiency of service in any

manner has been cognizably and falls within the compass of the Consumer's Protection Act and even court fee, stamp duties and other procedural

wrangles have been dispensed with in the order to have speedy redressal of the grievances of the Consumer which were being preferred before the

Divisional or the State Commission. Keeping under consideration this very purpose, the legislature has enacted the Act, where there is only one

appeal provided in each case namely if the order is passed by the Divisional Forum, appeal shall lye to the State Commission under the provision

of the Section 13 of the Act and that appeal is also to be filed within thirty days. Similarly in case. a person is aggrieved of the order passed by the

State Commission, appeal has been provided under the above referred provision of the State High Court. But are all orders appellable as has been

projected ?

So, the short point which is to be considered and projected by the appellant is that as because the words in section 17 of the Act do envisage that

any person aggrieved by any order passed by the State Commission, meaning

thereby that it is any order whether passed as an interlocutory or the final order which is to be agitated in the appellate Forum? The contention of the learned counsel for the appellant is not well founded for obvious reasons because the legislature has further more enacted that every order of Divisional Forum or the state Commission shall, if no appeal has been preferred against such order under the provisions of this Act be final and to circumvent as a final order. Section 19 reads and provides :

19. Enforcement of order by the Forum or the State Commission : Every order made by the Divisional Forum, or the State Commission may be enforced by the Divisional Forum, or the State Commission as the case may be in the same manner as if it were a decree or order made by a court in the suit pending therein and it shall be lawful for the Divisional Forum or the State Commission to send in the event of its inability to execute it , such orders to the court within the local limits of whose jurisdiction:

(a) in the case of order against a company, the registered office of the company is situated, or

(b) in 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 the order sent it

for execution

So the order which is to be deemed as final and which is appealable must be an order as if it were a decree or order made by the court in a suit pending therein.

Furthermore it has been provided that it shall be lawful for the Divisional Forum or the State Commission to send in the event of its inability to

execute it. Such order to the Court within the local limits of whose jurisdiction for execution and the executive court to which order is so sent shall

execute the order as it were the decree or order sent to it for execution. This shows the intention of the legislature that it is only final order passed

by the Divisional Forum or the State Commission which is to be agitated in appeal as the case may be either before the State Commission or

before the High Court. So it is not all the orders which are to be deemed as decree as has been clearly circumvented and defined in Section 19 of

the Act. Thus it will be an anomaly in case courts give loose interpretation to the

word any order passed State Commission or the Divisional

Forum to take it as an appellable. That is neither the intent nor the purport of the legislature and even nor of the Act.

In case Courts would give such a loose interpretation to the word 'any other' meaning thereby that all interlocutory orders passed by the Divisional

Forum or the State Commission are appellable, then that will be shattering the whole figure of the statute as well as the intent and purpose for which

this special legislation has been enacted.

So the order which is appellable is only the order which is executable as a decree passed by a civil court of competent jurisdiction. The result is

that appeal being misconceived is accordingly dismissed. Inform the Commission accordingly. File be consigned to records.