

(2019) 09 BOM CK 0040

In the Bombay High Court

Case No : Criminal Writ Petition No. 207 Of 2019

Ramesh Mohanlal Ahuja And Ors

APPELLANT

Vs

Vidya Mahadev Chougule And Ors

RESPONDENT

Date of Decision : 13-09-2019

Acts Referred:

Consumer Protection, Act, 1986 — Section 15, 19, 21, 21(b), 21(a)(ii), 24, 27(1), 27, 27(2), 27A, 27(3), 27A(1), 27A(2), 27(1A)
Maharashtra Co-operatives Societies Act, 1960 — Section 107, 110
Code Of Criminal Procedure, 1973 — Section 13(4), 13(6), 13(7), 27, 251, 262
Code Of Civil Procedure, 1908 — Order 21 Rule 32
Constitution Of India, 1950 — Article 142

Citation : (2019) 09 BOM CK 0040

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : S.S. Patwardhan, Sukhman Rait, N.B. Patil, Suresh Sawale

Final Decision : Dismissed

Judgement

1. Rule. Rule made returnable forthwith. With the consent of parties matter is heard and disposed of finally at the stage of admission.

2. This petition takes an exception to the order dated 04.12.2018 passed by the State Consumer Disputes Redressal Commission, Maharashtra State in Appeal No. 16/3028.

3. It is the case of the petitioners that, Petitioners are the Chairman and Directors of the Co-operative Sahakari Path Sanstha namely Shri Sainath Nagri Sahhakari Path Sanstha Ltd. Miraj, duly registered under the Maharashtra Co-operative Societies Act, 1960. Respondent No. 1 herein filed the consumer complaint No. 878 of 2008 against the Petitioners. Respondents - Complainants had fixed deposits receipt no. 3707 amounting to Rs. 80,000 and a saving account worth Rs. 40,000 deposited with the society.

4. The complaint was filed by the Respondents No. 1 and 2 herein on 07.08.2008

bearing Consumer Dispute No. 878 of 2008 before the District Consumer Dispute Redressal Forum, Sangli for the claim on the said deposits and the interest thereupon from the petitioner Society. On 06.11.2009, a ex parte order was passed by the District Consumer Dispute Redressal Forum, Sangli directing the Petitioners to pay a Sum of Rs. 80,000/- (Rupees Eighty Thousand Only) to each of the complainant in respect of the fixed deposit with interest @ 10% p.a. with reference to the order dated 06.11.2009 till realization. The petitioners were further directed to pay in respect of another savings account amounting to sum of Rs. 40,000/- (Rupees Forty Thousand Only) along with 7% p.a. It is the case of the petitioner that, an Administrator was appointed as liquidator for the said society on 22.03.2013. Learned forum below did not consider the fact that once the liquidator was appointed, the liquidator was answerable to pay the amounts to the complainants - Respondents as the Management Committee seized to exist.

4. Thereafter, complainant filed an Execution Application No. 1 of 2010 under Section 27 of the Consumer Protection, Act, 1986 for non-compliance of the order dated 06.11.2009 passed by the District Consumer Dispute Redressal Forum, Sangli which has been allowed by the order dated 04.11.2016.

5. Being aggrieved and dissatisfied by the order dated 04.11.2016 passed by the District Consumer Dispute Redressal Forum, Sangli the Petitioners preferred an Appeal in the State Consumer Dispute Redressal Commission, Circuit bench, at Kolhapur bearing Appeal No. 16/3028. The learned State Consumer Dispute Redressal Commission, Circuit Bench at Kolhapur vide its order dated 04.12.2018 gave a final opportunity to the petitioners to arrange the payment in accordance with the final order passed by the District Consumer Disputes Redressal Forum on 06.11.2009 within 45 days from the date of receipt of the order. Hence this Writ Petition.

6. At the outset, learned counsel appearing for the first and second Respondent raises preliminary objection about maintainability of the Writ Petition and submits that the Writ Petition is not maintainable, and proper remedy to the Petitioners is to approach the National Consumer Forum. In support of the aforesaid contention learned counsel placed reliance upon the judgment of the Division bench of the Bombay High Court in the case of the Bajirao s/o. Dagduji Sirsat Vs. Sanjay Prakashchand Kothari and others 2015 (1) Mh.L.J. 278 and the Hon'ble Supreme Court in the case of Cicily Kollarckal vs. Vehicle factory (2012) 8 SCC 524 wherein it is held that, the proper remedy to the Petitioners therein is to approach the National Consumer Forum and Writ Petition is not maintainable. Therefore, learned counsel appearing for the first and second respondents reserving their contentions on merits, prays that Writ Petition may be dismissed since not maintainable.

