

(2009) 12 DEL CK 0072

In the Delhi High Court

Case No : CM (M) No. 1413/09 and CM No. 17547/09

Religare Securities Ltd.

APPELLANT

Vs

Mr. Om Singh Deswal

RESPONDENT

Date of Decision : 16-12-2009

Acts Referred:

Constitution of India, 1950 — Article 227
Consumer Protection Act, 1986 — Section 12

Citation : (2009) 12 DEL CK 0072

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Sanjeev Puri and Parmod Ahuja, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—This petition has been filed under Article 227 of the Constitution of India. Initially, petitioner sought quashing of orders dated 21st May, 2009 and 10th July, 2009.

2. However, on 9th December, 2009, counsel for petitioner gave a statement that, he does not press his prayer with regard to quashing of order dated 10th July, 2009 and wants to withdraw his prayer qua this order. He sought liberty to take appropriate remedy under the law.

3. In view of the above statement, prayer with regard to quashing/setting aside of the impugned order dated 10th July, 2009, was dismissed as withdrawn.

4. Vide impugned order dated 21st May, 2009, complaint of the respondent pending before Consumer Disputes Redressal Forum (for short as "District Forum") was restored. This order read as under:

21.05.09

Present Mr. G.L. Aggarwal, AR of the complaint. Respondent is absent in spite of

service of the notice of the restoration application.

After having the arguments the complaint is restored to original number.

As respondent was duly served of the notice and is absent in spite of service, therefore it is also proceeded ex-parte.

Now to come up for ex-parte evidence by way of affidavit on 8.06.09.

5. It is contended by learned Counsel for petitioner that impugned order restoring the complaint and setting down the petitioner ex-parte, are bad in law. District Forum could not have entertained an application for restoring the complaint and thereby recalling its own order. District Forum has no power/authority under the Act or otherwise to recall its order. Thus, the proceedings and the impugned judgment passed by District Forum are without jurisdiction, bad in law and liable to be quashed.

6. In support of its contentions, learned Counsel for petitioner cited Nihal Chand Rameshwar Dass and Another Vs. Vinod Rastogi and Others, .

7. Respondent had filed a complaint u/s 12 of the Consumer Protection Act, 1986 (for short as "Act") against petitioner before District Forum. Notice of this complaint was issued to the petitioner for 19th March, 2009.

8. On 19th March, 2009, the complaint was dismissed in default as none was present on behalf of respondent, while counsel for petitioner was present. Respondent moved application for restoration, notice of which was issued.

9. On 21st May, 2009, Authorized Representative (AR) of respondent was present, whereas, petitioner was absent in spite of service of the restoration application. After hearing the arguments, complaint was restored.

10. Since petitioner was absent in spite of service, hence, he was proceeded ex-parte. The matter was adjourned to 8th June, 2009 for exparte evidence.

11. On 8th June, 2009, affidavit by way of evidence was filed by respondent. Arguments were heard and judgment was reserved.

12. Vide judgment dated 10th July, 2009, petitioner was directed to pay sum of Rs. 6,07,539/- along with interest @ 9 % from October, 2007 till the date of payment. Besides that, petitioner further directed to pay a sum of Rs. 50,000/- to respondent for mental agony and harassment and, another sum of Rs. 30,000/- towards cost of litigation.

13. Short question which arise for consideration, is as to whether petition under Article 227 of the Constitution of India, lies against impugned order or not?

14. Section 15 of the Act, provides for appeal against an order made by the District Forum and it reads as under:

15 Appeal-Any person aggrieved by an order made by the District Forum may

prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed: Provided that the State Commission 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 within that period:

[Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be entertained by the State Commission unless the appellant has deposited in the prescribed manner fifty per cent of that amount or twenty-five thousand rupees, whichever is less]

15. The words "an order" mentioned in above Section means "any order". This Section provides remedy to the aggrieved party, to file an appeal before the State Commission against "any order".

16. If, order dated 21st May, 2009, is wrong or bad in law, the alternative remedy, lies in filing of the appeal as provided u/s 15 of the Act. It is well settled that, where alternative remedy is available, the High Court's jurisdiction under Article 227 of the Constitution of India is not attracted.

17. In the petition, an averment has been made that "no application for restoration/notice was received by the petitioner in the said matter". This averment is against the record as impugned order, clearly states that; "Respondent is absent in spite of service of the notice of the restoration application."

18. Hence, it cannot be said that, the District Forum did not follow the principles of natural justice or committed any illegality in restoring the complaint. Before restoring the complaint, District Forum issued notice of the restoration application to the petitioner. It was the petitioner, who did not appear before District Forum after service of the notice. Case of Jyotsana Arvind Kumar Shah (Supra) is not applicable at all to the facts of the present case.

19. Under these circumstances, there is no ambiguity or illegality in the impugned order. Present petition is having no legal force. The same is dismissed with costs of Rs. 5,000/- (Rupees five thousand only).

20. Petitioner is directed to deposit the costs, with Registrar General of this Court, within four weeks from today, failing which Registrar General shall recover the same in accordance with law.

21. List for compliance on 18th January, 2010. 22. Dismissed, being infructuous.