(2008) 03 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

Sagar Suri Estate And Finance Ltd APPELLANT

Vs

Prakash Wadhwa RESPONDENT

Date of Decision : 24-03-2008

Acts Referred:

Citation : 2008 0 NCDRC 91 : 2008 3 CPJ 69

Hon'ble Judges : R.C.Jain , Anupam Dasgupta J.

Final Decision : Petition dismissed

Judgement

1. THIS revision petition seeks to impugn the order dated 3rd April, 2007 of the Delhi State Consumer Disputes Redressal Commission, Delhi (hereafter the State Commission) in revision petition no. 165/2005 against the order dated 25th February, 2005 of the District Consumer Disputes Redressal Forum II, Delhi (hereafter the District Forum) on execution petition no. 1502/2004.

2. THE matter has had a chequered history spanning over 10 years, which we think ought to be recalled in some detail: (i) In response to a brochure published by M/s Sagar Suri Estate and Finance Ltd. (petitioners, a non banking financial company; hereafter referred to as the company), the original complainants (respondents here) deposited, under the companys cumulative deposit scheme, Rs. 3.97 lakh in 25 certificates (24 of Rs. 16,000/- each and the last of Rs. 13,000/-), each with maturity period of one year, during May December 1996. THE brochure showed that these deposits carried interest @ 15% per annum with monthly rests, i.e., an average annual yield of 16.07%.

(ii) THE principal amount of none of these deposits was paid back to the complainants on completion of one year from the respective dates of deposits. Two deposits, each of Rs. 16,000/- made on 27.08.1996 and 10.09.1996 respectively, were refunded on 11.04.1998, i.e., after delays of nearly 7/8 months. THE principal amounts of the remaining 23 deposits were not paid back at all. However, post-dated warrants for interest on maturity were issued on time and received by the complainants for 10 deposits (including the two where the principal amounts were also received, albeit with delay).

(iii) This led the complainants to file a consumer complaint in June 1998. THE company did not appear before the District Forum despite service of notice by registered post. THE Forum, therefore, passed an ex parte order dated 28.12.1999 directing the company to pay to the complainants, within 60 days of the date of the order the (a) principal amounts of the remaining 23 deposits, (b) interest at the agreed rate for various periods in keeping with the details of actual payment by the company of the principal amounts and maturity interest on some deposits and (c) cost of Rs. 1000/-. THE order also clarified that the complainants would be free to commence execution proceedings if the company failed to comply within time.

(iv) THE company did not comply, which led the complainants to file an execution petition. This time, however, the District Forum dismissed the petition as the company claimed that the matter was involved in proceedings before the Company Law Board. THE complainants appeal to the State Commission against this order also failed on the same ground, driving them to this Commission. THE company also failed to appear before this Commission which, by its order dated 02.05.2002, set aside the orders of the State Commission as well as the District Forum and directed the latter to proceed as per law.

(v) In the remanded execution proceedings before the Forum, the learned Counsel of the company produced a document dated 05.12.2002 purporting to show that the matter had been settled between the parties and the complainants had agreed to receive the sum of Rs. 3.17 lakh in full and final settlement of their claims. THE company, with a view apparently to persuading the District Forum not to enforce the personal appearance of its Chairman and Managing Director, produced pay orders for Rs. 48,000/- payable to some of the complainants and assured bi-monthly payment of Rs. 48,000/-, as terms of the settlement. THEse terms were also not adhered to. In sum, it appears that at the end of a tortuous process, the complainants received payment of the balance amounts of the principal deposits during October 2002 November 2003. In the meantime, the complainants disputed that the document of 05.12.2002 was a full and final settlement, on the basis of the fact that the endorsement of Prakash Wadhwa on the said document was only to the effect of receiving three pay orders of Rs. 16,000/- each.

(vi) On the basis of all material and averments before it, the District Forum held in its well-reasoned order dated 25.02.2005 that the document dated 05.12.2002 did not amount to a settlement at all and directed the company to make payments to the complainants according to the order passed earlier in the execution proceedings. THE State Commission, as noted above, upheld the findings and order of the District Forum by its order dated 03.04.2007.