7. Learned counsel appearing for the Petitioners submit that, neither remedy of appeal nor revision in the Consumer Protection Act, 1986 is available to the Petitioners and therefore, the present Writ Petition is filed. Learned counsel

appearing for the petitioners submit that, the sub-section (1) of the Section 27-A of the said act provides for a singular appeal.

- (a) From the order made by the District Forum to the State Commission;
- (b) From the order made by the State Commission to the National Commission; and
- (c) From the order made by the National Commission to the Supreme Court;

if the orders in execution are passed under Section 27 of the said Act by the District Forum, State Commission or National Commission as the case may be. Under the provisions of the said act, the higher courts in the hierarchy are also courts of original jurisdiction depending upon the valuation of the claim. Such trial court (District forum / State Commission / National Commission as the case may be) is the Executing Court of its own award (section 27(3) of the said Act). From the order in execution under Section 27-A of the said Act, however, only one appeal is available, unlike under original proceedings (complaint). Section 15 provides for three appeals from the award of the District Forum, section 19 provides for two appeals from the award of State Commission and section 21 provides for one appeal from the award of National Commission. In other words, against a final order in a complaint (original proceeding) there can be three appeals (section 15 of the Act), 2 appeals (section 19 of the said Act) or only one appeal (section 21 of the said Act); but against an order under Section 27-A of the said act there can be only and only one appeal (section 27- A(2) of the said act). An appeal under Section 21(a)(ii) or even a revision under Section 21(b) is not maintainable.

8. He further submits that, a question of maintainability of a second appeal from the orders under Section 27(1A) of the said Act, was considered by the Supreme Court in Kamlesh Aggarwal vs. Narain Singh Dabbas and Anr. reported in (2015) 11 SCC 661 and it is held that, no second appeal under the provisions of the Consumer Protection Act, 1986 is available against an order under Section 27-A of the said Act. The question of maintainability of revision from the orders under Section 27(1A) of the said Act, was considered by the Hon'ble Supreme Court in Karnataka Housing Board vs. K.A. Nagamani reported in (2019) 6 SCC 424 it is held that, no further revision under the provisions of the Consumer Protection Act, 1986 is available against an order under Section 27-A of the said Act.

9. He further submits that, since the Petitioners challenged the judgment and order dated 04.11.2016 passed by the District Forum, Sangli in Execution proceeding no. 1 of 2010, by way of an appeal before the State Commission, Maharashtra, and the said Appeal (No. 16/3028) is dismissed, no further remedy of appeal / revision is available to the Petitioners under the provisions of the Consumer Protection Act, 1986. The present Writ Petition, is therefore, the only remedy available to the petitioner, and hence the present Writ Petition cannot be treated as barred on account of availability of any other alternative and equally efficacious remedy as contended by the learned advocate for the Respondent

nos. 1 and 2.

10. Learned counsel appearing for the Petitioners submit that, learned Forum below ought to have seen that the order of liquidation is issued against the Co-operative society and therefore, the consumer forum seizes to proceed further against the directors or the Sanstha, and order of conviction could not have been passed against the directors. Learned counsel further submits that, Learned Courts below ought to have considered that, the Consumer Protection Act provides the procedure about the supply of the certified first copy. The Certified First copy of the order was neither send nor communicated to the Petitioners resulting in grave injustice caused to the Petitioners. Learned counsel further submits that, Learned Lower Court has erred in not considering the fact that the society was under liquidation and an administrator was appointed, and hence the Petitioners was no more liable for the contention of the complainant. The Learned State Consumer Forum has erred in not considering the provisions of Section 107 and 110 of the Maharashtra Co-operatives Societies Act, 1960 which suggest a process of winding up as the outcome of the situation of liquidation. Learned counsel appearing for the Petitioners therefore prays that Petition may be allowed.

