(2007) 12 AHC CK 0170

In the Allahabad High Court

Prahlad Kumar Gupta and Smt. Kamla Gupta APPELLANT

Vs

The State of U.P. RESPONDENT

Date of Decision : 05-12-2007

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : AIR 2008 All 120 : (2008) 2 AWC 1227

Hon'ble Judges : V.M. Sahai, J;R.N. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.M. Sahai and R.N. Misra, JJ.—By invoking jurisdiction of this Court, under Article 226 of Constitution of India through this writ petition, the petitioners have challenged jurisdiction of District Consumer Forum Budaun in passing the order dated 2.2.2007 in Consumer Complaint No. 306 of 2002, by which the petitioners have been ordered to pay the amount of Fixed Deposit Receipts in favour of Km. Pragya Bharti, Rohit Kumar and Akshey Kumar, the complainants of the case and some other persons named in annexure-3.

2. We have heard learned Counsel for the petitioners, learned Standing Counsel for respondent Nos. 1 and 2 and learned Counsel for respondent No. 3. The main grievance of the petitioners is that District Consumer Form (hereinafter called as Forum) has no jurisdiction to intervene in such matters, in which payment of money is involved. The complainants have remedy of filing civil suit for recovery of money, if any. Surprisingly enough, the petitioners have not made party to the aforesaid complainants, in whose favour orders have been passed. It appears from the contents of writ petition that the Forum has passed the orders on different dates in favour of the persons named in the list Annexure-3 to the writ petition and recovery proceedings are being initiated by the respondents to execute those orders. The petitioners were running business of deposit of money on interest in the name and style of M/s Godavari Hire Purchase Pvt. Ltd, M/s Godawari Instalments, Pvt. Ltd, M/s Bros Hire Purchase Pvt. Ltd and M/s Raj

Financers Registered. They were Directors of the said Companies. Said companies were engaged in the business of private financing. A number of persons deposited their money in the aforesaid Companies and said Companies issued F.D.Rs but when depositors/consumers presented their receipts for payment, the aforesaid Companies refused to make payment, therefore, customer approached the Forum and got orders in their favours. The copy of complaint filed by Km. Pragya and two others before the Forum is Annexure-4 and the written statement filed by the petitioners is Annexure 4A. In para 6 of additional pleas of written statement, the petitioners have not even clearly admitted deposits. Contents of para 6 are quoted below:

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In para 7, it has been mentioned that business of aforesaid Companies have failed and the petitioners are not in a position to make payment to the customer. This shows that the customers were cheated by the petitioners and they collected huge amount from the innocent people and failed to make payment. This is a fraud and cheating on the part of petitioners and their Companies. This is no ground to refuse payment of customers that the business of petitioners has failed. Ho where, petitioners have been declared insolvent.

3. As regard jurisdiction of Forum is concerned, we are of the opinion that the Forum has jurisdiction to intervene in the said matters and give relief to the consumers. Section 2(d) of Consumer Protection Act 1986, defines consumer as under:

2(d) "consumer" means any person, who-

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such services for any commercial purpose.

It is evident from Clause 2 of said Act that the petitioners and their Companies were beneficiary of deposits made by the customers and in lieu thereof, the petitioners and their Companies had promised to repay the deposits to the customers along with interest. The money deposited by the customers were utilized by the petitioners for their own benefit and took advantage of same, therefore, in not making the payment of depositors along with interest by the petitioners and their Companies, they lacked in service, which has been defined u/s 2(o) of said Act which runs as under:

2(o) service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free if charge or under a contract of personal service.

The definition given above includes provisions of facilities in connection with banking. The enforcement of payment of F.D.R against a Finance Company or Society doing business of banking can be ordered by the Forum. In the case of Allahabad Bank v. Shiv Swaroop Srivastava 2005 (3) A.W.C 4.110 (UPC), the State Consumer Disputes Redressal Commission U.P. Lucknow has clearly held that deficiency in service by the Banking Companies is still covered under the jurisdiction of Consumer Forum. In that case, the complainant had invested Rs. 35,000/ with the appellant Bank in the shape of F.D.R but when receipt was presented for payment, the Bank refused on the ground that it had been obtained by fraud. The matter went to District Consumer Forum, who on the basis of evidence recorded findings that claim of the complainant was genuine and ordered for payment of F.D.R money. Against said order, the appeal was preferred to the State Consumer Forum u/s 15 of the Act. The State Forum confirmed the jurisdiction of District Forum and dismissed the appeal preferred by the Bank.

4. Learned Counsel for the petitioner has argued that business run by the petitioners could not be termed as Banking, but we do not agree with this contention. When the petitioners and their Companies were indulging in getting money deposited by the customers on interest and the F.D.R were issued, they were duty bound to make payments and such type of transactions definitely terms as Banking. Learned Standing Counsel has challenged maintainability of this writ petition. The Kerala High Court in the case of A.V. Georgekutty Vs. State of Kerala and Others, , clearly held that the question as to who is a consumer could be decided by the Consumer Forum itself.

5. From various decisions, it is clear that the High Court is not bound to entertain every such writ, but jurisdiction of High Court, under Article 226 of the Constitution of India is not clearly barred. Whenever question of jurisdiction is raised, the High Court normally permits it under Article 226 of the Constitution and examines whether proceedings instituted before the Tribunal are within the jurisdiction, but the High Court has discretion to entertain such writ. The Consumer Protection Act has clearly made provisions for appeal. Any person

aggrieved from the order of District Forum can prefer appeal to the State Forum under Section15 of the Act and any person aggrieved by the judgement/order of State Forum can prefer appeal to National Forum u/s 19 of the Act. The Judgment of National Forum is final. The intention of legislature appears to provide for a speedy and efficacious remedy, for resolving consumer disputes. The statement of objects and reasons clearly mentions that the Act is intended to provide speedy and simple redressal of consumer disputes by providing a self-contained quasi-judicial machinery. The Act has created a hierarchy of bodies under the Act with power to hear appeals at every stage. No one can say that the District, High Court or Supreme Court Judges who preside over the Consumer forums are not competent to decide the question of jurisdiction. They have long judicial experience to face such questions, however, complicated. They are not like executive authorities who have no judicial experience. It is well settled that such bodies are entitled to decide whether they have jurisdiction to decide a dispute and whether the complainant before them is a consumer within the meaning of Section 2(d). The intention of legislature would be defeated if at the initial stage itself, objections regarding the jurisdiction are permitted to be raised before the High Court because such proceedings are bound to cause delay and the very purpose of creating the new forum would be defeated. The petitioners can not get any benefit of order dated 18.9.2007 shown to us by Hon''ble Single Judge in Writ Petition No. 45088 of 2007 against District Consumer Forum''s order regarding jurisdiction. Only admission of said writ petition for hearing gives no benefit to any party. In view of our above discussion, we are of the considered opinion that this writ petition is devoid of merits and is liable to be dismissed. Accordingly, the writ petition is dismissed.