(2004) 08 NCDRC CK 0069

In the National Consumer Disputes Redressal Commission

SAU NIRMALA SHYAMSUNDER JAIPURIA — APPELLANT

Vs

CANBANK MUTUAL FUND — RESPONDENT

Date of Decision : 11-08-2004

Acts Referred:

Citation : 2004 2 CPC 596 : 2004 3 CLT 359 : 2004 3 CPR 384 : 2004 4 CPJ 290

Hon'ble Judges : M.S.Rane , R.N.Varhadi J.

Final Decision : Appeal dismissed

Judgement

1. WE are proceeding to dispose of this appeal at the stage of its admission itself on hearing the appellant No. 2 who is appearing on behalf of the appellants and on perusal of the material available in the appeal paper book.

2. THIS appeal has been filed by the org. complainants under Section 27-A of Consumer Protection Act, 1986, against the order dated 9th March, 2004 of the District Forum. It is noticed that the complainants filed the complaint against the respondents-org. O.Ps. alleging deficiency against them and claiming amount invested by them because of failure on the part of the respondents to honour their commitments to redeem the amount with accrued benefits on or after the date of maturity thereof.

It is noticed that the District Forum dismissed the complaint of the complainants and appeal therefrom also met the same fate.

3. BEING aggrieved by the orders of the State Commission as also of the District Forum, complainants approached the National Commission in Revision Petition No. 1393/2002, which came to be finally disposed of on 16th October, 2003. The National Commission has allowed the Revision and set aside the orders of the District Forum as also of the State Commission. While disposing of the Revision and allowing the complaint, National Commission has specifically ordered and we reproduce the relevant portion thereof as it appears in the last paragraph : "In the light of the above disucssion, we find no merit in the order of the District Forum as affirmed by the State Commission which is set aside and direct the

respondent to pay remainder amount to Rs. 37,915/- along with interest @ 10% from 1.4.1992 till the date of payment. The petitioner is also entitled to cost which we fix at Rs. 5,000/-. The amount shall be payable within a period of 6 weeks from the date of this order. The revision petition is allowed in above terms. "

4. AS the respondents-O.Ps. did not pay the amount within stipulated time in the said order i.e., within 6 weeks from the date of the order which was passed on 16th October, 2003 i.e., on or before 27th November, 2003 that the complainant moved the Execution Application seeking straightaway initiation of action under Section 27 of Consumer Protection Act, 1986. District Forum has dispsed of the said application by its order dated 9th March, 2004 dismissing the same. It is to be stated that when the said aplication was pending respondents-O.Ps. eventually complied with the order of the Hon''ble National Commission on 12th January, 2004 by depositing the entire amount with the District Forum with interest up-to-date.

5. DISTRICT Forum took into consideration all these facts and proceeded to reject the application recording that since the order was complied with including payment of interest till date, the initiation of process under Section 27 of Consumer Protection Act, 1986 which visits with penal consequences was unnecessary.

6. WE are in agreement with the findings as rendered by the District Forum. In the first instance, as it reflected in the judicial pronouncements of the Supreme Court, High Courts that proceedings under Section 27 of Consumer Protection Act, 1986 which invites penal consequences should be resorted to only on failure to realise the decretal amount by process of execution as will be available under Section 25 of Consumer Protection Act, 1986. As a matter of fact, Andhra Pradesh High Court in its Full Bench judgment in the case of Dr. C.V. Raman v. Union of India & Ors., reported in 2002 CTJ 42, has held that the award rendered by the Consumer Fora, in the first instance should be executed by usual process under Section 25 of Consumer Protection Act, 1986 and on failure for the compliance then recourse should be taken to Section 27 of Consumer Protection Act, 1986.

Further recently the Allahabad High Court in the case of Ghaziabad Development Authority v. Union of India & Ors., reported in October, IV 2000-2003 CTJ page 863, has held that the proceeding as contemplated under Section 27 of Consumer Protection Act, 1986 are in a nature of civil contempt and principles of natural justice have to be followed while initiating the proceedings thereunder.

7. IN short, it is repeatedly asserted that the exceptional remedy available under Section 27 of Consumer Protection Act, 1986 should not be permitted to be resorted to as a handle of vengeance. It is only when the normal attempts of recovery fail then the same should be resorted to. In the matter herein, the complainants have straightaway resorted to the proceedings under Section 227

of Consumer Protection Act, 1986. Secondly and importantly, when the execution was pending O.Ps.-respondents have complied with the award by paying the interest up-to-date. For all these reasons, we do not find any merit in the appeal herein. ORDER 1. Appeal stands dismissed. 2. No order as to costs. 3. Copies of the order to be furnish to the parties.

Appeal dismissed.

