

(1991) 07 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

PARIKSHATH RAJ KULKARNI

APPELLANT

Vs

KARNATAKA STATE CO-OPERATIVE HOUSING SOCIETY

RESPONDENT

Date of Decision : 30-07-1991

Acts Referred:

Citation : 1993 2 CPJ 930

Hon'ble Judges : R.G.Desai , K.R.Ramaswamy Iyengar , Sudha V.Reddy J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal is directed against the Order dated 7.5.1991 passed by the District Forum, Gulbarga in Complaint No. 2/1991 on its file.

2. IT arises in this way : - The appellant was the complainant and the respondent was also the respondent before the District Forum and they will be hereinafter referred to by Their position before the District Forum. The respondent had advanced a loan of Rs. 20,000/- to the complainant on 27.6.1969 re payable in 300 monthly installments together with interest at the rate of 7-% p.a. The complainant defaulted in the payment of the installments. The dispute was referred to the arbitrator under the Co-operative Societies Act. An award was passed on 2.9.1974 directing the complainant to pay Rs. 24,982.56 together with interest at 10-% p.a. from 25.3.1974 till the date of payment. After the award was passed, the complainant paid certain amounts from 30.6.1979 onwards. The complainant preferred an appeal against that a ward and that appeal was dismissed. Then the property of the complainant was brought to sale. The sale proclamation was challenged by the complainant in Writ Petition No.14021/1987. That Writ Petition was also dismissed on 19.9.1988, According to the complainant, the amounts paid by him should have been appropriated by the respondent first towards the payment of the award amount and he ought not to have calculated interest on the said amount from the date of payment as stated in Order 21 Rule (1)(5) of the CPC. The complainant took up that contention before the Asst. Registrar, who was executing the a ward passed against him and the Asst. Registrar did not uphold his contention. He had other remedies against

that order and he did not chose to avail of the same. Then he filed a complaint before the District Forum, for directing the respondent to appropriate the amounts paid by him towards payment of the award amount. The complaint was resisted by the respondent by contending that he was justified in appropriating the amounts paid by the complainant towards interest first & then towards the principal and that the complainant ought to have raised this point before the High Court in the Writ Petition and as he has not done so, this complaint is not maintainable.

The District Forum held that the complaint was not maintainable as he has not raised that point in the Writ Petition before the High Court and dismissed the complaint. Hence, this appeal.

3. MR. R.J. Desai, Learned Counsel for the appellant relying upon the decision in Punjab National Bank v. Premsagar Choudhury & Ors. in AIR 1988 Himachal Pradesh at Page No.33 and Order 21, Rule (1) Clause (5) of the Code of Civil Procedure, urged that the respondent ought to have appropriated the amounts paid by the complainant towards the Award amount and not towards the interest. After going through the said decision and Order 21, Rule (1) Clause (5) of the CPC, we find considerable force in the said contention of the Learned Counsel. But it is admitted that the complainant had taken up this point before the executing authority who negative the said contention. It is also admitted that there were other remedies available for challenging the said order and that has not been done. The complainant could have also raised this point before the High Court in Writ Petition when he had challenged the sale proclamation and when the statement of accounts of the respondent were filed. No doubt, the complainant will be a consumer, as the respondent was rendering financing service to the complainant for consideration and he can question the deficiency in service by filing the complaint before the consumer forums. But when once he has agitated the said matter before the Asst. Registrar and High Court, he cannot be allowed to file a complaint before the consumer forum, as the consumer forums are not appellate authorities over those authorities. Hence, the view taken by the District Forum is proper. In the result, the appeal is dismissed. Under the circumstances, we direct the parties to bear their own costs. Appeal dismissed.