(1999) 02 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

PRUDVI AGRO FARMING AND FINANCE COMPANY — APPELLANT

Vs

KRISHNAMURTHY SATYANARAYANA — RESPONDENT

Date of Decision : 22-02-1999

Acts Referred:

Citation : 1999 2 CPJ 580

Hon'ble Judges : S.Parvatha Rao , T.Ranga Rao , Mamata Lakshmanna J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal preferred by the opposite party in O.P. No. 196/1997 against the order of the Srikakulam District Forum in that O.P. dated 31.12.1998 partly allowing that O.P. and directing it to refund Rs. 30,000/- to the complainant together with interest at 24% per annum from 24.6.1997 till the date of payment and also Rs. 1,000/- towards costs. The complainant before the District Forum is the respondent before us. We do not find any merit in this appeal. The facts are in a very brief compass. It was the case of the complainant before the District Forum that pursuant to the invitation for deposits made by the appellant he deposited in all a sum of Rs. 30,000/- in units of Rs. 3,000/- each i.e. in all ten (10) units - a sum of Rs. 3,000/- paid by way of a cheque dated 12.7.1996 for one unit (evidenced by Ex. A-1 receipt); and a sum of Rs. 27,000/- paid in cash towards nine (9) units (evidenced by Ex. A-2 receipt dated 19.7.1996). The complainant was aggrieved that even after receiving Rs. 30,000/- the deposit receipts in printed forms were not handed over to him as promised. In May, 1997 when he approached the office of the appellant he found it locked and then he gave legal notice dated 24.6.1997 (xerox copy of which marked as Ex. A-3) to which he received a reply legal notice given on 5.7.1997 from the appellant (xerox copy of which marked as Ex. A-4). Then he approached the District Forum for redress seeking the repayment of Rs. 30,000/- together with interest at 24% per annum from 22.7.1996 till the date of realisation and also Rs. 10,000/- for mental agony and hardship and Rs. 2,000/- towards costs. The opposite party received notice in the O.P. and filed its version/ counter. It was stated in the counter that the appellant firm was formed with four

partners, one of whom was Smt. J. Ramani Bai. When she was asked by other partners to contribute her share to the firm she arranged a loan of Rs. 3,000/- through the complainant and that subsequently disputes arose between the partners and because of that there was no proposal for receiving any deposits and issuance of units and that if the complainant paid Rs. 27,000/- he would have at least taken a hand receipt if printed receipts were not available. Thus the receipt of Rs. 27,000/- in cash was denied and also the receipt of Rs. 3,000 / - towards deposit was also denied.

2. THE District Forum accepted Exs. A-1 and A-2 receipts finding that they were signed by the Managing Partner of appellant firm, Sri R. Suryaprakasa Rao, with the stamp of the firm showing that they were issued on behalf of the appellant firm. A copy of the partnership deed dated 4.5.1996 (marked as Ex. B-1) constituting the appellant firm was filed before the District Forum. THE District Forum was satisfied that the signatures on Exs. A-1 and A-2 were similar to the signature of Sri R. Suryaprakasa Rao in the partnership deed (Ex. B-1). It was contended before the District Forum on behalf of the appellant firm that when the document was questioned before it as not genuine the matter should be referred to the Civil Court. That contention was rejected by the District Forum relying on the decision in Nagarwal Construction Company v. Suresh Kumar, II (1997) CPJ 88 (NC)=1997 (2) CPR 69, wherein the National Commission rejected the proposition that "whenever the documents produced before the Consumer Redressal Agencies are questioned, the matter should be referred straight away to the Civil Court". It was also contended before the District Forum that Sri R. Suryaprakasa Rao received the amount from the complainant in his individual capacity. That contention was rejected by the District Forum holding that Exs. A-1 and A-2 receipts were issued by him in the name of the appellant firm signing as Managing Partner of the firm. THE District Forum also held that when a firm was held to be liable, all the partners also would be liable to pay the amounts since it was a joint and several liability - rightly so, in view of Section 25 of the Indian Partnership Act, 1932 (''1932 Act'' for short). In the result, the District Forum partly allowed the complaint as already observed earlier. The learned Counsel for the appellant very vigorously contended that the complaint was bad because all the partners of the appellant firm were not impleaded. He sought to rely upon Section 25 of the 1932 Act. Section 25 of that Act only states that "every partner is liable jointly with all the other partners and also severally, for all acts of the firm while he is a partner". This specifically does not require that for an action against the firm all partners should be impleaded. The learned Counsel himself states that the appellant firm was registered under the 1932 Act. Though Order 30 of the Code of Civil Procedure, 1908 is not made applicable to the complaints under the Consumer Protection Act, 1986, the principle adumbrated in it is attracted to all actions against firms. Rule 1 of Order 30 states as follows : "1. Suing of partners in name of firm : (1) Any two or more persons claiming or being liable as partners and carrying on business in (India) may sue or be sued in the name of the firm (if any) of which such persons were

partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm to be furnished and verified in such manner as the Court may direct. (2) Where persons sue or are sued as partners in the name of their firm under Sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons." This is based on the principle applicable to registered firms. The effect of non-registration of a firm is stated in Section 69 of the 1932 Act. Sub-section (2) of Section 69 of the 1932 Act states as follows : "No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the person suing are or have been shown in the Register of Firms as partners in the firm."

This amply makes it clear that when once a firm is registered it can be sued in its name represented by a partner. Going through the grounds of appeal, we find that this is the only serious contention raised. The learned Counsel for the appellant seeks to rely on a decision of the National Commission in K. Kasi Annapurna & Ors. v. Smt. Vemuri Bharathi & Ors., and K. Kasi Annapurna & Ors. v. Smt. M. Anuradha & Ors., I (1996) CPJ 43 (NC)=I (1997) CCJ 372 (NC). The National Commission pointed out that the only question that arose in the appeals before it was "whether the appellants herein are and/or were partners of M/s. Vijaya Credit Corporation at the relevant time". The National Commission held, on the basis of the material placed before it, that the appellants were partners of that firm at the relevant time and that though it was shown that they ceased to be partners with effect from a subsequent date i.e., 1.12.1988, the State Commission rightly observed that the complainants were third party creditors of the said partnership firm and were not bound by that cessation as to notice was given. The National Commission then observed as follows :

"...Under Section 25 of the said Act (''1932 Act'') every partner is liable, jointly with all the partners and also severally for all acts of the firm done while he is a partner. A partner who retires from a firm does not cease to be liable for partnership debts or obligations incurred before his retirement."

The National Commission also held that even after the appellants retired from the firm "they would be liable as no public notice of retirement is given as required by Section 32 of the said Act". We do not see how these observations of National Commission would come to the rescue of the appellant before us in this appeal. In the present matter it is not anyone''s case that any of the partners retired from the appellant firm and no contention was sought to be advanced before us on the basis that any of the partners ceased to be partners at the time when the amounts were deposited by the complainant with the appellant firm. The only contention sought to be raised by the learned Counsel for the appellant is that the complaint was bad because all the partners of the appellant firm were not impleaded and that the District Forum ought to have dismissed the complaint on the short ground that all the partners of the appellant firm were not impleaded. We do not see any merit in this contention for the reasons stated by us earlier. The learned Counsel further sought to contend before us that the complaint itself was a mischievous one and was actually engineered by one of the partners i.e. Smt. J. Ramani Bai. The District Forum rejected that contention as no material was placed before it to substantiate the same and in view of its finding that Exs. A-1 and A-2 clearly establish that a sum of Rs. 30,000/- was deposited by the complainant with the appellant firm. We may also state that no contention was raised before us that the interest that was awarded by the District Forum at 24% was on the high. No ground was also raised in that regard in the grounds of appeal. In the result, the appeal is dismissed.

Appeal dismissed.

