

(2008) 08 NCDRC CK 0052

In the National Consumer Disputes Redressal Commission

SAHAKAR AYUKT AND NIBANDHAK SAHKARI SANSTHA

APPELLANT

Vs

JAGMOHAN SINGH CHATRATH

RESPONDENT

Date of Decision : 05-08-2008

Acts Referred:

Citation : 2008 4 CPJ 141

Hon'ble Judges : P.N.Kashalkar , S.P.Lale J.

Advocate : Amar Habib , Bindu Jain

Judgement

1. THIS appeal has been filed by org. O. P. No. 3/sahakar Ayukt and Nibandhak Sahakari Sanstha of Govt. of Maharashtra, Pune feeling aggrieved by the award passed by Mumbai Suburban District Consumer Forum in consumer complaint No. 384/2006 decided on 13. 6. 2007. By the said impugned award, org. O. P. No. 3/appellant herein has been directed to pay jointly and severally Rs. 5,000 to the complainant towards mental and physical agony and also to pay jointly and severally Rs. 500 to the complainant towards cost of this litigation. The appellant has taken strong exception to the said award by filing this appeal.

2. THE facts to the extent material may be stated as under: Mr. Jagmohan Singh Chatrath filed consumer complaint against O. P. No. 1/madhu Milan Co-op. Hsg. Soc. Ltd. , Borivali (West) and also against its Chairman Mr. Shantilal Chheda and impleaded Sahakar Ayukat and Nibandhak Sahakari Sanstha as O. P. No. 3. The grievance of the complainant who contested the complaint in person was that O. P. Nos. 1 and 2 had recovered certain excess amount towards building repair fund, Ota charges, interest, compound interest and according to the complainant they had wrongly collected Rs. 2,304. They wrongly charged him Rs. 16,680. They also wrongly charged interest amounting to Rs. 1,78,582 and because of this wrongful charging, he suffered heart stroke. He suffered mental tension, which was created by O. Ps. and he was required to spend Rs. 1,70,000 for medical expenses and, therefore, he filed consumer complaint seeking compensation of Rs. 4,08,566 from all the three O. Ps.

The O. Ps. were duly served with the notices. They remained absent. They did

not file written statement. So, all of them were proceeded ex parte. The Forum below, therefore, read the complaint and affidavit filed by the complainant and observed that the O. Ps. had not appeared and filed written statement and, therefore, they were of the opinion that the complainant was entitled to relief as prayed for. Admittedly opportunity of being heard was given to the O. Ps. However, O. Ps. remained absent. Since, allegations of the complainant remained unchallenged, the Forum below held that, "the complaint is liable to be believed and accordingly complainant's prayers are liable to be allowed and accordingly complaint is allowed". The Forum below also noted that they are of the view that the complainant being a consumer, in view of deficiency in service is entitled to relief from the O. Ps. Less said the better about this ex parte judgment. The O. P. Nos. 1 and 2 against whom the award for refund of Rs. 1,74,582 has been passed along with certain other reliefs have not filed appeal. The present appeal is confined to O. P. No. 3 who has come in appeal challenging the award passed by District Consumer Forum and appellant has restricted the appeal as against Clause Nos. 5 and 6 of operative part of the judgment, whereby the O. P. Nos. 1 to 3 have been directed to pay Rs. 5,000 towards mental and physical agony and also directed jointly and severally to pay Rs. 500 to the complainant towards cost of this litigation. This portion has sought to be challenged by O. P. No. 3 in this appeal.

3. WE heard Mr. Amar Habib, Advocate for the appellant/org. O. P. No. 3 and Ms. Bindu Jain, Advocate for the respondent No. 1/org. complainant. There is delay of 59 days in filing appeal. Hence, application for condonation of delay is filed. According to the appellant they received copy of the order only on 14. 9. 2007 from the office of the Deputy Registrar, Co-op. Societies, "r" Ward. So, delay occurred because of non-intimation of the order. We are satisfied that the delay has been properly explained by the appellant. Moreover, it is our consistent stand that whenever order is ex facie erroneous and bad in law, we do condone the delay as a matter of fact. So, in the circumstances, we are inclined to allow the condonation of delay application filed by the appellant.

4. WE are finding that there is virtually no finding making the Sahakar Ayukt and Nibandhak/appellant liable to pay compensation of Rs. 5,000 for mental agony and cost of Rs. 500 to the complainant. The dispute was between the complainant Mr. Jagmohan Singh Chatrath on the one hand and O. P. Nos. 1 and 2 on the other hand. The complainant is a member of O. P. No. 1/society of which O. P. No. 2 is the Chairman. This dispute prompted the complainant to file consumer complaint. But, while filing complaint, he made appellant as O. P. No. 3 to the complaint. Since it was ex parte order, the learned District Consumer Forum did not bother to scrutinise the case of the complainant and simply held that since the averments of the complainant were not controverted or disputed by filing affidavit or written statement, they proceeded ex parte and on that ground, the complainant was liable to be believed and by so observing, the Forum below passed ex parte judgment and directed the appellant/org. O. P. No. 3 with O. P. Nos. 1 and 2 jointly and severally to pay Rs. 5,000 to the

complainant for mental agony and Rs. 500 also to the complainant by way of cost. It is to be borne in mind that simply because the Forum is proceeding ex parte against the parties, that does not mean, that the prayers of the complainant should be allowed in toto. Still the case of the complainant has got to be tested on the touchstone of pleadings, affidavits and attending circumstances. It would be absurd to allow the complaint simply because the O. Ps. have remained absent and have been proceeded ex parte. No ex parte judgment should be passed unless District Consumer Forum is fully satisfied that there was deficiency in service on the part of the O. Ps. and there was mental harassment and agony to the complainant at the hands of O. Ps. Unless that finding is given no order imposing monetary compensation should be awarded by the Forum below against any party, simply because the O. Ps. remained absent and are being proceeded ex parte. There has been miscarriage of justice on the part of the District Consumer Forum in passing impugned award as far as appellant herein is concerned. The appellant is also the Statutory Authority discharging his function under the Maharashtra Co-operative Societies Act. If the complainant had any grievance against action or inaction of O. P. No. 3, he should have made complaint to the Higher Authority of Government of Maharashtra. Instead of doing so, he made appellant as party to the proceeding in consumer complaint and the Forum below without application of mind passed the impugned award against the appellant herein. The said award is patently erroneous and bad in law. Hence, we are inclined to allow this appeal. As such, we pass the following order: ORDER 1. Misc. Application No. 1599/2007 is allowed. Delay is condoned. 2. Appeal is allowed. The impugned order passed against the appellant herein is quashed and set aside. The complaint stands dismissed as against present appellant/org. O. P. No. 3 only. 3. Rest of the order holds good since other two O. Ps. have not filed appeal. 4. No order as to costs. 5. Misc. Appl. No. 1600/2007, which is for stay stands disposed of. 6. Copies of the order be furnished to the parties.

Appeal allowed.