

(2005) 04 NCDRC CK 0003

In the National Consumer Disputes Redressal Commission

Sarvodaya Co -Op Credit Society Ltd

APPELLANT

Vs

Rameshchandra C Kathrani

RESPONDENT

Date of Decision : 26-04-2005

Acts Referred:

Citation : 2005 4 CPJ 119

Hon'ble Judges : M.S.PARIKH , M.K.JOSHI , LEENABEN P.DESAI J.

Judgement

1.THIS appeal arises from order dated 27.2.2004 rendered by the learned Kheda District Consumer Disputes Redressal Forum, in Complaint No. 131 of 2003 directing the opponent Sarvodaya Co -operative Credit Society Limited through its Chairman to pay to the complainant fixed deposit amount of Rs. 1,00,000/ - made up of four fixed deposit receipts of Rs. 25,000/ - each with interest @ 13% p.a. from the date of fixed deposit namely 25.9.2001 till payment and lumpsum cost and compensation in the sum of Rs. 5,000/ -.

2. THE present appeal has been filed by the custodian of the original opponent society. He does not have dispute with regard to the basic claim of the complainant. What he contends before us is that it is not possible to make payment as per the impugned order passed by the learned Forum since the concerned office bearers of the opponent society made advances to the tune of Rs. 18 crores out of which advances to the tune of Rs. 12 crores were made to the relatives and acquaintances of the said office bearers and they all have absconded and left India. It has also been submitted before us that criminal complaint has been filed against such erring personnel of the opponent society. In our considered opinion, the defence which is sought to be taken by the Custodian relates to the payment to be made by the opponent society to the complainant as per the order passed by the learned Forum. It is true that the Custodian will not be personally liable to answer the claim or to abide by the order. It is also true that the Custodian might be a public servant as per the provisions of Section 164 of the Gujarat Co -operative Societies Act, 1961. It is as well true that he would have immunity from proceedings of suit, complaint or

other legal proceedings as per the provisions of Section 165 of the said Act. However, as and when he has funds available for making payment to the depositors and creditors, he is bound to make payment to the complainant as per order passed by the learned Forum. He will, therefore, be required to present the financial condition of the society as available to him before the learned Forum in the execution proceedings. There being no defence to the claim in the complaint, we pass following order. ORDER Impugned order dated 27.2.2004 rendered by the learned Kheda District Consumer Disputes Redressal Forum, in Complaint No. 131 of 2003 is hereby maintained with liberty to the Custodian of the opponent society to present his defence which might relate to payment and compliance of the order before the learned Forum in the execution proceedings. In the meantime, the amount of Rs. 25,000/- stated to have been deposited in this Commission be paid over to the complainant with interest, if any, by A/c Payee cheque and the said amount shall be given set off towards the impugned order as and when the execution is taken out by the complainant before the learned Forum. This appeal is accordingly disposed of, with no order as to costs. Appeal disposed of.