11. Respondent Nos. 1 and 2 have filed reply. It is contended in the said reply that, Respondents No. 1 and 2 Original Complainants filed Complaint no. 878 of 2008 against the Petitioner No. 1 to 12 and Respondent No. 3 herein before the Learned District Consumer Dispute Redressal Forum, Sangli for recovery of FDR and Saving Account. It is contended that, after receipt of summons Petitioners No. 1 to 12 appeared before the learned District Forum but not filed any written statement / say. Hence, learned District Forum passed 'No Say' order against present Petitioners no. 1 to 12 and Respondent no. 3 herein. After hearing the complainant learned District Forum, Sangli passed reasoned final judgment and order and directed present Petitioners and Respondent No. 3 herein to pay decretal amount.

12. It is further contended that, after hearing both the sides learned Maharashtra State Consumer Dispute Redressal Commission, Circuit bench Kolhapur dismissed appeal filed by the Petitioners affirming order passed by the District Forum by impugned order dated 04.12.2018.

13. Learned counsel appearing for the Respondents No. 1 and 2 submit that, Petitioners only grievance is that ex parte judgment was passed, but it is pertinent to note that, it is not the case of Petitioners that they have taken any steps to get aside said ex parte judgment. It is further submitted that, judgment and order dated 06.11.2009 attained finality and hence binding upon both the parties. The order passed by the District Consumer Forum is made on merits and in terms of Section 24 of Consumer Protection Act, 1986 the said order has becomes final. The petitioners have not complied with order passed by the said forum, and thus they committed offence under Section 27(1) of Consumer Protection Act. Therefore, learned counsel appearing for the first and second

Respondent prays that Writ Petition may be dismissed.

14. Heard counsel appearing for the Petitioners and learned counsel appearing for the Respondents at length. With their able assistance perused the pleadings in the Petition, annexures thereto and also the written notes of arguments filed by the advocate for the petitioners. Since the preliminary objection is raised by the counsel appearing for the contesting respondents about the maintainability of the Writ Petition, it would be apt at this stage to deal with the said preliminary objection at threshold.

I have considered the judgment cited by the counsel appearing for the petitioners and also by the learned counsel appearing for the first and second Respondents. According to the learned counsel appearing for the first and second respondent the proper remedy to the petitioner is to approach National Consumer forum. Admittedly, proceedings are arising out of execution petition filed by the Respondent nos. 1 and 2 before the District Consumer Forum. Being aggrieved by the order passed by the District Consumer Forum, the petitioner approached the State Consumer Forum, and State Consumer Forum has rejected the appeal filed by the Petitioners by impugned order dated 04th December, 2018. The Supreme Court in the case of Karnataka Housing Board vs. K.A. Nagamani (Supra) has taken a view that there is no remedy provided under Section 21 of the said Act to file Revision Petition to challenge the order passed in appeal arising out of execution proceedings. Section 21 of the said Act does not provide for filing of Revision Petition before the National Commission against an order passed by the State Commission in execution proceedings. Therefore, the remedy of Revision is not available to the Petitioners.

15. Let us now consider whether the remedy of second appeal was available to the Petitioners before the National Commission for challenging the order passed by the State Consumer Forum is an appeal filed by the petitioner. At this stage it would be appropriate to reproduced herein below Section 27-A of the Consumer Protection Act, 1986, as under:-

88 [27A. Appeal against order passed under section 27.- (1) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), an appeal under section 27, both on facts and on law, shall lie from-

- (a) the order made by the District Forum to the State Commission;
- (b) the order made by the State Commission to the National Commission; and
- (c) the order made by the National Commission to the Supreme Court.

(2) Except as aforesaid, no appeal shall lie to any court from any order of a District Forum or a State Commission or the National Commission.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of an order of a District Forum or a State Commission or, as the case may be, the National Commission:

Provided that the State Commission or the National Commission or the Supreme Court, as the case may be, may entertain an appeal after the expiry of the said period of thirty days, if, it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.]

16. From perusal of the aforesaid provision it is abundantly clear that an appeal under Section 27-A, both on facts and the law shall lie from the order passed by the District Forum to the State Commission, and from the order made by the State Commission to the National Commission, and the order made by the National Commission to the Supreme Court. In the present case petitioners challenged the order made by the District Forum to the State Commission by way of filing appeal.