During the proceedings in this (second) revision petition, as many as six adjournments have had to be granted, all at the request of the learned Counsel for the petitioner company. A cost of Rs. 2000/- was also imposed once and paid. The last three adjournments were principally with a view to enabling the learned arguing Counsel for the company to suggest a reasonable settlement with the complainants. The trend, however, was that the arguing Counsel would not appear on the date(s) when the issue of settlement was to be considered. Be that as it may. On the last date of hearing, we also asked Ms Jain, the petitioners learned Counsel as well as the complainant (Mr. Prakash Wadhwa) to file their respective statements clarifying the actual dates of payment(s) of principal and interest amounts. The complainant did so; Ms Jain did not.

We have heard both the parties and perused all the material before us, including the latest statement (dated 29.02.2008) of receipt of payments and calculation of interest submitted by the complainant, Mr. Wadhwa. Throughout these proceedings before us, the companys arguments have been the following: (i) The document of 05.12.2002 represents a full and final settlement of all subsisting claims of the complainants, as of that date. (ii) The complainant (Prakash Wadhwa representing all others) is well versed in law and has been conducting this case on his own. He would not have signed the document of 05.12.2002, clearly mentioning full and final settlement for the sum of Rs. 3.17 lakh, had it indeed not been so. (iii) The company is nearly bankrupt and the Chairman and Managing Director a very old person now.

In other words, the learned Counsel for the company have had nothing of substance to add during the months that these proceedings have been in progress before us - these months of progress being the result mainly of their strenuous efforts to expedite a reasonable settlement. Incidentally, in response to a specific query of ours on the last date of hearing, learned Counsel Ms Jain also stated that so far the company had not been liquidated on grounds of bankruptcy or otherwise, nor were there any ongoing proceedings on that score. Be that as it may, once again. On the other hand, the complainants have all along contended that the document dated 05.12.2002 does not reflect a full and final settlement of their claims for Rs. 3.17 lakh only; the endorsement of Mr. Wadhwa on the said document is merely an acknowledgement of receipt of three pay orders amounting in all to Rs. 48,000/- towards payment of the principal amounts of three of the till then unpaid deposits. He also emphasises that there was no reason for the complainants to settle for the sum of Rs. 3.17 lakh when they had an order of the District Forum awarding them on the principal amounts and the interest due and, in any case, the company did not adhere to its own terms placed before the said Forum after December 2002. In the statement filed on 29.02.2008, Mr. Wadhwa has also given two detailed accounts of the amounts of the principal and interest, the dates of their payment by the company and the amount(s) still due at the agreed rate of interest. The first part of the statement shows calculation of interest due at the agreed rate on the principal amounts of the fixed deposits from the respective dates of commencement to the dates of their actual payment (Rs. 5,60,170) and the second shows the interest due from the date(s) of payment(s) till 31.03.2008 (Rs. 5,88,806). The calculations appear to be accurate.

3. WE note that the document of 05.12.2002, purporting to be a full and final settlement for Rs. 3.17 lakh, has been considered at length by both the Fora below. Both have rightly held that this document does not reflect what the company claims to be a full and final settlement and, therefore, discharge of the subsisting liability of the petitioner company arising out of the order of the District Forum under execution. WE find no material irregularity or legal infirmity in this concurrent finding. Moreover, as the foregoing discussion amply shows, the conduct of the company all through has been that of a rather unscrupulous litigant adept at misusing the process of adjudication to delay due discharge of its liabilities - liabilities that it incurred by obtaining deposits of small sums of money from several ordinary depositors on the promise of attractive rates of interest. A so-called settlement produced by such an entity after several years of delay deserves to be viewed with grave suspicion. In the result, we dismiss this petition, which is totally devoid of merit. As stated above, the complainants have detailed the amounts due to them as a result of the order of the District Forum. This comes to Rs. 11.5 lakh approximately and includes interest on interest. They have, however, added that an award as thought fit may be passed in their favour. The sum mentioned above is very large, though in accordance with the District Forums order. Considering, that the principal amounts of the deposits and some of the maturity interest have already been received, the amount needs to be modulated.

4. WE, therefore, feel it would meet the ends of justice adequately if, in partial modification of the order of the District Forum, the complainants are awarded a lump sum amount of Rs. 5 lakh. Accordingly, we direct the company to pay to the complainants the said amount, within 60 days of the date of this order. WE also hope that the company would eschew delaying tactics this time and comply with this order within the stipulated period.