17. A question of maintainability of second appeal from the order under Section 27(1A) of the said Act felt for consideration before the Hon'ble Supreme Court in the case of Kamlesh Aggrawal (supra). In the context of controversy involved in the present petition, it would be apt to reproduced herein below paragraph nos. 17 and 18 of the above judgment which reads thus:

17. It is also needless to mention in this order that no remedy is available to the appellant against the order of the District Forum even under Section 24 of the Act for the reason that the order passed by the State Commission, which was not interfered with by the National Commission holding that second appeal is not maintainable against the order of the State Commission. Further, the order passed by the State Commission is under Section 27A of the Act in the appeal against the order dated 30.7.2013 of the District Forum which under Section 27(2) of the Act convicted and sentenced the respondents in the execution proceedings for non implementation of the order dated 17.10.2003 passed by the District Forum on the original complaint. Therefore, this Court in exercise of power of this Court under Article 142 of the Constitution of India, modifies the order of the State Commission to the extent of remanding the case to the District Forum to execute the decree and take penal action against the respondents by following the procedure under Section 262 read with Chapter XX and Section 251 of the Code of Criminal Procedure in accordance with law.

18. Further, it is needless to observe in this order that apart from initiating proceedings under Section 27 of the Act, the alternative right is also available to the appellant to execute the order of the District Forum by invoking the provisions of Code of Civil Procedure, 1908 under Order XXI read with the Rule 32 for seeking direction to the respondents to get sale deed in respect of the Plot No.114, Village Khoda, Ghaziabad executed by the Navchetna Sahkari Awas Samiti Ltd. and register the same before the Sub- Registrar and put her in possession of the same in accordance with the aforesaid provisions. The execution of the decree in the aforesaid terms is permissible in law in view of the provisions of Section 13(4), (6) and (7) of the Act, as the provisions of Order XXI read with the Rule 32 of Code of Civil Procedure are applicable to the District Forum to follow the procedure for execution of the order passed by it.

18. A careful reading of observations made by the Supreme Court in paragraph no. 17 is reproduced herein above, it is clear that the Supreme Court held that, no second appeal under the Consumer Protection Act, 1986 is available against an order made under Section 27(1A) of the said act. In that view of the matter, neither remedy of appeal nor the remedy of revision is available to the Petitioners and therefore they have filed the present Writ Petition.

19. It is the contention of the counsel for the Petitioners on merits that the order passed by the District Consumer Forum, Sangli on 06.11.2009 is ex parte and Petitioners did not get opportunity to contest the said proceedings. The said submission is devoid of any merits. The District Consumer Forum, Sangli in its judgment dated 06.11.2009 in paragraph no. 2 has specifically mentioned that Respondents were served however, they did not filed their reply. It is further the contention of the petitioners that liquidator was appointed and therefore, the Petitioners were not responsible for returning the deposit of the Respondent - Complainant and they were not necessary party before the District Consumer Forum. The District Consumer Forum in its judgment dated 04.11.2016 in Execution Application no. 1/2010 has considered the said submission and held in paragraph no. 4 that the administrator was appointed after original consumer complaint no. 878/2008 was decided on 06.11.2009 and the issue process was ordered against all the accused persons on 05.01.2010. Therefore, it appears that at the relevant time when the District Consumer Forum decided the complaint filed by the Respondent - Complainant, at that time the Petitioners were managing the affairs of the said society. The District Consumer Forum in paragraph no. 9 of the judgment in execution proceedings observed that, it is not the case of the accused persons i.e. the Petitioners herein, that they have taken any steps to get set aside the ex parte judgment of the District Consumer Forum. It is not their case either they have moved the District Consumer Forum for setting aside the ex parte order or they have filed an appeal against the said ex parte order. On the contrary, the petitioners admit the existence of such an order and the fact that the said order was passed against them. Therefore, it follows from the said reasons that the present petitioners did not challenge the order passed by the District Consumer Forum on 06.11.2009 and therefore, the said order attained finality. Therefore, the appropriate course for the Petitioners was to challenge the said order. In that view of the matter and the findings / reasons recorded by the District Consumer Forum and confirmed by the State Consumer Forum there by rejecting the prayer of the petitioner, no case is made out to cause interference in the impugned orders passed by the District Consumer Forum and also by the State Consumer Forum. Hence, the Writ Petition is devoid of any merits and same stands rejected. Rule stands discharged.